



W.P.No.35894 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.35894 of 2005

K.Suthanthirarajan

... Petitioner

Vs.

1.The Superintendent of Police,  
Cuddalore District

2.The Deputy Inspector General of Police,  
Villupuram Range, Villupuram

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records of the respondents in connection with the impugned order passed by the first respondent in C.No.H2/PR336/2003 u/r 3(a) dated 11.02.2004 and to quash the same.

For Petitioner : Mr.K.Venkatramani,  
Senior Counsel  
for Mr.M.Muthappan



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For Respondents : Mr.L.S.M.Hasan Fizal,  
Additional Government Pleader

### ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 11.02.2004, thereby imposed punishment of 'censure deferred for a period of three months from the date of the order'.

2. The petitioner had entered into service as a directly recruited Sub-Inspector of Police on 28.09.1987. Thereafter he was promoted as Inspector of police on 28.09.2002. While he was serving as Inspector of Police, Prohibition Enforcement Wing in Vridhachalam from 02.09.2003, the petitioner was served with charge memo, which reads as follows:

*"highly reprehensible conduct in not strictly enforcing Tamilnadu Prohibition Act, 1937 as seen with the detection of cases by the Special party led by the Superintendent of Police, Cuddalore district at Gandhi Nagar and Junction Road in Vridhachalam Town and Chakkaramangalam Village on 27.09.2003 vide Vridhachalam P.S.Crime No.447 of 2003 u/s 4(1)(a) of*



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*TNP Act r/w S.328 IPC and Cr.No.478 of 2003 u/s  
4(1)(i) TNP Act r/w sec.328 IPC and  
Karuvepppilankurichi PS Cr.No.235 of 2003 u/s 328 IPC  
r/w S.4(1)(a,a,) TNP Act”*

On receipt of the same, the petitioner submitted a detailed explanation. Without satisfying with the explanation submitted by the petitioner, an enquiry officer was appointed to conduct enquiry. However, no witness was examined on the side of the disciplinary authority. The documents which were annexed along with the charge memo were relied upon by the enquiry officer and also the explanation submitted by the petitioner, the enquiry officer had drawn up a minute as enquiry report and held that the charges proved. Even then, the enquiry report was not furnished to the petitioner and based on the findings of the enquiry officer, he was imposed punishment of 'censure deferred for a period of three months from the date of the order' by an order dated 11.02.2004. Aggrieved by the same, the petitioner preferred appeal before the second respondent and the same is pending.



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3. Mr.K.Venkatramani, the learned Senior Counsel appearing for the petitioner submitted that the first respondent passed final order without any reasoning by non-speaking order. The petitioner was not given any opportunity to appear before the enquiry officer and no witness was examined on the side of the disciplinary authority as well as on the side of the delinquent i.e. the petitioner herein. Therefore it is violation of principles of natural justice. Even after enquiry, the petitioner was not served with any enquiry report and he was not issued any show cause notice. Though the charge issued under Rule 3(a) of Tamilnadu Police Subordinate Services (Discipline and Appeal) Rules and it is summary proceedings, no enquiry was conducted and the petitioner was not given opportunity to appear before the enquiry officer to put forth his defence.

4. The respondents filed counter and Mr.L.S.M.Hasan Fizal, the learned Additional Government Pleader submitted that the petitioner acknowledged the charge memo and he submitted explanation. After analysing the explanation and prosecution documents, the enquiry



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officer held the charges proved and submitted its minutes. Based on the proved minutes, the petitioner was awarded punishment as per the Rules. As such, there was absolutely no illegality in the order passed by the first respondent.

5. Heard, Mr.K.Venkatramani, the learned Senior Counsel appearing for the petitioner and Mr.L.S.M.Hasan Fizal, the learned Additional Government Pleader appearing for the respondents.

6. The learned Senior Counsel appearing for the petitioner relied upon the judgment of the Hon'ble Division Bench of this Court in the case of ***C.K.G. Nathan Vs. Assistant Commandant Central Industrial Security Force, CISF Unit, CPCL, Manali, Chennai and Another*** reported in ***(2009) 5 MLJ 1121***, wherein the Honorable Division Bench of this Court held that the disciplinary authority is duty bound to consider the imputation of the misconduct or misbehaviour committed by the delinquent officer, the explanation offered by him and the relevant records to satisfy himself as to whether an enquiry, is



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necessary or not in terms of Rules. When the delinquent specifically refutes the charges, the following *Rationes Decidendi* drawn up by the Hon'ble Division Bench of this Court:

*I. "Even in case where the rules do not make a provision for enquiry in cases where minor penalties are imposed, nevertheless, the compliance of the principles of natural justice may be required and the non compliance may vitiate the order. It depends upon the facts of each case. In the event the charges are very minor and the order imposing minor penalty merely refers to the charge without adversely imputing anything about the delinquent employee, the failure to conduct an enquiry will not vitiate the order. However, the same cannot be the general rule. In case if the charges are serious in nature and nevertheless the employer proceeds to follow Rule 37 of the Central Industrial Security Force and the order of punishment contains certain adverse imputation, remarks or even comments on the delinquent employee which may be considered as a stigma or which may be likely to affect his reputation in the eye of public, certainly the failure to conduct enquiry by giving an opportunity to such delinquent employee would vitiate the order for non compliance of the principles of natural justice. This*



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*principle also applies to the case where charges are minor, nevertheless some imputations/observations are made against the delinquent. The test to decide whether an enquiry is required or not is not the mere fact of minor penalty is imposed, but the nature of charges, the nature of observations or findings of the disciplinary authority while passing final orders of penalty.'*

*II. "An enquiry is mandatory, where the charges are refuted by the delinquent."*

7. Thus, it is clear that the principle also applies to the case where charges are minor, nevertheless some imputations/observations are made against the delinquent. The test to decide whether an enquiry is required or not is not the mere fact of minor penalty is imposed, but the nature of charges, the nature of observations of finding of the disciplinary authority while passing final orders of penalty. Further, an enquiry is mandatory where the charges are refuted by the delinquent.

8. In the case on hand, the petitioner categorically refutes the charges framed against him by detailed representation. In fact, the disciplinary authority appointed enquiry officer. The enquiry officer did



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not call upon any party, neither the delinquent nor the presenting officer to adduce any evidence. The enquiry officer, on the basis of the charge along with the documents which were annexed and the explanation submitted by the delinquent, prepared minutes in the form of enquiry report and submitted before the disciplinary authority. On the strength of the minutes, the disciplinary authority imposed punishment on the petitioner without even giving any opportunity to submit his explanation. Therefore, the above judgment is squarely applicable to this case and the entire disciplinary proceedings is vitiated.

9. The learned Senior Counsel also relied upon the judgment of this Court in the case of ***Nawabkhan Vs. Superintendent of Police, Chengai MGR East District, Chennai and another*** reported in (2008) 7 ***MLJ 1275***, wherein this Court laid *Rationes Decidendi* as follows:

*I. "Holding an employee liable for the charges levelled against him on the basis of his explanation and documentary evidence, without conducting any enquiry, would result in injustice to him and is not justified."*



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*II. "When the enquiry officer is not the disciplinary authority, the delinquent employee has got a right to have a copy of the report of the enquiry officer before the disciplinary authority arrives at a conclusion with regard to the guilt or innocence of the delinquent in respect of the charges levelled against him. Denial of right to the employee to have the copy of the enquiry report would definitely amount to denial of reasonable opportunity and violation of the principles of natural justice."*

10. As stated supra, the petitioner was not given any opportunity to appear before the enquiry officer and he was not given any opportunity to adduce evidence to defend the charge. Even the minutes submitted by the enquiry officer was not served on the petitioner and he was not called upon to explain for the minutes submitted by the enquiry officer. Therefore, it is violation of principles of natural justice and the said judgment is squarely applicable to the case on hand and the entire disciplinary proceedings cannot be sustained and it is liable to be quashed.



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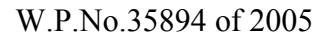
11. In view of the above discussion, the impugned order passed by the first respondent in C.No.H2/PR336/2003 u/r 3(a) dated 11.02.2004 is quashed and the writ petition is allowed. There shall be no order as to costs.

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Internet: Yes

Index: Yes/No

Speaking/Non-speaking order  
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1. The Superintendent of Police,  
Cuddalore District
2. The Deputy Inspector General of Police,  
Villupuram Range, Villupuram
3. The Government Advocate,  
High Court, Madras.



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**G.K.ILANTHIRAIYAN, J.**

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