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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.08.2021

PRONOUNCED ON : 02.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21889 of 2017

and

WMP.No.22922 of 2017

R.Gnanasekaran

.. Petitioner

VS

1. The Additional Director General of Police/
Inspector General of Prisons,
6, Whannels Road,
Egmore, Chennai - 8.

2. The Superintendent of Prisons,
Central Prison,
Coimbatore- 18.

.. 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 in Proceedings No.11324/G4/2012-1, dated 6.3.2013 of the 2nd respondent and the consequential order issued in orders No.45000/EW1/2016, dated 6.3.2017 by the 1st respondent and quash the orders passed by the respondents and consequently direct the respondents to reinstate the petitioner with all service and monetary benefits including backwages.

For Petitioner : Mr.L.Chandra Kumar

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate.

O R D E R

The petitioner has challenged the impugned order dated 6.3.2013 of the second respondent as affirmed by the first respondent vide order dated 6.3.2017.



2. By the first mentioned impugned order dated 6.3.2013, the second respondent dismissed the petitioner from service on account of the petitioner's alleged involvement of smuggling of 21 contraband items into the Central prison at Coimbatore on 24.06.2012 along with two others viz., Sivamurthy, Grade II Warder No.243 and Dinesh II Warder No.174.

3. On the said date, the petitioner was serving as a Grade II Warder. These persons were proceeded departmentally and separate orders were passed against them for the alleged misconduct on account of smuggling of contraband items into the prison.

4. The allegation against the petitioner and the two co-delinquent was that they colluded with each other and facilitated smuggling contra band items weighing about 18 kgs to AL Ummah Prisoners lodged in the Central Prison, Coimbatore.

5. Allegation against the petitioner stems from a statement of Lakshmanan, Grade II Warder No.271 that on 24.6.2012 accused named Hakeem @ Kakee @ Anwar was seen carrying contraband items in bag/bundle within the prison and when enquired, latter refused to say any thing and walked quickly towards his cell in a hurry.

6. Based on the complaint of the said Lakshmanan Grade II Warder No.271 and a preliminary enquiry was conducted. The petitioner and two other delinquents were suspended. The petitioner was thereafter issued with a Charge Memo dated 20.8.2012.

7. Later an Enquiry Officer was appointed who gave an enquiry report dated 4.10.2012 and found the petitioner guilty. Before the Enquiry Officer, following persons were examined as departmental witnesses:-

S.No.	Name of the witness	
1	K.Venugopalan	P.W.1
2	S.Devarajan	P.W.2
3	M.Bharathiar	P.W.3
4	P.Balasubramani	P.W.4
5	A.Sakthivel	P.W.5
6	K.Lakshmana	P.W.6

8. The said K.Balasubramani and A.Sakthivel merely deposed that they had seen the co-delinquent Dinesh and Sivamurthy standing at the backside of the gallow room.



However, none of the witnesses were able to confirm whether they had seen either the petitioner or anyone of the two co-delinquents directly or indirectly participated in the alleged smuggling of contraband into the prison.

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9. It is submitted that the Enquiry officer however concluded that a case was made out against the petitioner and two co-delinquents based on the statement of witnesses. During the course of enquiry, the petitioner elicited the contradiction in the statements of the witnesses.

10. It is submitted that none of the witnesses who deposed evidence have given statements either before the enquiry or during enquiry have directly or indirectly confirmed the involvement of the petitioner in the alleged smuggling of contraband items into the prison. It is submitted that the Enquiry Officer concluded the enquiry in one day in a hurried manner.

11. It is submitted that as the Disciplinary Authority, the 2nd respondent confirmed the charges against the petitioner based on the Enquiry Officer's report and imposed the punishment of dismissal from services on the petitioner. On further appeal, the first respondent has also disallowed the appeal and confirmed the order of the 2nd respondent.

12. Appearing on behalf of the petitioner, the learned Senior Counsel submits that the entire disciplinary proceeding was vitiated as no case was made out against the petitioner for imposing harsh punishment of dismissal from service.

13. It is further submitted that the finding given by the Enquiry Officer was perverse and not sustainable as elementary test of preponderance of probability was not satisfied which both the Disciplinary Authority and the Appellate Authority failed to note.

14. It is submitted that smuggling 18 kgs of 22 of different contraband items into the prison in a bundle was highly improbable in the manner in which it has been portrayed in the charge memo and in the charge memo and in the disciplinary proceeding.

15. It is submitted that the prison is well guarded and it is impossible to throw 18 kgs of contraband items from outside the prison with a 18 ft. high peripheral wall.

16. The learned Senior Counsel further submits that smuggling of contraband items from outside the prison wall was also highly improbable as the prison is manned round the clock by different personnel.



17. The learned Senior Counsel further submits that the contraband items which were found in the custody of under trials consisted of various items which could not have been thrown in a parcel weighing 18 kgs and even if it is assumed they were thrown they would break and therefore the theory put forward in the Charge Memo and accepted by the Disciplinary Authority and the Appellate Authority was highly improbable. He therefore submits that since the elementary test of preponderance of probability was not satisfied, the impugned orders are liable to be quashed.

18. The learned Senior Counsel further submits that the witnesses have given not only vague but also contradictory statements. It is therefore submitted that even on these counts both the orders are liable to be quashed.

19. Learned Government Advocate for the respondents on the other hand submits that the writ petition is liable to be dismissed as the Court is not concerned with the decision but decision making process. It is submitted that the respondents have not violated any of the procedure in the decision making process.

20. Heard the learned Senior counsel for the petitioner and the learned Government Advocate for the respondents. I have also perused the enquiry report dated 4.12.2012 of the Enquiry Officer and order dated 6.3.2013 of the second respondent and order dated 6.3.2017 of the first respondent rejecting the appeal filed by the petitioner.

21. The order passed by the 2nd respondent is unsustainable inasmuch as there was neither direct nor indirect evidence available on record to conclude that the petitioner and the other delinquents were involved in the smuggling of contraband items into the prison in the manner in which it has been portrayed in the impugned orders.

22. During preliminary investigation, statements were given by P.W.6 - K.Lakshmanan, P.W.2 - S.Devarajan and P.W.4 - Balasubramani. During cross examination, these witnesses have not confirmed their statements given by them during preliminary investigation which led to the initiation of the disciplinary proceedings against the petitioner and the two other delinquents.

23. The Enquiry Officer has also not considered the contradiction elicited by the petitioner during cross examination from the statements of the witness.

24. It is also noticed that the prison is well guarded. The entrance of the prison is monitored by the Tamil Nadu Special Police Force. That apart, the prison is under a



constant surveillance of the Prison Intelligence Wing.

25. The Prison Intelligence Wing consists of one Sub-Inspector of Police and Constable who are present round the clock. It is not only impossible but also improbable to throw 18 kgs of contraband items from outside in a bundle without it being noticed by these persons who guard the prison.

26. It is improbable that the contraband items weighing about 18 kgs consisting of several items which found their way into the prison would have been thrown from the outside the prison.

27. It is improbable that the contraband items were thrown in a bundle weighing 18 kgs from outside the prison periphery. Considering the fact that the prison is under constant surveillance and surrounded by Central Reserve Police Force and Tamil Nadu Special Police, it is quite possible that the contraband items moved into the prison from outside into the prison in active connivance of some of the other persons manning the prison entrance.

28. It is quite possible for such bulk quantity of contraband items weighing about 18 kgs would have passed only through regular entry and exits in the prison with the tacit knowledge of the Personnel's of the Tamil Nadu Special Police Force and the Prison Intelligence Wing.

29. The entire exercise carried out by the first and the second respondents indicate that the disciplinary proceeding against the petitioner and others appears was an attempt to cover up a well oiled network operating well within the prison. Before initiating disciplinary proceeding a high level enquiry ought to have been ordered to find out the connect modus operandi adopted to smuggle contraband and prohibited items to pander to the baser instincts of the prisoners contrary to the Prison Rules and Manual and to book every officer involved in such misconduct.

30. Since the Enquiry Officer has given a finding based on an improbable theory of smuggling of contraband items, i.e. throwing of the contraband items from outside prison wall of 18 ft. the conclusion arrived by the Enquiry Officer which was accepted by the 2nd respondent as the Disciplinary Authority is liable to be quashed.

31. As there are no direct or indirect evidence to implicate the petitioner the alleged misconduct, impugned order is liable to be quashed.



32. There appears to be a well organized system is in place to smuggle contraband items into the prison directly through the normal entrance and exit points. There would have been several others who may have been involved and this would require a detailed probe independently and to sterilize precincts of the prison of such smuggling with the help of two other delinquents. Since several others may have been involved, a detailed probe independently by an higher official of the respondents to sterilize precincts of the prison is required to break the hegemony and nexus with the prisoners.

33. The first respondent as the Appellate Authority ought to have examined the appeal from the perspective of the statements of the witnesses who were examined before the Enquiry officer. Further, the first respondent as an Appellate Authority ought to have passed a speaking order. Both the first and second respondents failed to note that the Enquiry Officer simply confirmed the charges against the petitioner without any direct or indirect evidence against the petitioner. Therefore, finding the petitioner guilty of misconduct in absence of a preponderance of probability of the petitioner having committed the alleged misconduct cannot be sustained.

34. The respondents are directed to re-instate the petitioner into service with continuity of service. This exercise shall be carried out by the respondents within a period of three months from the date of receipt of a copy of this order. The respondents shall make suitable entry in the Service Register of the petitioner by reinstating the petitioner back to service with continuity of service alone. It is made clear that the petitioner shall not be entitled for any arrears of salary or increments. If necessary, the respondents shall depute the petitioner to any other non sensitive department and keep the petitioner under strict watch. The respondents shall strengthen the prison precinct and may depute only persons with clean and clear integrity.

35. This writ petition is allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

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Sub Assistant Registrar

kkd



To

1. The Additional Director General of Police/
Inspector General of Prisons,
6, Whannels Road,
Egmore, Chennai - 8.
2. The Superintendent of Prisons,
Central Prison,
Coimbatore- 18.

+1cc to M/s.L.Chandrakumar, Advocate, S.R.No.57214

+1cc to the Government Pleader, S.R.No.57703

W.P.No.21889 of 2017

KSM(CO)
SU(01/12/2021)