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WP.No.1857/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.1857/2018

L.Manohar

... Petitioner

Versus

**1.The Director General of Police
Dr.Radhakrishnan Salai
Mylapore, Chennai 600 004.**

**2.The Secretary to Government
Home [Police II] Department
Fort St George, Chennai 600 009.**

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the 1st respondent in connection with the impugned order passed by him in Rc.No.269402/Con.II[1]/2001 dated 01.03.2017 served on the petitioner on 20.07.2017 and quash the same and grant such other further relief as this Court may deem fit.



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For Petitioner : Mr.K.Venkataramani
Senior Counsel for
Mr.M.Muthappan
For Respondents : Mr.R.Neethi Perumal
Government Advocate

ORDER

- (1) The writ petition has been filed in the nature of a certiorari seeking records of the 1st respondent/Director General of Police, at Chennai, in connection with an order passed by him in Rc.No.269402/Con.II[1]/2001 dated 01.03.2017 served on the petitioner on 20.07.2017 and to quash the same.
- (2) The petitioner had been directly recruited as Sub Inspector of Police Category-I through a selection conducted by the Tamil Nadu Uniform Services Recruitment Board and was appointed to service on 01.03.1996. He was due for promotion in the year 2004-05, but was not promoted. He was subsequently promoted as Inspector of Police in November 2010. His seniority was restored with his juniors. While serving as the Sub Inspector of Police at Kottur Police Station at Tiruvarur District in the year 2000, he had arrested one Ramanathan in connection with Crime No.35/2000 in the middle of



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the night on 28.01.2000 and had remanded the accused to judicial custody. There was an enquiry that the petitioner had used force beyond what was required while taking the said Ramanathan into custody. The District Revenue Officer, had conducted an enquiry under the Police Standing Orders 145. Thereafter, two decisions were taken. One, to prosecute the petitioner for the said criminal offence and another, to proceed against him by initiating departmental proceedings. Incidentally, the said Ramanathan who was the accused in Crime No.35/2000, suffered an order of conviction and was also sentenced in the criminal trial. The charge against him was that he, while driving a bullock cart, had dashed it against a Government bus and poured hot milk on the driver of the bus. The criminal case against the petitioner herein, had ended in acquittal. Insofar as the departmental proceedings are concerned, the witnesses produced by the Presenting Officer, did not stand by their statements and had spoken adverse to the Presenting Officer. The Enquiry Officer, therefore, not finding sufficient evidence, had held that the charges were not proved. But however, the Disciplinary Authority had



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appointed another Enquiry Officer to re-examine and revisit the evidence. At that time, it was held that charges against the petitioner were established. A Report in this connection, was submitted on 07.12.2003. Thereafter, the matter went before the Disciplinary Authority/Commissioner of Police. He examined the entire file and had taken a decision to drop the charges against the petitioner herein and differed with the findings of the Enquiry Officer. This was on 14.11.2008.

- (3) The Rule provides that if there is an aggrieved party, he/she can file a revision before the 1st respondent herein/Director General of Police. But here, there was no aggrieved party since the charges against the petitioner herein had been dropped. The Rule also provided that the Director General of Police can *suo motu* examine the records as *suo motu* revision. That is provided under Rule 15[A][1][i] of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. An order dated 23.07.2016, was issued nearly after eight years, consequent to which the present impugned order was passed. On the side of the respondents, it is contended that it is not an order,



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but only a show cause notice.

- (4) However, the learned Senior counsel appearing on behalf of the petitioner, questioned the nomenclature, show cause notice by stating that there a finding was given that the charges against the petitioner had been established and proved and therefore, contended that it was not a show cause notice. This particular impugned notice/order is questioned on the ground that a decision had already been taken and conveyed in the said notice/order itself. It is therefore, contended by the learned Senior Counsel that giving any explanation would only be an empty formality as a decision had already been taken and logically, the 1st respondent could not turn around and take a different decision having expressed in clear terms that the charges have been proved and that he is differing from the views taken by the Disciplinary Authority.
- (5) In the show cause notice/order, the 1st respondent herein, after extracting the facts, had stated as follows:-

"7.Hence, I conclude that the charges against the delinquent have been conclusively proved by the



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enquiry officer and the opinion of the Disciplinary Authority is not in order. Further, I agree with the findings of the Enquiry Officer and hold that charge as proved and it is proposed to impose any one of the penalties mentioned, in Rule 2 of TNPSS [D&A] Rules, 1955 on the delinquent.

8.Hence, you are directed to submit representation if any, within 15 days from the date of receipt of this show cause notice, regarding the proposed penalty to be imposed on you. If no representation is received within stipulated time, it will be presumed that you have no representation to make and final orders will be passed on merits of the case."

- (6) A perusal of the extracted portion shows that the 1st respondent had concluded that the charges have been proved by the Enquiry Officer and that the opinion of the Disciplinary Authority is not in order. The authority has a right to hold so, but he should have held so only after giving an opportunity to the petitioner herein to advance his case and after examining the records and viewing it from all sides, including the first findings of the Enquiry Officer originally holding that the charges



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have not been proved, the findings of the second Enquiry Officer on the same piece of evidence that the charges have been established, the opinion of the Disciplinary Authority that the charges should be dropped and then, weigh them with the explanation of the petitioner and then, come to a conclusion whether the charges have been proved or not proved. Even without examining all these materials, coming to a conclusion that the charges have been conclusively proved, is prejudicial to the petitioner herein as whatever explanation the petitioner gives, would only stand rejected and there is no possibility of the explanation being considered in their proper light. The 1st respondent should have worded the show cause notice a little more carefully and should have left the issues open and should have taken any decision only after examining the records more particularly, the explanation given by the petitioner herein. It must be kept in mind that judicial review lies against the procedure adopted. While granting opportunity to answer to a show cause notice, it should be made clear that the authority has an open mind and would receive the explanation, examine it and then, take a decision whether the



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allegations in the show cause notice stand proved or not proved, established or not established. But, once the authority shuts his/her mind to any possibility of holding otherwise, then the only possibility which remains is that the charges have been proved, and giving an opportunity to answer to the show cause notice is only an empty formality. Opportunity should not be only in letter, but in spirit also. It should be effective. It should inspire the confidence of the delinquent that if he makes any statement by way of an explanation, it would be considered.

- (7) Learned Senior Counsel appearing on behalf of the petitioner relied on the judgment reported in **2006 [9] SCC 440 [Lav Nigam Vs. the Chairman and Managing Director, ITI Limited and Another]**, wherein it had been held that when the Disciplinary Authority had taken a view different to that by the Enquiry Officer, then, notice should be given to the charged employee and thereafter, a decision whether the charges have been held proved or not, should be taken. The Hon'ble Supreme Court had also referred to two earlier decisions reported in **1998 [7] SCC 84 [Punjab National Bank Vs. Kunj**



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Behari Misra] and in 1999 [7] SCC 739 [***Yoginath D.Bagde Vs. State of Maharashtra]***.

- (8) The dictum laid down by the Hon'ble Supreme Court as encompassed in paragraphs No.10 to 12 are extracted as follows:-

"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.

11. In Punjab National Bank v. Kunj Behari Misra [(1998) 7 SCC 84 : 1998 SCC (L&S) 1783] a Bench of this Court considered Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the



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enquiry officer. This Court held: (SCC p. 97, para 19)

“The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

12. This view has been reiterated in *Yoginath D. Bagde v. State of Maharashtra [(1999) 7 SCC 739 : 1999 SCC (L&S) 1385]* . In this case also Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 did not specifically provide for a disciplinary authority to give an opportunity of



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hearing to the delinquent officer before differing with the view of the enquiry officer. The Court said: (SCC p. 758, para 29)

“But the requirement of ‘hearing’ in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the ‘TENTATIVE’ reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of ‘not guilty’ already recorded by the enquiring authority was not liable to be interfered with.”

- (9) The reasoning given is that the delinquent officer should have the opportunity to give an explanation and thereafter, the decision should be taken. It had been stated that principles of natural justice require the authority to take a final decision after giving an opportunity to the



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officer charged to make a representation, record findings and then take a decision.

- (10) In view of this particular dictum laid down, I hold that the order impugned, namely, the show cause notice/order dated 23.07.2016 suffers from procedural violations and therefore, the said order is interfered with by me. The consequential punishment which has been imposed vide order dated 01.03.2017 is therefore, kept in abeyance.
- (11) It is informed by the learned Senior counsel that owing to this particular decision taken, the promotional aspects of the petitioner had suffered.
- (12) Let the promotion of the petitioner not be anymore delayed. The punishment imposed has been kept in abeyance. The show cause notice/order dated 23.07.2016 is struck down. The matter is remitted back to the 1st respondent/Director General of Police to issue a fresh show cause notice, and give an opportunity to the petitioner herein and then take any decision. He may take a decision by imposing the same punishment which is kept in abeyance or he may even withdraw the said punishment. The prerogative is entirely left to the 1st



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respondent. The 1st respondent may also take into consideration, the delay in initiating the *suo motu* revision. The Disciplinary Authority had dropped the proceedings on 14.11.2008 and just when the petitioner was due for promotion from Inspector of Police to Deputy Superintendent of Police on 23.07.2016, the show cause notice has been issued. These aspects may be taken into consideration. The 1st respondent therefore, has to keep an open mind on granting of promotion and grant promotion to the petitioner herein and also take a decision whether the *suo motu* revision will have to be pursued further or not. Let a considered decision on all these aspects be taken once again by the 1st respondent after a thorough review of the entire records. Such decision should to be taken within a period of four months from the date of receipt of a copy of this order. If the petitioner is entitled for promotion, then such promotion may be granted and if there is no delinquency found, it may be dated back so that the petitioner may not suffer owing to any delay.

- (13) The writ petition stands **disposed of**. The show cause notice dated 23.07.2016 is set aside. The consequential punishment imposed on



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01.03.2017 is **kept in abeyance**. The matter is remitted back to the 1st respondent/Director General of Police to revisit the entire records and take a proper decision in accordance with law. No costs.

14.08.2023

AP

Internet : Yes

To

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Dr.Radhakrishnan Salai
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C.V.KARTHIKEYAN, J.,

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