

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN  
and  
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.No.2423 of 2018

T.Jaya ..... Appellant

-vs-

- 1.The Director General of Police  
Santhome, Mylapore  
Chennai 600 004.
- 2.The Deputy Inspector General of Police  
Armed Police, Chennai 600 010.
- 3.The Commandant  
TSP XI Battalion  
Rajapalayam  
Virudhunagar District. ... Respondents

Write Appeal filed under Clause 15 of Letter Patent against the order in W.P.No.20897 of 2006 dated 09.07.2018 on the file of the High Court of Judicature at Madras.

Prayer in W.P.No.20897 of 2006:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorarified Mandamus Call for records in R.C. No. 166893/AP 3 (1) /2005dt. 25.9.2005 of the first respondent herein and quash the same and that this honourable court may be pleased to direct the first respondent to include the petitioner name in the promoted list of sub Inspectors in C.No. A.1/31356/02 dt. 13.1.2003.

|                 |   |                                                  |
|-----------------|---|--------------------------------------------------|
| For Appellant   | : | Mr.P.Subramanian                                 |
| For Respondents | : | Mrs.A.Sri Jayanthi<br>Special Government Pleader |

## J U D G E M E N T

[Judgement of the Court was delivered by P.T.ASHA,J.]

The challenge in this Intra-Court appeal is to the order dated 09.07.2018 in W.P.No. 20897 of 2006. The Writ Petition in question had been filed by the appellant for the following relief:

"To issue a Writ of Certiorarified Mandamus to call for records in R.C.No.166893/AP 3 (1) / 2005 dated 25.09.2005 of the first respondent herein and quash the same and that this Hon'ble Court may be pleased to direct the first respondent to include the petitioner's name in the promoted list of the Sub Inspectors in C.No.A.1/31356/02 dated 13.01.2003"

The events preceeding the filing of the Writ Petition:

2. The appellant had joined the services of the respondents as a Grade II Police Constable on 27.05.1988. He was promoted as a Naik on 20.01.1994 and thereafter as Havildar on 24.05.1994. The appellant was the recipient of many awards including the Manaser NSC Commando Shield on 09.03.1999. The appellant would submit that he had shown utmost devotion in the discharge of his duties with the respondents. While so hard times fell on him when one Pitchai Muthu had assumed charge as the Deputy Commandant of the TSP 4th Battalion. The appellant would submit that right from the inception the said officer had taken a dislike for him.

3. The appellant would submit that on 24.01.2002 he had received a charge memo from the 2nd respondent followed by a fresh memo dated 03.07.2002 wherein a denovo enquiry was initiated against him. Earlier, the appellant was issued with a charge memo dated 19.06.2000 on the complaint of two women police constables that he had conducted himself in an improper way with them. After enquiry it was found that the entire complaint was a cooked up one, since the appellant had found fault with them for deriliction of duty on their side. Therefore, to take revenge the complaint had been filed. The Commandant in the order dated 16.06.2000 had clearly observed that there was no iota of truth in the complaint alleged against the appellant.

4. It was only thereafter the charge memo which is the subject matter of the Writ Petition was issued. The charge against the appellant was that on 24.06.2001 at around 18.26 hours he had made a call to the cell phone

of Deputy Commandant TSP IV Battalion, Kovaipudur on his cell phone number 98422 27555 from a landline number 0422 807734 and had abused the officer with unparliamentary words. The charge memo emanates from a complaint that this officer Pitchai Muthu had given to the Deputy Inspector General, Armed Force (Welfare and Modern) on 12.08.2001. The said Pitchai Muthu, herein after referred to as the complainant who would submit that the Commandant of the IV Battalion one Chockalingam had warned him about the appellant stating that he was totally incompetent and that the appellant had used derogatory words against two women for which disciplinary proceedings were pending against him (This disciplinary proceedings, which has been referred to in Paragraph 3 supra, was revoked by letter dated 16.06.2000 as being concocted one).

5. The complaint further proceeds to state that when the complainant and the said Commandant were away at Hyderabad the appellant had wrangled with the officiating Commandant to remain at Kovaipudur for three months. On his return the complainant had instructed the Head of Office of the Company to remove him from the IV Battalion and attach him to the B Company. The complainant would submit that this had angered the appellant who on 11.02.2001 had given a false news to a Tamil Daily linking the complainant's name with a women colleague.

6. The complainant would submit that this news had been conveyed to the Daily only by the appellant since he was at Chennai during the period 08.02.2011 to 11.02.2001. The complaint would further indicate that the appellant had been appointed as an Havildar in the Treasury Department of the Police force and his services had been regularised by the Commandant Incharge of the IV Battalion. Immediately on coming to know about the said appointment the complainant had informed the regular Commandant of the IV Battalion to cancel the order and at the behest of the complainant the appellant was removed from the duty. It is the contention of the complainant that this further angered the appellant. When the complainant had gone for a meeting of officers to Tirunelveli on 24.06.2001, he had received a call on the cell phone of his elder son, Sivamuthu at around 18.26 hours from the landline number 0422 807734 and on picking up the call the person at the other end had started abusing the complainant and disconnected the call.

7. The complainant would narrate that the very next minute he had contacted his house at phone number 806666 from his cell phone and asked his younger son Prithiviraj to immediately find out as to who had called him from the

number 0422 807734. The complainant would submit that his son had immediately contacted the said number and found that the number belonged to the STD Booth near the main entrance of the IV Battalion. His son immediately went to that place with Constable Gnanavel who was there in the residence of the complainant. At that time Krishnasamy, the Sub Inspector of the IV Battalion was near the entrance. He then took them to the STD booth where Police Constables Renuka and Sahayamary were present as also the appellant. The complainant would submit that the distance between his house and the STD booth was just 50 yards.

8. On enquiring with these two women police as well as the lady manning the STD booth they learnt that it was the appellant who had been on the phone and who had abused the complainant. For this reason the complainant requested Disciplinary Action to be taken against the appellant.

9. Based upon this complaint the charge memo had been issued. The appellant had questioned the maintainability of the enquiry, since Rule 3(b) of the TNPSS Rules, 1955 stipulates that an enquiry can be conducted only for the offences indicated therein. The abuse of Superior Officer was not an offence under these rules and therefore initiation of the enquiry was flawed. Be that as it may, the enquiry was conducted from 14.09.2001 to 25.03.2003 by 11 officers at 11 different stages.

10. The appellant would submit that in his explanation to the charge memo he had clearly stated that he was not at Kovaipudur between the period 24.06.2001 to 26.06.2001 as he was away at Kuzhithurai. However, this factor does not find place in the report. The Enquiry Officer passed a preliminary order on 08.07.2003 and final order on 23.08.2003 fastening guilt on the appellant. The final order would read that the offence was proved because the appellant had not completely refuted the charge. Consequent to the final order the appellant was awarded punishment by the 3rd respondent by imposing punishment of reduction in time scale of pay by one stage for one year. It was also mentioned that the period of reduction will not operate as postponement of future increments.

11. The appellant had filed an appeal against the order passed by the Disciplinary Authority and the same was dismissed by the Inspector General of Police by way of a non-speaking order dated 16.10.2003. The review petition dated 07.02.2005 which was considered as a Mercy

petition was also dismissed once again by way of a non-speaking order on 25.09.2005. It is against the said order that the appellant had filed W.P.No.20897 of 2006.

12. The learned Single Judge by order dated 09.07.2018 was pleased to dismiss the Writ Petition. The learned Judge had relied upon the evidence of P.W.2, P.W.3 and P.W.4 to dismiss the Writ Petition. The learned Judge had also observed that the Court cannot interfere in a decision made by the fact finding authority and consequently the order of punishment was confirmed.

Submissions:

13. Mr.P.Subramanian, learned counsel appearing on behalf of the appellant argued that the enquiry was nothing but a Witch hunting and a vindictive one initiated by a Superior Officer who had taken a dislike to the appellant right from the beginning for reasons best known to him. The learned counsel would argue that a mere perusal of the enquiry and the evidence that has been adduced on the side of the prosecution witness would clearly demonstrate that the entire complaint was nothing but a cooked up one. The Enquiry Officer had not taken into consideration the explanation of the appellant nor the evidence let in on his side both oral as well as documentary.

14. Mrs.A.Sri Jayanthi arguing on behalf of the respondents would contend that a perusal of the statement issued by the Mobile network company namely, Aircel, would clearly show that on 24.06.2001 a call had been received from the landline number 0422 807734 and this coupled with the evidence of P.W.2, P.W.3 and P.W.4 would clearly link the appellant with the mis conduct. She would argue that the Enquiry Officer has conducted a very detailed enquiry and submitted his report, which was rightly taken as the basis for imposing punishment.

Discussion:

15. A perusal of the entire records including the original files produced before this Court clearly demonstrates that the instant case is one where an enquiry had been conducted not with the object of discovering the truth but with the object of punishing the person accused. The vindictive nature of the complaint is clearly evident from a mere reading of the complaint dated 12.08.2001, which has been filed nearly 2 months after the alleged incident. The complainant who holds the Post of Deputy Commandant then and who is personally heading a Battalion as a Commandant demonstrates the amount of prejudice and ill-will against

a subordinate Official, who is very lower in rank.

16. The complainant would himself state that by his orders the appellant was removed from the IV Battalion and posted to the B Company despite orders of the Commandant (Incharge) permitting the appellant to continue for a period of 3 months in the said Battalion. Thereafter the complainant has ensured that the appellant was removed from the Treasury Department of the 3rd respondent. The complainant does not give any reason as to why the said action has been taken by him except for a statement that the regular Commandant did not like the appellant.

17 (a) Now coming to the complaint in question, the complainant would submit that on 24.06.2001 he was at Tirunelveli to attend the officers meeting. The complainant would further go on to state that he was carrying his son Sivamuthu's cell phone on the said date and that around 18.26 hours he had received a call from the land line number 0422 807734 and on his picking up the phone, person at the other end had started abusing him. The complainant would state that at the very next minute he had contacted his house at telephone number 806666 and informed his younger son Prithviraj to immediately verify the said number and trace its location.

(b) The complainant would proceed to state that his son had contacted the said number and came to know that the telephone number was that of the STD Booth situate near the main entrance of the TSP IV Battalion. His son had immediately taken his two wheeler and along with Gnanavelu (P.W.2) proceeded to the said STD Booth (The complainant would state that the STD booth is 50 yards from his house and it is rather strange that his son had to take a bike to travel 50 yards). When his son had reached the telephone booth the Sub Inspector of the TSP IV Battalion one Krishnasamy was present at the main entrance and had taken them to the telephone booth where, P.W.3 and P.W.4, Police constables Renuka and Sahaya Mary respectively were present along with the appellant.

(c) The complainant would contend that on enquiring the two Police women as well as the lady operating the STD booth it was confirmed that it was the appellant who had called him from the booth and abused him.

18. A reading of the very complaint would demonstrate the number of weak links in the narrative, a few of which are listed herein below:

a) There is no explanation as to how the appellant had come to know that the complainant was carrying his son's cell phone to Tirunelveli and further how the

mobile number of the complainant's son was known to the appellant.

b) The fact that the appellant after making the so called call had waited right next to the booth for the complainant's son and others to reach the spot is strange, more particularly when the statement in the complaint was that after the complainant had informed his son, his son had to verify the location of the telephone number and thereafter to proceed there.

19. A perusal of the evidence of the various witnesses who have adduced evidence on the side of the complainant would further highlight the flaws in the complaint, charge memo and the Enquiry report.

a) As per the complaint the sequence of the offence was that the appellant had called the complainant, the complainant had called home, his son Prithiviraj had verified the location of the STD booth and thereafter rushed to the booth on his motor bike where he found two Police constables and the appellant.

b) P.W.1 who is the son of the complainant and whose evidence has been extracted in the enquiry report has the following to state about the sequence on 24.06.2001.

c) At around 6.20 hrs in the evening he was at home and the phone had rung in the 1st floor and when he answered the said call he was asked who he was and he answered that he was the son of the complainant and when he had asked the person on the other end who he was, there was no reply but had spoken very derogatory words about his father and had stated that he would see that how his father would be promoted. As soon as the person on the other end disconnected the phone he had informed his mother about the conversation and his mother had tried calling the complainant who was then out of town but however the phone was engaged. Thereafter he once again called his father. When his father had picked up the call he had narrated the incident. Thereupon his father told him that he had also received a similar call and that the number is recorded and he was asked to go and find out where this place was. Thereafter P.W.1 had gone along with Police Constable Gnanavel to the main entrance gate of the Battalion. Thiru.Krishnasamy, Sub Inspector took him to STD booth where two Police women were there (P.W.3 and P.W.4). He has stated that when he had enquired with the lady at the booth and two Police women they had told him that one Jaya (appellant herein) was found speaking angrily over the phone to somebody. On collecting this information he had immediately

contacted his father and reported the entire sequence to him. Therefore, on the said day, four calls had been made from the Telephone No.0422-806666. (This is not reflected in the call details.).

d) Gnanavel (P.W.2), the Police Constable who is said to have accompanied P.W.1 has this to say about the sequence of events on 24.06.2001. Around 6.00 p.m. on 24.06.2001, while he was working as orderly in the house of the complainant the phone with the number 806666 had rung upstairs and the complainant's son had picked up the phone and without cutting the line P.W.1 had enquired with P.W.2 about the location of the telephone number 0442 807734. P.W.2 would state that he had thereupon informed P.W.1 that the said number belonged to Kovaipudur area and this information was conveyed by P.W.1 to the complainant who was on the other end. P.W.1 informed the complainant that he would go and see the place and had disconnected the call. Thereafter P.W.1 and P.W.2 took the Motor-Cycle and as they were nearing the entrance of the main gate they saw the booth on the opposite side with number 807734 written on it. Bayammal who was working in the said booth informed P.W.1 and P.W.2, after reading the bills, that it was from that booth the call had gone and that the person just left. They asked her who the person was and P.W.5 had stated that she did not know who the person was but he was wearing a lungi and shirt. From the booth P.W.1 and P.W.2 returned to the complainant's house and informed the details to the complainant (P.W.2 does not talk about P.W.3 or P.W.4 or about the presence of Krishnasamy, Sub Inspector).

20. Therefore a mere perusal of the evidence of the two witnesses juxtaposed with the complaint would clearly demonstrate the discrepancies with reference to the sequence of events that had taken place on 24.06.2001.

21. The next point for consideration is the evidence of the so called witnesses who had deposed to have seen the appellant making the call to the complainant.

a) P.W.3, Police Constable Renuka would state that she had come at 6.00 p.m to the booth in question to make a call to her husband. When she had come to the booth the appellant was talking over the phone. After making the call he had left and thereafter Sub Inspector Krishnasamy had asked both herself as well as Sahayamary, the other Police Constable who was there and as to who had made a call. P.W.3 had there upon informed the Sub Inspector that it was the appellant who had made the call. During her examination she would submit that it was only from the said date that she was working in that

place and when she had gone to call her husband in the evening she had to leave the camp and go out through the main gate to booth. She would also admit that the appellant had given a complaint in the year 1998 that P.W.3 had lost a 302 Rifle. Therefore, it is clear that Renuka had an axe to grind with the appellant.

b) P.W.4 during her cross examination would submit that she was at the booth between 5.00 and 5.20 p.m and that she was doing 'Para Work" from 4.00 to 6.00 p.m. Even in the chief examination she has only made a statement that when she had come to the booth the appellant was talking on the phone.

c) P.W.5 who is the lady running the STD booth, in her cross examination has made a very clear and categorical statement that the Assistant Commandant had obtained her signature in an already prepared statement and that she did not know the contents of the said statement. She would further state that this statement was prepared 1 1/4 years prior to the enquiry. She would say that she affixed her signature because she was scared of the Assistant Commandant. This witness was treated as hostile. Thereafter it was the Enquiry Officer who had cross examined her and in the cross examination also she has stuck to her earlier statement.

d) P.W.6, Sub Inspector, Krishnasamy in his evidence would submit that when he along with P.W.1 and P.W.2 were nearing the telephone booth the appellant was waking away. The witness during his cross examination was unable to recollect who was the officer in-charge of Battalion on 24.06.2001 and what duties were assigned to him, i.e., P.W.6. Therefore, his evidence lacks credibility.

e) The evidence of P.W.7, the other son of the complainant, whose mobile phone the complainant was using clearly falsifies the entire complaint. He would state that on 24.06.2001 in the afternoon someone had called his cell phone at 1.00 p.m asking him if his father was there. The witness would further state that he had informed the caller that his father was not at home. Thereafter the person had abused his father. After his father returned from work he had informed about this incident. It is the specific case of the complainant that on 24.06.2001 he was at Tiirunelveli, whereas, P.W.7, his son would depose that his father was very much available at Coimbatore.

22. On the conspectus of the above evidence it is crystal clear that the complaint was a vindictive one meant to settle scores. The witnesses on the side of the complainant have fallen like a pack of cards. It is rather unfortunate that the Appellate and Revisional Authorities have not cared to examine the evidence on record independently instead of blindly accepting the report submitted by the Enquiry Officer.

23. The Scope of Judicial Review is very limited in Disciplinary Proceedings. However, when it is clearly demonstrated that there was no legal evidence to substantiate the charges, the Constitutional Court is entitled to interfere to do Justice. Neither the Disciplinary Authority nor the Writ Court made an attempt to consider the contradictory evidence given by the witnesses and the false case set up to see that the appellant is punished. We are therefore of the view that the appellant is entitled to succeed. The order imposing punishment is quashed.

24. The order passed by the Writ Court is set aside. The Writ Petition is allowed.

25. The Intra-Court Appeal is allowed. No costs.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Director General of Police  
Santhome, Mylapore, Chennai 600 004.

2.The Deputy Inspector General of Police  
Armed Police, Chennai 600 010.

3.The Commandant  
TSP XI Battalion  
Rajapalayam  
Virudhunagar District.

+1cc to Mr.P.Subramanian , Advocate SR.No. 65720

+1 cc to Government Pleader Sr.No. 66336

W.A.No.2423 of 2018

A.SK(21/10/2019)