



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.8199 of 2009  
and M.P.No.1 of 2009

P.Lingappan

... Petitioner

vs.

1.The Government of Tamilnadu,  
Rep by its Secretary to Government,  
Home (Police VI) Department,  
Fort St.George, Chennai-600 009.

2.The Director General of Police,  
Mylapore, Chennai-600 014.

3.The Deputy Inspector General of Police,  
Coimbatore Range.

4.The Superintendent of Police,  
Erode District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondents, especially the first respondent relating to his proceedings made in G.O.(3D) No.93, Home (Pol-VI) Department dated 29.12.2008, quash the same as null and void, illegal, invalid and consequently directing the respondents to restore the petitioner's increment from the date from which the same was stopped making him to draw not only the arrears but regular scale of pay with all eligible increments and stepping up of pay etc., together with all service and monetary benefits therefor.

For Petitioner : Mr.A.Amalraj

For Respondents : Mr.T.Arunkumar,  
Additional Government Pleader



## O R D E R

The petitioner, challenging the impugned order of punishment in G.O.(3D)No.93, Home (Pol.VI) Department dated 29.12.2008, imposing the punishment of stoppage of increment for a period of one year with cumulative effect and for a consequential direction to the respondents to restore the petitioner's increment from the date from which the same was stopped making him to draw not only the arrears but regular scale of pay with all eligible increments and stepping up of pay etc., together with all service and monetary benefits, has filed the present writ petition.

2. The facts of the case briefly narrated are as follows:

2.1. The petitioner entered the service as Grade II Police Constable on 16.04.1973 and at the inception, he was posted for duty in the Coimbatore Armed Reserve Police force and thereafter transferred to various police stations between 1980 and 2004 and lastly posted at Perunthurai Police Station in October, 2009. While he was serving in Erode District, he was promoted as Grade -I Constable in the year 1994 and posted at Sennimalai Police Station and further promoted as Head Constable and posted at Dharapuram Police Station and for the last 35 years, the petitioner have been maintaining unblemished service record.

2.2. While that being so, the petitioner was implicated upon an allegation for the alleged occurrence in the year 2001 and six charges were framed under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules for "Gross neglect of duty in having convicted with HC-941 Thangaraj (now Sub-Inspector of Police) to register a case against one Mani in Vellore Police Station Crime No.21/2001 under Sections 4(1)(a) of the Tamil Nadu Prohibition Act and to record that the said Mani was arrested on 22.02.2001 at 8.30 hours knowing the fact that the said Mani was kept illegally in Vellore Police Station from the night of 21.02.2001 itself".

2.3. According to the petitioner, preliminary enquiry was conducted and it was recommended to the respondents to initiate disciplinary proceedings. An Enquiry Officer was appointed and after conducting enquiry, the Enquiry Officer found that the charges framed against the petitioner were not proved. The second respondent / Disciplinary Authority, having disagreed with the findings of the Enquiry Officer's Report, issued a show cause notice to the petitioner, vide proceedings dated 30.03.2007. The petitioner submitted his explanation to the show cause notice and accepting the said explanation, the



Disciplinary Authority, vide proceedings dated 16.09.2007, has ordered to drop all further actions against the petitioner,.

2.4. Subsequently, after a period of one year, the first respondent/Government has issued a show cause notice, vide proceedings dated 28.07.2008, making suo motu revision by exercising the powers conferred under Rule 15-A of the Tamil Nadu Subordinate Services (Discipline & Appeal) Rules, 1955. The petitioner submitted his explanation to the said show cause notice and the first respondent / Revisional Authority did not accept the said explanation and passed the impugned order in G.O.(3D)No.93, Home (Police VI) Department dated 29.12.2008, imposing punishment of stoppage of increment for a period of one year with cumulative effect. Challenging the said order of the first respondent/revisional authority, the present writ petition has been filed.

3. Mr.A.Amalraj, learned counsel appearing for the petitioner would contend that the first respondent ought not to have invoked Rule 15-A of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955, after more than 1 year 3 months from the date of final order passed by the second respondent/Disciplinary Authority dropping all further action, contrary to Sub-Rule (iii) of Rule 15A, which stipulates only six months time for suo motu review of the exoneration made by the authority below. The learned counsel for the petitioner would further submit in the impugned order, the first respondent/revisional authority has not assigned reasons for disagreeing with the view of the second respondent/disciplinary authority and on that ground also, the impugned order is liable to be aside and in this regard, has placed reliance on the decision of the Hon'ble Supreme Court in Punjab National Bank and Others v. Sh.Kunj Behari Misra [Civil Appeal No.7433 of 1995 dated 19.08.1998].

4. Per contra, Mr.T.Arunkumar, learned Additional Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit filed on behalf of the respondents and would submit that the first respondent is having every right to review the cases of special nature, even after the period specified in the specified rules and considering the grave nature of offence, the first respondent has suo motu reviewed the case of the petitioner based on relevant documents and only after careful consideration has rightly passed the impugned order of punishment and therefore, there is no necessity to assign any reason for the suo motu review taken by the first respondent. The learned Additional Government



Pleader, in support of his submissions, has relied on a Full Bench Judgment of this Court dated 14.02.2020 made in W.A. (MD)No.686 of 2015 [The Director General of Police, Chennai and Others v. C.Vijaya Baskar].

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5. I have anxiously considered the rival submissions and also perused the materials placed before it.

6. It is an admitted fact that the Enquiry Officer has held that the charges levelled against the petitioner were not proved and the second respondent/Disciplinary Authority has concurred with the same, vide proceedings dated 16.09.2007 and dropped further action against the petitioner, after considering the explanation submitted by the petitioner in response to the show cause notice and the first respondent/Revisional Authority, disagreeing with the views of the Enquiry Officer as well as the findings of the Disciplinary Authority, had passed the impugned order of punishment in the suo motu revision in exercise of powers conferred under Rule 15-A of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955.

7. According to the petitioner, the first respondent/revisional authority has no power to review the order passed by the Disciplinary Authority. The said ground raised by the petitioner has been answered in a Full Bench Judgment of this Court dated 14.02.2020 made in W.A.(MD)No.686 of 2015 [The Director General of Police, Chennai and Others v. C.Vijaya Baskar], wherein the Full Bench of this Court has held as under:

"36.... Further in the light of the provisions of Rule 15A of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955, the Head of the Department has the authority to exercise his suo motu power of review, after an order passed by the authority subordinate to it, exercising the power of suo motu review.

...

44. Considering the fact that the show cause notice impugned in the writ petition refers to the proceedings of the second appellant dated 31.03.2011 and the second appellant, namely, the Commissioner of Police has not given any special reason relating to merits, we are of the view that the show cause notice, dated 25.10.2011 itself can be treated as a notice proposing to review the order of the second appellant, dated 31.03.2011. We make it clear that the Head of Department or the State Government can either enhance or remit the punishment awarded by the Disciplinary



Authority, while reviewing the order of the Appellate Authority or the Head of the Department, as the case may be, since the order of Disciplinary Authority merges with that of the Appellate Authority/Head of the Department...."

In view of the decision of the Full Bench of this Court cited supra, the first ground raised by the petitioner is answered in negative against the petitioner.

8. The second contention of the petitioner is that the first respondent/Revisional Authority has not assigned reasons for disagreeing with the findings of the second respondent/Disciplinary Authority and on that ground, the impugned order is liable to be set aside.

9. On this aspect, it is useful to refer to the decision of the Hon'ble Supreme Court in Punjab National Bank & Others Vs. Kunj Behari Misra reported in (1998) 7 SCC 84, wherein it has been held as follows:

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

10. In M.Muthu Anand Vs. Principal Secretary and Secretary to Government, Home (Transport) Department, Chennai reported in (2011) 6 MLJ 122, this Court held as follows:

"16. At this juncture, it is pertinent to point out that when the Disciplinary Authority takes the assistance of an enquiry officer to conduct the enquiry into the charges and if any findings adverse



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11. A perusal of the impugned show cause notice issued by the first respondent/Disciplinary Authority dated 28.07.2008 would disclose that no reasons have been assigned for disagreeing with the views taken by the second respondent/Disciplinary Authority and simply stated that the Government have decided to take a revision in the matter under Rule 15-A of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955 and therefore directed the petitioner to submit his explanations, if any, within 15 days from the date of receipt of the said letter. As far as merits of the case is concerned, the alleged occurrence took place in the year 2001 and charges were framed against the petitioner only in the year 2007, after a delay of six years and the first respondent / Revisional Authority in exercise of powers conferred under Rule 15-A of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955, ought to have assigned reasons in the impugned order for disagreeing with the findings of the second respondent/Disciplinary Authority and however, they have not done so.

12. Considering the above facts and circumstances and keeping in mind the ratio laid down in the above judgments, this Court has no hesitation to hold that the impugned show cause notice as well as the impugned order of punishment passed by the first respondent / revisional authority warrant interference and are liable to be set aside.

13. In the result, this Writ Petition is allowed and the proceedings of the first respondent in G.O.(3D) No.93, Home (Pol-VI) Department dated 29.12.2008 is set aside and the respondents are directed to confer all consequential service and monetary benefits to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

SD/-  
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

Jvm  
To

1.The Secretary to Government,  
The Government of Tamilnadu,  
Home (Police VI) Department,  
Fort St.George, Chennai-600 009.



2.The Director General of Police,  
Mylapore, Chennai-600 014.

3.The Deputy Inspector General of Police,  
Coimbatore Range.

4.The Superintendent of Police,  
Erode District.

+1cc to the Government pleader Sr.62646

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