



W.P.(MD).No.26540 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 14.12.2023

ORDER PRONOUNCED ON : 20.12.2023

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.26540 of 2023
and WMP(MD).No.22817 of 2023**

G.Ramarajan

....Petitioner

Vs

1.The State of Tamil Nadu
Represented by its Principal Secretary to Government
Home Department
Secretariat
Chennai -9

2.The Director General of Police
Tamil Nadu
Chennai 4

3.The Inspector General of Police
South Zone
Madurai

4.The Deputy Inspector General of Police
Tirunelveli Range
Tirunelveli

5.The Superintendent of Police
Office of the Superintendent of Police Office
Thoothukudi
Thoothukudi District

...Respondents



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Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of dismissal passed by the first respondent in his proceedings in G.O(2D).No.303 Home (Police.2) Department dated 17.07.2023 and quash the same as illegal and consequentially to direct the respondents to permit the petitioner to retire from service and pay retirement benefits within the period that may be stipulated by this Court.

For Petitioner : Mr.M.Ajmalkhan
Senior Counsel
For M/s.Ajmal Associates

For Respondents : Mr.T.Villavan Kothai
Additional Government Pleader

ORDER

The present writ petition has been filed by a Superintendent of Police challenging the order of dismissal dated 17.07.2023 passed by the first respondent.

(A).2.The undisputed facts are as follows:

(i)The petitioner was appointed as a Sub Inspector of Police on 27.09.1987 through direct recruitment. He was promoted as Inspector of Police on 26.01.2001. He was later promoted as Deputy Superintendent of Police on 27.07.2013.

(ii)While the petitioner was serving as Deputy Superintendent of Police, an F.I.R was registered against him in Crime No.3 of 2014 under



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Prevention of Corruption Act. A charge memo was issued to the writ petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on 23.10.2014.

(iii)Not being satisfied with the explanation submitted by the writ petitioner, an Enquiry Officer was appointed. The Enquiry Officer found two count of charges as against the writ petitioner are proved and submitted a report on 25.07.2016. The Disciplinary Authority had issued a second show cause notice on 07.04.2017 for which the petitioner had submitted his representation on 07.07.2017.

(iv)The Disciplinary Authority after going through the explanation submitted by the writ petitioner and on the basis of opinion given by Tamil Nadu Public Service Commission, proceeded to pass an order of dismissal from service on 17.07.2023. This order is under challenge in the present writ petition.

(B)3.The contentions of the learned counsel appearing for the writ petitioner:

(i)The learned Senior Counsel appearing for the writ petitioner had contended that the charges levelled against the writ petitioner are frivolous in nature and even assuming that the charges are true, a punishment could not be imposed upon the writ petitioner.



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(ii)The impugned order of dismissal is solely based upon the opinion offered by TNPSC. This opinion was not communicated to the writ petitioner so that he could offer his explanation to the Disciplinary Authority with regard to the quantum of punishment.

(iii)The Disciplinary Authority namely the first respondent has not given any independent reason for concurring with the opinion of TNPSC.

(iv)The opinion of TNPSC is recommendatory in nature and therefore, the first respondent herein ought to have formed an independent opinion based upon the explanation offered by the writ petitioner. However, in the present case, without forming any independent opinion, the impugned order has been passed which is a non-speaking order.

(v)The learned Senior Counsel relied upon a judgment of the Hon'ble Supreme Court reported in *(2011) 4 SCC 591 (S.N.Narula Vs. Union of India and others)* to contend that the non-furnishing of opinion of TNPSC would be fatal and the order of Disciplinary Authority is liable to be set aside.

(C)4.The contentions of the learned Additional Government Pleader appearing for the respondents:

(i).Per contra, the learned Additional Government Pleader appearing for the respondents had contended that the allegations as against the writ petitioner are serious in nature and after a full-fledged enquiry, the enquiry officer has arrived at a categorical finding that the charges as against the writ



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petitioner on two counts have been proved and therefore, the contention that the charges are frivolous in nature are not legally sustainable.

(ii).A copy of the opinion offered by TNPSC has been annexed to the order of Disciplinary Authority. It is not mandatory to annex a copy of the opinion of TNPSC along with the second show cause notice.

(iii).When the opinion TNPSC is recommendatory in nature, the question of calling for explanation from the writ petitioner for the said opinion is not required.

(iv).The Disciplinary Authority namely the first respondent has independently considered the enquiry report along with the explanation offered by the writ petitioner and arrived at a finding that the petitioner should be imposed with a punishment of dismissal from service. Therefore, the order may be sustained.

5.I have considered the submissions made on either side and perused the material records.

(D).Discussion:

6.Under the impugned order in G.O(2D).No.303 Home (Police.2) Department, dated 17.07.2023, the petitioner has been imposed with capital punishment of dismissal from service for the proven charges. Paragraph No.7 of the said order reveals that along with the impugned order, a copy of TNPSC letter containing its view were communicated to the writ petitioner.



Therefore, it is clear that the opinion of TNPSC was not forwarded to the writ petitioner along with second show cause notice calling for explanation.

7.The Hon'ble Supreme Court in a judgment reported in **(2011) 4 SCC 591 (S.N.Narula Vs. Union of India and others)** in paragraph Nos. 3 to 7 has held as follows:

“3.It is to be noticed that the advisory opinion of the Union Public Service Commission was not communicated to the Appellant before he was heard by the disciplinary authority. The same was communicated to the Appellant along with final order passed in the matter by the disciplinary authority.

4.The Appellant filed O.A. No. 1154/2002 before the Central Administrative Tribunal, New Delhi and Tribunal held that there was violation of principles of natural justice and the following direction was issued:

“We are of the considered opinion that this order is a non-speaking one and as such we are of the view that the same cannot be sustained and is liable to be quashed. Accordingly, we quash the impugned order and remand the case back to the disciplinary authority to pass a detailed reasoned and speaking order within a period of 3 months from the date of receipt of a copy of this order in accordance with instructions and law on the subject.”

5. This order was challenged by the Union of India by way of Writ Petition before the High Court of Delhi and by the impugned judgement the High Court interfered with the order.



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The writ petition was partly allowed and it was directed that the matter be again considered by the Tribunal. Against that order the appellant has come up in appeal by way of special leave petition.

6.We heard the learned counsel for the appellant and the learned counsel for the respondent. It is submitted by the counsel for the appellant that the report of the Union Public Service Commission was not communicated to the appellant before the final order was passed. Therefore, the appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed.

7.We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in interfering with the order. Therefore, we set aside the judgment of the Division Bench of the High Court and direct that the disciplinary proceedings against the appellant be finally disposed of in accordance with the direction given by the Tribunal in para 6 of the order. The appellant may submit a representation within two weeks to be disciplinary authority and we make it clear that the matter shall be finally disposed of by the disciplinary authority within a period of three months thereafter.

8.The Hon'ble Supreme Court in a judgment reported in (2014) 7 SCC 340 (Union of India and others Vs. R.P.Singh) after following the judgment reported in (2011) 4 SCC 591 (S.N.Narula Vs. Union of India and others) in



paragraph No.12 has held as follows:

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“12.... *The said decision of S.N.Narula case is an authority for the proposition that the advice of UPSC, if sought and accepted, the same, regard being had to the principles of natural justice, is to be communicated before imposition of punishment.*”

9.The Hon'ble Supreme Court in a judgment reported in **(2011) 4 SCC 589 (Union of India and others Vs.S.K.Kapoor)** in paragraph No.8 has held as follows:

“8.There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the employee concerned. However, if it is relied upon, then a copy of the same must be supplied in advance to the employee concerned, otherwise, there will be violation of the principles of natural justice.This is also the view taken by this Court in the case of S.N.Narula vs. Union of India.”

10.A consolidated reading of the judgment of the Hon'ble Supreme Court makes it clear that whenever the Disciplinary Authority relies upon the report of TNPSC, a copy of the same has to be furnished. If the same is not furnished to the delinquent before imposition of punishment that would be in violation of principles of natural justice. In the present case, a perusal of the order impugned in the writ petition reveals that up to paragraph No.3, the



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proceedings that are prior to the second show cause notice have been recorded. Paragraph No.4 extracts the opinion offered by TNPSC. Paragraph No.5 clearly points out that the Government has examined the case in the light of the views expressed by TNPSC. Paragraph No.7 reveals that along with the order of dismissal, a copy of the letter of TNPSC has been enclosed. Therefore, it is clear that the Disciplinary Authority has relied upon the opinion of Public Service Commission, but they have not annexed the said opinion with the second show cause notice calling for explanation from the writ petitioner. Therefore, there is clear violation of principles of natural justice.

11.In view of the above said deliberations, this Court passes the following orders;

(i)The order impugned in the writ petition is set aside and the matter is remitted back to the file of the first respondent herein.

(ii)The petitioner is at liberty to submit his further explanation to the first respondent herein in the light of the opinion expressed by TNPSC within a period of four weeks from the date of receipt of a copy of this order.

(iii)The first respondent is directed to pass orders after considering the explanation offered by the writ petitioner within a period of 12 weeks thereafter.



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15. Accordingly, the writ petition is allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

20.12.2023

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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