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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD) Nos.22635 and 22636 of 2017
and
W.M.P.(MD)Nos.18936 and 18937 of 2017

R.Manivannan ... Petitioner in W.P.(MD)No.22635 of 2017

R.Kannan ... Petitioner in W.P.(MD)No.22636 of 2017

-Vs-

1. The Director General of Police,
   Office of the Director General of Police,
   Mylapore, Chennai - 600 004.

2. The Deputy Inspector General of Police,
   Office of the Deputy Inspector General of Police,
   Dindigul Range, Dindigul.

3. The Superintendent of Police,
   Office of the Superintendent of Police,
   Theni District, Theni. ... Respondents in both cases

Prayer in W.P.(MD)No.22635 of 2017: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent in connection with the impugned order of punishment passed by him in his proceedings in PR No.13/F1/2016, dated 11.02.2017 and the consequential impugned order on appeal passed by the second respondent in Rc.No.AP-14/A2/2017, dated 13.04.2017 and the impugned order of review passed by the first respondent in Rc.No.114554/AP II(3)/2017 dated 24.09.2017 and quash them all.

Prayer in W.P.(MD)No.22636 of 2017: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent in connection with the impugned order of punishment passed by him in his proceedings in PR 12/F1/2016, dated 11.02.2017 and the consequential impugned order on appeal passed by the second respondent in Rc.No.AP-13/A2/2017, dated 13.04.2017 and the impugned order of Review passed by the first respondent in Rc.No.114553/AP II(3)/2017 dated 24.09.2017 and quash them all.

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For Petitioners : Mr.G.Thalaimutharasu
For Respondents : Mrs.S.Srimathy,
Special Government Pleader.
(In both petitions)
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COMMON ORDER

Heard the learned Counsel on either side.

2. The petitioners were working as Grade-II Police Constables in Theni District. They were issued with a charge memo dated 13.01.2016. The charge memo contained two articles of charge. The substance of the allegation was that even though the petitioners seized banned lotteries on 18.09.2015, they did not take the consequential steps of handing over the same to the police station and registering a case. It is further alleged that one of the seized lotteries had won a price in the bumper held on 21.09.2015 and that the same was encashed, by accepting illegal gratification from whom the banned lottery tickets were seized and thereby, the petitioners brought disrepute to the police organization. Enquiry was conducted and the enquiry officer submitted his report dated 30.11.2016, holding that the charges framed against the delinquents were not proved.

3. But the third respondent herein entered a dissenting note. That is, he issued notice dated 02.01.2017, disagreeing with the findings of the enquiry officer and holding that the delinquency, said to have been committed by the petitioners herein, stood proved. The petitioners were instructed to offer their further representation and accordingly, the petitioners submitted their further representation. The third respondent, not satisfied with the said explanation offered by the petitioners, imposed the punishment of postponement of next increment for three years, which will have the effect of postponing their future increments. This order was passed on 11.02.2017. Aggrieved by the same, the petitioners filed appeals before the second respondent, who confirmed the orders passed by the third respondent herein. The review petitions filed by the petitioners before the first respondent also ended in vein. By order dated 24.09.2017, the first respondent rejected the review petitions of the petitioners. These orders are under challenge before this Court.

4. These petitions will have to be allowed on a short and simple ground. As rightly pointed out, the enquiry officer submitted his report holding that the charges framed against the petitioners were not proved. It is true that an enquiry report is a mere material for consideration of the disciplinary authority and that the same is not binding on him. It is perfectly open to the disciplinary authority to disagree with the findings rendered by the enquiry officer. But, before doing so, it is incumbent upon

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the disciplinary authority to put the delinquents on notice. In this case, when entering a dissenting note on 02.01.2017, the disciplinary authority did not put the delinquents on notice. Even without hearing the delinquents, the disciplinary authority had already formed final conclusions with regard to the guilt of the petitioners. In other words, his disagreement with the enquiry officer's findings was not tentative, but final. Such an approach can only be termed to be a clear violation of principles of natural justice. The appellate authority as well as the reviewing authority have not considered this aspect of the matter.

5. It is seen that the disciplinary authority went entirely by the preliminary report. A preliminary report serves only one purpose. It gathers *prima facie* material to trigger action against the delinquents. Since it has been prepared behind the back of the delinquents, in the very nature of things, it cannot be relied upon during the regular enquiry. But, this aspect of the matter was totally lost sight-of and the authorities chose to hold it against the petitioners. In this view of the matter, the orders impugned in these writ petitions are liable to be quashed and the same are accordingly quashed.

6. In result, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Director General of Police,
   Office of the Director General of Police,
   Mylapore, Chennai - 600 004.

2. The Deputy Inspector General of Police,
   Office of the Deputy Inspector General of Police,
   Dindigul Range, Dindigul.

3. The Superintendent of Police,
   Office of the Superintendent of Police,
   Theni District, Theni.

+ 2 ccs TO Mr.G.Thalaimutharasu , Advocate in SR No.58036,58037
+ 1 cc TO The Special Government Pleader in SR No. 58922

gk
AE/SV MMS/SAR1/01.06.2018/3P/7C

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