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W.P.No.18490 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.18490 of 2004

T.Rajakumar,
S/o.I.Thangaraj,
No.6, Staff Quarters,
Jail Campus, Coimbatore.

... Petitioner

Vs.

1.The Superintendent of Central Prisons,
Coimbatore.

2.The Deputy Inspector General of Prisons,
Coimbatore Range,
Coimbatore.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records of the first Respondent in his proceedings No.12882/PO.4/2003 dated 26.05.2004 and to quash the same and consequently to direct the first Respondent to treat the period of absence as duty in all aspects.

For Petitioner : Mr.N.Kolandaivelu

For Respondents : Mr.R.Neethiprural
Government Advocate



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ORDER

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This Writ Petition has been filed to call for the records of the first Respondent in his proceedings No.12882/PO.4/2003 dated 26.05.2004 and to quash the same and consequently to direct the first Respondent to treat the period of absence as duty in all aspects.

2.The facts of the case in nutshell is as under:

The Petitioner was appointed as a Selection Grade Assistant in Coimbatore Central Prison and was dealing with R2 Section and the same was assigned with effect from 07.03.2003. It was clarified by the 1st Respondent on 05.05.2003 that R1 Assistant and R5 Junior Assistant should deal the affairs of high security prisoners and R2 Assistant, R3, R4 and R6 Junior Assistants should deal with the affairs of all prisoners except high security prisoners. The charges were framed by the 1st Respondent on the Petitioner and the charge memo dated 10.06.2003 under Rule 17(b) was issued to the Petitioner. The 4th charge was already dropped by the 1st Respondent with warning on 11.04.2003 in his proceedings No.7289/PO1/03, the 1st Respondent already issued the 1st charge under Rule 17(a) in proceedings No.PO4/9236/2003 dated 02.05.2003, the 2nd charge was already issued under Rule 17(a) by the 1st Respondent in proceedings No.PO4/9237/2003 dated 07.05.2003. The 1st Respondent in his



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proceedings No.12882/PO4/2003 cancelled the 17(a) charges issued on 02.05.2003 & 07.05.2003. Thereafter, the Petitioner requested the 1st Respondent on 08.08.2003 and 16.12.2003 to alter the charges from 17(b) to 17(a) and to furnish the connected documents, but the 1st Respondent in his proceedings dated 12.08.2003 and 17.12.2003, rejected the request to alter the charges and furnished the documents only to 4 charges. Thereafter, Mr.Ramani who was connected with charges 3, 4 & 8 was appointed as Enquiry Officer on 22.10.2003. Thereafter, the enquiry was fixed on 03.01.2004. The Petitioner appeared for enquiry before the Enquiry Officer and objected his enquiry, since he should be examined as one of the witnesses for the charges 3, 4 & 8 on behalf of the Petitioner. The Enquiry Officer submitted a report on 30.03.2004 and the Petitioner was served with show cause notice by enclosing the enquiry report on 11.04.2004. The Petitioner requested time for one month to submit the written explanation, since he returned from medical leave and to go through the records. But without considering the request, without extending the time as requested by the Petitioner and without receiving written explanation, the 1st Respondent passed an order of major punishment of compulsory retirement on 26.05.2004. Aggrieved by the order of the 1st Respondent, the Petitioner has come forward with the present Writ Petition.



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3.Learned counsel for the Petitioner submitted that charges under Rule 17(a) were changed to charges under Rule 17(b) and there is no rule to combine/convert/change the charges. Learned counsel drew attention of this Court to the proceedings of the 1st Respondent dated 11.02.2004, in which it is mentioned that even though it was decided to conduct enquiry on 29.01.2004, the Petitioner prevented the same by sending request to the Deputy Inspector General of Prisons, Coimbatore Range to change the Enquiry Officer. The charge memo under Rule 17(a) was issued to the Petitioner on 07.05.2003 and the charge memo under Rule 17(b) was issued on 10.06.2003. The charges 3, 4, 5 & 7 are new charges.

4.Learned counsel for the Petitioner further submitted that the Enquiry Officer appointed, is none other than the PA to Superintendent of Central Prison, Coimbatore/the 1st Respondent herein and since he is related to the charges, he cannot be appointed to conduct the enquiry. Since he is related to the charges his appointment is in violation of the rules.

5.Learned counsel for the Petitioner further contended that the charge memo under Rule 17(a) cannot be changed into 17(b) charges and there is no rule or regulations to combine/change/convert the same. Learned counsel



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further submitted that four charge memos under Rule17(a) were issued to the Petitioner and the same were revoked on 11.07.2003. After clubbing the above said four 17(a) charges adding further four 17(a) charges, charge memo under Rule17(b) was issued on 10.06.2003 by the 1st Respondent. In the said charge memo, totally 8 charges were framed and those charges were related to negligence, carelessness, lethargic attitude and slackness which are all come under Rule 17(a) only. The request to convert the 17(b) charge memo to 17(a) charge memo was turned down by the 1st Respondent.

6.Learned counsel for the Petitioner further submitted that the first charge was not proved and in respect of second charge there is prohibition in the Tamil Nadu Government Office Manual Rule 5, not to work on Sundays and other holidays, therefore the 2nd charge cannot withstand. In respect of third charge, P.T. warrant was not marked and no details as to when P.T. warrant had been received and for whom P.T. warrant had been issued etc., thus, this charge was very vague. Fourth charge is related to "Failure to attend duty after office order No.10, dated 22.05.2003", but, the evidence was given for the alleged failure in attending duty in March 2003 and complaint was given on 28.03.2003 i.e. before 22.05.2003, thus, this charge was not proved. In respect of charge No.5, February 2003 incident was mentioned in the evidence



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and no incident after 16.04.2003 was mentioned, thus, this charge was also not proved. In respect of charge No.6, no document was marked on the side of prosecution. In respect of charge No.7, already Mr.Sunil, S/o.Soman released on his own bond on 11.11.2002, as such, he was not in prison on 17.05.2003, therefore, the charge that he was not produced before the Magistrate did not arise. In respect of charge No. 8, already the file was made ready on 12.04.2003, thus, there was no delay on the part of the Petitioner and no document was marked to prove the said charge. Thus, the above said charge was also not established.

7.Learend counsel for the Petitioner further submitted that per the guidelines, the delinquencies mentioned in charge memo dated 10.06.2003 would attract only Rule 17(a) and not 17(b).

8.Learned counsel for the Petitioner further submitted that as per Rule 17(a), when the authorities decided to impose minor punishment, 17(a) charge memo could be framed. After having invoked Rule 17(a), no rule empowers the respondents to revoke and club the same alongwith other four 17(a) charges and made it as 17(b) charges. Thus, without jurisdiction, 17(b) charge memo dated 10.06.2003 was framed. Learned counsel also relied Rule



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17(a) and 17(d)(i). Rule 17(d)(i) deals with waiver of procedure while conducting enquiry and not clubbing of charges from Rule 17(a) to Rule 17(b).

9.Learned counsel for the Petitioner further submitted that P.A. to the Superintendent of Prison, Coimbatore, who is an Enquiry Officer was also involved in Charge No.2, Charge No.6 and Charge No.8, as such, he ought not to have been Enquiry Officer, that is the reason why he travelled beyond the scope of charges and held charges were proved. Learned counsel further submitted that as per Service Jurisprudence, the Enquiry Officer ought to have given findings in respect of each and every charge and the same was not done in this case and when the Petitioner sought for time to give explanation, the same was not given. The enquiry officer's report reveals his personal enmity with the petitioner.

10.Learned counsel for the Petitioner further submitted that the disciplinary authority also did not assign valid and sufficient reasons for imposing major punishment of compulsory retirement as per Rule 8 of Tamil Nadu Civil Services (D & A) Rules. The punishment is also disproportionate to the charges levelled against the petitioner.



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11.The 1st Respondent has filed his counter affidavit on 08.10.2004.

WEB COPY The relevant portion of the counter affidavit is extracted hereunder:

“1.He has refused to appear before Hon'ble High Court on 10.4.2003 as per the High Court order with connected records regarding the Writ Petition filed by prisoner Balamurugan, S/o.Kumaravel.

2.He has refused to receive Superintendent's memo No.8423/G1/2003 dt.17.4.2003 wherein important instructions issued to take action for pending files in view of DIG's review meeting.

3.For his failure to get and enter PT Warrant in the register properly and to take action due to irregularities in some cases notice was issued to the Superintendent by some of the courts.

4.For his act of refusing Tappals relating to his seat and for his failure to work properly in his seat.

5.For his failure to conduct meeting to select prisoners to send OAJ, Singnallur

6.For his failure to take action on Chief Minister's cell petition received on 3.4.2003, which requires immediate action. Went on CL for 2 days on 24, 25.05.2003 suddenly but failed to attend office upto 28.05.2003 without proper intimation or leave petition. He has failed to take action for the above Chief Minister's cell petition received on 3.4.2003 upto 23.5.2004. Hence the reply was sent with the help of other staff of remission section.

7.For his failure to take action to produce one prisoner Sunil



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S/o Soman before Principal Sessions Judge, Thirissur as per Tapal received on 17.5.2003. Hence an explanation was called for by the Judge concerned for his act.

8.For his failure to send detailed report to the DIG of Prisons on a complaint received from one prisoner in time.

For the above lapses a charge memo under 17(b) has been issued vide Supdt's memo No.12882/G4/2003 Dt.10.6.2003 and his explanation was called for. He has failed to submit his explanation in time and with an inner motive to drag on the disciplinary case he has submitted 16 petitions asking unnecessary records, change of 17(b) memo into 17(a), change of Enquiry Officer, and complaining about Enquiry Officer. Further, to avoid unnecessary delay in disciplinary proceedings, the P.A. to Superintendent was appointed as Enquiry Officer, and the Enquiry Officer has submitted his minutes after conducting oral enquiry. The Enquiry Officer has clearly stated that, the all the eight charges framed against the delinquent was proved beyond any doubt based on the statements of govt. witnesses and also govt. records filed at the time of oral enquiry. Based on the minutes of the Enquiry Officer, the following punishment was awarded to him vide Superintendent's Pro.No.12882/G4/2003 Dt.26.5.2004.

"He was ordered to be compulsorily retired from service WEF 26.05.2004" "

12.Learned Government Advocate appeared for the Respondents



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submitted that as per Tamil Nadu Civil Services (Discipline and Appeal) Rules charges framed under Rule 17 (a) can be converted into 17(b). As the charges under Rule 17(a) are included in the charge memo framed under Rule 17(b), the charges under Rule 17(a) have been ordered to be cancelled as per Rules in force vide office memo No.12882/G4/2003, dated 11.07.2003.

13.Learned Government Advocate further submitted that even though the disciplinary cases under Rule 17(b) should be finalised within the period of three months, this case was finalised only after 11 months and the delay is only due to the non-cooperation of the delinquent at each stage. Hence enough opportunity is given to finalise the case, as per the Rules in force. He further submitted that the Petitioner failed to follow Tamil Nadu Civil Services Appeal Rules, as per which, first he has to prefer appeal to the DIG of Prisons and then review Petition to ADGP and then to Government and to Tamil Nadu Administrative Tribunal to quash this order. But he has directly approached this Court, which is against Rules.

14.The 1st Respondent has filed additional counter affidavit. The relevant portion of the counter affidavit is extracted hereunder:

“Initially the Petitioner was dealt with under Rule No.17(a) of



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Tamil Nadu Civil Services (Discipline & Appeal) Rules for the following 4 lapses with the 4 separate charge memos of the 1st Respondent.

S.No	Charge memo No. and date	Nature of delinquency
1	9237/G4/03, dated 07.05.2003	He refused to receive the Memo No.8423/G1/03, dated 17.04.2003 in which all the Ministerial staff were instructed to attend office on holidays in view of range Deputy Inspector General of Prisons' review meeting.
2	11883/G4/03, dated 02.06.2003	He failed to submit remarks on the Petition of the father of life convict Palaniappa regarding the bail release to Chief Minister's cell.
3	9236/G4/03, dated 02.05.2003	He failed to take action on the telex message received on 09.04.2003 from the Hon'ble High Court, Madras regarding the appeal Petition of the Prisoner Balamurugan S/o.Kumaravel Gounder and failed to attend the Court on 10.04.2003.
4	5473/G4/03, dated 19.04.2003	He failed to submit remarks on a complaint petition received against the Prison administration.

While the above 4 disciplinary cases were under process, the following delinquencies were subsequently noticed in his duties.

a)He failed to enter the details of PT warrants received from various Courts in the concerned register and produced the



prisoners.

b)He failed to look after his duties according to the revised work allotment order issued in order No.10, dated 22.05.2010 of the 1st Respondent.

c)He did not return to duty on 27.05.2003 and 28.05.2003 after availing the casual leave on 24.05.2003 and 26.005.2003 without prior intimation and failed to submit remarks on the petition received from the Chief Minister's Cell on 03.04.2003.

d)He failed to prepare and send the remarks to Chief Office on the complaint petition received against the prison administration in time inspite of repeated reminders.”

15.Heard both sides and perused the materials available on record.

16.In this case, initially the charges were framed under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1956 and subsequently, converted into 17(b) charges, by which four more new charges were included. **In the counter affidavit filed by the 1st Respondent, it is stated that as per the Tamil Nadu Civil Services (D & A) Rules, charges framed under 17(a) can be converted into 17(b), but they have not mentioned the specific Rule, by which the charges have been converted from Rule 17(a) to 17(b) and the counter affidavit is silent on this aspect.**

The charges framed against the Petitioner are minor in nature which can



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be framed only under Rule 17(a) of the Tamil Nadu Civil Services (D & A)

Rules and not under 17(b) of the Tamil Nadu Civil Services (D & A) Rules

as contended by the 1st Respondent. It is pertinent to extract the eight charges

framed against the Petitioner by the 1st Respondent and same are hereunder:

“1.He has refused to appear before Hon'ble High Court on 10.4.2003 as per the High Court order with connected records regarding the Writ Petition filed by prisoner Balamurugan, S/o.Kumaravel.

2.He has refused to receive Superintendent's memo No.8423/G1/2003 dt.17.4.2003 wherein important instructions issued to take action for pending files in view of DIG's review meeting.

3.For his failure to get and enter PT Warrant in the register properly and to take action due to irregularities in some cases notice was issued to the Superintendent by some of the courts.

4.For his act of refusing Tappals relating to his seat and for his failure to work properly in his seat.

5.For his failure to conduct meeting to select prisoners to send OAJ, Singnallur

6.For his failure to take action on Chief Minister's cell petition received on 3.4.2003, which requires immediate action. Went on CL for 2 days on 24, 25.05.2003 suddenly but failed to attend office upto 28.05.2003 without proper intimation or leave petition. He has failed to take action for the above Chief Minister's cell petition received on 3.4.2003 upto 23.5.2004.



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Hence the reply was sent with the help of other staff of remission section.

7.For his failure to take action to produce one prisoner Sunil S/o Soman before Principal Sessions Judge, Thirissur as per Tapal received on 17.5.2003. Hence an explanation was called for by the Judge concerned for his act.

8.For his failure to send detailed report to the DIG of Prisons on a complaint received from one prisoner in time.”

From the above charge memo it can be seen that the charges are related to refused to appear before the High Court on 10.04.2003, refused to receive Superintendent's memo No.8423/G1/2003 dated 17.04.2003, failure to enter PT warrant, refused Tappals relating to his seat, failure to conduct meeting to select prisoners to send OAJ, Singanallur, failure to take action on Chief Minister's cell Petition received on 03.04.2003, failure to take action to produce one Prisoner before the Principal Sessions Judge, Thirissur and failure to send detailed report to the DIG of Prisons on a complaint received from one Prisoner in time. These eight charges are not serious in nature, so as to frame the charges under Rule 17(b) of the Tamil Nadu Civil Services (D & A) Rules, 1956. The punishment of compulsory retirement imposed on the Petitioner by the 1st Respondent by order dated 26.05.2004, is disproportionate to the delinquencies committed by the Petitioner.



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17.This Court is of the considered view that the punishment of compulsory retirement imposed on the Petitioner is too harsh to the delinquencies committed by the Petitioner, do not warrant such a major punishment. The Petitioner has also requested to change the Enquiry Officer, who is the P.A. to Superintendent of Police, Central Prison, Coimbatore, who is also the 1st Respondent and he is related to the charges 3, 4 and 8. Hence the Petitioner is of the view that he will be biased and requested for change of Enquiry Officer, but the same was rejected by the 1st Respondent. The same Enquiry Officer after conducting enquiry submitted a report that all the eight charges against the Petitioner are proved. Thus it shows that the enquiry was not conducted in a fair and proper manner and is also in violation of the principles of natural justice.

18.It is pertinent to mention that no Rule is mentioned by the 1st Respondent in his counter affidavit, by which they have converted the 17(a) charges of Tamil Nadu Civil Services (D & A) Rules into 17(b) charges. This itself shows that the 1st Respondent has acted without jurisdiction and the same is in violation of the Rules and against law. In the first charge memo, only four charges were framed and subsequently, when it was converted into 17(b) charges, four more charges were included



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and thus totally eight charges were framed against the Petitioner. The

order of compulsory retirement dated 26.05.2004 is liable to be set aside on the following grounds:

a.The conversion of charges from Rule 17(a) to Rule 17(b) is without jurisdiction, in the absence of any Rule or provisions, under the Tamil Nadu Civil Services (D & A) Rules, 1956, the same is not sustainable in law.

b.The eight charges framed against the Petitioner are not so grave to initiate action under Rule 17(b) of the Tamil Nadu Civil Services (D & A) Rules, 1956.

c.The punishment of compulsory retirement is too harsh and the same is disproportionate to the delinquencies committed by the Petitioner.

d.The enquiry was not conducted in a fair and proper manner and sufficient opportunities were not given to the Petitioner and the records sought by the Petitioner were also denied which are in gross violation of the principles of natural justice.

e.The Enquiry Officer, who is the P.A. to the Superintendent of Police, Central Prison, Coimbatore/1st Respondent is related to the charges 3, 4 and 8 and hence, the Petitioner was having a genuine



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apprehension that the enquiry will not be conducted in a fair and proper manner and requested for change of Enquiry Officer, but the same was denied, which is also in violation of principles of natural justice.

19.Hence, this Court is of the considered view that order of compulsory retirement of the 1st Respondent in Proceedings No.12882/PO.4/2003 dated 26.05.2004 imposed on the Petitioner is liable to be quashed, based on the above mentioned grounds/findings of this Court, and the same is hereby quashed.

20.In the result, the Writ Petition stands allowed and the Respondents are directed to treat the period of absence of the Petitioner as duty in all aspects.
No costs.

01.06.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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J.SATHYA NARAYANA PRASAD, J

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To

1.The Superintendent of Central Prisons,
Coimbatore.

2.The Deputy Inspector General of Prisons,
Coimbatore Range,
Coimbatore.

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Dated: 01.06.2023