

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.A.No.3347 of 2019

S.Jega Jeeva Dhas

... Appellant

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Chennai - 600 009.

2. The District Collector,
Thiruvannamalai District.

3. The District Backward Class Officer,
Thiruvannamalai District.

4. The Thasildar,
Taluk Office,
Thiruvannamalai District.

5. The Commissioner of Disciplinary Proceedings,
Vellore. ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 16.04.2019 made in WP.No.21457 of 2008.

WP.No.21457 of 2008:Petition under Article 226 of the
Constitution of India praying for the issuance of a Writ of
Certiorarified Mandamus, calling for the records connected with
the orders passed by the 1st respondent in G.O.(2D) No.163
Revenue Department dt 9.4.2008 and quash the same and further
direct the 1st respondent to reinstate the petitioner and permit
him to retire on superannuation on 30.4.2005 and further direct
to give all consequential pensionary benefits.

For Appellant : Mr.T.V.G.Kartheeban

For Respondents: Mr.P.S.Shivashanmugasundaram
Special Government Pleader

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Instant writ appeal has been filed against the order made in WP No.21457 of 2008 dated 16.04.2019, by which the writ Court, dismissed the writ petition, filed to quash G.O.(2D) No.163, Revenue Department dated 09.04.2008 and to consequently to direct the respondents to reinstate the petitioner/appellant and permit him to retire on superannuation on 30.04.2005 and to give all consequential pensionary benefits.

2. Short facts leading to the filing of the writ appeal are as follows:

While the petitioner was serving as Office Superintendent in the office of the District Backward Class Officer, Thiruvannamalai District, the third respondent herein, he was posted as a Additional Deputy Tahsildar in the Taluk Office, Cheyyar, Thiruvannamalai District, the 4th respondent herein. While he was serving in the office of the fourth respondent, he was placed under suspension on 29.4.2005. When he was to retire from service on reaching the age of superannuation on 30.4.2005, he was not permitted to retire from service by an order passed under FR 56(1)(c) of the Fundamental Rules and retained in service, since there were charges pending against him in T.D.P.Case No.3 of 2004 on the file of the Commissioner for Disciplinary Proceedings, Vellore. He was also charge sheeted in another case pending before the learned Chief Judicial Magistrate, Thiruvannamalai for certain offences under the Indian Penal Code read with Sections 13(2) and 13(1)(c), (d) of the Prevention of Corruption Act, 1988 in Special Case No.4 of 2005.

(ii) Coming to the charge levelled against the petitioner, when the petitioner was employed as a Office Superintendent during the period 1999-2000, he is alleged to have collected a sum of Rs.29,650/- from the Travelling Allowance claims of the subordinates, namely, Wardens of the Backward Classes hostels, towards small savings agent's commission in order to get the savings certificate numbers and out of the total collection of Rs.29,650/-, the petitioner is alleged to have misappropriated a sum of Rs.12,325/-. Therefore, based on the recommendation of the Director of Vigilance and Anti-Corruption, an enquiry was ordered to be conducted by the Tribunal for Disciplinary Proceedings, Vellore. Accordingly, the Tribunal for Disciplinary Proceedings also initiated proceedings against the petitioner in T.D.P.Case No.3 of 2004 and finally, the Commissioner for Disciplinary Proceedings, Vellore has sent a report to the Government on 27.1.2005.

(iii) When the matter was pending, the petitioner came to this Court and filed W.P.No.38219 of 2004 seeking for early completion of the disciplinary proceedings. This Court, considering the limited prayer, by order dated 29.12.2004, disposed of the writ petition, directing the respondents therein to complete the disciplinary proceedings within a period of eight weeks. However, in view of the voluminous documentary and oral evidence involved in the disciplinary proceedings initiated against the petitioner, the Government filed W.M.P.No.35510 of 2005 seeking extension of time.

(iv) When the Commissioner for Disciplinary Proceedings submitted a final report, after completion of the enquiry, the Government called for further explanation from the petitioner in Letter No.4782/Ser.2(1)/2005-7, Revenue dated 17.10.2005. On receipt of the same, the petitioner also submitted his explanation in his letter dated 2.11.2005. Thereafter, the Government examined the explanation of the delinquent officer and found that the same is not acceptable. Hence, the Government decided to accept the findings of the Tribunal for Disciplinary Proceedings holding the charges levelled against the petitioner, as proved. Finally, for the proven charges, the Government decided to impose the punishment under Rule 8(viii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on the petitioner.

(v) For this purpose, the Government also referred the matter to the Tamil Nadu Public Service Commission seeking its views in letter No.4782/Ser.2(1)/05-30 dated 6.9.2007. The Tamil Nadu Public Service Commission, after careful examination of the matter with reference to the enquiry report and the petitioner's representations dated 8.12.2004, 28.11.2006, 21.12.2006, 10.9.2007 and 19.11.2007 respectively. Government in letter No.585/D.C.D-B2/2007-1 dated 19.12.2007 made it clear that the Commission finds no reason to deviate from the findings of the Tribunal for the Disciplinary Proceedings.

(vi) The Commission has also expressed that as the misconduct committed by the delinquent officer is grave in nature, he deserves the highest punishment, namely, dismissal from service. Based on the views expressed by the Tamil Nadu Public Service Commission, the first respondent passed a final order in G.O.(2D) No.163, Revenue [Ser.2(1)] Department dated 9.4.2008 dismissing the petitioner from service for the irregularities committed by him.

(vii) Challenging the same, the petitioner has filed WP No.21457 of 2008, for a writ of certiorarified mandamus, to quash G.O.(2D) No.163, Revenue Department dated 9.4.2008 and prayed for a direction to the Secretary to the Government of Tamil Nadu, Revenue Department, Chennai, first respondent herein to reinstate the petitioner and permit him to retire on superannuation on 30.04.2005 and for a further direction to give all consequential pensionary benefits.

(viii). Before the writ Court, the petitioner has stated that when allegations were made against the petitioner and also against one another Assistant Accounts Officer, charges were framed against the petitioner and Mr.R.K.Palaniappan, formerly District Backward Class Officer, Thiruvannamalai. But, surprisingly, the investigating agency of the Vigilance and Anti-Corruption Department, Vellore completely spared Mr.Gubendra Babu, the then Assistant Accounts Officer by not even interrogating him in the investigation. But he was cited as one of the witnesses.

(ix) Before the writ Court, challenging the impugned order, it is also averred that the offence charged against the petitioner is with regard to the contravention of Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973. According to him, even a close look at the charge shows that no act of corruption or act involving criminal intent of any nature has been involved. Therefore, if the irregularity does not involve corruption, the matter need not be referred to the Vigilance and Anti-Corruption and can be disposed of departmentally.

(x) The further averment of the petitioner was that, he is alleged to have violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules. However, initiation of disciplinary action has to be taken under Rule 17(a) or 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules only. While so, the proper procedure in issuing the charge memo in the format as prescribed in G.O.Ms.No.124/B/ARC/(P&AR) Department dated 27.2.96 as per Appendix VIII of CCA Rules is not followed. The petitioner has challenged the charge of misappropriation of Rs.12,325/-; and he has denied the collection of any amount directly. He has further pleaded that he had not kept any such amount in his custody. Therefore, the question of misappropriating the same does not arise. On this basis, he has challenged the findings of the Tribunal for Disciplinary Proceedings on the alleged misappropriated amount is vague, since such a finding has been given without actually verifying the records.

(xi) Before the writ Court, it is also averred that when the petitioner has no role to play in the alleged misconduct, the said aspect has been completely overlooked by both the Tribunal for Disciplinary Proceedings and the Tamil Nadu Public Service Commission. Therefore, major punishment of dismissal from service imposed against the petitioner is disproportionate to the charges. Hence, the impugned Government Order is liable to be quashed.

(xii) Before the writ Court, a detailed counter affidavit has been filed by the respondents. Learned Additional Government Pleader for the respondents, supporting the impugned order, has argued that when the petitioner was employed as a Office Superintendent in the office of the District Backward Classes and Minorities Welfare Department, Thiruvannamalai during the year 1999-2000, he had collected a sum of Rs.29,650/- from the travelling allowance claims of his subordinates, namely, Wardens of the Backward Class hostels towards the small savings agent's commission. Out of the total collection of Rs.29,650/-, the petitioner had misappropriated a sum of Rs.12,325/-. Therefore, an enquiry was ordered to be conducted, based on the detailed recommendation made by the Director of Vigilance and Anti-Corruption, by the Tribunal for Disciplinary Proceedings, Vellore. Finally, after the completion of enquiry in T.D.P. Case No.3 of 2004, the Commissioner for Disciplinary Proceedings, Vellore sent a report to the Government. While the report was under examination, the petitioner came to this Court seeking a writ of mandamus directing the respondents to complete the enquiry proceedings expeditiously. In the meanwhile, the petitioner was to reach the age of superannuation on 30.4.2005. Therefore, on 29.4.2005, he was not allowed to retire from service on reaching the age of superannuation and also retained in service by an order passed under FR 56(1)(c) of the Fundamental Rules till the disposal of the charges pending against him. However, when the Tribunal for Disciplinary Proceedings gave its finding, the Government called for explanation from the petitioner in letter No.4782/Ser.2(1)/2005-7, Revenue dated 17.10.2005. On receipt of the same, the petitioner also submitted his explanation in his letter dated 2.11.2005. Thereafter, the Government, carefully examined the explanation of the delinquent officer, found that the further explanation offered by the petitioner is not acceptable. Hence, the Government decided to accept the findings of the Commissioner for Disciplinary Proceedings and held the charges are proved. Consequently, the Government decided to impose the punishment under Rule 8(viii) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Before that, the Government have also referred the matter to the Tamil Nadu Public Service

Commission. Accordingly, the Tamil Nadu Public Service Commission, after careful consideration of the matter, came to the conclusion that there is no reason to deviate from the findings of the Tribunal for Disciplinary Proceedings. Since the Commission had also expressed its view that the misconduct committed by the delinquent officer was of grave nature, for which he deserves the highest punishment of dismissal from service, Government have passed the impugned order dismissing the petitioner from service for the irregularities committed by him. Before the writ court, learned Additional Government Pleader for the respondents submitted that when there is no complaint made by the petitioner with regard to the procedure followed by the department, it is not open to the petitioner to say that the punishment imposed on him is wholly disproportionate or unjustified.

(xiii) Before the writ Court, petitioner did not appear and after hearing the learned Additional Government Pleader for respondent, writ Court vide order dated 16.04.2019, dismissed WP No.21457 of 2008, as hereunder.

"7. This Court also finds substance on the submissions made by the learned Additional Government Pleader for the respondents. When the petitioner was serving as Office Superintendent in the office of the third respondent, he had indulged in certain dealings and collected Rs.29,650/- from the travelling allowance claims, namely, Wardens of Backward Classes hostels, towards small savings agent's commission in order to get the saving certificate numbers. Out of the total collection of Rs.29,650/-, the petitioner has misappropriated a sum of Rs.12,325/-. Therefore, a case was registered by the Director of Vigilance and Anti-Corruption with regard to the said allegation and finally the Commissioner for Disciplinary Proceedings, Vellore was entrusted with the enquiry into the allegation of misappropriation made by the petitioner. The Tribunal for Disciplinary Proceedings, Vellore took up the case in T.D.P. Case No.3 of 2004 and submitted its report to the Government. On receipt of the said report, the Government also called for explanation from the petitioner in letter No.4782/Ser.2(1)/2005-7, Revenue dated 17.10.2005. The Government, on receipt of the explanation from the petitioner, finding that the said explanation is not acceptable, decided to accept the findings of the Tribunal for Disciplinary Proceedings holding the charges as

proved. When the Tribunal for Disciplinary Proceedings, after examining the charges framed against the petitioner, found him guilty, the Government also, before imposing the punishment under Rule 8(viii) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, obtained the views of the Tamil Nadu Public Service Commission. It is useful to refer to the relevant portion of the views expressed by the Tamil Nadu Public Service Commission, as follows:-

"the Commission finds no reason to deviate from the findings of the Tribunal for Disciplinary Proceedings. Hence, the misconduct committed by the delinquent officer is of grave nature for which he deserves highest punishment (i.e.) dismissal from service. The Commission, therefore, advises the Government to go ahead with their decision of imposing the punishment of Dismissal from service prescribed under Rule 8(viii) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules against the delinquent officer and to issue orders accordingly."

8. In the light of the views expressed by the Tamil Nadu Public Service Commission holding that the misconduct committed by the petitioner is of grave nature, for which he deserves the highest punishment of dismissal from service, the first respondent, by the impugned Government Order, has imposed the punishment of dismissal from service on the petitioner for the irregularities committed by him. Therefore, this Court finds no merits whatsoever in the writ petition. Accordingly, the writ petition stands dismissed. No costs."

3. Aggrieved by the abovesaid order, petitioner/appellant has filed the instant writ appeal on the following grounds.

(i) Writ Court has failed to see that the 5th respondent herein viz., Commissioner of Disciplinary Proceedings, Vellore is bound to follow the Act and rules and thereby departmental proceeding initiated against the appellant under Rule 20 of the Tamil Nadu Government Servant Conduct Rules 1973, is erroneous.

(ii) writ Court has failed to consider that departmental proceedings have been initiated based on Criminal case U/S 467,468.471, r/w 468,477(A),

409 and 420 IPC r/w 30(1) (c.) (d) of Prevention of Corruption Act, by simultaneously by the 5th respondent herein viz., Commissioner of Disciplinary Proceedings, Vellore.

(iii) writ Court has failed to consider that all the wardens have accepted the fact that they had received the entire T.A. Bill amount after putting their signatures on the stamped T.A. bill acquaintance register and therefore, the charges against him are framed as false.

(iv) writ Court has failed to consider that the small savings collection is not covered by any rule or law. It is not an unauthorized collection. No receipt is given for that as well as no registries maintained in the office.

(v) writ Court has failed to see that the 5th respondent herein has not followed the procedure as per G.O.MS.No. 140 dated 14.03.1989, where a detailed enquiry against Officers of Group "A" or "B" is proposed and the materials should be forwarded by the Government to the Director of Vigilance and Anti-Corruption through the Vigilance Commissioner and in other cases references may be made direct to the Director of Vigilance and Anti - Corruption.

(vi) writ Court has failed to consider that under section 5(A) of the Tamil Nadu civil services Disciplinary proceedings Tribunal rules-1955, explained that the Directorate of Vigilance and Anti corruption shall forward its records to the Government through the vigilance Commissioner, Chennai, whereas petitioner's case was not sent through the vigilance commissioner, Chennai.

(vii) writ Court has failed to consider that the 5th respondent herein has not followed the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which shall apply to all the members of the Tamil Nadu State and Subordinate Services and to the holders of all the civil posts, Whether temporary or permanent in any such service except to the extent otherwise expressly provided and therefore, the proceedings of the 5th respondent is illegal.

(viii) writ Court has failed to consider that the 5th respondent herein has initiated the Departmental proceedings under Rule 20 of the Tamil Government Servant Conduct Rules 1973 against the appellant herein on his day of

retirement and suspended, which amounts to Human Rights violation and thereby harassment against the writ petitioner / appellant herein.

(ix) writ Court has failed to consider that the 5th respondent herein has not followed the Disciplinary proceedings Rules 16.4 that to each charge should be expressed in definite, clear and precise terms and it should be based on clear evidence and the rule or order in support of each charge, Manuals, Conduct Rules, circulars or general instructions, the breach of which constitutes the charge, should invariably be quoted.

(x) writ Court has failed to consider that the 5th respondent herein has not followed the procedure to frame the charges against the appellant herein, as this is false allegation and none of the wardens who gave Rs.1000/- has said there was compulsion. In this case action is being taken under the civil service (DPT) rules 1955. Rule 8(d) of the Tamil Nadu civil services (Discipline and appeal) rules shall apply (i) in respect to the procedures to be followed in cases other than those of corruption and (ii) in regard to the other matter for which no specific provision has been made in these rules. There is no provision to frame charges under Tamil Nadu Government servants conduct rules. Hence there is violation of the rule and charge memo issued is a violation. Corruption as well as misappropriation charges were not proved by the Vigilance and Anti-corruption vellore in crime No. 12 of 2004 in Special case No.4 of 2005 and the appellant herein was acquitted by the Chief Judicial Magistrate Thiruvannamalai on 23.06.2009.

(xi) writ Court has failed to consider that the Principal Secretary is a senior super time scale I.A.S officer, it is not legally valid to authorize a Non-I.A.S officer to submit the counter affidavit before the Hon'ble Court instead of the Secretary to the Government.

(xii) writ Court has failed to consider the date of occurrence is 3/2000 but, the enquiry was conducted after 4 years in 2004. According to G.O.Ms 1118 (sec) 87, P&AR dated 22.12.87 disciplinary proceedings related to DVAC should be conducted within 2 years and four months But in this case there is a delay of 9 years from the

date of occurrence 4 years from the date of charge memo and altogether 13 years. The appellant herein physical challenged person aged about 73 years.

(xiii) writ Court has failed to consider that the 5th respondent herein has not considered that the District Backward Classes Welfare Officer District Collector who is the authority to issue work allotment order to the appellant to disburse the T.A claim amount of the Staffs apart from other works. The same has been admitted. There was no work allotment order in report of disbursement of T.A tills claim amounts to the appellant by the District Collector as observed in crime No. 12 of 2004 in Special case No.4 of 2005 by the Chief Judicial Magistrate Thiruvannamalai on 23.06.2009.

(xiv) writ Court has failed to consider that the 5th respondent herein has not considered the AAO alone was in charge of all accounts matter and he is the drawing officer of all bills on proper sanction by DBCWO. The Assistant Account Officer was the responsible officer was in this case. Unfortunately he was not enquired even as a witness by the enquiry officer and therefore entire proceedings of the 5th respondent is null and void against the appellant herein.

(xv) writ Court has failed to consider that, originally in the charge memo issued to the appellant it was alleged that the collection amount was Rs.29,650/- whereas in the enquiry officer's report it was reduced to Rs.23,400/- This shows that the charge memo itself was vague, false and cooked.

(xvi) As per A.O.Ms.No. 122 dated 20.02.1995, the appellant herein is entitled to retirement gratuity, which has been delayed, and therefore, interest shall be paid at the rate of 12% per annum compounded annually.

(xvii) writ Court has disposed of the Writ petition for no appearance of the appellant, but the learned judge has given the findings based on Tamil Nadu Public Service Commission findings.

(xviii) writ Court has failed to consider that the 5th respondent herein has not followed the procedure that as per Lr.No.(Ms) 1118/per.N/87, dated 22.12.87 as Disciplinary cases arising out of Directorate of Vigilance and Anticorruption (i) To send the investigation by Directorate of

Vigilance and Anticorruption and to send a report to Government through vigilance Commission for limitation period of one year (ii) To complete the enquiry by the Tribunal and to send its findings to the Departments of Secretariat for limitation period of one year (iii) To pass final orders by the government Heads of Department on receipt of the report of the Tribunal for limitation period of 4 month. Therefore, the proceeding against the appellant by the 5th respondent herein is illegal.

(xix) As per Circular No.35/2005-Rc.No.Ser.III (4) / 11647/2005 - 2(h), the appellant herein is entitled to retire from service on the day of retirement. Therefore, this aspect was not followed by the 3rd and 5th respondent.

(xx) As per Circular No.35/2005-Rc.No.Ser.III (4)/11647/2005 - 3(a), as soon as the G.O. along with the Part A and B report of the DV&AC is received by the disciplinary authority, he should collect all the original records; go through the report of the DV&AC carefully frame charges under Rule 17(b) only. All the requirements of Rule 17 (b) including the mandatory enclosure of questionnaire form should be complied with. Charges framed under Rule 20 of The Tamil Nadu Government Service Contract Rules," 1973 is illegal.

(xxi) The District Collector, Tiruvannamalai District has not followed the procedure contemplated in Letter No N/2000 dated 21.07.2000 personnel and Administrative Reforms (N) Department/Secretariat, Chennai-09, and therefore suspension and extension of service from retirement on 29.04.2005 before one day of superannuation retirement on 29.04.2005 before one day of superannuation retirement dated on the A.N. Of 30.04.2005 is illegal.

(xxii) The 2nd respondent herein has not followed the procedure stipulated in Letter No.N/198 dated 19.12.2005 personnel and Administrative reforms (N) Department, Secretariat, Chennai - 09, and thereby suspended the writ petitioner/appellant and extension of service from retirement on 29.04.2005 before one

day of superannuation on the A.N.of 30.04.2005 is illegal.

4. On the above grounds, Mr.T.V.G.Kartheeban, learned counsel for the appellant made submissions.

5. Heard the learned counsel for the appellant and perused the materials available on record. We also heard Mr.P.S.Shivashanmugasundaram, learned Additional Government Pleader, who prayed to sustain the order of the writ Court.

6. Before the writ court appellant has relied on the judgment of the Criminal Court in Special Case No.4/2005 on the file of the learned Chief Judicial Magistrate, in which he was acquitted. It is trite law that the decision rendered in a criminal case is not automatically binding, in disciplinary proceedings. Test to prove the guilt of commission of an offence tried by a Court of law is on the basis of strict evidence, whereas, the test to prove the charges in the departmental proceedings is preponderance of probability. Legal position is also clear that departmental proceedings and criminal case can go simultaneously. The difference between the departmental proceedings and criminal proceedings has been elaborately discussed by the Hon'ble Apex Court in various cases. It is useful to refer the principles laid down by the Hon'ble Supreme Court in Capt M. Paul Anthony v. Bharat Gold Mines Ltd. and another, reported in 1999 (3) SCC 679, at Paragraph 22, which is extracted hereunder:

"(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

7. Whether the disciplinary proceedings should be kept in abeyance, when a criminal case is pending? Legal position has been made clear by the Hon'ble Supreme Court in the following decisions,

(i) In State Bank of India and others v. R.B.Sharma reported in 2004 (7) Supreme Court Cases 27, at paragraph 8, the Hon'ble Supreme Court held as follows:-

"8. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from

mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short "the Evidence Act"). Converse is the case of departmental enquiry. The enquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer, to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

(ii) The above said principle has been reiterated in a subsequent decision Hindustan Petroleum Corporation Ltd., and others v. Sarvesh Berry reported in 2005 (10) Supreme Court Cases 471, wherein, at Paragraph 8, the Hon'ble Supreme Court held as follows:

"8. The purposes of departmental enquiry and of prosecution is two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of

fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

(iii) In *Indian Overseas Bank, Anna Salai and Another Vs. P.Ganesan and Others* reported in 2007 (5) CTC 632, the Hon'ble Supreme Court, having regard to the legal position that there is no need for automatic stay in the departmental proceedings, observed that the discretionary Writ jurisdiction under Article 226 of the Constitution of India should be exercised, keeping in view of the conduct of the parties, stage of the criminal case and whether it would expose the defence of the delinquent, if he is constrained to acquiesce himself to the departmental enquiry, pending disposal of the trial before the Court of competent jurisdiction. Relevant portion is as follows:

"26. Furthermore the discretionary writ jurisdiction under Article 226 of the Constitution of India should be exercised keeping in view the conduct of the parties. Respondents made a representation that in the event the order of suspension is revoked, they would cooperate with the Enquiry Officer. They kept on filing applications for extension of time which were allowed. They took benefit thereof. Without, however filing show cause, they moved the High Court. Furthermore before the Enquiry Officer also, as noticed hereinbefore, although they had appointed the defence counsel, did not cross-examine the witnesses examined on behalf of the Management. A large number of witnesses had already been examined on behalf of the appellants.

The disciplinary proceedings, as we have noticed hereinbefore, have proceeded to a great extent. In such a situation we are of the firm view that the discretionary jurisdiction should not have been exercised in favour of Respondents 1 to 4 by the High Court."

(iv) In Noida Entrepreneurs Association Vs. Noida and others reported in (2007) 10 SCC 385, the Hon'ble Supreme Court held as follows:

"16.The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.

20.Since the petitioner is in the uniformed disciplined service, the authority is expected to perform his duty as per the Rules. When the petitioner is alleged to have committed misconduct, the respondents have no other choice except to proceed with the departmental enquiry and they need not wait for the decision of the criminal court. The department need not wait for the decision of the law enforcing agency.

21.Furthermore, discretionary jurisdiction under Article 226 of the Constitution of India should be exercised cautiously. In the present case on hand, already department witnesses have been examined. It is for the petitioner to cross examine the witnesses. At this stage, if the department has to defer the departmental proceedings, till the criminal prosecution is over, then it will adversely affect the administrative functioning of the disciplined force.

22.Further, in view of the categorical decision held by the Hon'ble Supreme Court, we do not find any error or need to interfere with the order dated 24.08.2017 passed in W.P.No.22697 of 2017. Accordingly, the writ appeal is dismissed."

8. In the light of the above decision and decisions, contention of the appellant that acquittal in the criminal case, ought not to have been taken note of, is not tenable.

9. Referring to Rule 8(2) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, and other circulars, appellant has contended that charges cannot be framed by the Tribunal, for a misconduct alleging misappropriation, and that he ought not to have been suspended and departmentally proceeded with.

10. Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, state that without prejudice to the provisions of the Public Servants' Inquiries Act, 1850, in every case, where it is proposed to impose on a member of a service or on a person holding a Civil Post under the State any of the penalties specified in items (iv), (vi), (vii) and (viii) in rule 8, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegation, on which each charge is based and of any other circumstances, which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. Even if a person charged has waived oral inquiry, such inquiry shall be held by the authority concerned in respect of charges which are not admitted by the person charged and which can be proved only through the evidence of witnesses. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. Whether or not the person charged desired or had an oral inquiry, he shall be heard in person at any stage, if he so desires before passing of final orders. A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of the evidence, if any, and a statement of the findings and the grounds thereof. Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly

recorded by itself; Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as here-in-before provided: Provided further that where there is a complaint of sexual harassment within the meaning of rule 20-B of the Tamil Nadu Government Servants' Conduct Rules, 1973, the complaints Committee established in each Government department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold the inquiry as far as practicable in accordance with the procedure laid down in these Rules. Provided also that the Government Servant may take the assistance of any retired Government servant to present the case on his behalf but may not engage a legal practitioner for the purpose unless the inquiring authority is a legal practitioner or the inquiring authority, having regard to the circumstances of the case, so permits. Provided that in every case where it is necessary to consult the Tamil Nadu Public Service Commission, the disciplinary authority shall consult the Tamil Nadu Public Service Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty: Provided further that in the case of a person appointed to a post in a temporary department by transfer from any other class or by recruitment by transfer from any other service, the State Government may, at any time before the appointment of such person as a full member to the said post, revert him to such other class or service, either for want of vacancy or in the event of his becoming surplus to requirements or if the State Government are satisfied that he has not got the necessary aptitude for work in the said post, without observing the formalities prescribed in this sub-rule.

11. Charge Memo dated 17.9.2004 framed by the Commissioner for Disciplinary Proceedings, Vellore, is as follows:

WEB COPY

Proceedings of the Commissioner for Disciplinary
Proceedings, Vellore.

Address: No.312, 13th Cross Street, Phase II,
Sathuvachari,
Vellure - 632 009

Present : Thiru.G.Muthusamy, I.A.S.,

TDP Case No.3/2004

RC. No.374/2004/B/ Dt.17-09-2004

To
Thiru.R.K.Palaniappan
Formerly District Backward
Classes Officer
Thiruvannamalai

Thiru.S.Jegajeevadass
Formerly Superintendent
C/o.Dist. Backward Classes
and Minorities Welfare Dept
Thiruvannamalai

The following charges are framed against you
hereinafter referred to as Accused Officers.

Accused Officer - 1 Charge - 1

That you AO1 bearing a public servant and
employed as District Backward Class Officer,
Thiruvannamalai during the period, 1999-2000,
instead of achieving the small savings target fixed
by the collector of Thiruvannamalai District by
cancasting towards the same had compelled your
subordinate to pay the travelling allowance claims
towards small savings agent's commission i order to
get the saving certificate numbers from the and also
failed to have proper supervision over your
subordinate Thiru.S.Jega Jeeva Dass, Superintendent
of your office, who had collected Rs.29,650/-
(Rupees Twenty Nine Thousand Six Hundred and Fifty
only) from the wardens of backward classes hostels
in the district during the year 1999-2000, while
disbursing their travelling allowance claims, and
who had misappropriated sum of Rs.12,325/- from the

said T.A. Claims amount and thereby failed to maintain absolute integrity and devotion in duty, and conducted yourself in a manner unbecoming of a public servant, as mentioned above and thereby you have contravened Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973.

Accused Officer - 2

That the A.O. (2) being a public servants and employed as Superintendent, O/o.District Backward Classes and Minority Welfare Department, Thiruvannamalai during the period of 1999-2000 instead of achieving the small savings target fixed by the Collector, Tiruvannamalai District by canvassing towards the same, at the instructions of the A.O.1 collected by compulsion, from the Travelling Allowance Claims of the Subordinates i.e. wardens of the backward classes hostels, towards small savings agents commission, in order to get the saving certificate numbers from a sum of Rs.29,650/- (Rupees Twenty Nine Thousand six hundred and fifty only) during the year 1999-2000 and you had also misappropriated a sum of Rs.12,325/- (Rupees Twelve thousand three hundred and twenty five only) from the said T.A. Claims amount, and thereby failed to maintain absolute integrity and devotion to duty and conducted yourself in a manner unbecoming of a public servant as mentioned above and thereby you have contravened Rule 20 of the Tamil Nadu Government Servant Conduct Rules, 1973.

-sd-

COMMISSIONER,
DISCIPLINARY PROCEEDINGS

VELLORE - 632 009

17-09-2004

Encl: List of Witnesses

12. There is nothing in the TDP rules that cases other than corruption cannot be enquired into by the Tribunal. In fact, as per rule 4(2) of the said rules, the government may, subject to the provisions of rule 5, also refer to the Tribunal any other case or class of cases, which they consider should be dealt with by the Tribunal and the Government, in exercise of the powers conferred by sub-rule, shall have regard to the nature and gravity of the charge, the grade or rank of the officer charged and the organisational strength of the department

concerned in handling cases involving interpretation of rules regulating conditions of service of Government servants.

13. As per Rule 8(d) of the said rules, the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, shall apply

(i) in regard to the procedure to be followed in cases other than those of corruption; and

(ii) in regard to any other matter for which no specific provision has been made in these rules.

14. Writ petitioner has been alleged to have unauthorizedly collected Rs.29,650/- abusing his official position and found to have misappropriated Rs.12,325/-. Rule 17(a) or 17(b) of the Tamil Nadu Civil Services (Discipline & Appeals) Rules, speaks only about the procedure and not the ground or provision, on the basis of which, charge is framed. In the light of Rule 4(2) of TDP Rules, r/w. proviso to Rule 5 of the said Rules, contention of the writ petitioner that only a departmental proceedings can be taken by the disciplinary or the appellate authority, as the case may be and that matter ought to have been referred to the TDP rules, cannot be countenanced. In issuing charge memo to the petitioner, the procedure, as per law and rules have been followed, and that a questionnaire in the prescribed form has been enclosed along with the charge memo.

15. Time limit prescribed for conducting the disciplinary proceedings, referred to by the appellant, can at best, be considered as executive or administrative instructions. Initiation and conclusion, depends upon the merits of each case. Voluminous documents and evidence to be recorded. Material on record discloses that the government have filed an application for extension of time, which has also been granted. Therefore, contention that there was a delay in concluding the proceedings cannot be accepted.

16. Going through the materials on record, this court is of the view that there is no perversity in the finding of the Tribunal. What is perversity has been dealt with by the Hon'ble Supreme Court, as follows:-

(i) In Arulvelu v. State reported in 2009 (10) SCC 206, the Hon'ble Supreme Court, at Paragraphs 27, 29 and 30, explained what "perverse" means,

"27. The expression "perverse" has been defined by various dictionaries in the following manner:

1. Oxford Advanced Learner's Dictionary of Current English Sixth Edition PERVERSE: Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

2. Longman Dictionary of Contemporary English - International Edition PERVERSE: Deliberately departing from what is normal and reasonable.

3. The New Oxford Dictionary of English - 1998 Edition PERVERSE: Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition) PERVERSE: Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. Stroud's Judicial Dictionary of Words & Phrases, Fourth Edition PERVERSE: A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

.....

29. In *Kuldeep Singh v. The Commissioner of Police*, (1999) 2 SCC 10, the Court while dealing with the scope of Articles 32 and 226 of the Constitution observed as under:

"9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

30. The meaning of 'perverse' has been examined in *H. B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & Others v. Gopi Nath & Sons & Others* 1992 Supp (2) SCC 312, this Court observed as under:

"7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to Section 39(5) was proper or not, it was not open to the High Court re-appreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness - as distinguished from the legal permissibility - of the primary or perceptive facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

(ii) In *S.R.Tiwari v. Union of India* reported in 2013 (6) SCC 602, at Paragraph 30, the Hon'ble Supreme Court, held as follows:

"30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is against the weight of evidence, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with."

(iii) In State of NCT of Delhi v. Sanjeev reported in 2005 (5) SCC 181 = AIR 2005 SC 2080, the Hon'ble Supreme Court observed thus,

".....to characterize a decision of the administrator as 'irrational' the Court has to hold, on material, that it is a decision 'so outrageous' as to be in total defiance of logic or moral standards."

(iv) In State of A.P., v. Abdul Khuddus reported in 2007 (15) SCC 261, the Hon'ble Supreme Court, at Paragraph 12, held that,

"the High Court, while reversing the findings of the Special Court could also not come to a conclusion of fact that the respondents had perfected their title in respect of the schedule land by adverse possession or that the schedule land belonged to Gandhi Hill Society. Such being the position, we are unable to sustain the order of the High Court, which had set aside the findings of fact arrived at by the Special Court, which, in our view, were arrived at on consideration of the materials on record and which, by any stretch of imagination, cannot be said to be based on no evidence or surmises or conjectures and therefore, it was not open to the High Court, in the exercise of its writ jurisdiction, to set aside the findings of fact arrived at by the Special Court which were based on sound consideration of the materials on record."

(v) In The General Manager (P) Punjab & Sind Bank v. Daya Singh reported in (2010) 11 SCC 233, at Paragraph 24, the Hon'ble Supreme Court, held as follows:

"24. Absence of reasons in a disciplinary order would amount to denial of natural justice to the charge-sheeted employee. But the present case was certainly not one of that category. Once the charges were found to have been established, the High Court had no reason to interfere in the decision. Even though there was sufficient documentary evidence on record, the High Court has chosen to hold that the findings of the enquiry officer were perverse. A perverse finding is one which is based on no evidence or one that no reasonable person would arrive at. This has been held by this Court long back in Triveni Rubber & Plastics v. CCE, AIR 1994 SC 1341. Unless it is found that some relevant evidence has not been considered or that certain inadmissible material has

been taken into consideration the finding cannot be said to be perverse. The legal position in this behalf has been recently reiterated in Arilvelu v. State, 2009 (10) SCC 206. The decision of the High Court cannot therefore be sustained."

11. In the light of the above decisions, said contention is untenable."

17. One of the grounds raised is simultaneous action, both on the criminal side and departmentally, on the enquiry conducted by Department of Vigilance and Anti-Corruption. Such course is permissible. It is useful to refer few judgments of Hon'ble Apex Court,

(i) The principles underlined in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., reported in 1999 (3) SCC 679, at Paragraph 22, are extracted hereunder:

"(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude

them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

(ii) Whether the disciplinary proceedings should be kept in abeyance. Legal position has been made clear by the Hon'ble Supreme Court in the decision reported in 2004 (7) Supreme Court Cases 27 [State Bank of India and others v. R.B.Sharma]. At paragraph 8, the Hon'ble Supreme Court held as follows:-

"8. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short "the Evidence Act"). Converse is the case of departmental enquiry. The enquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer, to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is

required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

(iii) The above said principle has been reiterated in a subsequent decision reported in 2005 (10) Supreme Court Cases 471 (Hindustan Petroleum Corporation Ltd., and others v. Sarvesh Berry).

(iv) In 2007 (5) CTC 632 (Indian Overseas Bank, Anna Salai and Another Vs. P.Ganesan and Others), the Hon'ble Supreme Court, having regard to the legal position that there is no need for automatic stay in the departmental proceedings, has observed that discretionary Writ jurisdiction under Article 226 of the Constitution of India should be exercised, keeping in view of the conduct of the parties, stage of the criminal case and whether it would expose the defence of the delinquent, if he is constrained to acquiesce himself to the departmental enquiry, pending disposal of the trial before the Court of competent jurisdiction. Relevant portion is as follows:

26. Furthermore the discretionary writ jurisdiction under Article 226 of the Constitution of India should be exercised keeping in view the conduct of the parties. Respondents made a representation that in the event the order of suspension is revoked, they would cooperate with the Enquiry Officer. They kept on filing applications for extension of time which were allowed. They took benefit thereof. Without, however filing show cause, they moved the High Court. Furthermore before the Enquiry Officer also, as noticed hereinbefore, although they had appointed the defence counsel, did not cross-examine the witnesses examined on behalf of the Management. A large number of witnesses had already been examined on behalf of the appellants. The disciplinary proceedings, as we have noticed hereinbefore, have proceeded to a great extent. In such a situation we are of the firm view that the discretionary jurisdiction should not have been exercised in favour of Respondents 1 to 4 by the High Court.

(v) In the decision reported in (2007) 10 SCC 385 (Noida Entrepreneurs Association Vs. Noida and others), the Hon'ble Supreme Court has held as follows:

16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.

18. Tamil Nadu Government Servants Conduct Rules, 1973 referred to by the appellant only deals with the enumerated acts of misconduct. They are only illustrative and not conclusive. It does not mean that acts which are not enumerated in Rule 20 of the said rules would not fall under the ambit of misconduct. Rule 17(b) of the Tamil Nadu Government Servant Conduct Rules, 1973 or Rule 8 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, as the case may be, empower the competent authority to frame charges.

19. Government have considered the findings of the Tribunal and chosen to get the views of the Tamil Nadu Public Service Commission, which on 19.12.2007 opined thus:
Confidential

From	To
The Secretary,	The Secretary to the
Tamil Nadu Public Service Commission	Government of Tamil Nadu
Chennai 600 002	Revenue Department
	Secretariat
	Chennai 600 009

Letter No.585/DCD-B2/2007-1, dated 19.12.2007

Sir,

Sub:Disciplinary action - Thiru.S.Jegajeevadass (under suspension) formerly Superintendent, Office of the District Backward Classes and Minorities Welfare Office, Tiruvannamalai - Irregularities committed - Enquiry by Tribunal for Disciplinary Proceedings, Vellore - Views of the Commission - Communication of.

Ref : Government letter No.4782/Ser.2(1)/05-30,
dated 6.9.2007

I am directed to invite kind attention to the reference cited and to say that the views of the Commission on the case, referred to above, are as follows:-

Thiru.S.Jagajeevadass (delinquent officer) (under suspension) was working as Superintendent in the Office of District Backward Classes and Minorities Welfare Office, Tiruvannamalai. While he was working as such, certain allegations of misappropriation of Government money, were received against him. The government placed the delinquent officer on his defence before the Tribunal for Disciplinary Proceedings, Vellore. The Tribunal for Disciplinary Proceedings, Vellore had framed a charge against him and after conducting inquiry, given its findings holding the charge as proved. A copy of the report of the Tribunal for Disciplinary Proceedings was communicated to the delinquent officer and his further representation was obtained. The government, after examining the case have decided to hold the charge as proved and also arrived at a provisional conclusion and sought the views of the Commission.

The entire records have been carefully perused by the Commission. The charge against the delinquent officer is that he had collected Travelling Allowance claims of his subordinates by compulsion, to use the same towards small savings agent commission in order to get saving certificate numbers and misappropriated a portion of the amount so collected. The appropriate authority of the government had conducted investigation regarding the above said allegation and examined all the concerned persons whose Travelling Allowance claims had been collected by compulsion. Mere perusal of the investigation reports reveals the fact that Prima facie case has been made out against the delinquent officer. Followed by the conclusion of the appropriate authority of the government, the Tribunal for disciplinary proceedings, Vellore, has conducted oral enquiry in accordance with rules and procedures laid down. During the oral enquiry, the delinquent officer has contested the case by engaging an advocate and all the witnesses, who

were examined on the side of prosecution, were cross examined on the side of delinquent officer. Therefore, it is clear that the delinquent officer had been granted sufficient opportunity to put forth his defence. The Tribunal for disciplinary proceedings, after deep and careful consideration of evidence and exhibits submitted and elaborate discussion had come to a conclusion that the delinquent officer had collected a sum of Rs.23400/- by compulsion from his subordinates and misappropriated a sum of Rs.6075/-.

The government, after accepting the findings of the Tribunal for Disciplinary Proceedings have decided to impose punishment under rule 8(viii) of Tamil Nadu Civil Services (Discipline and Appeal) Rules against the delinquent officer is the amount due to his subordinates who actually incurred expenses by performing tour for inspection and the delinquent officer in order to reach the target had coerced his subordinates to part with the above said amount. The commission finds no reason to deviate from the findings of the Tribunal for Disciplinary Proceedings. Hence the misconduct committed by the delinquent officer is of grave nature for which he deserves highest punishment (i.e) dismissal from service. The Commission therefore advises the Government to go ahead with their decision of imposing the punishment of dismissal from service prescribed under rule 8 (viii) of Tamil Nadu Civil Services (Discipline and Appeal) Rules against the delinquent officer and to issue orders accordingly.

2) A copy of orders as and when passed by the Government may be sent to the Commission early for its information.

3) The records relating to the case are sent separately with the Commission's letter No.585/DCD-B2/2007-2, dated 19.12.2007.

for SECRETARY"

21. Charge of misappropriation is grave. Let us consider, few decisions, as to how, the Hon'ble Supreme Court viewed,

(i) In Divisional Controller, KSRTC (NWKRTC) vs. A.T.Mane [2005 (3) SCC 254], when an employee is found guilty of misappropriating corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such an employee and awarding punishment of dismissal.

(ii) In Divisional Controller, N.E.K.R.T.C. vs. H.Amaresh [2006 (6) SCC 187], misappropriation of Rs.360.95 was held to be

a grave act of misconduct and the punishment of dismissal from service was upheld.

22. Contention of the appellant that when allegations have been made by the department that the appellant had misappropriated a sum of Rs.29,650/-whereas, the TDP has arrived at a conclusion of only Rs.12,325/-, and therefore, the punishment of dismissal is disproportionate, cannot be accepted for the reason that when there is an unimpeachable finding of misappropriation, even one rupee is suffice to impose a major penalty. In our considered view, the quantum is not the criteria, but the conduct, which the Court has to consider.

23. With the full knowledge of the charges, appellant has submitted the explanation, participated in the enquiry, cross-examined the witnesses, and it is too late in the day to raise grounds of vagueness of charges. Going through the charges framed by the TDP, along with the material documents, it is our considered view that charges cannot be said to be vague.

24. No sooner, the Director of Vigilance Commission, has recommended for disciplinary action, matter has been referred to the Commissioner for Disciplinary Proceedings, Vellore. A case in T.D.P. Case No.3/2004 has been registered. Charge Memo dated 17.9.2004 has been issued.

25. Analysing the case on hand, in the light of the decisions considered, there is no procedural irregularity and we are of the view that the appellant has not made out a case for interference. While confirming the order made in WP No.21457 of 2008 dated 16.04.2019, writ appeal is dismissed. No Costs.

Sd/-

Asst.Registrar (CS VIII)

/true copy/सत्यमेव जयते

Sub Asst. Registrar

ars/asr

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To

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Chennai - 600 009.

2. The District Collector,
Thiruvannamalai District.

3. The District Backward Class Officer,
Thiruvannamalai District.

4. The Thasildar,
Taluk Office,
Thiruvannamalai District.

5. The Commissioner of Disciplinary Proceedings,
Vellore.

W.A.No.3347 of 2019

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