



W.P.No.655 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.09.2023

Delivered on: 26.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**

AND

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**W.P.No.655 of 2004**

1. N. Kirubakaran S/o. P. Natesan
2. L. Ramakrishnan S/o. N. Ladamuthu

... Petitioners

Vs.

1. Union of India,  
represented by its Chief Secretary  
cum Appellate Authority,  
Government of Pondicherry,  
Pondicherry.

2. Inspector General of Police,  
Pondicherry.

3. Senior Superintendent of Police (L & O),  
Pondicherry.

4. S. Kuppusamy,  
Inspector of Police,  
Pondicherry.

5. The Registrar,  
Central Administrative Tribunal,  
Chennai.



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6. A. Nandagopal,  
Inspector of Police,  
Pondicherry [impleaded as per order in W.M.P. No.1788 of 2004  
dated 05.02.2004] ... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the Central Administrative Tribunal relating to order dated 25.09.2003 in O.A. No.147 of 2003 dated 25.09.2003 and call for the records of the 1<sup>st</sup> respondent relating to the order bearing No.C16014/3/2002/Home-Pol.I dated 05.12.2002 confirming the order of the 2<sup>nd</sup> respondent dated 25.09.2001 in order No.SP (HG) 1813/99/SSP (L&O) and quash the same.

For Petitioners : Mr. V.R. Shanmuganathan

For Respondents : Mr. Syed Mustafa, Special  
Government Pleader [for R1 to R3]

Not Ready [for R4]

Tribunal [for R5]

No appearance [for R6]

### **JUDGMENT**

(Judgment of the Court was made by P.B.BALAJI,J.)

The writ petition has been filed to set-aside the order of the Tribunal in O.A.No.147 of 2003, confirming the disciplinary proceedings initiated against the petitioners.



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2. The gist of the case of the petitioners before the Tribunal was that the petitioners were working as Police Constables in the Union Territory of Puducherry. While being in service, on 09.03.1997, a case in Crime No.17 of 1997, came to be registered against 10 persons on the file of Bahour Police Station, Pondicherry, where the petitioners were stationed at that relevant point of time. It was the case of the petitioners that the then Inspector of the said police station drafted his own statement as though given by the petitioners, *U/s 161 of the Code of Criminal Procedure, 1973* and without even the signatures of the petitioners, the Inspector of Police enclosed the statement along with the charge sheet and filed them before the Court. It is further contended that even when deposing before the court, as the petitioners were not properly instructed by the Public Prosecutor, they were forced to depose on their own. The Additional Sessions Judge, convicted the accused in the said criminal case and the petitioners were treated as hostile witnesses, with the Session Judge observing that the petitioners had been gained over. The Public Prosecutor in and by letter dated 13.03.1999, addressed to the Inspector of Police requested punitive action to be initiated against the petitioners. Pursuant to the said communication, the Senior Superintendent of Police, Law and



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Order, Pondicherry issued a charge memo against the petitioners. The petitioners denied the charges. An enquiry officer was appointed and he submitted a report holding that the charges against the petitioners had been proved. Thereafter the Inspector of Police issued a show cause notice calling upon the petitioners as to determination of the penalty that had been provisionally concluded, namely dismissal from service. The petitioners submitted their replies. However, in and by proceedings dated 25.09.2001, a reduction of pay in three stages in the petitioners' scale, for a period of 5 years was ordered. The appeal preferred by the petitioners before the Government of Puducherry, being the Appellate Authority came to be dismissed, as against which the petitioners moved the Tribunal.

3. In response to OA filed by the petitioners, the respondent filed a reply statement stating that only a lenient view came to be taken, despite the enquiry officer recommending termination of service of the petitioners. According to the respondents, the petitioners were afforded full and fair opportunity and no grounds were made out for interfering with the final order passed in disciplinary proceedings.

4. The Tribunal after considering the rival claims put forth by the parties before it, finding that a lenient view had already been taken, in not



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dismissing the petitioners from service and by imposing a penalty of reduction of three stages for 5 years, dismissed the OA. Aggrieved by the concurrent findings of the Disciplinary Authorities and also the dismissal of the OA by the Central Administrative Tribunal (CAT), the petitioners filed the above writ petition on the grounds that the enquiry was tainted with malafides; the Section 161 statements enclosed along with the charge sheet and filed before the Criminal Court were not the statements that were actually given by the petitioners; more importantly the said statements had not even been signed by the petitioners; the petitioners never turned hostile and finally that the High Court had acquitted the accused in the said criminal case, disbelieving the case of the prosecution.

5. We have heard Mr. V.R. Shanmuganathan, counsel for the petitioners and Mr. R. Syed Mustafa, counsel for the respondents. We have also perused the records and also the impugned order passed by the Tribunal.

6. It is an admitted fact that the petitioners, while in service were involved in the process of investigating a criminal case. The main ground of attack by the petitioners is twofold namely,



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- (i) the Section 161 statement under the Code of Criminal Procedure, 1973 had not been signed by the petitioners, and
- (ii) the High Court had acquitted the accused in the criminal case, on appeal.

7. In so far as the first submission is concerned, the petitioners were examined before the Criminal Court during trial and they have given evidence contrary to the 161 statements given by them earlier. It is not the case of the petitioners that they have taken immediate steps to retract from the 161 statements given by them. Only during the disciplinary proceedings, they have chosen to take such a stand. In fact even according to the petitioners, it is an admitted position that the evidence they let-in was contrary to their own Section 161 statements. Though the petitioners have vaguely alleged malafides, no specific allegation has even been made, leave alone being established by them. In fact, the Additional Sessions Judge has specifically taken exception to the conduct of the petitioners while proceedings to pass strictures against them. Therefore, in the light of the above, it is not open to the petitioners to contend that no prejudice had been caused to the prosecution, because of the inconsistent stand taken by the petitioners, one in the Section 161 statement and the other while



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deposing before the Criminal Court. With regard to petitioners not signing the Section 161 statements, they had all the opportunity to take such a stand at the earliest instance. However, having chosen to appear and depose before the Court and subsequently when disciplinary proceedings are sought to be initiated against them, it was not open to them to take such a stand for the first time.

8. With regard to the second submission that the High Court had allowed the appeal preferred by the accused and therefore the petitioners should also stand to benefit from the said acquittal, here again, we are unable to countenance to the said submission of the counsel for the petitioners. The proof required in criminal cases and in disciplinary proceedings are not one and the same. It is now well settled law that even if in the criminal proceedings, an order of acquittal comes through, still it does not straight away absolve the delinquents in the departmental or disciplinary proceedings, as the yardstick to be adopted in both the proceedings are totally different. At best, the acquittal order passed by the Criminal Court can be a relevant circumstance for deciding the disciplinary proceedings. However, it cannot be gain said that once an order of acquittal has been passed in a criminal case, automatically it should result



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in the delinquent succeeding in the disciplinary proceedings.

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9. One another relevant factor is that despite the Enquiry Officer suggesting termination of services of the petitioners, the Disciplinary Authority has only imposed a penalty of reduction of pay in three stages, for 5 years. This only goes to show that the Disciplinary Authority has independently applied its mind to the facts in issue, before passing the orders. Even the Appellate Authority has carefully dealt with all the contentions put-forth by the petitioners and has passed a well-reasoned order. The Tribunal has taken note of all these factors and circumstances, while dismissing the OA. The scope judicial review in such matters is very limited. From a careful reading of the impugned order before the Tribunal and also the order of Tribunal, we do not find them to be perverse or the findings being such that which shocks the conscience of the Court in such circumstances exercising jurisdiction under Article 226 of Constitution of India, we do not deem it a fit case to interfere with the concurrent findings rendered by the Disciplinary Authority which also came to be confirmed by the Tribunal. Therefore we do not find any ground warranting interference with the order of the Tribunal.



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10. For all the above reasons, writ petition fails and accordingly dismissed. Costs made easy. Connected miscellaneous petition, if any, is closed.

**(D.K.K.J) & (P.B.B.J)**  
26.09.2023

Internet : Yes  
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Neutral Citation: Yes/No  
mjs

To

1. Union of India,  
represented by its Chief Secretary  
cum Appellate Authority,  
Government of Pondicherry,  
Pondicherry.

2. Inspector General of Police,  
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3. Senior Superintendent of Police (L & O),  
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**D.KRISHNAKUMAR, J.,**  
**and**  
**P.B.BALAJI, J**

(mjs)

Pre-delivery judgment in  
**W.P.No.655 of 2004**

26.09.2023