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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.1085 of 2020

and

C.M.P. (MD)No.5912 of 2020

1.The Additional Chief Secretary to Government,
Home (Police - 2) Department,
Fort St. George, Chennai - 600 009.

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

3.The Commissioner of Police,
Madurai City.

4.The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

... Appellants / Respondents

Vs.

Dr.A.Manivannan

... Respondent/Petitioner

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P.(MD)No.22742 of 2019, dated 06.01.2020.

Prayer in WP(MD). 22742/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the entire records relating to the impugned G.O.(2D).No.270, Home (Police-2) Department, dated 10.9.2019 issued by the 1st respondent quash the same and consequential direct respondents to promote the petitioner to the post Additional Superintendent of Police by keeping his seniority above all his juniors with all service, monetary and attendant benefits.

For Appellants	:	Mrs.J.Padmavathi Devi Special Government Pleader
For Respondent	:	Mr.M.Ajmalkhan Senior Counsel for Mr.J.Anandkumar



JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This Writ Appeal is directed against the order of the learned Single Judge, who upon finding that there is no material to substantiate the charges, set aside the punishment of Censure imposed and accordingly, allowed the Writ Petition.

2.Before considering the rival submissions made, the factual background requires narration.

3.A sensational murder took place. One Station House Officer, by name, P.Jeyachandran took up the investigation. A special team was formed to nab the accused. The respondent/writ petitioner was the Deputy Superintendent of Police at the relevant point of time.

4.The respondent/writ petitioner was giving oral instructions to the Investigation Officer and reporting the progress to the Higher Officers, namely, the Superintendent of Police. He earned the appreciation and approval of his higher officers for the arrest of the accused.

5.One of the accused approached this Court, after dismissal of the discharge petition, by filing revision. Having found that the investigation was perfunctory and defective, this Court while disposing of the matter, made strong remarks against the Investigation Officer, namely, P.Jeyachandran.

6.Incidentally, a charge sheet was filed exonerating five accused persons. This Court awarded compensation for wrongly arraying them as accused, which was confirmed by the Hon'ble Apex Court with a modification in respect of the compensation.

7.On that basis, a departmental proceeding has been initiated against the respondent/writ petitioner. The charges against him was dereliction of duty and violation of Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973. 10 Witnesses were examined. Witness Nos.1 to 8 did not make any incriminating statement against the respondent/writ petitioner. P.W.9 has stated that the subsequent investigation of the case was taken up by a team of Officers under the leadership of Superintendent of Police, Ramanathapuram. P.W.10 was added subsequently, who is none other than the Writer in the Deputy Superintendent of Police Camp Office, Rameswaram. These two witnesses alone implicated the respondent/writ petitioner to the charges.

8.The Enquiry Officer gave the following finding with respect to the charges levelled:-

<https://hcservices.ecourts.gov.in/hcservices/>



"As regard to the violation of Rule 20(i) of Tamil Nadu Government Servants Conduct Rules, 1973, the delinquent being the immediate superior to the I.O. and Sub Divisional Police Officer, had supervised the investigation of the case to a certain extent. The Dy. Insp. Genl. of Police, Ramanathapuram, visited Uchipuli and apprised of the fact of arrest of six persons and gave instructions to arrest the remaining accused by forming Special teams. As such, the delinquent was in direct liaison with senior officers earning their appreciation and latent approval regarding arrest of accused. In the absence of any written direction from his superiors, the delinquent has not evaded his responsibility, but acted in his best judgment and maintained absolute integrity and devotion to duty in the brutal and gruesome murder of six persons. Hence, the question of misconduct in violation of Rule 20(i) of the Tamil Nadu Government Servants Conduct Rules, 1973 does not arise.

In brief, only because of the failure of the delinquent to arrange for "Identification Parade" and recording 164(i) Cr.P.C. Statements, while supervising the investigation of the Inspector, the investigation was observed to be perfunctory and ordered for a re-investigation and award of compensation to the accused deleted from the second final report. As such, the delinquent has committed dereliction of duty and violated PSO.I-142 to a certain extent while supervising the investigation of the Inspector in Uchipuli PS Cr.No.301/2012.

Hence, from the perusal of statement of P.Ws.1 to 10, Exhibits in P.Exhibits 1 to 15 and defence exhibits D. Exhibits 1 to 5, I hold the charge against the delinquent partially proved beyond reasonable doubts."

9.Thus, the Enquiry Officer after holding that the respondent/writ petitioner was dutiful and there is no violation of Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973, nonetheless, proceeded to hold that the charges have been proved partially, as he has failed to arrange for test identification parade and recording 164(1) Cr.P.C. statement during his supervision. Incidentally, the Enquiry Officer made his conclusion upon perusing the statements of P.Ws.1 to 10 and Exs.P.1 to P.15 and Exs.D.1 to D.5.

10.The aforesaid report was accepted by the disciplinary authority and confirmed by the appellate and revisional authorities.

11.The learned Single Judge allowed the Writ Petition *inter alia* holding that the respondent/writ petitioner was neither the



Investigation Officer nor asked to do the said job. He was appreciated by the Higher Officers and there is no material to substantiate the charges levelled against him. Challenging the same, the present Writ Appeal is filed.

12.The learned Special Government Pleader appearing for the appellants submitted that because of the defective investigation, compensation was made to be given by the State. The respondent/writ petitioner was asked to oversee and supervise the investigation. There was a subsequent development in dropping the names of five accused at the time of filing the charge sheet. The respondent/writ petitioner has not instructed the Investigation Officer to conduct the test identification parade and recording the statement under Section 164(1) Cr.P.C.

13.The learned Senior Counsel appearing for the respondent/writ petitioner submitted that there is no need either for recording 164(1) Cr.P.C. statement before the learned Magistrate or for conducting a test identification parade, since there was no eyewitness in the case. The finding of the Enquiry Officer was in favour of the respondent/writ petitioner and the evidence of P.Ws.9 and 10 ought not to have been accepted, as the subsequent investigation was taken up by P.W.9 and P.W.10 - Writer, is not entitled to speak about the charges levelled against the respondent/writ petitioner, as he has not involved in the investigation.

14.Heard the learned counsel appearing for the parties.

15.The learned Single Judge rightly found that the charges are not proved. It is settled law that in a departmental proceeding, it is for the Department to prove the charges levelled against the delinquent officer. P.Ws.1 to 8 are the Officers, who are involved in the investigation. Their evidence should carry more weight.

16.In any case, the role of the respondent/writ petitioner is merely to supervise. The recording of the fact by the Enquiry Officer as mentioned above, would clearly show that the respondent/writ petitioner did his part to the best of his ability. The charges cannot be divided, as there is no violation of Rule 20 (1) of the Tamil Nadu Government Servants Conduct Rules, 1973 and lack of supervision. If at all the criminal case was one of no direct eyewitness, there is no need for a direction to the Investigation Officer to put the witness through test identification parade or taking him before the learned Magistrate for recording statement under Section 164(1) Cr.P.C.

17.Thus, considering the above, we do not find any error in the order passed by the learned Single Judge.



18. In the result, this Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (AS)

/ /2021

Sub Assistant Registrar (CS)

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To

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+1 CC to SPL GP (SR-2884[F] dated 02/02/2021)

W.A. (MD) No. 1085 of 2020
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VB (17.02.2021) 5P 6C