



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2019

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU

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**W.P. (MD)No.5851 of 2012 and
M.P(MD) .No.1 of 2012**

G.Balachandran

.. Petitioner

vs

1. The Principal Secretary to Government,
Government of Tamil Nadu
Home (Pol. VI) Department,
Fort St.George, Chennai 600 009.

2. The Director General of Police,
Chennai-600 004.

3. The Additional Director General of Police,
Law & Order, Chennai-600 004.

4. The Deputy Inspector General of Police,
Tiruchirapalli Range, Tiruchirapalli.

... Respondents

PRAYER: Petition filed under Article 226 of the constitution of India to issue a writ of certiorarified mandamus, calling for records relating to the impugned orders bearing G.O(2D).No.159, dated 31.03.2009 issued by the first respondent herein confirming the order in Rc.No.APIV(1)/124124/2006 dated 29.03.2007 issued by the second respondent herein confirming the order in Rc.No.API(3)/AP IV(1) 125179/2005, dated 20.02.2006 issued by the third respondent herein confirming the order in C.No.B2/PR-09/2004 dated 03.03.2005 issued by the fourth respondent herein and quash the same and consequently direct the respondents to confer all the consequential benefits to the petitioner.

For Petitioner
For Respondents

... Mr.Antony Arulraj
... Mr.S.Dhayalan
Government Advocate

ORDER

The petitioner has filed this writ petition calling for records relating to the impugned orders bearing G.O(2D).No.159, dated 31.03.2009 issued by the first respondent herein confirming the order in Rc.No.APIV(1)/124124/2006 dated 29.03.2007 issued by the second respondent herein confirming the order in Rc.No.API(3)/AP IV(1) 125179/2005, dated 20.02.2006 issued by the third respondent



herein confirming the order in C.No.B2/PR-09/2004 dated 03.03.2005 issued by the fourth respondent herein and quash the same and consequently direct the respondents to confer all the consequential benefits to the petitioner.

2. The petitioner has joined the Police Department as Police Constable Grade-II and subsequently, he was promoted as Head Constable. While the petitioner was working in the Prohibition Enforcement Wing in the year 2000, a case in Crime No.6 of 2000 on the file of Vigilance and Anti Corruption Wing, Pudukottai, was registered on 18.10.2000 at the instance of one Karuppiah, who was preparing illicit arrack.

3. A trap was laid based on the complaint to arrest the persons, who demanded bribe. The trap arranged failed 18.10.2000 and failure report was filed in Crime No.6 of 2000 before the learned Chief Judicial Magistrate, Pudukkottai. The said report was recorded on 05.4.2002 by the Court.

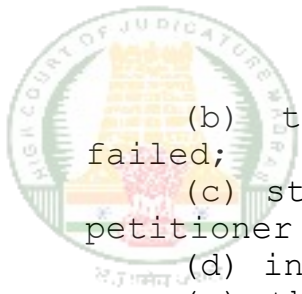
4. A charge memo was issued against the petitioner, as if he was also involved in the demand of bribe for illegal gratification. The complainant Karuppiah and other co-accused did not implicate the petitioner in the said incident. This charge memo was issued based on the statement of one Raman and Marikannu, who are said to be co-accused and cited as witnesses 4 and 5 in the charge memo. The said statements were obtained from the said persons after six months from the alleged incident.

5. When the enquiry was conducted, the complainant Karuppiah was dead. The witnesses Raman and Marikannu did not speak about any bribe being given to the petitioner. All the witnesses were treated as hostile witnesses. The prosecution failed to prove the charges against the petitioner. The Enquiry Officer based on the statement of witnesses on earlier occasion found the petitioner guilty of charges levelled against him. The petitioner submitted explanation to enquiry report to the fourth respondent, who without appreciating the points raised by the petitioner imposed punishment of reduction in time scale of pay by two stages for two years.

6. The petitioner filed appeal before the first respondent on 20.04.2005. The third respondent issued a show cause notice as to why the punishment should not be enhanced. The petitioner submitted his explanation. The third respondent dropped the proceedings for enhancement of punishment, but confirmed the earlier punishment. The petitioner gave a petition to the first respondent, who rejected the same on the ground that the allegation relates to demand and acceptance of bribe.

7. The learned counsel for the petitioner contended that,

(a) the complainant did not implicate the petitioner in the



(b) the trap laid against the named accused namely, Arul failed;

(c) statements were recorded from alleged witnesses implicating petitioner after 6 months of incident;

(d) in the Enquiry, no witness spoke against the petitioner.

(e) the Enquiry Officer erred in relying on earlier statement of witnesses and gave a report that charges levelled against petitioner were proved.

(f) the respondent failed to consider the points raised by the petitioner in proper perspective and in a mechanical manner imposed punishment.

For the above reasons, he prayed for setting aside the impugned order.

8.The respondents have not filed any counter affidavit. Learned Government Advocate contended that charges levelled against the petitioner and others are serious in nature, namely, demand and accepting of bribe. The witnesses turned hostile at the time of enquiry. Hence, the Enquiry Officer has rightly taken note of earlier statement of witnesses and has given a report. Based on which, the disciplinary authority imposed punishment, against which, an appeal was filed and the appeal was also dismissed. Hence, he prayed for dismissal of the Writ petition.

9. Heard the learned counsel for the petitioner as well as the respondents.

10.Perusal of record shows that the named accused namely, Arul who faced the order of reduction in rank, challenged the same in W.P (MD).No.7412/2006 and this Court, by order dated 26.07.2011 set aside the order of punishment by stating as follows:

"12. The petitioner, therefore, challenges the impugned order of punishment in this writ petition. The contention of the learned counsel for the petitioner, is that the impugned order, on the face of it, is arbitrary and amounts to colourable exercise of power, in as much as, the punishment is based on Enquiry Report, which is based on no evidence, thus is perverse.

13. The other contention of the petitioner, is that admittedly, none of the witnesses examined by the prosecution had supported the allegations levelled against the petitioner, and the F.I.R., placed on record by P.W.2, was also dropped after investigation, therefore, it could not be a basis to hold the petitioner guilty.

14. In support of the contentions, learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in ROOP SINGH NEGI ..VS.. PUNJAB NATIONAL BANK AND OTHERS (2009 (2) S.C.C. 570), wherein the Hon'ble Supreme Court was pleased to lay down, that mere



documents are required to be proof by examining the witnesses.

15. It has been specifically laid down that F.I.R in itself is not an evidence without actual proof of facts stated therein.

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16. The learned Additional Government Pleader on behalf of the respondents contends, that in this case, some of the witnesses, out of 12 examined had supported the prosecution version. The enquiry officer had based his finding on the said evidence. The enquiry report was accepted by competent authority. The finding of the competent authority has been upheld by the Appellate Authority as well as Reviewing Authority. It is therefore not open to this Court, in exercise of writ jurisdiction to re-open the matter and reverse the finding recorded on appreciation of evidence.

17. The learned Additional Government Pleader further contends, that F.I.R has been registered against Karupaiah belatedly therefore, there is no cause for this Court, to interfere with the finding of the Enquiry Officer as well as punishment awarded to the petitioner.

18. On consideration, I find no force in the contentions of the learned Additional Government Pleader. The learned Additional Government Pleader has not able to point out anything in the evidence of any of the P.Ws to show any deposition connecting the petitioner with the charges levelled. The witnesses only proved the registration of the F.I.R., which was dropped after investigation.

19. The registration of F.I.R was not the charge against the petitioner. Therefore, the contention of the learned Additional Government Pleader deserves to be noticed to be rejected.

20. In this case, admittedly, except for the F.I.R, which was eventually dropped, there is absolutely no evidence against the petitioner. Therefore, the learned counsel for the petitioner is right in contending that the finding of the enquiry officer is based on no evidence, thus perverse.

21. Learned counsel for the petitioner also placed reliance on the decision of the Hon'ble Supreme Court in G.M.TANK ..VS.. STATE OF GUJARAT AND ANOTHER (2006 (3) C.T.C. 494) to contend that when on the same charges the prosecution evidence is not believed, it would be unfair to hold the person guilty on the Departmental proceedings.



22. This contention of the petitioner cannot be accepted. It is not the case, where the evidence was rejected by the Criminal Court, has been accepted in the Departmental proceedings. In the criminal case, no evidence was led as the police on investigation, had decided to drop the proceedings. Even otherwise this contention cannot be accepted as it is well settled that despite acquittal in criminal case, person can be held guilty and punished in departmental proceedings vide *SOUTHERN RAILWAY OFFICIERS ASSOCIATION AND ANOTHER ..VS.. UNION OF INDIA AND OTHERS* (2009 (9) S.C.C. 24). As already observed above, learned counsel for the petitioner is right in contending that mere F.I.R is not a piece of evidence to hold the petitioner guilty. Thus, the findings of the Enquiry Officer have to be held to be perverse being based on no evidence thus not sustainable in law.

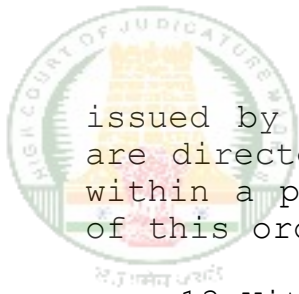
23. The impugned order passed by the punishing authority, appellate authority, and reviewing authority cannot be sustained, as they are based on the finding of the Enquiry Officer, which is held to be bad in law.

24. For the reasons stated hereinabove, this Writ Petition is allowed, the impugned order of punishment is set aside.

25. The petitioner shall be entitled to all consequential benefits. No costs"

11.The said Arul is the named accused and this petitioner's name was included after six months based on the statement of a witness who retracted his statement subsequently and only based on the earlier statement of the witnesses before the Police, the enquiry officer found the bribe charges as proved. As found by this Court in the above Writ petition filed by S.Arul who is the named accused in the FIR, FIR is not a piece of evidence to hold the petitioner guilty. The finding of the enquiry officer have to be held to be perverse which is based on no evidence and therefore not sustainable in law. More over, the impugned orders passed by the punishing authority, appellate authority and the reviewing authority are without any application of mind and the petitioner stands in a better footing than Arul who is the named accused and the judgment rendered in the case of Arul is squarely applicable to petitioner. Therefore, I am inclined to interfere with the order.

12.Accordingly, the impugned orders bearing G.O(2D).No.159, dated 31.03.2009 issued by the first respondent herein confirming the order in Rc.No.APIV(1)/124124/2006 dated 29.03.2007 issued by the second respondent herein confirming the order in Rc.No.API(3)/APIV(1) 125179/2005, dated 20.02.2006 issued by the third respondent herein confirming the order in C.No.B2/PR-09/2004 dated 03.03.2005



issued by the fourth respondent are set aside and the respondents are directed to confer all consequential benefits to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

13. With the above direction, the Writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar(CS)

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To

1. The Secretary to Government,
Government of Tamil Nadu
Home (Pol. VI) Department,
Fort St. George, Chennai 600 009.

2. The Director General of Police,
Chennai-600 004.

3. The Additional Director General of Police,
Law & Order, Chennai-600 004.

4. The Deputy Inspector General of Police,
Tiruchirapalli Range, Tiruchirapalli.

+1 CC to MR.T.ANTONY ARUL RAJ, Advocate (SR-104660[F] dated 12/12/2019)

+1 CC to SPL.GP (SR-104976[F] dated 13/12/2019)

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M.P (MD) .No.1 of 2012
12.12.2019**

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