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W.P. Nos.17744 of 2011 and 12220 c



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

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THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

W.P. Nos.17744 of 2011 and 12220 of 2012

W.P.No.17744 of 2011

T. Rajkumar

... Petitioner

-VS-

1. The Superintendent of Prison,  
Borstal School cum District Jail,  
Pudukottai.

2. The Deputy Inspector General of Prison,  
Trichy Range, Trichy.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of CERTIORARIFIED MANDAMUS, to call for the records relating to the punishment dated 30.05.2008 imposed by the 2<sup>nd</sup> respondent against the petitioner in proceedings No.4572/Mu/Vu/2007 and the further punishment dated 08.04.2010 imposed by the 1<sup>st</sup> respondent in Proceedings No.9803/Po1/2004 and quash the same and consequentially to direct the 1<sup>st</sup> respondent to reinstate the petitioner with all consequential service and monetary benefits including retrospective promotion on par with his junior.



W.P.No.12220 of 2012

T. Rajkumar

... Petitioner

-VS-

The Superintendent of Prison,  
Central Prison, Coimbatore.

... Respondent

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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of CERTIORARIFIED MANDAMUS, to call for the records relating to the eviction Notice dated 09.04.2012 issued by the respondent against the petitioner in proceedings No.10488/Po 1/ 2010 and quash the same and consequently to direct the respondent to permit the petitioner to stay in the Quarters No.6, Staff Quarters, Central Prison Compound, Coimbatore.

In both W.Ps

|                 |   |                               |
|-----------------|---|-------------------------------|
| For Petitioner  | : | Mr. R. Sankara Subbu          |
| For Respondents | : | Mr.V.Veluchamy                |
|                 |   | Additional Government Pleader |
|                 |   | and                           |
|                 |   | Mr.S.Rajesh                   |
|                 |   | Government Advocate           |

### COMMON ORDER

The proceedings No.4572/Mu/Vu/2007 dated 30.05.2008 awarded by the 2<sup>nd</sup> respondent and the further punishment awarded by the 1<sup>st</sup> respondent in proceedings No.9803/Po 1/2004 dated 08.04.2010 are under challenge.

2. The petitioner T. Rajkumar S/o. Thangaraj submits that he was



working as an Assistant at Central Prison, Coimbatore. Pursuant to the Orders of the Authorities, he was transferred to Pudukottai in the year 2004. He was approaching the Authorities for re-transfer to Coimbatore to look after his aged mother, who was ill. Upon a phone message from his neighbour about his mother's sudden illness on 18.06.2005, he applied for casual leave for two days from 20.06.2005 to 21.06.2005. As his mother's health did not improve, he was taking her to various hospitals and meanwhile, his health was also affected, thereby he applied medical leave by requesting the Authorities to convert his casual leave to medical leave with effect from 20.06.2005 onwards. Further he extended his medical leave till 15.06.2006. Based on the direction of the 1<sup>st</sup> respondent to hand over charge and key on 14.07.2005, as no co-staff co-operated to receive the charge and key from him, he did not hand over the charge and key to anybody. Thereafter, upon the proceedings of the 1<sup>st</sup> respondent dated 09.07.2005, specifying the persons for handover, was served on him on 01.08.2006. He handed over the locker key to his co-staff Ganesan and Rengaraj on 06.08.2005.

3. The petitioner would further submit that when he went to the office of the 1<sup>st</sup> respondent on 16.06.2006 along with fitness certificate to rejoin the duty and the Superintendent In-charge, who was looking after the affairs of the 1<sup>st</sup> respondent's jail was not available on that day. Hence he came on the next



day as per the direction for re-joining the duty. He was not permitted to rejoin and at the same time, the 1<sup>st</sup> respondent attempted to serve a hurriedly prepared charge memo dated 17.06.2006 to him with predetermined mind. As the 1<sup>st</sup> respondent did not permit him to rejoin and also initiated departmental action, he returned back to Coimbatore. The petitioner further submits that since his mother was suffering from various continuous ailments, he could not concentrate about the letters sent from the Medical Board from the 1<sup>st</sup> respondent.

4. The details of Charge Memo No.9803/G1/2004, dated 17.06.2006 is given hereunder.

1. *He did not hand over the charges of the Stores during the period of casual leave on 20.06.2005 and 21.06.2005. This is violation of rule No.126, 127, 139, 1030 of Tamil Nadu Prison Manual, Volume II and Rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973 and Para No.47 of Tamil Nadu Official Manual.*
2. *In continuation of Casual Leave, while he applied Medical Leave from 20.06.2005 for 15 days, he did not hand over the charge of the Manufacturing Store. Even though he came to office on 14.07.2005 and 15.07.2005 and repeated instructions issued to him on that days he did not hand over charges to the Assistants concerned. This is violation of rule No.126, 127, 139, 1030 of Tamil Nadu Prison Manual, volume II and Rule No.20 of Tamil Nadu government Servant Conduct Rules 1973 and Para No.41 of Tamil Nadu Office Manual.*
3. *Medical Leave petitions for the period 20.06.2005 to 04.08.2005 received from the petitioner had been sent to*



the Medical Board in letter No.9803/G1/2004, dated 15.07.2005 as well as instructions had been issued to the petitioner to appear before Medical Board in Register Post with Acknowledgement Due which was received by the petitioner on 21.07.2005. But he did not appear before the Medical Board. This is violation of rule No.126, 127 of Tamil Nadu Prison Manual, Volume II and Rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973.

4. He applied Medical Leave as mentioned below:

- 1) 15 days from 20.06.2005
- 2) 30 days from 05.07.2005
- 3) 30 days from 04.08.2005
- 4) 30 days from 04.09.2005
- 5) 30 days from 05.10.2005
- 6) 30 days from 05.11.2005
- 7) 30 days from 05.12.2005
- 8) 30 days from 14.01.2006
- 9) 30 days from 23.02.2006
- 10) 30 days from 11.03.2006
- 11) 30 days from 21.04.2006
- 12) 30 days from 22.05.2006

Though the petitioner had been instructed to appear before the Medical Board in letter No.9803/G1/2004, dated 16.08.2005, 22.09.2005, 11.11.2005, 30.01.2006, 05.05.2006, he did not do so. This is violation of rule no.126, 127, 139 and 1030 of Tamil nadu Prison Manual, Volume II and Rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973.

5. The petitioner was instructed to appear before Medical Board in the date furnished below by the Medical Board of Coimbatore Medical College Hospital and reported that he did not appear before the Medical Board in their letter mentioned against the each date.

|    |            |                                          |
|----|------------|------------------------------------------|
| 01 | 01.08.2005 | L.Dis.No.11844/MB/2004, dated .08.2005   |
| 02 | 28.08.2005 | L.Dis.No.13611/MB/2004, dated 01.09.2005 |
| 03 | 17.10.2005 | L.Dis.No.15520/MB/2004, dated 01.09.2005 |



|    |            |                                          |
|----|------------|------------------------------------------|
| 01 | 01.08.2005 | L.Dis.No.11844/MB/2004, dated .08.2005   |
| 04 | 28.11.2005 | L.Dis.No.18526/MB/2004, dated 02.12.2005 |
| 05 | 09.01.2006 | L.Dis.No.20614/MB/2004, dated 13.01.2006 |
| 06 | 20.02.2006 | L.Dis.No.1819/MB/2004, dated 24.02.2006  |
| 07 | 17.04.2006 | L.Dis.No.5071MB/2004, dated 20.04.2006   |
| 08 | 22.05.2006 | L.Dis.No.7116/MB/2004, dated 25.06.2006  |

*In the last letter, Medical Board opined that the petitioner was not appeared before the Medical Board even a single day, further action had to be taken departmentally. The activities of the petitioner are violation of rule No.126, 1276 of Tamil Nadu Prison Manual Volume II, and rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973.*

- 6. While knowing about the procedure of the Unearned Leave on Medical Certificate that the Medical Leave might be extended for above 60 days only by the recommendation of the Medical Board, the petitioner sent the Medical Leave petitioner in 13 spells from 20.06.2005 to 22.05.2006 and he did not appear before the Medical Board for obtaining recommendation. This is violation of rule No.126, 1276 of Tamil Nadu Prison manual Volume II, and rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973.*

5. The petitioner further submits that the first respondent issued a second charge memo dated 30.10.2006 based on the details of the first charge memo mentioned supra. The charges framed against him are as follows:

- 1. When he came to office on 16.06.2006 at 5:00PM, was directed to appear before Medical Officer of Government Headquarters Hospital, Pudukkottai on 17.06.2006 to obtain physical fitness certificate in memo no.9803/G1/2004, dated 17.06.2006. He received the memo. The Medical Officer of Government Headquarters Hospital, Pudukkottai has also instructed to appear before 26.06.2006. But he did not appear before the Medical*



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*Board. This is violation of rule No.126, 127 of Tamil Nadu Prison Manual Volume II and rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973.*

2. *Refusing to receive the Charge memo no.9803/G1/2004, dated 17.06.2006 in the office is violation of rule No.126, 127 of Tamil Nadu Prison Manual Volume II, and rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973.*
3. *On 16.06.2006, he mentioned his address as No.8, Borstal School Quarters, Pudukkottai. Subsequently, sent the leave petition in Coimbatore address in the following dates.*
  - a) 20.06.2006 - 30 days Medical Leave
  - b) 22.07.2006 - 30 days Medical Leave
  - c) 21.08.2006 - 40 days Medical Leave
  - d) 30.09.2006 - 40 days Medical Leave

*This is violation of rule No.126, 127, 139 and 1030 of Tamil Nadu Prison Manual Volume II and rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973.*

4. *As he sent 4 Nos. of Medical petition from Coimbatore address, he was instructed to appear before Medical Board, Coimbatore. But he did not appear before the Medical Board on 28.08.2006 and 19.10.2006. This is violation of rule No.126, 127 of Tamil Nadu Prison manual Volume II, and rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973.*
5. *Without appearing before the Medical Board for the extension of Medical Leave beyond 60 days, he had been sent the Medical Leave petitioner continuously was violation of rule No.126, 127 of Tamil Nadu Prison manual Volume II, and rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973.*

6. Mr.R.Sankara Subbu, learned counsel for the petitioner would vehemently argue that for the above said two charge memos, two ex-parte enquiries were conducted by the Additional Superintendent of Prison in a



single day on 07.05.2007 with the aid of Official witnesses namely Rajeswari, Ganesan, Rengasaamy and Mathivanan. Based on two ex-parte enquiry reports dated 21.08.2007 and 06.11.2007, the 2<sup>nd</sup> respondent imposed the punishment of reduction of time scale to the bottom stage for three years with cumulative effect against him after lapse of nine months in his proceedings No.4572/Mu.Vu/2007 dated 30.05.2008.

7. It is further submitted by the learned counsel for the petitioner that the enquiry file was sent to the 2<sup>nd</sup> respondent by the 1<sup>st</sup> respondent after lapse of two years on 25.08.2009 and the 2<sup>nd</sup> respondent returned the file to the 1<sup>st</sup> respondent pointing out some lapses on 16.09.2009 and thereafter, the 1<sup>st</sup> respondent imposed a major punishment of dismissal from service against him on 08.04.2010. Since no documents were furnished to him pursuant to his written request, he could not put forth his defence. The enquiry was conducted in a improper manner and violation of principles of natural justice, hence this writ petition.

8. Heard Mr. R. Sankara Subbu, learned counsel for the petitioner, Mr.V.Veluchamy, learned Additional Government pleader and Mr.S.Rajesh, learned Government Advocate for the respondents.



9. Per contra, the learned Additional Government Pleader strenuously argued that the petitioner was appointed on compassionate grounds as Junior Assistant on 17.02.1988 at Central Prison, Vellore and promoted as Assistant on 14.08.1991 and posted at Central Prison, Coimbatore. Due to insubordination, slackness and lethargic work of the petitioner, disciplinary actions were taken under rule No.17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules and he was awarded 'Compulsory Retirement' from service vide Proceedings No.12882/G4/2003, dated 26.05.2004 by the Superintendent, Central Prison, Coimbatore. As per the Order of this Court, the said Order was set aside and he reported duty on 27.09.2004 at Central Prison, Coimbatore and he was transferred from there and posted to Borstal School, Pudukkottai on 08.11.2004.

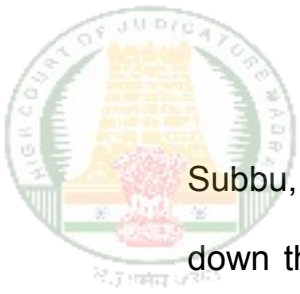
10. It is further contended by the learned Additional Government Pleader that upon the transfer to Borstal School, Pudukkottai, he was looking after Store Keeper seat and his duties were, maintaining of Cash Books, Raw Materials, finished materials, plants and tools, Prisoners Wages, etc., He would further submit that he went on casual leave on 20.06.2005 and 21.06.2005 and in continuation, he went on applying for medical leave from 20.06.2005 to 15.06.2006 for 361 days in 13 spells. The learned Additional Government Pleader would vociferously contend that the petitioner upon the



instructions to attend Medical Board, he did not respond the call letters of the Medical Board and did not attend the Medical Board, thereby evaded the very purpose of referring to the Medical Board.

11. It appears that when the petitioner reported to join the duty after getting Medical Board Fitness certificate for 361 days, as he did not respond to the letter sent, to his available address at Central Prison, Coimbatore Jail Quarters. A charge memo dated 17.06.2006 was again issued to him. When he was working as Assistant at Borstal School, on 20.06.2005, he availed Casual Leave for two days on 20.06.2005 and on 21.06.2005. Thereafter, he sent medical leave application in 13 spells covering period from 20.06.2005 till 15.06.2006. For the first Medical Leave application, the Superintendent issued direction to appear him before the Medical Board, Pudukottai. It appears that on eight occasions, the Medical Board sent call letters to the petitioner herein for appearance before the Medical Board, but he did not respond to such letters. While so, on repeated instructions issued to him, he handed over the charges on 06.08.2005 and it is also relevant to note that he was Store Keeper (in-charge).

12. As regards the first impugned Order, which was passed by the District Jail Superintendent In-charge dated 08.04.2010, Mr. P. Sankara



Subbu, learned counsel appearing for the petitioner would vehemently come down that, as per the rules, in the absence of Superintendent, the Additional Superintendent In-charge is not empowered to pass Orders in the Disciplinary Proceedings. In the normal course, in the absence of Superintendent, the next Officer in the hierarchy will be placed in Full Additional In-charge of Superintendent and he is responsible for entire affairs of the said Office. Therefore it should not lie in the mouth of the petitioner that the Order which was passed by the Officer did not have power to pass such Order. I find no force in his arguments.

13. From a careful perusal of first impugned Order, when the charge memo was sought to be served to the petitioner herein at the Quarters situated at Coimbatore Central Prison, as the petitioner did not receive the same by affixture on his residence, it was served. These details have been communicated by the Superintendent of Central Prison, Coimbatore as per his reference No.6 in the said impugned Order. Though the Deputy Inspector General, Trichy has mentioned in his letter that no details are found with regard to service of notice by affixture to the petitioner herein, it appears that through the Superintendent of Coimbatore Central Prison, a charge memo was served to the petitioner by way of affixture at his residence. As he was staying at Pudukottai and not in Coimbatore, as per reference No.3, the appointment of



Enquiry Officer is also informed to the petitioner and he was instructed to appear before the Enquiry Officer, for which he did not appear before the Enquiry Officer as per reference No.4. Therefore, the Enquiry officer has examined the departmental witnesses and thereafter he was asked to give his explanation as per reference No.10. He has received it on 09.07.2010. Final Orders was passed by dismissing the petitioner from service. Therefore, the petitioner having received the notice, it should not lie in his mouth that principles of natural justice is violated.

14. It is an admitted fact that the petitioner did not report to duty from 20.06.2005 to 15.06.2006. A long and short details of the charges are, he did not appear before the Medical Board and he did not receive the charge memo, which are in clear violation of Tamil Nadu Prison Rule No.126 and 127, besides violation of Rule 20 of Tamil Nadu Government Servants Service Rules. Without permission of the Superintendent, he has moved from the working place and upon the eight call letters sent by the District Medical Board, he did not appear before the Medical Board for medical examination. The rule position is if a Government Servant applies for a medical leave above 59 days, then he has to appear before the Medical Board in order to obtain the Medical Certificate as per rules. However, the petitioner had sent 13 medical leave applications for a period from 20.05.2005 to 15.06.2006 for 361 days. It is also



relevant to note that when the charge memo was to be served through a staff of the Coimbatore Central Prison, he refused to receive the same and it was caused to be affixed.

15. The petitioner has not followed the rules and regulations and to the maximum extent, he has caused inconvenience to the jail administration as mentioned supra. Of course, the petitioner is at the liberty to go on medical leave as per rules, if he is not in good health, he may avail the benefit of availing suitable leave. It is also pertinent to note that he was in-charge of Store keeper in the Borstal School, Pudukottai and he moved from Pudukottai on 20.06.2005 and thereafter, he did not hand over the charge and keys of the store to the said Borstal School.

16. As regards the power of judicial review, the Hon'ble Supreme Court by a Three-Judge Bench in *B. C. Chaturvedi vs. Union of India and others* [1995 (6) SCC 749] observed as under:

*“18. A review of the above legal position would establish that the disciplinary authority, on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the*



conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/ appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

17. In yet another case in *Lucknow Kshetriya Gramin Bank [Now Allahabad, Uttar Pradesh Gramin Bank]* and another vs. *Rajendra Singh*, [2013 (12) SCC 372], the principles summarized by the Hon'ble Supreme Court have been summed up hereunder:

*“19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.*

*19.2. The courts cannot assume the function of disciplinary/ departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.*

*19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.*

*19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.*

*19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-*



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*delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.”*

18. The learned counsel for the petitioner drew the attention of this Court by referring to the guidelines issued by the Government Circular No.14353, Personal and Administrative Reforms dated 11.03.1993 to be followed by the Disciplinary Authorities and stoutly contended that the charges framed in the above said two disciplinary proceedings revolves upon the same issue and they are minor in nature but with ulterior motive to throw out the petitioner from employment, charges were framed under Rule 17(b) instead of Rule 17(a).

19. Considering the nature of the submissions of the learned counsel for the petitioner, it is relevant to extract the guidelines issued in this regard in the Government Circular stated supra.

“(1) GUIDELINES FOR DECIDING WHETHER CHARGES MAY BE FRAMED UNDER RULE 17(b)

*Without prejudice to the generality of situations involving indiscipline, moral turpitude, corruption, etc., charges under rule*



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17(b) have to be framed in the following types of cases of imposing any one of the major penalties:-

- (1) Cases in which there is reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g.,
  - (a) possession of assets disproportionate to the known sources of income;
  - (b) obtaining or attempting to obtain illegal gratification;
  - (c) misappropriation of Government property, money or shares;
  - (d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate, etc.,
- (2) Falsification of Government records.
- (3) Irregularity or negligence in the discharge of official duties with a dishonest motive.
- (4) Misuse of official position for personal gain.
- (5) Disclosure of secret or confidential information even though it does not fall strictly with the scope of the Official Secrets Act.
- (6) Misappropriation of Government funds, false claims of Travelling Allowances, reimbursement of false medical bills, etc.,

*Unless a major punishment is really warranted namely, dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charges under rule 17(b) is not necessary and should be avoided.”*

20. On perusal of the charges as contended by the learned counsel, it is not multiplication of single charge. Therefore his arguments is not acceptable. From careful perusal of nature of charges in both charge memos, they would come under the irregularity or negligence in the discharge of Official duties.



21. It is crucial to note that when he was officiating as the Store Keeper in the Assistant cadre in the present service, he did not report to the duty from 20.05.2005 to 15.06.2006, almost for a year falling short of only 4 days. No where, he has stated the reason for not reporting to the duty or he has not filed any acceptable medical records, for the reasons best known to him. He remained absent for a long period of almost a year (361 days) by just sending 13 medical leave applications one after another, did not receive the charge memos, did not report to the Coimbatore Medical Board for examination etc., These sort of commissions and omissions not good for the efficient and better administration of Prison department.

22. The petitioner did not receive the charge memo. Only by affixture, it was issued. Upon notice, he did not appear before the Enquiry Officer, he has precluded from raising the issue that the principles of natural justice is violated. When he was called upon to give his final explanation also, he remained silent and he is not permitted to turn around and state that, he was not asked to give his explanation.

23. The details of Charge Memo No.9803/G1/2004, dated 17.06.2006 is given hereunder.

*1. He did not hand over the charges of the Stores during the period of casual leave on 20.06.2005 and 21.06.2005. This is*



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violation of rule No.126, 127, 139, 1030 of Tamil Nadu Prison Manual, Volume II and Rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973 and Para No.47 of Tamil Nadu Official Manual.

2. In continuation of Casual Leave, while he applied Medical Leave from 20.06.2005 for 15 days, he did not hand over the charge of the Manufacturing Store. Even though he came to office on 14.07.2005 and 15.07.2005 and repeated instructions issued to him on that days he did not hand over charges to the Assistants concerned. This is violation of rule No.126, 127,139,1030 of Tamil Nadu Prison Manual, volume II and Rule No.20 of Tamil Nadu government Servant Conduct Rules 1973 and Para No.41 of Tamil Nadu Office Manual.

3. Medical Leave petitions for the period 20.06.2005 to 04.08.2005 received from the petitioner had been sent to the Medical Board in letter No.9803/G1/2004, dated 15.07.2005 as well as instructions had been issued to the petitioner to appear before Medical Board in Register Post with Acknowledgement Due which was received by the petitioner on 21.07.2005. But he did not appear before the Medical Board. This is violation of rule No.126, 127 of Tamil Nadu Prison Manual, Volume II and Rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973.

4. He applied Medical Leave as mentioned below:

- 13) 15 days from 20.06.2005
- 14) 30 days from 05.07.2005
- 15) 30 days from 04.08.2005
- 16) 30 days from 04.09.2005
- 17) 30 days from 05.10.2005
- 18) 30 days from 05.11.2005
- 19) 30 days from 05.12.2005
- 20) 30 days from 14.01.2006
- 21) 30 days from 23.02.2006
- 22) 30 days from 11.03.2006
- 23) 30 days from 21.04.2006
- 24) 30 days from 22.05.2006

Though the petitioner had been instructed to appear before the Medical Board in letter No.9803/G1/2004, dated 16.08.2005,



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22.09.2005, 11.11.2005, 30.01.2006, 05.05.2006, he did not do so. This is violation of rule no.126, 127, 139 and 1030 of Tamil Nadu Prison Manual, Volume II and Rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973.

5. The petitioner was instructed to appear before Medical Board in the date furnished below by the Medical Board of Coimbatore Medical College Hospital and reported that he did not appear before the Medical Board in their letter mentioned against the each date.

|    |            |                                          |
|----|------------|------------------------------------------|
| 01 | 01.08.2005 | L.Dis.No.11844/MB/2004, dated .08.2005   |
| 02 | 28.08.2005 | L.Dis.No.13611/MB/2004, dated 01.09.2005 |
| 03 | 17.10.2005 | L.Dis.No.15520/MB/2004, dated 01.09.2005 |
| 04 | 28.11.2005 | L.Dis.No.18526/MB/2004, dated 02.12.2005 |
| 05 | 09.01.2006 | L.Dis.No.20614/MB/2004, dated 13.01.2006 |
| 06 | 20.02.2006 | L.Dis.No.1819/MB/2004, dated 24.02.2006  |
| 07 | 17.04.2006 | L.Dis.No.5071MB/2004, dated 20.04.2006   |
| 08 | 22.05.2006 | L.Dis.No.7116/MB/2004, dated 25.06.2006  |

In the last letter, Medical Board opined that the petitioner was not appeared before the Medical Board even a single day, further action had to be taken departmentally. The activities of the petitioner are violation of rule No.126, 1276 of Tamil Nadu Prison Manual Volume II, and rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973.

6. While knowing about the procedure of the Unearned Leave on Medical Certificate that the Medical Leave might be extended for above 60 days only by the recommendation of the Medical Board, the petitioner sent the Medical Leave petitioner in 13 spells from 20.06.2005 to 22.05.2006 and he did not appear before the Medical Board for obtaining recommendation. This is violation of rule No.126, 1276 of Tamil Nadu Prison manual Volume II, and rule No.20 of Tamil Nadu Government Servant Conduct Rules 1973.

24. To decide these details, it is relevant to look into the punishment



details at his credit. It appears that the petitioner is having following 21 punishments at his credit during his service in Prison Department excluding two punishments which have been now under challenge in this writ petition.

| <i>Sl. No.</i> | <i>Details of punishment</i>                                                        | <i>Order No. and date</i>          | <i>Nature of delinquency</i>                                                             |
|----------------|-------------------------------------------------------------------------------------|------------------------------------|------------------------------------------------------------------------------------------|
| 1.             | Censure                                                                             | No.1678/CA/1991, dated 14.02.1992  | Non-submission of Personal Register and allied records                                   |
| 2.             | Censure                                                                             | S.F.2/G1/1992, dated 16.03.1992    | For coming late to office during Inspector General's Annual Inspection                   |
| 3.             | Postponement of next increment for the period of 6 months without cumulative effect | SF/OM/92, dated 23.07.1992         | Non-submission of Personal Register and allied records.                                  |
| 4.             | Postponement of next increment for the period of 3 months without cumulative effect | 10195/G2/93, dated 28.07.1993      | Unauthorized absent of duty on 13.07.1993 and not submitting uniform Indent in due date. |
| 5.             | Censure                                                                             | SF.2/G2/1992, dated 08.09.1992     | Insubordination to the superior officers.                                                |
| 6.             | Censure                                                                             | No.1800/G1/99, dated 11.03.1999    | For not vacating the Government Quarters.                                                |
| 7.             | Censure                                                                             | No.5402/G2/1993, dated 16.04.1999  | Dereliction of duty.                                                                     |
| 8.             | Censure                                                                             | No.10180/G4/1999, dated 14.07.1999 | Unauthorized absence of duty on 18.05.1999 and 19.05.1999.                               |
| 9.             | Postponement of his next increment for the period of 3 months without               | No.15972/G4/99-3, dated 21.10.1999 | For not taking action on an appeal petition.                                             |



| Sl. No. | Details of punishment                                                                         | Order No. and date                 | Nature of delinquency                                                                                                        |
|---------|-----------------------------------------------------------------------------------------------|------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
|         | cumulative effect                                                                             |                                    |                                                                                                                              |
| 10.     | Postponement of his next increment for the period of 3 months without cumulative effect       | No.22670/G4/1999, dated 29.12.1999 | For delay in taking action on Audit Report.                                                                                  |
| 11.     | His pay was reduced to bottom of time scale for a period of 2 years without cumulative effect | No.20647/G4/1999, dated 29.04.2000 | For not attending Medical Board and not handling over charge of the seat of G3 after transferring to Central Prison, Vellore |
| 12.     | Postponement of his next increment for the period of 3 months without cumulative effect       | No.19615/G4/2000, dated 11.12.2000 | Non-submission of Personal Register and allied records.                                                                      |
| 13.     | Censure                                                                                       | No.2377/G2/2002, dated 15.04.2002  | Leaving the Headquarters without permission                                                                                  |
| 14.     | Postponement of his next increment for the period of 3 months without cumulative effect       | No.3133/G4/2000, dated 11.12.2000  | Derelection of Duty                                                                                                          |
| 15.     | Postponement of his next increment for the period of 3 months without cumulative effect       | No.19615/G4/2000, dated 11.12.2000 | For not attending Medical Board.                                                                                             |
| 16.     | Postponement of his next increment for the period of one year without cumulative effect       | No.9173/G4/2003, dated 30.05.2003  | For refusing to accept petitions of TNLA prisoner for taking further action                                                  |
| 17.     | Censure                                                                                       | No.16783/G4/2003,                  | Non-submission of                                                                                                            |



| Sl. No. | Details of punishment                                                                   | Order No. and date                  | Nature of delinquency                                                                                                |
|---------|-----------------------------------------------------------------------------------------|-------------------------------------|----------------------------------------------------------------------------------------------------------------------|
|         |                                                                                         | dated 14.01.2004                    | Personal Register and allied records                                                                                 |
| 18.     | Censure                                                                                 | No.26895/G4/2003, dated 18.03.2004  | Insubordination to Higher Officers.                                                                                  |
| 19.     | Postponement of his next increment for the period of one year without cumulative effect | No.4253/G4/2004, dated 26.04.2004   | Dereliction of his duties.                                                                                           |
| 20.     | Postponement of his next increment for the period of 3 months without cumulative effect | No.4604/G4/2004-2, dated 27.04.2004 | Non-submission of Personal register and allied records.                                                              |
| 21.     | Compulsory Retirement (obtaining stay order in Hon'ble High Court, Chennai)             | No.12882/G4/2003, dated 26.05.2004  | Insubordination to higher officers, dereliction of his duties and not sent the P.T. Warrant to the Courts concerned. |

25. The Petitioner was appointed as Junior Assistant in the Prison Department on Compassionate grounds on 17.02.1988. On bare perusal of punishment at his credit during his service in the Prison Department from the year 1992 to 2004, he was awarded nine times censure and postponement of increment without cumulative effect for eleven times. By the Order dated 26.05.2004, he was awarded compulsory retirement by the Superintendent, Coimbatore Centre Prison in No.12882/Po.4/03.



26. He has applied for medical leave from 20.06.2005 to 22.05.2006.

The Medical Board has eight times sent letters for appearance of the petitioner before the Medical Board, but he did not appear before the Medical Board even on one occasion.

27. As regards the first impugned order dated 30.5.2008 passed by the Deputy Inspector General of Prison upon the findings of the enquiry officer for the charges as mentioned supra, he was awarded punishment of increment cut for three years with cumulative effect which will have an impact in the pension. The sum and substance of the charges are that, when he applied for medical leave over and above 60 days, he did not appear before the Medical Board and failed to receive the letters sent by the Borstal School. Omitted to do his duties, thereby he violated the Prison Manual Rules and disobeyed the order of the higher officials, thereby he caused so much of inconvenience to the Prison Department.

28. As regards the impugned order dated 08.04.2010, this was awarded by the District Superintendent of Prison. Wherein, the charges are five in number:

- i. He did not attend office from 20.06.2005 onwards.
- ii. He refused to receive the notice on 17.06.2005.



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- iii. Continuously remained absent by sending medical certificates.
- iv. Based on the same, the petitioner did not appear before the Medical Board despite the instructions.
- v. He did not report to duty continuously for four years, thereby he did not cooperate with the administration and the same amounts to administrative indecorum. Though he was served with the notice, he did not participate in the enquiry and therefore, an order of dismissal from service was passed.

29. When an application for injunction was filed, it was dismissed in M.P.No.2 of 2011 on 29.07.2011 by this Court.

30. The judicial review is not an appeal from a decision but reviewing the manner in which the decision is made and it is meant to ensure that the investigation has received fair treatment, and the conclusion reached is whether proportionate to the charges or not. If the authority has proceeded in the manner inconsistent with the principles of natural justice or in violation of statutory rules or finding was based on no evidence.

31. Law is settled that it is the domain of the appointing authority/disciplinary authority to decide as to the punishment to be imposed on



the delinquent provided that the punishment is proportionate to the delinquency. If at all, punishment is shocking the conscience of the Court, the Court shall interfere with the same in exercise of powers conferred under Article 226 of Constitution.

32. While awarding the punishment, considering the nature and gravity of the charges and entire service records of the petitioner may be looked into in order to maintain discipline and efficiency in service in Prison Administration.

33. It is well established principles of administrative jurisprudence that leave cannot be claimed as a matter of right. The petitioner has sent applications for grant of leave one after another, almost for a year for twelve times, which never can be taken to be a bonafide act, because he did not appear before the Medical Board not even once. Eight notices for appearance were sent to him by the Medical Board, as mentioned supra. Even communications and notices have been served to the appellant by affixture. This shows his non-cooperation with the department. Even when a communication was sent by the Chairperson of Coimbatore Medical Hospital, he did not appear before Medical Board for examination and direction was given by the Dean, Medical College Hospital to initiate disciplinary action against the petitioner for not appearing before the Medical Board.



34. The charges made against the petitioner are acts of gross misconduct and breach of administrative discipline in the prison administration. The petitioner had developed unhealthy attitude by committing acts of misconduct and failed to discharge his duties, which is unbecoming of the employee of the Prison Department. Therefore, taking into totality of circumstances, I am of the considered view that order of the Disciplinary Authority and the Appellant Authority do not suffer from any infirmity or perversity.

35. In view of the facts and given circumstances, when tested on the touchstone of the principles of administrative law and governing rules, the only plausible conclusion is that the orders passed by the authorities concerned, the dismissal from service has to be maintained.

W.P.No.12220 of 2012

36. The eviction notice dated 09.04.2012 issued by the respondent against the petitioner in No.10488/PO-1/2010 is under challenge and direction is also sought for, to permit the petitioner to stay in quarters No.6, Staff quarters, Central Prison Compound, Coimbatore.



37. The facts which are leading to the filing of this writ petition is set out hereunder.

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The petitioner T.Rajkumar son of Thangaraj was appointed in the year 1988 as Junior Assistant in the Prison Department by the Inspector General of Prison. He was a Selection Grade Assistant and he is unmarried and was living with his mother in No.6, Staff Quarters, Central Prison compound, Coimbatore. While he was working under the control of the respondent, he was compulsorily retired on 26.05.2004 for the charge of non complying of certain instructions issued and contrary to the duties assigned to him as per the provisions of Prison Manual. He challenged the said in W.P.18490 of 2004. As per the interim order dated 17.08.2004 passed in W.M.P.No.22028 of 2004 restrain the respondent to evict him from the quarters. The order of stay was made absolute by the order of this Court dated 07.03.2006. While so, he was transferred to Pudukottai Borstal School, where no staff quarter was available. On receipt of an urgent message from Coimbatore about the serious health condition of his mother in Coimbatore, he rushed to Coimbatore on 18.05.2005 by getting two days Casual Leave. Meanwhile, a charge memo dated 17.06.2006 under 17(b) was framed against him for the charges of unauthorized absent and non-appearance before the Medical Board. Upon enquiry, he was removed from service on 08.04.2010 but he was not disturbed from the quarters in Coimbatore since he was not allotted any quarters in



Pudukkottai and the respondent has served eviction notice dated 09.04.2012 directing him to vacate the quarters and surrender it immediately. Hence this writ petition.

38. Heard Mr.R.Sankara Subbu, learned counsel appearing for the petitioner, Mr.V.Veluchamy, learned Additional Government Pleader and Mr.S.Rajesh, learned Government Advocate for the respondent.

39. The learned counsel for the petitioner would strenuously argue that the respondent has no jurisdiction to issue eviction notice to the petitioner when he was given protection by way of an interim order by this Court.

40. Mr.V.Veluchamy, learned Additional Government Pleader appearing for the respondent would vehemently argue that the petitioner was allotted quarters in Central Prison, Coimbatore premises, when he was working in the Central Prison, Coimbatore with effect from 18.12.1993. He was transferred to Central Prison, Vellore on 08.07.2001 and he has not vacated inspite of repeated order of office of the Superintendent of Prison, Central Prison, Coimbatore. Hence, penal rent was recovered from him vide proceedings No.524/G1.2000 dated 03.08.2001. He would further argue that the petitioner has no right to occupy the quarters even after he was transferred to Central



Prison, Vellore. When notice to vacate the quarters was issued to the petitioner, he filed O.A.No.2765/2002 and obtained an Order of interim stay dated 07.05.2002. The allotment of official quarters is a concession to the government employee, it cannot be claimed as a matter of right. It appears that, he was transferred from Central Prison, Coimbatore to Borstal School, Pudukkottai and joined duty on 08.11.2004. Thereafter also, he continued to occupy the quarters at Coimbatore Central Prison, which is not justifiable. When government servant occupies a quarters when he holds a particular post, on earlier occasion also, it was held that the department is perfectly justified in evicting the applicant from the quarters and an order of eviction cannot be found fault with, and O.A.No.2765 of 2002 was dismissed.

41. Thereafter, the petitioner was ordered to vacate the quarters before 15.03.2004, he moved writ petition before this Court by an order of interim stay for a period of twelve weeks was granted, and it was further extended up to 10.08.2004.

42. It has also been stated that the petitioner owns a house in Gandhipuram, Coimbatore and this was found out through police verification report. This was hidden, and he applied for allotment of quarters in the prison premises. The petitioner was awarded punishment of dismissal from service.



The petitioner was transferred from Central Prison, Coimbatore to Borstal School, Pudukkottai and took charge as Assistant at Borstal School, Pudukkottai on 08.11.2004.

43. After a reasonable time and upon permission, he is permitted to stay in the quarters. Thereafter, his stay after transfer to another place, his occupation of the quarters is not justifiable.

44. The petitioner has deprived similarly placed staff of Central Prison, Coimbatore from occupying the staff quarters as he was in occupation of the official quarters after he was transferred to Borstal School, Pudukkottai.

45. The petitioner is unlawfully occupying the quarters, and it appears that he has not remitted any rent to the Government thereby caused loss to the Government. When the petitioner is not in service, he is not entitled to occupy the official quarters.

46. It is relevant to refer the Tamil Nadu Prison Manual - Volume II, as per Rule No.157, every subordinate officer dismissed, discharged or allowed to resign his appointment, shall be required at once to quit the prison and quarters occupied by him. Therefore, the petitioner is not eligible to reside in



the Government Quarters.

Order in W.P.No.17744 of 2011:

47. Based on the aforesaid discussions and observations, this writ petition stands dismissed. There is no order as to costs. Consequently, connected miscellaneous petition, if any stands closed.

Order in W.P.No.12220 of 2012:

48. Based on the aforesaid discussions and observations, this writ petition also stands dismissed and the time for the petitioner to vacate the official quarters is four weeks from today. There is no order as to costs. Consequently, connected miscellaneous petition stands closed.

30.09.2024

Index : Yes/No  
Internet: Yes/No  
Speaking order/Non-Speaking order  
stn/ mac



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W.P. Nos.17744 of 2011 and 12220 c



R. KALAIMATHI, J.

stn/ mac

To

1. The Deputy Inspector General of Prison,  
Trichy Range, Trichy.
2. The Superintendent of Prison,  
Central Prison, Coimbatore.
3. The Superintendent of Prison,  
Borstal School cum District Jail,  
Pudukottai.

W.P. No.17744 of 2011  
and  
W.P. No.12220 of 2012

30.09.2024