



W.P.Nos.10422 & 10423 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM:

THE HON'BLE Mr. JUSTICE G.K. ILANTHIRAIYAN

W.P.Nos.10422 & 10423 of 2020

AND

W.M.P.Nos.12674 & 12675 of 2020

T.Gokuldoss ... Petitioner in W.P.No.10422 of 2020

R.Ravichandran ... Petitioner in W.P.No.10423 of 2020

VS

1. The Additional Chief Secretary to Government,
Home (Police) Department,
Fort St.George,
Chennai – 600 009.

2.The Director General of Police,
Mylapore,
Chennai 600 004.

3.The Commissioner of Police,
Vepery,
Chennai 600 004.

4.The Joint Commissioner of Police,
Western Zone, Ambattur,
Chennai 600 058.

5.The Chief Vigilance Commissioner,
Fort St.George,
Chennai 600 009.



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6. The Assistant Commissioner of Police/Enquiry Officer,
SRMC Range, Greater Chennai Police,
Porur, Chennai.

... Respondents in both W.Ps

Prayer in W.P.No.10422 of 2020 : Writ Petition is filed under Article 226 of Constitution of India to issue a writ of Mandamus directing the 1st respondent to pass final orders in the disciplinary proceedings initiated against the petitioner in proceedings PR.No.25/2016/WZ dated 04.04.2016 issued by the 4th respondent based on the Enquiry Report submitted by the 6th respondent in proceedings Na.Ka.No.PR.25/WZ/ 2016 dated 06.11.2017 within a stipulated period of time.

Prayer in W.P.No.10423 of 2020 : Writ Petition is filed under Article 226 of Constitution of India to issue a writ of Mandamus directing the 1st respondent to pass final orders in the disciplinary proceedings initiated against the petitioner in proceedings PR.No.26/2016/WZ dated 04.04.2016 issued by the 4th respondent based on the Enquiry Report submitted by the 6th respondent in proceedings P.R.No.26/WZ/2016 dated 06.11.2017 within a stipulated period of time.

For Petitioner : Mr.Karthik Rajan
in both W.Ps. for Mr.V.Sukumar

For Respondents : Mr.V.Manoharan
in both W.Ps. Additional Government Pleader

COMMON ORDER

These writ petitions have been filed for a direction to the 1st respondent to pass final orders in the disciplinary proceedings initiated as against the



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petitioners in the proceedings dated 04.04.2016, based on the enquiry report dated 06.11.2017 submitted by the 6th respondent.

2. The petitioner in both the writ petitions are the delinquents subjected to disciplinary proceedings for the same set of charges. Therefore, a common order is passed in these two writ petitions.

3. The petitioner's case, in a nutshell, is as under :

3.1. While the petitioner in W.P.No.10422 of 2020 and the petitioner in W.P.No.10423 of 2020 were working as Sub-Inspector of Police and Head Constable, respectively, in the Traffic Investigation Wing, Tambaram, they were arrested and remanded to judicial custody, pursuant to the trap case registered in V.Cr.No.2/AC/2008/CC-V, for the offence under Section 7 of the Prevention of Corruption Act, 1988 and they were placed under suspension.

3.2. After completion of investigation, charge sheet was laid and the same was taken cognizance in S.C.No.6 of 2008 by the learned Chief Judicial Magistrate, Chengalpet and after a full-fledged enquiry, the said case ended in acquittal, by judgment dated 09.04.2014, which became final, since no appeal was preferred by the Vigilance and Anti-Corruption.



3.3. After a period of two years *i.e.*, on 04.04.2016, the petitioners were served with a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955, for the very same set of allegations, which were tried by the Chief Judicial Magistrate, Chengalpet, in S.C.No.6 of 2008.

3.4. Not satisfied with the explanation submitted by the petitioners, the Disciplinary Authority/1st respondent appointed the 6th respondent as Enquiry Officer to conduct the enquiry. The Enquiry Officer, after a detailed enquiry, submitted a report dated 06.11.2017, wherein, he held that charges were not proved against the petitioners. However, the Disciplinary Authority not satisfied with the conclusion of the Enquiry Officer, ordered re-enquiry in the presence of Directorate of Vigilance and Anti-Corruption officials, *vide* proceedings dated 14.11.2018.

3.5. Challenging the said proceedings, the petitioner in W.P.No.10422 of 2020, filed W.P.No.9785 of 2019 and the same is pending adjudication before this Court. However, there is no interim order in W.P.No.9785 of 2019 and as such, the Enquiry Officer proceeded with the re-enquiry and concluded that charges were not proved against the petitioners.



3.6. Even then, the Disciplinary Authority, without accepting the findings of the Enquiry Officer, once again, by proceedings dated 27.01.2020, remanded the matter for the third time to the Enquiry Officer to submit a report holding the charges as proved on the ground that the standard of proof required in the disciplinary proceedings is only preponderance of probability and not proof beyond reasonable doubt as required in criminal case, which is not permissible under law. While so, this writ petition is filed seeking the relief as stated in the opening paragraph.

4. In support of his contention that the disciplinary authority has fallen into error in ordering even second enquiry, the learned counsel for the petitioners relied upon the judgment of the Supreme Court in ***K.R.Deb vs Collector of Central Excise, Shillong (1971 AIR 1447)***, the relevant portion of which reads thus:

“11. A number of points have been raised before us but we need only mention one point, viz., that the Collector had no authority to appoint Shri K.P. Patnaik to inquire into the charge after the Inquiry Officers had reported in his favour. It was urged before us that such an inquiry is not contemplated by the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was contended that Rule 15 of the Classification and Control Rules did not contemplate successive inquiries, and at any rate, even if it contemplated successive inquiries there was no provision for setting aside earlier inquiries without giving any reason whatsoever. It was further contended that the order dated February 13, 1962 was *mala fide*.



12. Rule 15(1) of the Classification and Control Rules, reads as follows:

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(1) Without prejudice to the provisions of the Public Servants (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in Clauses (iv) to (vii) of Rule 13 shall be passed except after an inquiry, held as far as may be, in the manner hereinafter provided.

Clause (2) of Rule 15 provides for framing of charges and communication in writing to the government servant of these charges with the statement of allegations on which they are based, and it also provides for a written statement of defence. Under Clause (3) the government servant is entitled to inspect and take extracts from such official records as he may specify, subject to certain exceptions. Under Clause (4) on receipt of the written statement of defence the Disciplinary Authority may itself enquire into such, of the charges as are not admitted, or if it considers it necessary so to do, appoint a Board of Inquiry or an Inquiring Officer for the purpose. Clause (7) provides that at the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefore. If in the opinion of such authority the proceedings of the inquiry establish charges different from those originally framed it may record findings on such charges provided that findings on such charges shall not be recorded unless the Government servant has admitted the facts constituting them or has had an opportunity of defending himself against them. Under Clause (9) "the Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge." Clause (10) provides for issue of show-cause notice.

13. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary



Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

14. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant.” (emphasis supplied)

5. *Per contra*, the learned Additional Government Pleader appearing for the respondents advanced arguments based on the stance taken by the respondents in the counter affidavit.

6. Heard both sides and perused the materials available on record.

7. At the outset, it needs to be pointed out that the judgment of the Supreme Court in **K.R. Deb**, *supra*, relied on by the learned counsel for the petitioner is squarely applicable to the case of the petitioners. In the said case, the Supreme Court held that Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules does not provide for second enquiry. Eventually, it was held that the Disciplinary Authority therein was determined to get some Inquiry Officer to report against the appellant. In the instant case,



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the scenario is worse, meaning, the disciplinary authority has ordered for re-enquiry not once, but twice, and after finding that even the second enquiry report is not appealing to him, the Disciplinary Authority has ordered for conduct of third enquiry, which does not cut ice with this Court, in the light of Clauses 115 and 120 of the Tamil Nadu Vigilance Manual, which is applicable to the cases on hand. As per the said provisions, the Director of Vigilance and Anti-Corruption may address the Government through the Vigilance Commission seeking review of findings of the Enquiry Officer, that too, only in a case where departmental action is initiated on the basis of the report submitted by the Directorate of Vigilance and Anti Corruption. Admittedly, it is not the stand of the respondents even, that the fifth respondent, viz., the Chief Vigilance Commissioner, has ordered for initiation of departmental proceedings against the petitioner. When that being so, the Disciplinary Authority cannot keep on ordering re-enquiries endlessly, till he gets an adverse report from the Enquiry Officer to his satisfaction.

8. In view of the above, the Disciplinary Authority/1st respondent is directed to pass final orders in the disciplinary proceedings initiated against the petitioners as per the enquiry report submitted by the 6th respondent by proceedings dated 06.11.2017, within a period of four weeks from the date of



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receipt of a copy of this order.

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With the above direction, these writ petitions are allowed. No costs.

Connected W.M.P.s are closed.

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Index: Yes/No

Internet: Yes/No



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G.K. ILANTHIRAIYAN, J.

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