



W.P.No.23494 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.04.2024

PRONOUNCED ON : 30.04.2024

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.23494 of 2010

J.B.Pon Prabhakar

...

Petitioner

Vs.

1.Tamil Nadu Grama Bank,
rep. by its Chairman and Disciplinary Authority, Head Office,
6, Yercaud Road,
Hasthampatti, Salem – 636 007.

2.Board of Directors,
Tamil Nadu Grama Bank,
Head Office, 6, Yercaud Road,
Hasthampatti, Salem – 636 007.

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Respondents

(R1 & R2 amended as per order dated 12.12.2023
in WMP No.32957/2023 in W.P.No.23494 of 2010)

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records from the files of the respondents pertaining to their impugned orders (i) bearing PGB/VIG/OF/SPK:2/10-11 dated 27th April 2010 imposing the punishment of “Compulsory Retirement from service...” as per regulation No.38 (1)(b)(iii) of Pallavan Grama Bank (Officers and Employees) Service Regulations 2007 issued by the 1st respondent and (ii) the order of the 2nd respondent bearing No. PGB/VIG/47/2010-11 dated 10.07.2010 and quash the same and



W.P.No.23494 of 2010

consequently direct the respondents to reinstate the petitioner in service with continuity of service with back wages and with all other attendant and consequential benefits.

For Petitioner : Mr.M.Ramesh, Senior Advocate
for M/s. R.Sandhya
For R1 : Mrs.Rita Chandrasekar
for M/s.Aiyar and Dolia
For R2 : ---

ORDER

This Writ Petition has been filed to call for the records from the files of the respondents pertaining to their impugned orders (i) bearing PGB/VIG/OF/SPK:2/10-11, dated 27th April 2010, imposing the punishment of “Compulsory Retirement from service...” as per regulation No.38 (1)(b)(iii) of Pallavan Grama Bank (Officers and Employees) Service Regulations 2007 issued by the 1st respondent and (ii) the order of the 2nd respondent bearing No. PGB/VIG/47/2010-11, dated 10.07.2010 and quash the same and consequently, direct the respondents to reinstate the petitioner in service with continuity of service with back wages and with all other attendant and consequential benefits.

2.The learned counsel for the petitioner submitted that the petitioner joint the services of Vallalar Grama Bank as officer on 16.04.1988. Vallalar



W.P.No.23494 of 2010

Bank got amalgamated with Pandian Grama bank with effect from

31.08.2006. Petitioner was working as officer in Bargur branch at the time of imposing the punishment of compulsory retirement. He was served with charge sheet bearing number No.PGB/VIG/OF/CHST/3/2008-09, dated 29.07.2008, alleging certain irregularities said to have been committed by him while working as branch manager of the Arasampattu branch. Refuting allegations, he submitted a detailed reply dated 16.11.2007. The charge sheet was issued under regulation 19 of Pallavan Grama Bank (Officer and Employees) service regulations 2007. The charges leveled are pertaining to the period when the petitioner was working as officer of Vallalar Grama Bank. Therefore, he can be proceeded only in terms of the regulations of Vallalar Grama Bank and not on the basis of Pallavan Grama Bank Regulations. The enquiry officer K.Ramamoorthy is junior to the petitioner and therefore, he is not competent to conduct the enquiry. MEX 1 to MEX 144 were produced on the side of the Management without examining any witnesses. In the absence of the examination of the witnesses, petitioner was denied with the opportunity of cross examination on the documents relied on by the Management. When witnesses are not examined, the documents had no legal sanctity. Marking of documents without examination of witnesses is against



W.P.No.23494 of 2010

the well established principles of reception of evidence. Without considering the defence exhibited and petitioner's explanation, the enquiry officer found that some of the charges against the petitioner were proved, some partly proved and some not proved. The disciplinary authority without assigning any reasons held that all the charges are proved. There was no opportunity given to the petitioner before the disciplinary authority on the view taken by the enquiry officer. Petitioner was imposed the punishment of compulsory retirement on the basis of the recommendation of the Central Vigilance Officer. It is not in tune with law and against the well settled proposition of law. The Appeal filed by the petitioner was disposed of without giving a speaking order. No opportunity was given to the petitioner for submission of his grounds of appeal. Petitioner had been working with the respondent bank for more than 22 years without any complaint. In the said circumstances, the imposition of punishment of compulsory retirement is grossly disproportionate to the alleged misconduct committed by the petitioner. Thus this writ petition.

2.1.The learned counsel for the petitioner produced the judgment in ***Ramchander Vs. Union of India (UOI) and Ors.*** reported in



W.P.No.23494 of 2010

MANU/SC/0484/1986 for the proposition that the appellate authority must

not only give hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal.

2.2. In a departmental and enquiry, recording of evidence is necessary and in the absence thereof, no reliance can be made on the documents produced. In support of his submission, he pressed into service the judgment in ***Roop Singh Negi Vs. Punjab National Bank and Ors.*** reported in (2009) 2 SCC 570. The relevant portion of the judgment is extracted hereunder:

10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the



documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

3.The report of of the Central Vigilance Officer cannot form basis for taking decision in the matter of imposing punishment. In support of this proposition, he pressed into service the judgment in ***Nagaraj Shivarao Karjagi Vs. Syndicate Bank, Head Office, Manipal and Another*** reported in ***(1991) 3 SCC 219***. The relevant portion of the judgment is extracted hereunder:

16.The power of the punishing authorities in departmental proceedings is regulated by the statutory Regulations. Regulation 4 merely prescribes diverse punishment which may be imposed upon delinquent officers. Regulation 4 does not provide specific punishments for different misdemeanours except classifying the punishments as minor or major. Regulations leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misconduct proved in the case.



Under Regulation 17, the appellate authority may pass an order confirming, enhancing, reducing or completely setting aside the penalty imposed by the disciplinary authority. He has also power to express his own views on the merits of the matter and impose any appropriate punishment on the delinquent officer. It is quasi-judicial power and is unrestricted. But it has been completely fettered by the direction issued by the Ministry of Finance. The Bank has been told that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceedings should be strictly adhered to and not to be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance.

17. We are indeed surprised to see the impugned directive issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Firstly, under the Regulation, the Bank's consultation with Central Vigilance Commission in every case is not mandatory. Regulation 20 provides that the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle. Even if the Bank has made a self imposed rule to consult the



Central Vigilance Commission in every disciplinary matter, it does not make the Commission's advice binding on the punishing authority. In this context, reference may be made to [Article 320\(3\)](#) of the Constitution. The [Article 320 \(3\)](#) like [Regulation 20](#) with which we are concerned provides that the Union Public Service Commission or the State Public Commission, as the case may be, shall be consulted-on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in [A.N. D'Silva v. Union of India](#), [1962] Suppl; 1 SCR 968 has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the Government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission.

18.Secondly, the Ministry of Finance, Government of India has no jurisdiction to issue the



W.P.No.23494 of 2010

impugned directive to Banking institutions. The government may regulate the Banking institutions within the power located under the banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. So far as we could see, Section 8 is the only provision which empowers to the Government to issue directions. Section 8 reads:

8. Corresponding new banks to be guided by the directions of the Central Government.- "Every corresponding new bank shall, in the discharge of its function, be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve bank, give."

19. The corresponding new bank referred to in Section 8 has been defined under Section 2(f) of the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the Government to issue direction in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different



W.P.No.23494 of 2010

cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. the authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See: De Smith's Judicial Review of Administrative Action, Fourth Edition, p. 309). The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters.

4.In reply, the learned counsel for the respondents submitted that the allegations made against the petitioner are serious in nature. Proper oral enquiry was conducted. On the basis of the oral enquiry, the enquiry officer found that certain charges have been proved; Certain charge have been partly proved and certain charges are not proved. Petitioner has not raised any



W.P.No.23494 of 2010

objection at the time of marking of the exhibits, especially, there was no

objection made that the documents should not be marked without examining

the witnesses. All are bank documents and as the Manager of the Bank

petitioner knew about those documents. Petitioner was permitted to peruse

the original documents before they were marked. The documents produced

by the respondents are also marked even without examining the witnesses on

the side of the respondents. Therefore, it is not open to agitate that the

documents marked cannot be relied without examination of the witnesses.

Violating the well established banking procedures, petitioner had sanctioned

loan without sufficient security, allowed withdrawal of money in excess of the

amount available in the bank account etc. A banker cannot act like that.

Petitioner's act resulted in trust deficit and also loss to the bank. Disciplinary

authority on re-appreciating the evidence found that there are materials to

hold that all the charges had been proved and thus held so. Thereafter, on the

basis of the evidence available, the gravity of the charges, petitioner was

imposed with the suitable punishment of compulsory retirement in

commensurate with the charges levelled against him. It cannot be faulted.

Thus, the learned counsel for the respondent prayed for dismissal of this

petition.



W.P.No.23494 of 2010

5.The learned counsel for the respondent pressed into service the judgment in ***Deputy General Manager (Appellate Authority) and others Vs. Ajai Kumar Srivastava*** reported in ***(2021) 2 SCC 612*** with regard to judicial intervention of administrative action. Following factors are to be considered (i)Whether the enquiry was held by the competent authority. (ii) Whether the rules of natural justice are complied with. (iii)Whether the findings or conclusions are based on some evidence. (iv) Whether the authority has power and jurisdiction to reach finding of fact or conclusion. Beyond this there is no possibility of judicial review of the administrative action. He also relied on the judgment in ***State Bank of India and Others Vs. Narendra Kumar Pandey*** reported in ***(2013) 2 SCC 740*** for the proposition that in a departmental enquiry, the disciplinary authority is expected to prove the charges on preponderance of probability and not on proof beyond reasonable doubt. The relevant portion of the judgment is extracted hereunder:

19. We may in the light of the above-mentioned statutory provisions examine the correctness of the order passed by the High Court. The charged officer, admittedly, did not choose to nominate his defence representative in spite of several opportunities given by the Inquiring



W.P.No.23494 of 2010

Authority nor had he submitted any written statement to the Inquiring Authority. Time was given upto 14.01.1998 to do so but he had not availed of that opportunity. Neither the charged officer nor any defence representative appeared before the Inquiring Authority. The arguments that were raised before the High court of non-compliance of the procedure, could have been raised by the charged officer before the Inquiring Authority, but the same was not done and he had not co-operated with the inquiry proceedings. In the said circumstances, the Inquiring Authority was entitled to hold the enquiry ex parte as provided under Rule 68(2)(xix).

.....

23. The Inquiring Authority has examined each and every charge levelled against the charged officer and the documents produced by the presenting officer and came to the conclusion that most of the charges were proved. In a departmental inquiry, the disciplinary authority is expected to prove the charges on preponderance of probability and not on proof beyond reasonable doubt. Reference may be made to the judgments of this



W.P.No.23494 of 2010

Court reported in *Union of India v. Sardar Bahadur*; (1972) 4 SCC 618 and *R.S. Saini v. State of Punjab and Others*; (1999) 8 SCC 90. The documents produced by the bank, which were not controverted by the charged officer, supports all the allegations and charges levelled against the charged officer. In a case, where the charged officer had failed to inspect the documents in respect of the allegations raised by the bank and not controverted it is always open to the Inquiring Authority to accept the same.

25. The High Court, in our view, under *Article 226* of the Constitution of India was not justified in interfering with the order of dismissal passed by the appointing authority after a full-fledged inquiry, especially when the Service Rules provide for an alternative remedy of appeal. It is a well acceptable principle of law that the High Court while exercising powers under *Article 226* of the Constitution does not act as an appellate authority.

6.The judgment in *the Indian Oil Corporation & Ors. Vs. Ajit Kumar Singh & Anr. in Civil Appeal No.3663 of 2023* is relied on for the preposition



W.P.No.23494 of 2010

that the constitutional Court while exercising its jurisdiction of Judicial review under Article 226 or Article 136 of the constitution would not interfere with the findings of fact arrived in the departmental enquiry proceedings except in a case of mala fides or perversity. The relevant portion of the judgment is extracted hereunder:

28. The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority. the same has to be sustained."

(emphasis supplied)

Similar view was expressed in the later judgment of this Court in Ex-Const/Dvr Mukesh Kumar Raigar vs. Union of India and Ors.



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W.P.No.23494 of 2010

7. If the facts of the case are examined in the light of the settled principles of law in scope of judicial review, we find that the Division Bench of the High Court proceeded to reappreciate the entire evidence as if conviction in a criminal trial was being re-examined by the next higher court. The stand taken by the respondent no.1 was that he was on leave and there was no question of his tampering with any document. His contention was that merely because he had the duplicate key of the drawer where the documents were kept, he cannot be made responsible for any tampering.

7.It is reiterated by the learned counsel for the respondents that proper enquiry was conducted and petitioner was rightly punished with compulsory punishment for the proved misconduct. Thus, he prayed for dismissal of this petition.

8.Considered the rival submission and perused the records.



W.P.No.23494 of 2010

9. It is seen from the records produced that articles of charges issued against the petitioner reads about 13 charges. Charges supported by the statement of imputation of misconduct with elaborate details runs to page Nos. 4 to 38 of articles of charges. Petitioner submitted his detailed explanation dated 06.11.2008 denying the charges. At the end of his explanation, he admitted that few unintentional omissions that had taken place may be condoned in the background of the circumstances explained in his letter. Not satisfied with the explanation, an oral enquiry was conducted. During the oral enquiry, the management produced MEX.1 to MEX.144 and the petitioner produced DEX. 1 to DEX.179.

10. The enquiry officer considered every charge and found that charge numbers 1,3,4,5,7,6,8,9,12,13 are proved, charge numbers 2 & 7.2 are partly proved, charge numbers 6, 7.1, 7.3 to 7.5, 7.7 to 7.10, 10 & 11 are not proved. It is true that there was no witness examined on either side in support of their case. When the petitioner charges the respondent that the respondent have not examined any witnesses for proving MEX.1 to MEX.144, petitioner had also not examined any witnesses to prove DEX.1 to DEX.179. Both sides have marked the documents without any demur or objections. In fact, it is brought



W.P.No.23494 of 2010

to my notice that through a communication dated 24.06.2009 petitioner was permitted to verify the original documents pertaining to the charges. When the petitioner was permitted to peruse the original documents and when he has not made any objections for marking the documents, especially, when the documents DEX.1 to DEX.179 are marked without examining the witnesses, this Court is of the considered view that the petitioner cannot now agitate that the documents marked without examining witnesses cannot be relied. Therefore, this Court does not subscribe to the view expressed by the learned counsel for the petitioner that the documents relied by the department cannot be relied to confirm the decision.

11.The next contention of the learned counsel for the petitioner is that when the enquiry officer held that certain charges are partly proved and certain charges are not proved, the letter from the the disciplinary authority holding that even the charges partly proved, as proved and charges not proved, as proved is against the evidence and well established principles of law. When the disciplinary authority proposed to take a different view than the view taken by the enquiry officer, an opportunity must be given to the delinquent. But that was not done in this case. This submission is responded



W.P.No.23494 of 2010

by the learned counsel for the respondent stating that even if one charge is proved, that is enough for imposing the punishment. Therefore, the contrary view taken by the disciplinary authority than the view taken by the enquiry officer with regard to proof of charges will not alter the position. In **Deputy General Manager (Appellate Authority) and others Vs. Ajai Kumar Srivastava** reported in (2021) 2 SCC 612, it is held in paragraph 26 as follows:

26. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.

12.This judgment makes it clear that where the enquiry officer is not a disciplinary authority, the disciplinary authority may or may not agree with by



W.P.No.23494 of 2010

the findings recorded by the enquiry officer. In case of disagreement, the disciplinary authority has to record the disagreement, record the reasons for disagreement after affording an opportunity to the delinquent he may record his own findings, if the evidence available on record be sufficient for such exercise or else the matter be remitted back to the enquiry officer for further enquiry. However, in the case before hand, the disciplinary authority founds certain charges were proved, certain charges were partly proved and certain charges were not proved. When the disciplinary authority disagrees with the findings and proceeded to hold the charges partly proved and charges not proved, as proved, it is expected that the petitioner should have been given an opportunity of hearing, before taking such a decision. Unfortunately, that was not done in this case. Therefore, the findings reached by the disciplinary authority against the findings of the enquiry officer without giving an opportunity of hearing is not in tune with law.

13.In *Ramchander Vs. Union of India (UOI) and Ors.* reported in *MANU/SC/0484/1986*, when considering the need to give an opportunity of hearing by the appellate authority, the Hon'ble Supreme Court held as follows:



24. Professor de Smith at pp. 242-43 refers to the recent greater readiness of the Courts to find a breach of natural justice 'cured' by a subsequent hearing before an appellate tribunal. In *Swadeahi Cotton Mills v. Union of India*, [1981] 2 S.C.R. 533 although the majority held that the rule of audi alteram partem was not excluded from s.18A(1)(a) of the Industrial Undertakings (Development and Regulation) Act, 1951, Chinnappa Reddy, J. dissented with the view and expressed that the expression 'immediate action' may in certain situations mean exclusion of the application of the rules of natural justice and a post-decisional hearing provided by the statute itself may be a sufficient substitute. It is not necessary for our purposes to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in *Tulsiram Patel's* case unequivocally lays down that the only stage at which a Government servant gets 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the



W.P.No.23494 of 2010

charge proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and give a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given.

14.This judgment makes it abundantly clear that an opportunity to exonerate himself from the charges by showing that the evidence adduced at



W.P.No.23494 of 2010

the inquiry is not worthy of credence or consideration or that the charge proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal and therefore, it is important to give an opportunity of hearing to Government servant while hearing the appeal.

15. Admittedly, in this case, no opportunity of hearing was given to the petitioner while disposing the appeal. The appeal was disposed without oral hearing, but by considering the materials relating to the enquiry along with the appeal. The grounds raised by the petitioner in the appeal petition is that the explanation to the 13 charges were not apparently considered by the appellate authority. Disposal of appeal is not in tune with the judgment of the Hon'ble Supreme Court in *Ramchander Vs. Union of India (UOI) and Ors.* reported in *MANU/SC/0484/1986*. Thus, this Court finds that though petitioner cannot agitate now that the documentary evidence cannot be relied in the absence of the oral evidence in support of the documentary evidence, this Court finds merit in the submission of the petitioner that the contrary findings recorded by the disciplinary authority against the findings recorded



W.P.No.23494 of 2010

by the enquiry officer with regard to the charges partly proved and charges not proved as proved, without giving opportunity of hearing is against law.

Similarly, the disposal of the appeal without giving an opportunity of hearing to appellant to put forth his grounds of appeal against the punishment is also against the law laid down in ***Ramchander Vs. Union of India (UOI) and Ors.*** reported in ***MANU/SC/0484/1986***.

16.In this view of the matter the order in PGB/VIG/OF/SPK:2/10-11, dated 27th April 2010 and the order in PGB/VIG/47/2010-11, dated 10.07.2010 are set aside, consequently, this matter is remanded to the disciplinary authority to pass fresh orders, after giving an opportunity of hearing to the petitioner with regard to the charges partly proved, charges not proved. This exercise shall be completed as early as possible, preferably, within a period of three months from the date of receipt of a copy of this order.

17.Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition, if any, is also closed.

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order
NCC: Yes/No

30.04.2024



W.P.No.23494 of 2010

To:

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1.Tamil Nadu Grama Bank,
rep. by its Chairman and Disciplinary Authority, Head Office,
6, Yercaud Road,
Hasthampatti, Salem – 636 007.

2.Board of Directors,
Tamil Nadu Grama Bank,
Head Office, 6, Yercaud Road,
Hasthampatti, Salem – 636 007.



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W.P.No.23494 of 2010

G.CHANDRASEKHARAN, J.
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Pre-delivery Order in
W.P.No.23494 of 2010

30.04.2024