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W.P.No.7370 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM:

THE HON'BLE MR. JUSTICE M.S.RAMESH

W.P.No.7370 of 2017

Raadhu Raji (Formerly R.D. Rajathi) ... Petitioner

vs.

1.The Director General of Police,
Mylapore, Chennai-04.

2.The Additional Director General of Police, Training,
Ashok Nagar,
Chennai-83.

3.The Deputy Inspector General of Police, Training,
Ashok Nagar, Chennai-83. ... 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 3rd respondent in connection with the impugned order passed by him in Rc.No.B19354/2010 C.O.42/2011 dated 18.04.2011 and modified by the 2nd respondent in her proceedings in RC.No.B1/Appeal/01/2011 dated 15.07.2011 and the subsequent rejection of the 1st respondent in Rc.No.249808/AP.1(1)/2011 dated 06.02.2017 and to quash the same and further direct the respondents to fix the seniority in the cadre of inspector of police on par with her junior with all service and monetary benefits.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.T.Chezhiyan,
Additional Government Pleader for R1 to R3



W.P.No.7370 of 2017

WEB COPY

ORDER

The charge impugned against the impugned through the charge memo dated 28.04.2009 is that there was a reprehensible conduct in having illegal intimacy with Thiru P.Shanmuga Sundaram, Sub Inspector of Police and thereby, created a bad name to the Police Department.

2. Based on the levelled charges, an enquiry was conducted in which the charges were held to be proved. Consequently, the third respondent herein, through impugned order dated 18.04.2011, had imposed the punishment of postponement of increment for two years with cumulative effect. The punishment came to be modified by the Appellate Authority / second respondent herein through the impugned order dated 15.07.2011, modifying the punishment to postponement of increment for two years “without cumulative effect”. Further, the Mercy Petition was rejected by the first respondent on 06.02.2017. The original punishment order as well as the order passed by the Appellate Authority are put under challenge in the present writ petition.



W.P.No.7370 of 2017

3. Mr.S.Sivakumar, learned counsel for the petitioner raised the following grounds attacking the orders impugned in the present writ petition.

Firstly, he would submit that Rule 4A of the Tamil Nadu Police (Discipline & Appeal) Rules has been violated, since common enquiry was not held in the case of the petitioner as well as the co-delinquent and in view of the same, the charge as against the co-delinquent was held to be not proved, whereas in the case of the petitioner, it was held to be proved. Secondly, he questioned the Enquiry Report, wherein reliance was placed on the statement made by the witnesses in the preliminary enquiry, which is impermissible in view of the various decisions of this Court. Thirdly, he would submit that the Appellate Authority, having agreed with the delinquent officers ground that reliance cannot be placed to the statement made by the witnesses during enquiry, ought to have set aside the punishment instead of modifying it.

4. *Per contra*, Mr.T.Chezhiyan, learned Additional Government Pleader would submit that the charge against the petitioner is serious in nature since she is from a disciplined police force. He would further submit that during the course of enquiry, the procedure contemplated for conduct of enquiry was properly adhered to and after giving opportunity to the



W.P.No.7370 of 2017

petitioner, the charges were held to be proved. He also submitted that the punishment, which came to be modified by the Appellate Authority, is proportionate to the levelled charges and therefore, no interference is required.

5. Rule 4A of the Tamil Nadu Police (Discipline & Appeal) Rules provides that *where more than one member of the service are involved, the authority competent to institute disciplinary proceedings and impose any of the penalties specified in rule 2 shall be the authority in respect of the member who holds the highest post and the disciplinary proceedings against all of them “shall be taken together”*.

6. In the instant case, the charge itself indicates the involvement of one more Sub Inspector of Police, namely P.Shanmuga Sundaram. If that be so, in view of Rule 4A of the Tamil Nadu Police (Discipline & Appeal) Rules, the Disciplinary Authority ought to have proceeded against the petitioner as well as the co-delinquent jointly, instead of conducting two separate enquiries. This failure on their part has now created an anomaly, where the charges framed against the petitioner was held to be proved, whereas in the



W.P.No.7370 of 2017

case of co-delinquent, it was held as not proved. In view of the violation of the procedure contemplated under Rule 4A of the Tamil Nadu Police (Discipline & Appeal) Rules, the consequential punishment imposed on the petitioner cannot be sustained.

7. Insofar as the second ground raised by the petitioner that the Enquiry Officer has placed reliance on the statement made by the witnesses during preliminary enquiry, it is needless to point out that such statements are recorded behind the back of the petitioner and without affording any opportunity to the petitioner and reliance on such statements cannot be made during the course of enquiry. This ratio has been reiterated in various decision of this Court, including the decision relied on by the learned counsel for the petitioner in ***M.Saravanan v. The Secretary to Government, Home (Police VI) Department, Chennai and Others [W.P.(MD)No.10231 of 2020 dated 03.08.2022]***, wherein it was observed as under:

“5. It is a settled proposition of law that during the course of a disciplinary proceedings, the enquiry officer cannot place reliance on the statements made during the course of a preliminary investigation conducted by the police in connection with the levelled charges. In one such decision of this Court, the proceedings itself have been held to be vitiated owing to the reliance placed by the enquiry officer on the statements made during the preliminary enquiry, in the case of



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-N.Rajavelu Vs. The Superintendent of Police, Villupuram District and Others- passed in W.P.No.32816 of 2013, dated 29.03.2022, in which the earlier decision of the Hon-ble Supreme Court, as well as this Court, was relied upon and this proposition was upheld in the following manner:

“2. This Court, in various decisions, have held that the orders of punishment based upon the evidences in the preliminary inquiry, cannot be sustained. In one such order of this Court, passed in the case of -M.Ramakrishnan Vs. The Superintendent of Police & another- in W.P.No.28893 of 2008, dated 18.09.2009, this proposition was upheld in the following manner:~

“8. The Enquiry Officer cannot give a finding based upon mere surmises and conjectures. The petitioner was not allowed to the cross-examine the witnesses to verify the statement made by them in the preliminary enquiry.

9. Therefore, while rejecting the subsequent statements the Enquiry Officer cannot rely upon earlier statement given during the preliminary enquiry. In the judgment reported in 2006 2 MLJ 202 this Court was pleased to observe as follows:-

“7. In the decision reported in Union of India v. Mohd. Ibrahim, (2004) 10 SCC 87, the Honourable Supreme court in the facts and circumstances of the case before it held that the order of dismissal was vitiated as the findings have been based on consideration of statement of the persons examined during the preliminary enquiry and for the said fact the Tribunal set aside the order of dismissal which was upheld by the High Court and there is no error in the said order setting aside the dismissal order.

8. A Division Bench of this Court by Judgment in Deputy Inspector General of Police, Villupuram and others v. V.Vanniaperumal and others, W.P.Nos.29862 and 32581 of 2002, dated 22.2.2005 upheld the order of the Tribunal which set aside the order of removal from service. Paras 6 and 8 of the judgment can be usefully referred to, which reads thus:



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“6. We have carefully considered the relevant materials and the rival contentions. We have already referred to the charges levelled against the applicants. It is also relevant to note that apart from the applicants two more officers have also been implicated along with them. They are one Sattanathan, Sub -Inspector of Police and Antony, Inspector of Police. It is brought to our notice that Sattanathan is no more and so far as the other officer Antony is concerned lesser punishment has been imposed. Now we are concerned with the charges levelled against both the applicants. In the light of the conclusion arrived at by the Tribunal, we perused the finding of the Enquiry Officer. It is not in dispute that all the prosecution witnesses except PW3, who is none other than the Deputy Superintendent of Police, the other witnesses viz., P.Ws. 1,2,4 and 5 turned hostile before the Enquiry Officer and not supported their earlier statement made at the preliminary enquiry. The Enquiry Officer having noted the above aspect curiously submitted a report holding that all the three charges levelled against them are proved based on the preliminary enquiry.

7.....

8. In our case, we have already referred to the fact that the prosecution witnesses viz., P.Ws. 1,2,4 and 5 turned hostile and not supported their preliminary version. However, the Enquiry Officer basing reliance on their earlier statement in the preliminary enquiry found that all the charges levelled against them are proved. In the light of the decision of the Supreme Court referred to above, after full-fledged enquiry was held the preliminary enquiry had lost its importance. Further, we find no substance or material to arrive at a conclusion that “since all the three counts were proved by the prosecution beyond reasonable doubts, convincingly, I agree with the findings of the Enquiry Officer,“. We are satisfied that there is no material to arrive at such a conclusion by the Deputy Inspector General of Police, while passing an order removing the applicants from service. All these aspects have been considered by the Tribunal in a proper manner and there



WEB COPY

is no acceptable material or evidence to take different view as that of the Tribunal. We find no merits in both the writ petitions. Accordingly, they are dismissed. No costs. Consequently, the connected miscellaneous petitions are dismissed.

The said conclusion was arrived at by the Division Bench based on the decision of the Honourable Supreme Court reported in Narayana Dattatraya Ramteerthakhar v. State of Maharashtra, (1997) 1 S.C.C 299.

9. The above referred decision of the Division Bench was followed by me in the order in B.Balamurugan v. The Inspector General of Police, Madurai - 2 and two others W.P.No.27019 of 2005, dated 15.2.2006, wherein the order of punishment was set aside.

10. Applying the above principles laid down by the Honourable Supreme Court, Division Bench of this Court and also the earlier decision of mine, as referred above, I am of the opinion that the differing view taken by the disciplinary authority/second respondent herein against the Enquiry officer's report is unsustainable in view of the fact that the said view was taken solely based on the statements recorded during the preliminary enquiry. Consequently, the punishment imposed on the basis of the dissenting view is unsustainable and the order of the appellate authority confirming the order of the dismissal is also unsustainable“.

10. The said judgment of the learned single judge was again followed in the unreported order passed in WP 23378/07 wherein this Court was pleased to observe as follows:

“ 9. Admittedly, the main witness namely, P.W.2 has not substantiated the allegations during the regular enquiry and the same is made clear not only in the enquiry report but also in the counter affidavit filed in the relevant paragraph, extracted above.

10. Whether a charge can be fond proved based on he statement given at the time of preliminary enquiry was



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considered by me in the decision reported in (2006) 2 M.L.J. 202 (T. Pitchai V. Deputy Inspector of General of police, Tirunelveli). In the said judgment, I have followed the Judgments of the Supreme Court reported in (2004) 10 S.C.C 87 (Union of India V. Mohd. Ibrahim) and also the Division Bench Judgment of this court in W.P.Nos.29862 and 32581 of 2002, dated 22.02.2005 etc., and held that the statements given by the witnesses during the preliminary enquiry cannot be the sole evidence to prove the charges against a police officer.

11. In this case, admittedly the Enquiry officer found that the charges are proved based on the statement given by P.W.2, during preliminary enquiry which is admitted in the counter affidavit filed by the respondents. Hence, the finding given by the enquiry officer is to be treated as perverse and the consequential punishment imposed against the petitioner is also not sustainable. The order of punishment imposed against the petitioner is quashed and in view of the order of punishment having been quashed, the respondents are directed to consider the case of the petitioner for promotion to the post of sub inspector of police on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. “

11. In WP.No.39098/06 dated 20.04.2009 this Court following the above mentioned judgment and observed as follows:

“ 13. In the decision reported in (2006) 3 MLJ 900 (H.C. Lenin v. Commissioner of Police), A. Kulasekaran, J., has taken a similar view following the decision of the Honorable Supreme Court reported in AIR 1999 SC 677: (1999) 2 SCC 10 (Kuldeep Singh v. Commissioner of police and others), wherein the Honorable Supreme Court in paragraphs 32 and 33 held thus,

32. In State of Mysore v. Shivabasappa Shivappa Makapur, the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned



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and it was his previous statement recorded at an earlier stage which was brought on record. That statement was put to the witness who acknowledged having made that statement. The witness was thereafter offered for cross-examination and it was held that although the statement (examination-in-chief) was not recorded in the presence of the delinquent, since the witness had been offered for cross-examination after he acknowledged having made the previous statement, the rules of natural justice were sufficiently complied with.

33. In Kesoram Cotton Mills Ltd. v. Gangadhar and state of U.P.v. Om prakash Gupta the above principles were reiterated and it was laid down that if a previous statement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination by the delinquent.” Following the above decisions, similar writ petitions in W.P.No.14193 of 2006, W.P.No.23378 of 2007 and W.P.No.7257 of 2008 were allowed by me by orders dated 9.4.2007, 9.4.2008 and 23.7.2008 respectively. The Director General of Police, implemented the order dated 9.4.2007 made in W.P.No.14193 of 2006 by issuing circular in Na.Ka.No.79697/Con.3(1)/2007, dated 25.4.2007, and ordered that the charges cannot be held proved only on the basis of the statement given during preliminary enquiry, and whether charges are proved or not, is to be determined only on the basis of the statements made during the oral enquiry. The Disciplinary Authorities as well as Enquiry Officers were directed to keep the same in mind while conducting enquiry and disposing of the disciplinary proceedings.

14. In view of the above cited settled position of law on this aspect and having regard to the fact that there is no controversy about the enquiry officer-s finding of guilt on the part of the petitioner, relying upon the statements given by the witnesses during the preliminary enquiry and there was no occasion to cross examine the said witness during the preliminary enquiry, I am of the view that the charges framed against the petitioner cannot be said to be validly proved. Hence the petitioner is bound to succeed in this writ petition



challenging the order of dismissal passed against him.”

Hence, considering the above said legal position, this Court is of the opinion that the Impugned orders passed by the respondents based upon the Enquiry report, which was based upon the statements obtained during the preliminary enquiry, cannot be sustained.

12. In the judgment reported in (2006) 5 Supreme Court Cases 88 M.V.Bijlani Vs. Union Of India and others the Hon-ble Apex Court was pleased to observe as follows_

“ 25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi~criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi~judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

26. The report of the enquiry officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the Appellate Authority which are based on the said enquiry report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the appellant. The Tribunal also, thus, failed to discharge its functions properly.”

13. A reading of the above said judgment would show that the proceedings before the Department are quasi~judicial



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proceedings, therefore, an Enquiry Officer cannot take into consideration irrelevant materials and give a finding based upon mere surmises and conjectures.”

3. Since both the charges levelled against the petitioner were held to be proved only on the basis of the statements given during the preliminary inquiry, which is impermissible in law, the consequential punishment which came to be modified by the second respondent on 29.07.2013, cannot be sustained”.

6. The aforesaid extract is self explanatory. Thus, when the fourth respondent herein, had also placed reliance on the statements made during the course of the preliminary police enquiry, particularly on the statement of Manimegalai, who is the complainant, as well as the report of the investigation officer, the proceedings are deemed to be vitiated, in view of the law laid down in the aforesaid decision.”

8. In the aforesaid extract, reliance has been placed on other decisions for the ratio that such statements made in the preliminary enquiry cannot be relied upon by the Enquiry Officer and on this procedural violation also, the consequential punishment order requires interference.

9. Insofar as the last ground raised by the petitioner which touches upon the order of the Appellate Authority is concerned, it is seen that in the order dated 15.07.2011, the second respondent had agreed with the contention of the delinquent officer that the Enquiry Officer should have



W.P.No.7370 of 2017

based his findings on the statement given by the witnesses during the Oral Enquiry held by him, instead of relying on the statement of one of the witnesses given during an earlier Preliminary Enquiry. Having agreed with the stand taken by the delinquent officer, the second respondent had curiously chose to modify the punishment by claiming it as a lenient view. Such a decision to modify the punishment should have never been done, particularly when the grounds raised by the petitioner has been accepted. The very purpose of filing an appeal is to point out the irregularities committed by the disciplinary authority while passing the impugned order. When the ground raised by the petitioner is accepted by the Appellate Authority, it ought to have set aside the entire punishment order, rather than modifying the same. On this ground also, the petitioner is entitled to succeed.

10. It is now brought to the notice of this Court that in view of the pendency of disciplinary proceedings, the petitioner has been denied promotion to the post of Inspector of Police in the year 2012 promotion panel and subsequently, he was promoted to the post of Inspector of Police, only during the year 2016. Now this Court intends to set aside the order of



W.P.No.7370 of 2017

punishment, the petitioner would therefore be entitled for notional promotion to the post of Inspector of Police in the year 2012 panel.

11. In the light of the above findings, the impugned orders of the first respondent in Rc.No.B19354/2010 C.O.42/2011 dated 18.04.2011 and modified by the second respondent in proceedings in RC.No.B1/Appeal/01/2011 dated 15.07.2011 and the subsequent rejection of the first respondent in Rc.No.249808/AP.1(1)/2011 dated 06.02.2017 are quashed. Consequently, there shall be a direction to the first respondent to forthwith pass orders, notionally promoting the petitioner to the post of Inspector of Police in the 2012 promotion panel, together with all service and monetary benefits and place her seniority above her immediate junior. Such order shall be passed, at least within a period of eight weeks from the date of receipt of a copy of this order.

12. The writ petition stands allowed. No costs.

14.12.2022

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Internet : Yes / No
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W.P.No.7370 of 2017

WEB COPY

To

- 1.The Director General of Police,
Mylapore, Chennai-04.
- 2.The Additional Director General of Police, Training,
Ashok Nagar, Chennai-83.
- 3.The Deputy Inspector General of Police, Training,
Ashok Nagar, Chennai-83.



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W.P.No.7370 of 2017

M.S.RAMESH. J

Jvm

W.P.No.7370 of 2017

14.12.2022