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W.P.No.26501 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.26501 of 2013

1.R.C.Mahendran (Deceased)
2.M.Lakshmi
3.C.M.Meenaskhi Sundaram
4.M.Revathy
5.C.M.Uma Maheshwari

...Petitioners

Vs

1.The Principal Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St.George,
Chennai – 09.

2.The Director General of Police,
Law and Order Tamil Nadu,
Mylapore,
Chennai – 04.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of 1st respondent herein vide G.O.(3 d)No.134, Home (Police.IV) department dated 23.12.2005 and quash the same and further direct the 1st respondent herein to give notional promotion to petitioner as Superintendent of Police from the date of which his junior was promoted and all the retirement benefits.



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For Petitioners :Mr.M.Purushothaman

For Respondents :Mr.Jayanthi

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ORDER

One R.C.Mahendran, the then Inspector of Police, District Crime Branch, Salem filed this Writ Petition, calling for the records of 1st respondent herein vide G.O.(3 d)No.134, Home (Police.IV) department dated 23.12.2005 and quash the same and further direct the 1st respondent herein to give notional promotion to petitioner as Superintendent of Police from the date on which his junior was promoted and all the retirement benefits.

2.The case of the deceased petitioner is that, he entered into service of the respondent in 1972 as Sup-Inspector of Police. He was promoted as Inspector of Police in 1989. He was awarded with Chief Minister's Medal for Gallantry during November 1981 for the effective work done in Anti-Naxalite Operations and Veerapan task force. When he was working as Inspector of Police, District Crime Branch, Salem, he received a direction from the Deputy Inspector of Police, Chennai to conduct enquiry upon the complaint from one T.V.A.Kumar, proprietor of Nandhi Dhall Mill against one Rajendra Prasad. This complaint was earlier enquired by Sub-Inspector, Bakthavatsalam. Not



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satisfied with his investigation, the enquiry was transferred to him in a case registered in Crime No.87 of 1992 for the offences under Sections 406, 420, 477, 477A and 461 IPC. He took up the investigation on 05.03.1993 and effectively carried out the investigation. He found out the culprits including Rajendra Prasad and his family members and staffs. During the course of investigation, he unearthed the illegal activities of Rajendra Prasad, which included evasion of tax to the tune of Rs.48,00,000/-.

2.1.Rajendra Prasad tried to prevent the deceased petitioner from investigating the case. He filed Writ Petition before this Court, restraining the petitioner from investigating this case. He sent a representation dated 19.03.1993 to the Chief Minister Cell making allegations against him. In both Writ Petition and representation sent to Chief Minister Cell, there was no whisper about corruption allegations against the petitioner. However, using his money and muscle power, he approached CBCID officer, alleging that, deceased petitioner demanded a bribe on 08.01.1993 and 11.01.1993.

2.2.The preliminary departmental enquiry was conducted in 52/97 under Section 3(b) by Deputy Inspector of General of Police, Vellore range and allegations against him stood disproved. Based on the same allegations the



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T.D.P, Coimbatore conducted enquiry in D.E.No.59/1995, later changed to 46 to 1998 and finally numbered as D.E.No.6 of 2000. Without properly following the procedure for enquiry and without examining the oral and documentary evidence properly, enquiry officer found the charges against the petitioner proved. Commissioner conformed the charges. 2nd respondent without considering the deceased petitioner's representation, ordered his removal from service.

2.3. Therefore, deceased petitioner filed O.A.No.2489 of 2003. It was later transferred to this Court and numbered as W.P.No.36906 of 2005. During the pendency of the Writ Petition, Government of Tamil Nadu issued a G.O.(MS).No.240, Home (Pol 8) Department, dated 23.03.2005 for giving accelerated promotion for persons, who participated in operation leading to nabbing and death of Veerapan. Petitioner submitted his representation. He filed W.P.No.29793 of 2005 to direct the respondents to consider his representation and that was allowed by this Court.

2.4. Later Government passed a order on 23.12.2005 rejecting his representation. This order rejecting his representation was issued in G.O.(3D)No.134, Home (Pol.IV) Department, dated 23.12.2005. This order was



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not communicated to the petitioner. Therefore, believing that his representation would be considered, he withdrew the W.P.No.36690 of 2005 and thus, it was dismissed as withdrawn on 01.03.2006. Finding that his representation was not properly considered, he approached the authority through representation and under Right to Information Act and finally he came to know about rejection of his representation through Letter No.72979/Pol-IV/2009-1, dated 06.10.2009.

2.5. Thereafter, he filed the present Writ Petition. Consequently, this Writ Petition was dismissed, on the ground of laches i.e., delay in approaching the Court, without going into the merits of the case. He filed W.A.No.501 of 2014 against the dismissal order, wherein this Court permitted to withdraw this Writ Appeal, with a liberty to file Review Application. Accordingly, he filed Review Application No.184 of 2015. This Court on 12.08.2021, ordered review of the order dated 24.09.2013 passed in W.P.No.26501 of 2013 and thus, this Writ Petition is before me.

3. It is the submission of the learned counsel for the petitioner that when the petitioner was no way incharge of the investigation in Crime No.87 of 1992 for the offences under Sections 406, 420, 477, 477A and 461 IPC against Rajendra Prasad till 05.03.1993, the allegations that he demanded bribe of



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Rs.2,80,000/- and received Rs.20,000/- on 08.01.1993 and Rs.30,000/- on

11.01.1993 is false. This allegation is made only to harass the deceased petitioner, thus to escape from the clutches of law, only after the deceased petitioner found various illegalities committed by the Rajendra Prasad including tax evasion running to lakhs.

3.1.It is further submitted that, Disciplinary Authority without properly conducting the enquiry and appreciating oral and documentary evidence, recorded a finding of guilty. Petitioner submitted his detailed explanation for the enquiry report denying the findings. However, the Disciplinary Authority has not adverted to the findings of the enquiry Officer, passed a cryptic and non-speaking order of holding that as per the enquiry report charges against the deceased petitioner are proved and therefore, petitioner was liable to be imposed with a punishment of removal from service. So is the case that the order of Appellate Authority. Appellate Authority has also not considered the grounds raised by the appellant/delinquent in appeal proceedings and passed a non-speaking order without application of mind.

4.In reply, learned counsel for the respondents submitted that the charges against the deceased petitioner was demand and acceptance of bribe. Proper



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charges have been framed and enquiry was conducted. Enquiry Officer found the charges against the petitioner stood proved. The charges and report of the Enquiry Officer were considered by the Disciplinary Authority. Having satisfied with the findings of the report of the Enquiry Officer, the Disciplinary Authority imposed the punishment of removal from service and that was confirmed by the Appellate Authority. There is no illegality and irregularity in conduct of enquiry, passing of final orders and rejection of appeal.

5.Considered the rival submissions and perused the records.

6.As per the charges, the main allegations against the deceased petitioner was that, he demanded a sum of Rs.2,60,000/- from Rajendra Prasad as bribe and accepted Rs.20,000/- at 8.00 p.m., on 08.01.1993 and Rs.30,000/- on 11.01.1993 in the presence of witness V.Manickam and Arumugam, Ex.MLA. It is pertinent to refer here that, Rajendra Prasad sent a representation to the Chief Minister's Cell on 19.03.1993 alleging that harassment in the investigation. He again filed W.P.No.7292 of 1993 against TVA.Kumar and deceased petitioner for the relief that 2nd respondent namely deceased petitioner should be restrained from misusing his legal power and from further investigating the case. The reading of the representation given to the Chief Minister's Cell and



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affidavit filed in W.P.No.7292 of 2013, shows that, there is no whisper about the demand of bribe of Rs.2,60,000/- and payment of Rs.20,000/- and Rs.30,000/- on 08.01.1993 and 11.01.1993 respectively. Therefore, it is apparent that the allegations of demand and acceptance of bribe is only an after thought, to prevent the deceased petitioner from further investigating the case and to harass him.

7.Apart from the submissions of the learned counsel for the petitioner that, the Enquiry Officer has not properly enquired the charges, appreciated the oral and documentary evidence, it is brought to the notice of this Court that the final order and the Appellate order passed by the Authorities are non-speaking orders.

8.The final order runs to 1 ½ pages. Paragraphs 1 to 5 reveals about the gist of the allegations, charges against the delinquent, submission of the delinquent and his further representation, findings of the Commissioner of Disciplinary Proceedings,. Thereafter, order in paragraph Nos.5 to 7 reads as follow,

“5. I have carefully gone through the findings of Commissioner for Disciplinary proceedings and further



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representation dated 08.06.2002 of Accused Officer, Tr.R.C.Mahendran, Inspector of Police.

6. Though the Accused Officer, Inspector of Police, Tr.R.C.Mahendran has denied the charge, it, has been proved clearly against him for the reasons mentioned in detail in the findings 'Analysis of Evidence and Arguments'.

7. It is therefore ordered that the Accused officer Tr.R.C.Mahendran, Inspector of Police is "Removed from Service" with effect from the date of receipt of the order."

9.Apparently, the Disciplinary Authority has not considered in detail the report of the enquiry, in a proper manner, in which, it is expected to be considered.

What are the evidence/oral and documentary evidence produced in support of the charges ?

What is evidence against the delinquent that proved the charges?

There is no discussion at all on these aspects. It is stated that delinquent/deceased petitioner submitted his further representation. His further representation was considered only in a nutshell. His representation with regard to oral and documentary evidence was not properly addressed. Therefore, it is clear that the Disciplinary Authority had not applied his mind to the enquiry report. Without considering evidence properly, the further representation of the deceased petitioner, he passed an order. The order of removal from service



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passed against deceased petitioner is a non-speaking order, without proper application of mind and therefore, it is liable to be set aside. Accordingly, the order passed by 2nd respondent in Rc.No.249360/Con I(2)/95 dated 03.09.2002 and the order passed by the 1st respondent vide G.O.(3 d)No.134, Home (Police.IV) department dated 23.12.2005 are set aside.

10.The legal representatives of deceased petitioner are impleaded as P2 to P5. The respondents are directed to notionally reinstate the deceased petitioner into service and give notional eligible promotion and all other attendant benefits, including monetary benefits. Since petitioner had died and represented by legal heirs, the monetary benefits and pensionary benefits have to be paid to his legal heirs.

11.With the above directions, this Writ Petition is allowed. Consequently, the connected Miscellaneous Petition, if any, is closed. No costs.

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Index:Yes/No
Speaking order/Non-speaking order
gd



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