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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

Review Application No.94 of 2019
in
WA.No. 2558 of 2018
in
WP.No. 30695 of 2012

- 1.Union of India
Represented by its Secretary
Ministry of Home Affairs
North Block, Central Secretariat
New Delhi 110 011.
 - 2.The Inspector General/South Sector
Central Industrial Security Force
South Sector, Chennai Port Trust
No.1, Rajaji Salai, Chennai 600 001.
 - 3.The Deputy Inspector General
South Zone, Central Industrial Security Force
Rajaji Bhavan, Besant Nagar
Chennai 600 090.
 - 4.Commandant
Central Industrial Security Force
Unit TPT, Tuticorin 628 004.
- ... Applicants /Appellants/
Petitioners
- vs-
- N.Subramanian ... Respondent/Respondent/Respondent

Review Application has been filed, for a review of the order, dated 08.01.2019, passed by a Division Bench of this Court, in W.A.No.2558 of 2018.

W.A.No.2558 of 2018:

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 15.02.2018 made in W.P.No.30695 of 2012.



WP.NO.30695/2012:

Petition filed Under Article 226 of the Constitution of India praying to issuance a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent made in reference No. V-15014/L&R/SS/ Rev/NS/2012-133 dated 27 April 2012 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant service benefits along with back wages and continuity of service.

For applicant : Mr.G.Rajagopalan,
Addl. Solicitor General of India
Asst. by Mr.T.L.Thirumalaisamy

For respondent : Mr.Balan Haridass

O R D E R

(Order of this Court was made by S.MANIKUMAR, J.)

Mr.N.Subramanian, respondent herein, joined the service of CISF as Security Guard on 14.7.1976 and the said post was subsequently reclassified as Constable in the year 1985. In the year 1998, he was promoted as Head Constable. However, during his service, a surprise check was conducted on 18.8.2009 and he was found having amount in excess of the amount declared by him in the General Diary, as per the rules. According to the officials, who conducted the inspection, the amounts were unaccounted and therefore, it was presumed that he must have received the unaccounted money, by way of illegal gratification from the Truck drivers, who were passing through the Check Post. In this regard, disciplinary proceedings were initiated against him and another constable Mr.P.Pandian, who was also posted along with him at the same Check Post. As per the rules, charge memo, dated 15.9.2009 was issued. Though he filed written statement of defence to the charges, an enquiry was ordered to be conducted. Witnesses were examined. He examined himself and documents were marked on both sides. After careful consideration, the enquiry officer found that the charges as proved. Based on the findings of the enquiry officer, the disciplinary authority passed an order dismissing him from service. Against which, an appeal was filed against the punishment, but the appellate authority has rejected the same on 29.8.2011, as devoid of merits. Revision filed also came to be rejected on 27.4.2012.

2. Aggrieved by the orders of the disciplinary, appellate and revisional authorities, he filed W.P.No.30695 of 2012. Writ Court, while considering the exoneration of other constable, Mr.P.Pandian, who was issued with a similar charge sheet and also in the absence of direct evidence, vide order, dated 15.02.2018, set aside the order passed in the revision, dated 27.04.2012 and consequently, directed the appellants to



pay all the terminal benefits, as he had attained the age of superannuation.

3. Against the order of the learned single Judge, the appellants have filed W.A.No.2558 of 2018. Considering the order made in W.P.(MD)No.8885 of 2013, dated 10.11.2017, filed by Mr.P.Pandian, who was also issued with a similar charge sheet and the orders in W.A.(MD)No.520 of 2018, dated 30.10.2018, a Hon'ble Division Bench of this Court, vide order, dated 08.01.2019, dismissed the same. Order reads thus,

"12. Though the appellants filed W.A. No.2558 of 2018 on the very same grounds as raised in the present appeal, Madurai Bench of the Madras High Court did not agree with the department's case and dismissed W.A. (MD) No.520 of 2018 on 30.10.2018 insofar as the matter pertains to Pandian, is concerned.

13. As stated supra, grounds raised in the present appeal, evidence and the materials on record are one and the same, and there cannot be any divergent views. If there is any decision rendered on the same set of facts and law, a Coordinate Bench is bound to follow the same, unless and until there is a strong reason to differ on law, which on the facts and circumstances of the case, does not arise. Therefore, inasmuch as facts pleaded, evidence adduced etc. are one and the same, we are inclined to follow the decision made in W.A. (MD) No.520 of 2018 dated 30.10.2018.

Accordingly, instant writ appeal is dismissed. As the respondent has attained the age of superannuation on 31.07.2014, appellants are directed to notionally reinstate the writ petitioner in service with all consequential service and monetary benefits including back wages, increment, if any, arrears of pay benefits, etc. The aforesaid action of reinstatement and payment of monetary benefits shall be made by the respondents within a period of two months from the date of receipt of a copy of this judgment. No costs. Consequently, the connected civil miscellaneous petition is closed."

4. Seeking review of the order made in W.A.No.2558 of 2018, dated 08.01.2019, instant review petition has been filed, on the grounds inter alia that,

"(b) The Hon'ble Division Bench has not considered that the respondent herein was "Dismissed from Service" on the ground that the article of charges was proved and the appeal before the appellate authority is rejected and the review before the revisional authority is also rejected.

(c) The Hon'ble Division Bench has not considered that W.P.(MD)No.8885 of 2013 was allowed on the ground that there is no evidence in the case



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of Head Constable, but in the respondent's case, there is evidence.

(d) The Hon'ble Division Bench has dismissed the writ appeal on the ground that different view cannot be taken if there is any decision rendered on the same set of facts and law and that a Coordinate Bench is bound to follow the same. But when the facts are not properly appreciated, while deciding W.P.No.30695 of 2012, then the Hon'ble Division Bench ought to have decided the issue independently."

5. Though Mr.G.Rajagopalan, learned Additional Solicitor General of India, appearing for the review petitioner sought to review the judgment made in W.A.No.2558 of 2018, dated 08.01.2019, on the grounds, stated supra, we are not inclined to do so, for the reason that review is not an appeal in disguise. Review can be made only if there is any mistake apparent on the face of the record or there is any clerical error in the order sought to be reviewed. Reference can be made to a few decisions, on the point of review.

(i) The Hon'ble Supreme Court in Lily Thomas v. Union of India, reported in 2000 (6) SCC 224, while considering the scope of review and the limitations imposed on its exercise under, Article 137 of the Constitution of India, held as follows:

"52. The dictionary meaning of the word "review" is the act of looking, over, something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi & Ors. Vs. Pradyunmarsinghji Arjunsinghji [AIR (1970) SC 1273], held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in S.Nagaraj & Ors.etc. Vs. State of Karnataka & Anr.etc. [1993 Supp. (4) SCC 595] held:

"19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal



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acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Law Choudhury v. Sukhraj Rai* [AIR 1941 FC 1] the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* (1836) 1 Moo PC 117 that an order made by the Court was final and could not be altered:

'...nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.'

Basis for exercise of the power was stated in the same decision as under:

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our constitution-makers who had the practical wisdom to



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visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, for any other sufficient reason in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

53. This Court in *M/s. Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi* [AIR 1980 SC 674] considered the powers of this Court under Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order 40 Rule 1 of the Supreme Court Rules and held:

"It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. *Sajjan Singh v. State of Rajasthan*, (1965) 1 SCR 933 at p.948. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing. *G.L. Gupta v. D.N. Mehta*, (1971) 3 SCR 748 at p.760. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. *O.N. Mohindroo v. Dist. Judge, Delhi*, (1971) 2 SCR 11 at p.27. Power to review its judgments has been conferred on the Supreme Court by Art.137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the



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rules made under Art.145. In a civil proceeding, an application for review is entertained only on a ground mentioned in O. XLVII, Rule 1 of the Code of Civil Procedure and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order XL, R.1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. Chandra Kanta v. Sheikh Habib (1975) 3 SCR 935."

54. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the ground specified in Order 47 Rule 1 of the Code of Civil Procedure which provides:

"Application for review of judgment -(1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which, no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

Under Order 40 Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases."

(ii) In Aribam Tuleshwar Sharma v. Aibam Pishak Sharma , reported in AIR 1979 SC 1047, the Hon'ble Supreme Court held that,

<https://hcservices.ecourts.gov.in/hcse/hcscases> There is nothing in Article 226 of the



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Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(iii) In yet another decision in *Rajindersingh v. Lt. Governor* reported in 2005 (13) SCC 289, the Hon'ble Supreme Court held that law is well settled that the power of judicial review of its own order by the High Court inheres in every Court of plenary jurisdiction to prevent miscarriage of justice.

(iv) In *Union of India v. Kamal Sengupta* reported in 2008 (8) SCC 612, the Hon'ble Supreme Court, at Paragraphs 14 and 15, has held that,

"14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

15. The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose



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of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision."

(v) Referring to various decisions of the Hon'ble Apex Court as well as this Court, a Hon'ble Division Bench of this Court, in *Infant Jesus Teacher Training vs. M.Manikandan* (Rev.Appn.No.38 of 2010 in W.A.No.1145 of 2009, dated 31.08.2010), considered the scope of review and at paragraphs 14, 31 and 32, held as follows:-

"14.Considering the scope of review jurisdiction and holding "mistake or error apparent on the face of the record must be self evident and does not require a process of reasoning, in *Parsion Devi v. Sumitri Devi*, ((1997) 8 SCC 715), the Supreme Court has held as under:

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. v. Govt. of A.P.*(AIR 1964 SC 1372 = (1964) 5 SCR 174) (SCR at p. 186) this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an error apparent on the face of the record. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an error apparent on the face of the record, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by error apparent. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

.....

31. The review proceeding is not by way of an appeal. Holding that the review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence on record for finding the error would amount to exercise of Appellate Jurisdiction, which is not permissible, in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1



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SCC 170, the Supreme Court held as under:

"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma ((1979 (4) SCC 389), speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3) "It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC 1909), there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale (AIR 1960 SC 137), wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

An error which has to be established by a



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long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

32. As held by the Hon'ble Supreme Court in AIR 1960 SC 137, (SATYANARAYAN LAXMINARAYAN HEGDEVS. MALLIKARJUN BHAVANAPPA TIRUMALE), the error must be apparent on the face of the record i.e., error must be self-evident and not which has to be established by a long drawn process of reasoning or which has to be searched. In other words, it must be an error and it must be one which must be manifest on the face of the record. Under the guise of review, parties are not entitled to rehearing of the same issue. An error can be said to be apparent on the face of the record only if such error is patent and can be located without any elaborate argument and without any scope for controversy with regard to such error, which stares at the face even by a mere glance of the judgement. The said position of law is reiterated in the decisions reported in (1997) 8 SCC 715, DELHI ADMINISTRATION VS. GURDIP SINGH UBAN AND OTHERS (2001 (1) MLJ 45 (SC)), KERALA STATE ELECTRICITY BOARD VS. HITECH ELECTROTHERMICS HYDROPOWER LTD. AND OTHERS ((2005) 6 SCC 651), HARIDAS DAS VS. USHA RANI BANK (2006(4) SCC 78) and STATE OF WEST BENGAL AND OTHERS VS. KAMAL SENGUPTA ((2008) 8 SCC 612)."

6. Evidence adduced in case of Mr.P.Pandian and the respondent are one and same. While allowing W.P.(MD)No.8885 of 2013, filed by Mr.P.Pandian, writ Court, vide order, dated 10.11.2017, ordered thus,

"29.The sum and substance of the charge made against the petitioner is that a sum of Rs.419.50/- was wrapped in a piece of paper which was seized from the pit near to the duty Check Post, where the petitioner was performing security duty which indicates that the petitioner had dishonestly earned a sum of Rs.419.50/-, while performing security duty through illegal ways from undisclosed sources. The said act on the part of the petitioner amounts to gross misconduct, indiscipline and violation of orders, unbecoming of a member of the disciplined paramilitary force, and accordingly, charge was framed.

30.Before going into the veracity of the charge, as has been rightly pointed out by the learned counsel appearing for the petitioner, the contradiction between the extract of G.D. Entry and



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the Special Report forwarded by the Assistant Commandant, can be looked into.

31. In the GD Entry extract, which was prepared on the spot on 18.08.2009 at 20.20 hours, by the Inspector Executive K. Annamalai, it is stated as follows:

"Shri J.M.U.Koya, AC, and myself K. Annamalai carried out checking of sentry post and near by area. Shri J.M.U.Koya, AC, picked up a small bundle of currency notes which was duly wrapped by piece of paper (Emphasis supplied) which was kept near by partition dias by removing piece of stone as weight. The said amount was seized in presence of Ct. P. Pandian. The small bundle was handed over to Ct. P. Pandian for counting the same, who in turn counted and accounted. The denomination of the currency notes.

(1)	100 x 1	= 100.00
(2)	50 x 1	= 50.00
(3)	20 x 1	= 20.00
(4)	10 x 22	= 220.00
(5)	5 x 4	= 20.00
(6)	2 x 3	= 6.00
(7)	1 x 3	= 3.00
(8)	0.50 x 1	= 0.50

= 419.50

(Rupees four hundred and nineteen and paise fifty only)

The seizure list was prepared on the spot and made report on the checking register of Check Post-I.

During the formal enquiry, HC/GD N. Subramanian and Ct. P. Pandian declined to disclose about the source of money seized from the earth and his possession of HC/GD N. Subramanian, a sum of Rs.45/- seized from him.

Lodged for information and action.

Sd./.....
K. Annamalai,
Insp/Exe.

32. Whereas the Assistant Commandant Mr. J.M.U.Koya had sent a Special Report on the surprise checking and seizure of Rs.464.50. In the said Special Report, in Subject portion, it is stated that "on surprise checking, seizure of Rs.464.50 from the possession of HC/GD N. Subramanian -reg".

33. In order to appreciate the said factor, the entire Special Report of the Assistant Commandant Mr. J.M.U.Koya is reproduced hereunder:

The Commandant,



CISF Unit TPT, Tuticorin.

Sub: SPECIAL REPORT ON SURPRISE CHECKING,
SEIZURE OF RS.464.50 FROM
THE POSSESSION OF HC/GD N.SUBRAMANIAM : REG.

It is to inform that I, Asstt Commandant J.M.U.Koya along with Insp/Exe K.Annamalai carried out surprise checking on 18.08.2009 at about 19.45 hrs at Check Post-I where HC/GD N.Subramanian and Const.P.Pandian were deployed in 'B' Shift duty on 18.08.2009 from 1300 hrs to 2100 hrs. Both the duty personnel were called in the duty room at the Check Post-I and carried out searching on them. While carrying out the searching on Const.P.Pandian, a sum of Rs.17/- was found in his pocket and a sum of Rs.45/- was found in the pocket of HC/GD N.Subramanian. After that checked the surrounding area of Check Post-I and found a wrapped bundle of paper which was concealed under a small piece of stone near the right side of adjacent Room of Check Post-I besides a cement bricks on the road divider. Then the bundle was recovered and asked Const.P.Pandian to open. Accordingly, he opened and found a sum of Rs.419.50. On asking HC/GD N.Subramanian about the source of money which was recovered near his duty post as well as from his pocket, he stated that he had in possession of Rs.30/- as pocket money while mounting of duty which was already declared by him in the duty register. Further he could not explain about the source of money i.e., Rs.419.50 recovered from adjacent of his duty post. In this connection a GD entry was made vide No.585 at 2020 hrs dated 18.08.2009 in the Control Room. After that a seizure list has been prepared in presence of HC/GD N.Subramanian and Const.P.Pandian, and asked them for putting their signature on the seizure list. HC/GD N.Subraamanian declined to sign on seizure memo. Further Const.P.Pandian deposed in his statement that while mounting for duty, he declared Rs.40/- as pocket money, out of which Rs.23/- was spent and the balance amount of Rs.17/- kept in his pocket. On checking of money declaration register, HC/GD N.Subramanian declared a sum of Rs.30/- and Const. P.Pandian declared a sum of Rs.40/- while mounting on 'B' Shift duty.

It is further informed that as per the office order issued vide letter No.E-42099/CISF/TPT/PA/O.O/2006-1991, dated 12.05.2006 under no circumstances the personnel proceeding for shift duties will not carry more than Rs.10/-.

In view of the above facts, suitable action may please be taken against the HC/GD N.Subramanian. Statement obtained and extract copy



of GD entry as well as money declaration register of 'B' shift duty are enclosed herewith for perusal please.

Submitted please.

ASSTT COMMANDANT CISF UNIT TPT
TUTICORIN

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34. In fact, in the said Special Report, the Assistant Commandant has recommended to take suitable action only against the Head Constable N. Subramanian. Enabling for such suitable disciplinary action, the Assistant Commandant had forwarded the statements obtained from the Constable P. Pandian (the petitioner herein), Inspector Executive K. Annamalai and Constable M. A. G. S. Velu, seizure memo and extract copy of G. D. Entry as well as the money declaration Register of "B" Shift duty as enclosures along with the Special Report.

35. These factors would go to show that what exactly happened on the date of surprise checking conducted by the Assistant Commandant and the Inspector Executive, has been clearly spelt out.

36. The alleged currency notes wrapped in a paper found and recovered from the earth near by the duty area of the petitioner as well as the Head Constable N. Subramanian, were neither recovered from the petitioner nor from the Head Constable N. Subramanian. However, depending upon the circumstances, it was construed by the Assistant Commandant and the Inspector Executive, who conducted the surprise check up that the recovery of money of Rs. 464.50 which is unaccounted, has to be vouched by the Head Constable N. Subramanian and therefore, in the Special Report, suitable action was recommended only against the said Head Constable N. Subramanian.

37. However, within a span of 30 days, on 19.09.2009, charge memo was issued against the petitioner, wherein the article of charge, which has already been extracted, would state that the Inspector Executive K. Annamalai, picked up the currency bundle and counted the same in the presence of P. Pandian, the petitioner herein, and the Head Constable N. Subramanian, and found a sum of Rs. 419.50. The charge would further state that the recovery of Rs. 419.50 from a pit near to the duty post, where the individual was performing security duty, indicates that the Constable P. Pandian has dishonestly earned Rs. 419.50, while performing security duty through illegal ways from undisclosed sources.

38. Before making the charge, the Disciplinary Authority should have definitely gone through the



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extract of G.D.Entry as well as the Special Report filed by the Assistant Commandant. Neither the extract of G.D. Entry nor the Special Report suggest that the reason attributable for the unaccounted money of Rs.419.50 was because of the alleged dishonest earning on the part of the Constable Pandian, the petitioner herein. From which source and on the basis of which document or prima facie evidence/proof, the Authority came to the conclusion that the charge against the petitioner is proved, is miserably unavailable.

39.Before the Enquiry Officer, three persons were examined as prosecution witnesses and three other persons were examined as defence witnesses. Where the Assistant Commandant Mr.J.M.U.Koya deposed as PW1 has stated that, a bunch of currency notes kept hidden in a pit was recovered by the Inspector Executive P.Annamalai. He also deposed that the Head Constable N.Subramanian declared Rs.30/- and the petitioner Pandian declared Rs.40/- as pocket money at the time of reporting duty. The Constable Pandian informed that he had spent an amount of Rs.23/- for purchase of tiffin and the remaining amount of Rs.17/- was found in his possession and the seizure list was prepared at the spot, however, the Head Constable N.Subramanian refused to sign in the seizure list.

40.During the cross examination, PW1 clarified that he did not see the charged official (petitioner), while collecting money from the Port users and he also did not witness the charged official, while hiding in a pit adjacent to Check Post-1.

41.Like that, the Inspector Executive P.Annamalai had deposed before the Enquiry Officer, as PW2. He deposed saying that on suspicion, the Assistant Commandant removed the small stone and a bunch of currency notes were kept and he called him and shown the currency notes. Thereafter, he handed over to the Constable Pandian, which is found as Rs.419.50. Thereafter, the seizure list was prepared and the Head Constable N.Subramanian refused to sign in the seizure list. PW1, in his cross examination, has deposed saying that the Assistant Commandant Mr.J.M.U.Koya, had picked up the bundle of currency notes, which was kept hidden near the Check Post-1.

42.On seeing the depositions of PW1 and PW2, who are the actual persons conducted the surprise check up, one can easily finds that there are number of contradictions between the statements of two witnesses. The Assistant Commandant Mr.J.M.U.Koya says that the Inspector Executive R.Annamalai removed a small stone and found a



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bunch of currency notes kept hidden in a pit and he handed over the paper bundle to the petitioner Pandian. Whereas, PW2, the Inspector Executive K.Annamalai says that the Assistant Commandant Mr.J.M.U.Koya had picked up the bundle of currency notes, which was kept hidden in a pit. As I noticed earlier, from the Extract of GD Entry, which was prepared at 20.20 hours on the said date, by the Inspector Executive K.Annamalai, he has categorically stated that the paper wrapped bundle of currency was picked up by the Assistant Commandant Mr.J.M.U.Koya. Only based on such G.D.Entry, a Special Report was prepared and sent by the Assistant Commandant Mr.J.M.U.Koya, wherein, he has stated that money was recovered from the possession of Head Constable N.Subramanian and therefore, he recommended to take action against the Head Constable N.Subramanian. These contradictions cannot be taken lightly because, except PW1 and PW2, no other persons involved in the surprise check up and no other eye witnesses were availed to vouch or reiterate the stand taken by PW1 and PW2. Even the said PW1 and PW2 have not spoken in unison or in one voice and they have given contradictory statements.

43.It is an admitted case that, no money, not even a single rupee, was recovered from the petitioner. It is also an admitted fact that, at the time of reporting duty on the said date, the petitioner declared Rs.40/- as pocket money. Out of which, he spent Rs.23/- for the purchase of food and therefore, the remaining amount of Rs.17/- kept at his pocket, was recovered by PW1 and PW2. After having accepted the same, the said amount of Rs.17/- was returned to the petitioner. Only on that basis, a Special Report was prepared by the Assistant Commandant, where recommendation has been made to initiate action against the Head Constable N.Subramanian and the Special Report prepared by the Assistant Commandant Mr.J.M.U.Koya also indicates that a sum of Rs.419.50/- was recovered from the Head Constable N.Subramanian.

44.When that being the position, how charges have been framed against the petitioner and on the basis of which materials, actions have been taken by the respondents, have not been explained by the respondents.

45.Further, before the Enquiry Officer, three defence witnesses were examined and in the depositions of the said three witnesses on the defence side, i.e., DW1, DW2 and DW3, have deposed before the Enquiry Officer. In order to appreciate the said evidences, extract of the statements of defence witnesses, as mentioned by the Enquiry



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Officer, is reproduced hereunder:

"STATEMENTS OF DEFENCE WITNESSES:-

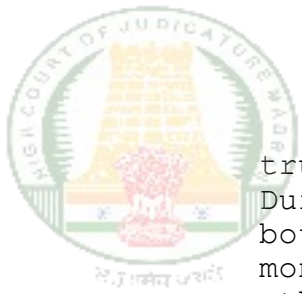
The DW-1: Mr.G.Jeya Kumar an employee of Tuticorin Port Trust stated that, he was performing his duties in Tuticorin Port Trust since 19/11/1992 as an Out Door Clerk. On dated 18/08/09 he was detailed for duty from 1400 hours to 22.00 hours at Pass Section of Check Post-I which was at a distance of 30 feet from CISF Check Post-I. He stood outside the Pass Section during his duty hours for watching the vehicles like Pay loader, Crane and Pull Dozer etc. which were not issued with vehicle pass and also ensure their signature on the registers of the pass section. On that day, HC/GD N.Subramanian and Const/GD P.Pandian were performing their duty at Check Post-I and both the CISF personnel did not receive any bribe money from any port users.

During cross examination by the presenting officer, the DW-1 clarified that he was regularly standing out side the pass section for watching the vehicles which were not issued with the vehicle pass and to get their signature on the register at the pass section. He also clarified that he had been the CISF officers who came at the Check Post-I for surprise checking but he was not aware of the details of money recovered/seized at Check Post-I by the CISF officers.

The DW-2: Mr.P.Suresh Kumar stated in his statement that he was performing duties in M/s.Nithyanantham & Company as Supervisor. He was detailed by the company officials to hand over some documents and money to the hired trucks of his company. So he was waiting at the road divider near CISF Check Post-I from 12.00 hours to 17.00 Hrs on 18/08/09. Moreover on that particular day three hired trucks of his company come late due to an accident. During his stay at Check Post-I, he noticed that both the CISF duty personnel were not taking any money illegally from Truck Drivers, Supervisors and other personnel.

During cross examination by the presenting officer, the DW-2 clarified that he remained near road divider at Check Post-I from 1200 to 1700 hrs on 18.08.2009. He further clarified that he was not aware of surprise checking carried out by CISF officers at the Check Post-I on 18.08.2009.

The DW-3: Mr.Ravi has stated that he was performing duties with M/s.Raja Agency as a Supervisor. He was detailed by his company officials to deliver some money to his transport agency trucks for which he was waiting near the Check Post-I from 16.30 hrs to 2000 hrs on 18.08.2009. Moreover, on that particular day, the



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trucks of his agency were not coming in time. During his stay at Check Post-I, he noticed that both the CISF duty personnel had not taken any money illegally from Truck Drivers, Supervisors and other personnel. Finally the Trucks of his Transport Agency came at around 2000 hrs.

During cross examination by the presenting officer, the DW-3 clarified that he remained near Check Post-I from 16.30 to 19.45 hrs on 18.08.2009. He further clarified that he was not aware of surprise checking carried out by CISF officers at the Check Post-I on 18.08.2009."

46. When there were specific contradictions between the depositions of PW1 and PW2, even with regard to the picking up of the currency notes, the Enquiry Officer easily brushed aside the said contradictions and simply stated that the Assistant Commandant and the Inspector have jointly made a surprise check up and recovered the money by both PW1 and PW2. The theory of picking of the recovered amount of Rs.419.50/- allegedly wrapped in a paper found in a pit near the check post, has been completely changed, by introducing the new theory by the Enquiry Officer. The Enquiry Officer either should have accepted the version of PW1 or the other version of PW2. Instead, the Enquiry Officer had given a third version in his enquiry report, to state that both PW1 and PW2 recovered the bundle. These findings itself would make us to come to the safe conclusion that the Enquiry Officer has given his findings, not only on the basis of the material evidences and the depositions made before him, but also based on surmises and by introducing his own theory.

47. Ultimately, the Enquiry Officer, in the penultimate para has stated that, both the charged officials (the Petitioner and the Head Constable N.Subramanian) performed their duty at a particular area on 18.08.2009 and the charged official have also involved in corrupt activity by conniving with the Head Constable N.Subramanian. In order to evaluate the same, the Enquiry Officer's report is reproduced hereunder:

"Further, both the charged official and HC/GD N.Subramanian performed duty at a particular duty post on 18.08.2009 and the charged official also involved in corrupt activity by conniving with the HC/GD N.Subramanian. To prove his innocence the charged official should have informed the shift in-charge about the collection of illegal money from the port users as and when the co-duty personnel involved in such corrupt activity, which he failed to do so. Further, it is quite evident from the documents adduced during the course of enquiry, the



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charged official had dishonestly earned a sum of Rs.419.50 in association with HC/GD N.Subramanian while performing security duties through illegal ways from undisclosed sources.

Findings: Considering all aspects in view, I the Enquiry Officer found that the Article of charge stands PROVED"

48.However, the Disciplinary Authority, while considering the report of the Enquiry Officer, has given his own reasoning to come to the conclusion to punish the petitioner. The Disciplinary Authority, in the order of punishment dated 18.08.2012, has stated as follows:

"Though the AC has recommended for disciplinary action against HC/GD N.Subramanian only, it doesn't mean that disciplinary authority shall act under the said recommendation only. Since the amount was seized from their area of jurisdiction and if the charged official was not part and parcel of misconduct committed by his co-duty man N.Subramanian, the charged official should have prevented his colleague, and if he could not control him, charged official should have communicated it to any of superiors, but utterly failed. Disciplinary Authority has its own power to assess the each case at his discretion and I found that there is no procedural lapse on this count."

49.In the very same order, the Disciplinary Authority also, while overlooking the defence taken by the petitioner, has stated that, the Head Constable N.Subramanian has been awarded penalty in this case. Therefore, from the reasoning given by the Disciplinary Authority, it comes to know that the Head Constable N.Subramanian, against whom in fact recommendation was made to initiate action, as per the Special Report submitted by the Assistant Commandant, was only given a penalty. Whereas, the petitioner against whom no report was submitted by the Assistant Commandant, who conducted the surprise check up, has been charged and has been punished with the maximum punishment of dismissal from service.

50.In spite of this lacuna on the part of the respondents, neither the Disciplinary Authority nor the Appellate Authority has considered these aspects and have mechanically inflicted the maximum punishment of dismissal from service by the Disciplinary Authority and the same was confirmed by the Appellate Authority. When revision was filed before the Revisional Authority, the said authority has accepted the punishment given and further observed that the departmental enquiry has been conducted in a fair manner and due procedure required has been followed. However, considering



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the long service rendered by the petitioner, has sympathetically modified the punishment, to that of 'compulsory retirement with full pensionary benefits w.e.f.19.08.2012'.

51. In fact, a similar issue came up for hearing before me as against the very same CISF Unit at Tuticorin Port Trust, where also almost on similar fact, the said security personnel had been removed from service. In the said case, in W.P. (MD).No.1009 of 2010 in G.Ramasamy (died) S.R.Gowri substituted for the deceased sole petitioner v. Union of India represented by its Secretary to the Government Department of Home Affairs, New Delhi, by Judgment dated 25.01.2017, I have considered two decisions i.e., W.P.No.1365 of 2017 and W.P.No.(MD).3513 of 2010, which have been again cited herein by the learned counsel appearing for the petitioner.

52. In the said case in W.P.No.(MD).1009 of 2010 cited supra, somewhat it was slightly better case from the side of the prosecution. In that case, two security personnels were on duty at the time of surprise check up and one security personnel threw the currency note wrapped with rubber band. Based on which, charge has been framed against another security personnel also on the ground that the said bunch of currency notes said to have been found on the earth and the same was handed over by the other security personnel, who was the petitioner in that Writ Petition and when the same was kept by other security personnel, he had thrown it at the time of surprise check up. Even in the said case, the personnel, who thrown the wrapped up currency notes, was given lesser punishment and the said security personnel, who was the petitioner in W.P.No.(MD).1009 of 2010, was given the maximum punishment of dismissal from service. While dealing with the said matter, I have given my reasonings to set aside the said punishment at Paras 18 to 21, which are extracted hereunder:

"18. In this regard, this Court, when raised a question that if the theory of the department that at the time of surprise inspection, a bundle of currency was thrown suddenly by the said Sadashiv and on recovering the same, when it was questioned both the petitioner herein and the said Sadashiv had given a statement, which in fact, lead to frame charges against them, then, certainly, money, if it is a ill gotten money must be for the benefit of both the petitioner as well as the said Constable Sadashiv. Assuming that the said Sadashiv is an innocent and he had been with the possession of the money, only because it was given by the said



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Ramasamy ie., the petitioner herein and therefore, the said Sadashiv could be an innocent one, than the Sadashiv could not have been given a punishment, even a minimum punishment of stoppage of increment. If the money was thrown only by the said Sadashiv, then, either the petitioner can have the joint responsibility with the said Sadashiv or the petitioner can claim innocence, as from whom no money was recovered or the petitioner had not thrown any money, at the time of surprise inspection, in that case, the petitioner should not have been inflicted with the maximum punishment of removal of service. Moreover, none of the eye witnesses, as has been claimed by the department, has deposed before the Enquiry Officer that they saw the incident of throwing the bundle of currency by the said Sadashiv. What they merely said is that at 13 hours when they were near to the blue gate, these team of officers came up for inspection and immediately, when the duty time was over, they left the spot or what had happened in the blue gate were not known to them. Moreover, there is no complaint from the container/lorry owners about the demand of any illegal gratification by the petitioner and other Constable, at any rate no such recovery of money has been made from the possession of the petitioner.

19. Therefore, viewing from any angle, fixing connection with the petitioner along with the said incident and based on which, inflicting the maximum punishment of removal of service on the petitioner while giving a minimum punishment to the co-delinquent ie., Constable Sadashiv is not acceptable one, because there is no proof or evidence to show that the money was recovered from the petitioner.

20. The alternative theory submitted as defence by the petitioner that actually the bundle of currency contains of 2 - 100 rupee note and one - 50 rupee note was taken from the floor along side the gate and it was handed over to Sadashiv for enabling them to hand it over to the concerned official at the time of completion of the duty, to some extent, may be acceptable, because normally this kind of gratification received by the members of the uniformed services may not be by way of bundle wrapped with rubber band and this kind of keeping some minimum money by wrapping it as a bundle, is the usual customary practice to be adopted by the Drivers of the vehicle. Therefore, even there is no chance of arriving a preponderance of probability in this case.

21. Moreover, there is absolutely no nexus with the punishment inflicted on the petitioner and



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the other co delinquent namely Constable Sadashiv, in spite of the fact that the money was thrown only by the said Sadashiv. Therefore, for all these reasons, and for the principles, as has been applied, by this Court, in the said judgments cited by the learned counsel for the petitioner, it can be easily concluded that the petitioner cannot be said to be involved in the alleged action of illegal gratification, as absolutely, there is no direct or indirect evidences connecting the petitioner for such an alleged violation and therefore, in that view of the matter, this Court is of the considered view that the order of punishment of removal of service is liable to be interfered with."

53. When compared the said facts with the said case cited supra, this Court feels that, the petitioner is in far better position than the said case referred to above. In the case referred to above, it was the allegation that at the time of check up, one security personnel thrown the bunch of currency notes wrapped in the rubber band, whereas, here it is the case of the Department that the currency note was wrapped up in a paper, was found and recovered from the earth. Even based on that, it was a recommendation of the Assistant Commandant, who conducted the surprise check up that, the said money of Rs.419.50 was recovered from the Head Constable N.Subramanian and therefore, the action was recommended against him. Whereas, the petitioner, who gave full vouch for the remaining pocket money found in his pocket, has been charged by the Department stating that he was responsible for the said illegal gratification of Rs.419.40/- and if at all, he was not involved in the said illegal gratification, he should have reported the illegal gratification on the part of the Head Constable N.Subramanian and since he has not reported, it should be presumed that he is also, with the connivance of the Head Constable indulged in illegal activity. This kind of reasonings given to make charge against the petitioner is absolutely arbitrary and unjustifiable. Moreover, it is a great contradiction between PW1 and PW2, who are not only the eye witness, but also the actual persons, who conducted the surprise check up.

54. From the beginning till end, the contradictions continue, as PW2 says that the wrapped up currency notes was picked up by PW1 and whereas PW1 says it was picked by PW2. Though the Enquiry Officer stated that it was picked up by both PW1 and PW2, this Court is at loss to understand on what basis the Enquiry Officer has



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given the said reasonings. It is the case of the Department that a sum of Rs.419.50 was found in the denomination of the Currency notes, which has been mentioned as follows:

"The denomination of the currency notes.

(1)	100	x	1	=	100.00
(2)	50	x	1	=	50.00
(3)	20	x	1	=	20.00
(4)	10	x	22	=	220.00
(5)	5	x	4	=	20.00
(6)	2	x	3	=	6.00
(7)	1	x	3	=	3.00
(8)	0.50	x	1	=	0.50

= 419.50

(Rupees four hundred and nineteen and paise fifty only)"

55.It is not only the currency notes of Rs.100/-, Rs.50/-, Rs.20/- and Rs.5/- but also a currency notes of Rs.1/- (3 Nos) and 1 No. of 50 paise coin.

56.If at all, any illegal gratification is received by the security personnel, it cannot be said that they would have received Rs.1/- and one number of 50 paise coin. Only, in this context, my reasoning given in the earlier order in W.P.No. (MD).1009 of 2010 referred to above, can be pressed into service. In the said order, I have stated that this kind of keeping some minimum sum by wrapping it as a bundle is the usual customary practice to be adopted by the drivers of the vehicle. Here in the case in hand, still, currency notes of various denominations from Rs.100/- to Rs.1/- were part of the bundle and Rs.1/- and 50 paise coin also, and definitely, this denomination would not be an illegal gratification given by the drivers of the vehicles. Moreover, it was specifically deposed by both PW1 and PW2 that they did not witness or see that those money was received by the petitioner or the other security personnel and they also deposed that they did not see whether the wrapped up bundle of currency notes was kept by the security personnels or not. In the absence of any of the ingredient, it cannot be construed that the petitioner was responsible for the said alleged illegal gratification.

57.Moreover, from the beginning, the finger of the prosecution was showing only towards the Head Constable N.Subramanian as against whom only recommendation was made by the Assistant Commandant to initiate action. It is the further fact that the said Head Constable N.Subramanian, has been imposed only penalty, whereas, the petitioner,



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against whom no direct or indirect evidence available to the prosecution, has been inflicted with the maximum punishment of dismissal from service, which has been subsequently modified to compulsory retirement. This action on the part of the respondents, in the opinion of this Court, on the basis of the aforesaid facts and circumstances, is absolutely unjustifiable and unlawful and therefore, this Court has no hesitation to hold that the said punishment and modification is duly unjustifiable, arbitrary and without any sound basis and hence, this Court has no other option except to interfere with the said order of punishment, as modified by the Revisional Authority.

58. In the result, the impugned orders of punishment of dismissal of service inflicted against the petitioner by the Disciplinary Authority as confirmed by the Appellate Authority, and modified by the Revisional Authority into compulsory retirement with eligibility of full pensionary benefits, are hereby set aside.

59. The petitioner shall be reinstated into service with all consequential service and monetary benefits including back wages, increment, if any, arrears of pay benefits, etc., The aforesaid action of reinstatement and payment of monetary benefits shall be made by the respondents within a period of two months from the date of receipt of a copy of this order."

7. In W.A.(MD)No.520 of 2018, filed by the department, against the order made in W.P.(MD)No.8885 of 2013, dated 10.11.2017, a Hon'ble Division Bench disposed of the same on 30.10.2018, in the following terms,

"3. The learned Single Judge, after going into the merits of the case, was pleased to set aside the order passed by the Disciplinary Authority. It appears that the co-delinquent against whom, an order of dismissal was passed, was put under challenge, the allegation is that receiving of money in the presence of the present respondent. Insofar as he is concerned, the order of dismissal was set aside by this Court. However, no backwages was granted, which was also confirmed by the Division Bench of this Court. Thus, as against the co-delinquent, the order was confirmed against the appellants. Insofar as the reinstatement is concerned, it has become final.

4. In such view of the matter, we are of the view that the same ratio will have to be applied to the present case also, in the light of the factual findings given by the learned single Judge.



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Therefore, on the question of setting aside the order of punishment, we are not inclined to go into the remaining question of granting pensionary and other benefits, which were not granted to the co-delinquent, even otherwise, the payment of backwages is a matter of right. Further, taking into consideration of the fact that the respondent/writ petitioner stands in a different footing than that of the co-delinquent, we are inclined to modify the order of the learned Single Judge to the effect that the first respondent is entitled for monitory benefits from the date of receipt of the order of the writ petition along with continuity of service and other instrumental benefits.

5. With the aforesaid modification, the writ appeal stands disposed of. We make it clear that the continuity of service would start from the date of dismissal."

8. However, in W.A.No.2558 of 2018, filed by the Department, against the order made in W.P.No.30695 of 2012, this Bench, after considering the decision in W.P.(MD)No.8885 of 2013, dated 10.11.2017, ordered, as hereunder:

"12. Though the appellants filed W.A.No.2558 of 2018 on the very same grounds as raised in the present appeal, Madurai Bench of the Madras High Court did not agree with the department's case and dismissed W.A.(MD) No.520 of 2018 on 30.10.2018 insofar as the matter pertains to Pandian, is concerned.

13. As stated supra, grounds raised in the present appeal, evidence and the materials on record are one and the same, and there cannot be any divergent views. If there is any decision rendered on the same set of facts and law, a Coordinate Bench is bound to follow the same, unless and until there is a strong reason to differ on law, which on the facts and circumstances of the case, does not arise. Therefore, inasmuch as facts pleaded, evidence adduced etc. are one and the same, we are inclined to follow the decision made in W.A.(MD) No.520 of 2018 dated 30.10.2018.

Accordingly, instant writ appeal is dismissed. As the respondent has attained the age of superannuation on 31.07.2014, appellants are directed to notionally reinstate the writ petitioner in service with all consequential service and monetary benefits including back wages, increment, if any, arrears of pay benefits, etc. The aforesaid action of reinstatement and payment of monetary benefits shall be made by the respondents within a period of two months from the date of receipt of a copy of this judgment. No



costs. Consequently, the connected civil miscellaneous petition is closed."

9. What applies to Mr. Pandian, applies to the case on hand. Therefore, operative portion of the order made in W.A. (MD) No. 520 of 2018, dated 30.10.2018, is modified as hereunder,

"Accordingly, instant writ appeal is dismissed. As the respondent has attained the age of superannuation on 31.07.2014, appellants are directed to notionally reinstate the writ petitioner in service with all consequential service and monetary benefits including back wages, increment, if any, arrears of pay benefits, etc, from the date of receipt of the order of the writ petition. The aforesaid action of reinstatement and payment of monetary benefits shall be made by the respondents within a period of two months from the date of receipt of a copy of this judgment. No costs. Consequently, the connected civil miscellaneous petition is closed."

10. Hence, the review application is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

skm/dm

TO

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+2cc to Mr.T.L.Thirumalai samy, Advocate, S.R.No. 83519
+1cc to Mr.Balan Haridass, Advocate, S.R.No.83536

REV.APLN.No.94 OF 2019

GJ(CO)
GN(24/01/2020)