

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.01.2020

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.13741 of 2008

G. Murugan, H.C.10000

...Petitioner

vs

1. The Secretary to Government
Home (Police V) Department, Chennai-9.
2. The Director General of Police
Chennai 4.
3. The Commissioner of Police Greater Chennai-8.
4. The Additional Commissioner of Police
Chennai-8.
5. Deputy Commissioner of Police
Secretariat Security District
(i/c) Flower Bazaar District
Chennai.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ, or in the nature of writ and in particular a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order P.R.No.64/PR2 (1)/05 dated 11.07.2005 passed by the 5th respondent, order in Rc.No.209/63223/PR.II (1)/05 dated 20.09.2005 passed by 4th respondent, order in Review Petition Rc.No.73/96736/PR.IV (1)/05 dated 07.12.2005 passed by 3rd respondent, order in D.Dis.19449/AP3 (3)/2006 dated 22.04.2006 passed by 2nd respondent and order in G.O. (2D) No.549 dated 22.08.2007 passed by 1st respondent and quash the same and direct the respondents to award all consequential benefits.

For Petitioner : Mr. M.S.Soundararajan

For Respondents : Mr. P.Chinnadurai, AGP.

O R D E R

The petitioner has filed the above writ petition praying to issue a Writ, or in the nature of writ and in particular a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order P.R.No.64/PR2 (1)/05 dated 11.07.2005 passed by the 5th respondent, order in Rc.No.209/63223/PR.II (1)/05 dated 20.09.2005 passed by 4th respondent, order in Review Petition Rc.No.73/96736/PR.IV (1)/05 dated 07.12.2005 passed by 3rd respondent, order in D.Dis.19449/AP3 (3)/2006 dated 22.04.2006 passed by 2nd respondent and order in G.O. (2D) No.549 dated 22.08.2007 passed by 1st respondent and quash the same and direct the respondents to award all consequential benefits.

2. The petitioner was enlisted as Police Constable in the year 1986 and promoted as Head Constable in the year 1998 at Armed Reserve. On 07.12.2004, there was some traffic snarl near US Consulate, Chennai. On the direction of the higher officials, the Reserve Inspector visited the place and submitted the preliminary report that the petitioner, who is posted at Visa gate to do body frisking duty, had allowed the auto drivers to park their vehicles in front of US consulate and thereby caused traffic snarl. Based on that, discreet enquiry was conducted and it was found that the petitioner was collecting money from the auto drivers and allowed them to park their vehicles in front of the US Consulate. On the basis of the preliminary enquiry, a charge memo was issued on 31.05.2005 in P.R.No.65/2005. The charge against the petitioner is that he had collected Rs.20/- per trip per auto for parking the vehicle in front of the US consulate and for getting illegal gratification from shop owners for sending the visa applicants to keep their belongings in a bunk shop, and for referring them to Xerox shop and photo studio. In this regard, 12 witnesses were examined on the side of the prosecution and 3 witnesses were examined on the side of the petitioner/delinquent. Majority of the witnesses on the side of the prosecution were auto drivers and some of them had stated that they had given Rs.20/- per trip to the delinquent for permitting them to park their autos in front of the US consulate. The defence witnesses have denied the allegation and spoken in favour of the delinquent. Considering the evidence adduced by the witnesses, the enquiry officer has held that charge No.1, collecting Rs.20/- per trip per auto as illegal gratification, is proved fully and the second charge of getting illegal gratification from the Xerox and photo studio owner and bunk shop owner is proved partly. Based on the findings, the disciplinary authority imposed a punishment of reduction of time scale of pay by two stage for the period of two years without cumulative effect. On appeal, the same was confirmed. Aggrieved

over the same, the petitioner has preferred this present writ petition.

3. The Respondents filed a counter and the learned Government Advocate appearing for the respondents would reiterate the stand taken by the respondents.

4. The learned counsel for the petitioner would vehemently contend that the charges framed are very vague and bereft of specific details. The charge does not disclose on which date and at what time the petitioner had went outside from his place of posting and from whom he collected bribe. Apart from the vague statement by the witnesses, the charge was not specifically proved by stating on which date, time and place he collected the gratification and moreover, no money was recovered from the petitioner. The photo studio owner and the other witnesses squarely deposed that they did not pay any bribe to the petitioner. Further, the preliminary enquiry conducted by the Reserve Inspector states that all the policemen numbering around 10, posted in the US consulate, share booty, but no action was taken against them and the petitioner alone was singled out and the disciplinary enquiry was initiated only against him. He would rely upon the judgment of this Court in N. N. Nandagopalan vs. Secretary to Government, Personnel & Administration Reforms (Q) Department reported in 2007 Writ L.R. 52. In that Judgment, this Court, following the judgment reported in 1998 (2) SCC 407 in the case of Director General of Police and others vs. G. Dasayan, would observe that if the disciplinary proceedings should be initiated, it should be initiated against all the persons who involved in the misconduct and not against only one. This is violative of Article 14 of the Constitution of India.

5. I considered the rival submissions. Admittedly, the petitioner was posted at visa gate in US consulate. Around 12 witnesses have given statement that the petitioner was in the habit of collecting illegal gratification from the auto drivers. During the course of cross examination also it was again confirmed by the witnesses that they have paid illegal gratification to the petitioner. However, there is a suggestion made by the petitioner that they were forced to depose by the traffic police and that their deposition is not free and voluntary. From this back ground if we visualize the situation, there are probabilities that the petitioner would have collected some money from the auto drivers, for, it is submitted that place is highly traffic sensitive. But, it could not have continued for a long time without the knowledge of the traffic and also law and order police of that area. In that view of the

matter, the disciplinary proceedings, as contended by the learned counsel for the petitioner, should have been initiated against all those people who are involved in the irregularity. The petitioner alone cannot be singled out. Further even though the auto drivers were examined as witnesses, there is no specific statement on which date and at which place the illegal gratification was paid. Whether it was paid then and there per trip or total amount was given to this petitioner and he shared the booty along with the other policemen. Surprisingly, the other policemen with whom the petitioner said to have shared the booty were not examined as witnesses. No statement was also obtained from them. All these factual aspects gives raise to a doubt as to whether the petitioner was made a scapegoat or he is the only person involved in this misconduct. In the given factual background, the petitioner who was on frisking duty could not have gone out. It is not probable without the assistance of other policemen. There was no detail about the routine affair when the petitioner was off duty. In the considered view of this Court is that the prosecution should have framed specific charges on these aspects and proved the case with specific details rather than giving omnibus statement. Further in the judgment relied on by the petitioner in N. N. Nandagopalan vs. Secretary to Government, Personnel & Administration Reforms (Q) Department, it is observed as under:

7. I have considered the rival submissions and relevant papers. On a perusal of the G.O.(2D) No.28, Rural Development (E2) Department, dated 09.02.2002, it is clear that the Appropriate Enquiry Authority held that the Departmental action may be taken against 28 officials of the Block Development Department, whose names have been listed in the order for having placed the orders to M/s. Alagu Printers, Chidambaram and register without observing formalities and thereby violated Article 65 of the Manual of Panchayat Administration, Part-II. The Government states that no enquiry was conducted and no recommendation to initiate action against 28 other persons were issued by the Enquiry Authority. On the contrary, it is stated that the Appropriate Enquiry Authority in its report pointed out that departmental action may be taken against 28 officials for the very same reason against which the petitioner was proceeded with and the impugned punishment is issued.

8. Therefore, the submissions of the learned counsel for the petitioner is sustainable in view of the identity of the charges and the Enquiry Authority having recommended to initiate Departmental action for involvement of the other 28 persons in the same incident. It is not open to the respondent to initiate

action against the petitioner and the said impugned order of the respondent is in violation of the 1998(2) SCC 407, para 10 and 11, Director General of Police and others vs. G. Dasayan In another decision of this court reported in 2002 WLR 449, T.R.Venkatachary vs. The Special Officer, Corporation of Madurai and another, this Court quashed the similar order of punishment (dismissal), where in paragraph 5, it is held as under:

"5) ... As rightly argued, the order of dismissal imposed on the petitioner is violative of Article 14 of the Constitution of India. In this regard, learned counsel for the petitioner has very much relied on a Division Bench decision of this Court in M.Rajamanickam v. The Executive Director, Bharat Heavy Electrical Limited, reported in 1997 W.L.R. 356: 1997 (3) L.L.N. 550. In similar circumstance of imposing punishment of removal of one person, the Division Bench, after referring to the principle laid down by the Supreme Court in Sengara Singh vs. State of Punjab (1983 (4) S.C.C.225), has held as follows: (para26)

"26. We are of the view that there is no iota to evidence which would differentiate the case of the present appellant from that of the other employee Meenakshisundaram. This discrimination is writ large on the record and the Court cannot overlook the same. Therefore, we see no justification in treating the appellant differently without pointing out how he was guilty of more serious misconduct or the degree of indiscipline in this case was higher than compared to that of Meenakshi Sundaram. Learned counsel for the management failed to explain to us the distinguishing features and therefore, we are satisfied in putting both of them in the same bracket. Therefore, we have no hesitation to come to the conclusion that the treatment meted to the present appellant suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution of India. The Court must accordingly interpose and quash the discriminatory action.

In the light of the similar factual position, I am of the view that the principle laid down in the above Division Bench Judgment is squarely

applicable to the facts of the present case. In this case, I have referred to the nature of charges leveled against all the 3 persons as seen from the proceedings of the Commissioner of the Corporation, dated 14.11.1986. In the absence of any explanation before me as to how the petitioner was guilty of more serious misconduct or the degree of dereliction of duty in this case was higher than compared to that of the other two persons, as observed by the Division Bench, I am of the opinion that the present action against the petitioner is undoubtedly hit by Article 14 of the Constitution of India."

Writ Appeal filed against the judgment was also dismissed in W.A.No.3263 of 2002, dated 17.03.2004, wherein in paragraph 8 and 9, it is held as under:

"8. The learned single Judge relying upon the judgments rendered in Sengara Singh Vs. State of Punjab (1983(4) SCC 225) held that in view of the nature of charges leveled against all the three persons being same and in the absence of any explanation before him as to how the petitioner was guilty of a more serious misconduct or degree of dereliction of duty in the case was higher than compared to that of the other two persons, the petitioner before him was discriminated by awarding a more serious punishment of dismissal.

9. On going through the order of the learned Single Judge, we find no reason to interfere with the same as we have already held that the charges leveled against all the three were not only similar in nature but on the other hand, the disciplinary authority had come to the conclusion that the part played by other two delinquents were more serious when compared to the part played by the respondent."

6. In the instant case also, the preliminary report submitted by the Reserve Inspector discloses that more than 10 people were involved in this misconduct. It is also not possible for the petitioner to do it alone, as, he was posted at body frisking duty at Visa gate and it is highly improbable to frequent out of his duty and collect money from auto drivers. It is also not possible, without the assistance of the others, to give direction to the auto drivers to carry the visa applicants to a specific place. In that event, the abovesaid judgment is squarely applicable and the petitioner alone cannot be singled

out. Therefore, in the considered opinion of this Court, the punishment imposed only on the petitioner alone, leaving out the others, is violative of the Article 14 of the Constitution of India as held by the Hon'ble Supreme Court. Therefore, the punishment imposed on the petitioner is liable to be set aside. However, after a period of 15 years remanding the matter for de-nova enquiry would not yield fruitful results. Considering the evidence available on hand, this Court is of the opinion that the delinquent shall not be allowed to go scot-free. In view of that matter, I am inclined to modify the punishment into one stoppage of increment for two years without cumulative effect.

7. With the above observations, the Writ Petition is partly allowed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Bga
Copy to

1. The Secretary to Government
Home (Police V) Department, Chennai-9.
2. The Director General of Police
Chennai 4.
3. The Commissioner of Police Greater Chennai-8.
4. The Additional Commissioner of Police
Chennai-8.
5. Deputy Commissioner of Police
Secretariat Security District
(i/c) Flower Bazaar District
Chennai.

+1cc to the Government Pleader Sr.3532
+1cc to MR.M.S.Soundararajan, Advocate Sr.2949

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srg 11/03/2020