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W.P.No.18209 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.18209 of 2011

P. Duraiswamy

... Petitioner

Vs.

1.The Deputy Inspector General of Police,
Kanchipuram Range, Kanchipuram.

2. The Additional Director General of Police (L&O),
Chennai-4.

3.The Director General of Police,
Mylapore, Chennai-4.

4.The Secretary to Government,
Home (Police IVA) Department,
Fort St.George, Chennai-9.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the respondents 1 to 4 in connection with the impugned order passed by them in PR No.63/2008 dated 7.12.08, RC No.036894/API(2)/2009 dated 30.3.09, RC No.213474/API(2)/2009 dated 18.2.10 and GO (2D) No.61 Home (Police IVA) Department dated 18.2.11 respectively and quash the same.



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For Petitioner : Mr.K.Venkataramani
Senior Advocate
for Mr.M.Muthappan

For Respondents : Mr.J.C.Durairaj
Special Govt.Pleader [R1 & R2]
Mrs.M.E.Raniselman [R3]
Mr.G.Pugazhenthir [R4]

ORDER

This writ petition is filed challenging the impugned order passed by the respondents 1 to 4 in PR No.63/2008 dated 7.12.08, RC No.036894/API(2)/2009 dated 30.3.09, RC No.213474/API(2)/2009 dated 18.2.10 and GO (2D) No.61 Home (Police IVA) Department dated 18.2.11 respectively and quash the same.

2. The short question that arises for consideration in this case is whether the Disciplinary Authority while deviating from the report of the Enquiry Officer which is otherwise favourable to the delinquent, ought to issue a show cause notice setting out its tentative conclusions with an opportunity to the petitioner to submit his objection.



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3. It is submitted by the learned counsel for the petitioner that the enquiry officer found that there was no evidence in respect of charges and thus not proven. This would be evident from the following findings:

“1) (i) There is no evidence from any of the prosecution witnesses 1 to 4 against the delinquent during the course of the oral enquiry except the evidence of PW-5 the officer who has conducted the preliminary enquiry.

(ii) The signed statements allegedly obtained by PW-5 from PWs 1 to 4 cannot be given any consideration for it's stands without any authentication from PW-5 to speak to the fact that it was obtained by him during the course of his enquiry.

(iii) Statements recorded in preliminary enquiry are of no use if they are not supported by the concerned prosecution witnesses at the time of the oral enquiry-is a landmark judgment as delivered by various Higher forms of Course.

(iv) Preponderance of probability is no doubt is the measure in deciding an issue in a departmental disciplinary proceedings. But, even for that there should be some basis of evidence to infer the preponderance of probability. In the absence of any evidence even to establish a base, quoting the concept of preponderance of probability and holding the charges as proved would be not only un-natural but also sound injustice.

2) In the circumstances stated above, there is no evidence



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against the delinquent official to hold the charge as proved and therefore a not proved minute is drawn against the delinquent in respect of the charge which was served to him on which the oral enquiry was conducted by me as per the orders of the DIG, Kanchipuram Range in RC.No.B2/12979/2007, dated 29.05.2008.”

4. However, the Disciplinary Authority had issued a show cause notice dated 11.11.2008, which did not contain the tentative conclusions, instead it had stated/ concluded that the guilt was proved as would be evident from the following extract:

“And the delinquent S.I., has refused to give written statement during the preliminary enquiry conducted by the enquiry officer, which clearly proves that he had guilty. The evidence of PW5 and prosecution exhibits No.1 to 11 fully proves the charge.”

5. It is submitted by the learned counsel for the petitioner that from the above findings, it is evident that the requirement of a notice containing tentative conclusion which would enable the delinquent petitioner to convince the Disciplinary Authority not to depart from the Enquiry Officer has not been complied with. Failure to comply with the procedure would



prove fatal to the validity of the proceedings.

6. The petitioner challenged the order of the Disciplinary Authority by way of statutory appeal before the Additional Director General of Police. The appellate authority has vide order dated 30.03.2009 affirmed the order of punishment which is "reduction in pay by one stage for one year with cumulative effect" to the delinquent without assigning any reasons. It was submitted that the order of appellate authority was non-speaking. A revision was filed before the Director General of Police, wherein again the petitioner's case was rejected, para 6 of order is relevant and thus extracted hereunder:

"6. I have gone through the mercy petition, PR file and connected records carefully. The Disciplinary authority has awarded a punishment, disagreeing with the 'not proved' minute of the Enquiry Officer. His appeal was rejected. Merely because the persons who are said to have paid the bribe turned hostile, it does not vitiate the preliminary enquiry officer's report and findings. Given the gravity of the charge, he has been awarded a lenient punishment. I see no reason to interfere with the punishment awarded to the delinquent. His mercy petition is rejected."

7. Thereafter, the petitioner submitted a Memorial to the



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Government which ended up in confirmation of the order of the lower authorities. It is submitted that the order dated 07.12.2008 is contrary to the judgment of the Hon'ble Supreme Court in *Lav Nigam* inasmuch as the disciplinary authority has deviated from the enquiry officer without issuing a notice containing tentative conclusion. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***Lav Nigam vs. Chairman & MD, ITI LTD., and another*** reported in (2006) 9 SCC 440, wherein it was held as under:

“9. Challenging the orders of the respondent authorities the appellant filed a writ petition before the High Court. The appellant specifically raised the issue that the disciplinary authority was obliged to give a separate show-cause notice if the disciplinary authority differed with the inquiry officer. The High Court also held that there was no need to give two separate show-cause notices one before the disciplinary authority found against the employee while differing with the view of the inquiry officer, and another against the proposed punishment. It was further held that the two notices could be combined in one. The writ petition was accordingly dismissed.



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10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

(emphasis supplied)

8. A reading of the Disciplinary Authority's show cause notice as well as the orders of the Appellate and Review Authority would indicate that while the enquiry officer has held in clear terms that there was no evidence in support of the charges, however, the disciplinary authority even while issuing a notice had pre-determined the issue by stating that the petitioner was proven guilty which is contrary to the above judgment of the Hon'ble Supreme Court. It is this order of the disciplinary authority which has been affirmed by the Appellate / Review Authority, and the 4th respondent.

9. To the contrary, it was submitted by the learned counsel for the



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Respondents that the orders of the Disciplinary authority as well as the appellate and review authorities are well-founded and does not warrant interference.

10. This Court finds that the entire proceedings before the Disciplinary Authority stands vitiated in view of the fact that the procedure contemplated for departmental enquiry as explained by the Hon'ble Supreme Court in the case of *Lav Nigam* has not been complied with, the order of the appellate / review authority i.e., respondent affirming the same is thus unsustainable. However, taking into account the submission of the learned counsel for the petitioner and considering the age of the petitioner, this Court finds it appropriate that the punishment must be modified rather than remitting the matter back.

11. In view of the above, the punishment stands modified from reduction in pay by one stage for one year with cumulative effect to a



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punishment of reduction in pay by one stage without cumulative effect, the petitioner would be entitled to the consequential benefits, which was not objected seriously by the counsel for the respondent.

12. With the above directions, the writ petition stands disposed of.

No costs.

16.12.2022

Index : Yes / No

Speaking / Non-Speaking Order

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To:

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Kanchipuram Range, Kanchipuram.

2. The Additional Director General of Police (L&O),
Chennai-4.

3.The Director General of Police, Mylapore, Chennai-4.

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MOHAMMED SHAFFIQ, J.

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