



W.P.(MD).No.16227 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.16227 of 2023

and

W.M.P.(MD)Nos.13596 to 13598 of 2023

C.Ilavarasu

... Petitioner

Vs.

- 1.The Secretary to Government,
Home Department,
Secretariat, St.George Fort,
Chennai-600 009.
- 2.The Secretary to the Government,
Public (Law & Order) Department,
Secretariat, St.George Fort,
Chennai-600 009.
- 3.The Director General of Police,
O/o. The Director General of Police,
Chennai-600 004.
- 4.The Additional Director General of Police,
(Law & Order),
O/o.The Director General of Police,
Chennai-600 004.



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5.The Deputy Inspector General of Police,
O/o. The Deputy Inspector General of
Police,
Dindigul Range, Dindigul.

6.The Deputy Inspector General of Police,
O/o. The Deputy Inspector General of
Police, Ramanathapuram Range,
Ramanathapuram.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Cetrriorarified Mandamus, to call for the records relating to the impugned order of punishment vide ந.க.எண்.பி1/2413/2019 த.ப.எண்.21/2015 விதி 3(ஆ) (தேனி மாவட்டம்) நாள்: 05.11.2020 passed by the 6th respondent and the consequential orders passed vide Rc.No.841368/Con.III(3)/2020 dated 02.04.2021 by the 4th respondent and Rc.No.841368/Con.III(3)/2020 dated 21.10.2021 passed by the 3rd respondent and quash the same and consequently direct the respondents to provide notional promotion to the post of Deputy Superintendent of Police from the date on which the juniors were promoted with all other attendant monetary benefits and consequential promotion to the post of Additional Superintendent of Police.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr..R.Baskaran,
Additional Advocate General
Assisted by
Mr.S.Shaji Bino
Special Government Pleader



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ORDER

This Writ petition has been filed to quash the impugned order of punishment dated 05.11.2020 passed by the 6th respondent and the consequential orders dated 02.04.2021 and 21.10.2021 passed by the 4th respondent and 3rd respondent respectively and consequently, directing the respondents to provide notional promotion to the post of Deputy Superintendent of Police from the date on which the juniors were promoted with all other attendant monetary benefits and consequential promotion to the post of Additional Superintendent of Police.

2. The petitioner was appointed as Sub-Inspector of Police on 01.03.1996 and further promoted as Inspector of Police in the year 2005. While the petitioner was working as Inspector of Police in Periyakulam Police Station, Theni District in the year 2010, on the basis of the complaint given by one Thiru.Jeyakumar of Periyakulam, a case in Crime No. 1071 of 2010 was registered in the Periyakulam Police Station for the offences under Sections 457 and 380 of the Indian Penal Code on 15.11.2020 for having committed theft in the dwelling house of the complainant. During the course of investigation, it



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was revealed that four accused namely John (A1), Sasikumar (A2), Sathish @ Imran Ahamed (A3) and Chandrasekhar(A4) were involved in the crime. Subsequently, the accused Nos.1 to 3 were arrested and remanded to judicial custody. The 4th accused namely Chandrasekhar was absconding and he could not be arrested by the police. While so, on 21.11.2010, one Thiru.Chinnavar @ Edward had given a complaint to the Special Sub-Inspector of Police Thiru.Kalaichelvan attached with Periyakulam Police Station alleging that on 21.11.2010 at about 2 o'clock in the early morning, when he was proceeding towards Samathuvapuram by his bicycle for the purpose of engaging labours, the deceased Chandrasekhar, S/o.Anantharaj, was found struggling in chest pain in the Periyakulam to Madurai Main Road. He was taken to the Periyakulam Government Hospital by the said Chinnavar @ Edward and he was admitted at about 3.15 A.M. in the morning. The Medical Officer Thiru.Karthikeyan had recorded Accident Register. After giving preliminary treatment, he was taken to the Government Medical College Hospital, Theni, where he was declared brought dead by the doctors. The complainant Mr.Chinnavar @ Edward alleged that the police had gone in search of the deceased Chandrasekhar on 20.11.2010 at about 10.30 P.M in connection with



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the theft case. On the basis of the complaint of Thiru.Chinnavar @ Edward, a case in crime number 1077 of 2010 was registered in Periyakulam Police Station under Section 174 Cr.P.C.

3. The petitioner was placed under suspension by order dated 08.12.2010 alleging that he had failed to handle the situation by not taking precautionary measure while enquiring the accused concerned in crime number 1077 of 2010 registered by the Periyakulam Police Station, under Rule 3(e)(1)(i) of the Tamil Nadu Subordinate Service (Discipline and Appeal) Rules, 1955. Thereafter, the District Collector, Theni District has directed the Sub-Divisional Magistrate/ Revenue Divisional Officer (RDO), Periyakulam to hold full-fledged magisterial enquiry under Clause 151 (3) of the Tamil Nadu Police Standing Order to enquire into the alleged suspicious death of Mr. Chandrasekar.

4. Thereafter, the Revenue Divisional Officer conducted an enquiry and submitted his enquiry report dated 20.06.2011 holding that the allegations that the said Chandrasekar was beaten up by five police officials as true. However, he further observed in his enquiry report that there had been no eyewitness to



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the said occurrence. On the basis of the circumstantial evidence, an inference could be drawn that the petitioner and other police constables attached with Periyakulam Police Station had attacked the deceased. The finding of the Revenue Divisional Officer was mainly relied upon by the Enquiry Officer who had conducted oral enquiry.

5. Besides RDO enquiry, the Inspector of Police CBCID, Madurai District was directed to conduct enquiry by the Additional Director General of Police, CBCID vide proceeding dated 18.05.2011. On the basis of the said proceeding, the Inspector of Police, CBCID conducted enquiry to find out the circumstances which led to the death of Thiru.Chandrasekar. On the basis of the enquiry conducted by the Inspector of Police, the Deputy Superintendent of Police CBCID, Madurai Range submitted a report dated 29.09.2011 requesting to take appropriate action against the erring police personnel attached with the Periyakulam Police Station. The Inspector of Police. CBCID has allegedly recorded the statement of witnesses, he has not admittedly obtained signature of the witnesses in the statements. On the other hand, the DSP, CBCID mainly



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relied on the report of RDO, Periyakulam for recommending initiation of departmental proceeding against the petitioner and others.

6. In the meanwhile, the petitioner was reinstated in service by the Deputy Inspector General of Police, Dindigul Range vide proceeding dated 29.06.2011. Thereafter, the petitioner duly joined duty in Dindigul range. While so, the first respondent issued G.O.M.No. 85, Public (Law & Order-A) Department dated 21.01.2013, whereby the disciplinary authority was directed to take disciplinary action against the petitioner and others. The said Government order was passed on the basis of the report filed by DSP, CBCID. On the basis of the said Government order, the petitioner was again placed under suspension by the Deputy Inspector General of Police, Dindigul range vide proceedings dated 08.04.2015. Aggrieved over the second suspension on the same set of facts, the petitioner filed a writ petition in W.P.(MD)No. 6160 of 2015 before this Court and this Court was pleased to dismiss the same by order dated 27.04.2016. Challenging the order of the learned Single Judge in the aforesaid writ petition, the petitioner filed W.A.(MD)No. 993 of 2016 before the Hon'ble Division Bench of this Court. The Hon'ble Division Bench



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of this Court was pleased to stay the operation of the suspension order in C.M.P(MD)No. 5973 of 2016 by order dated 15.11.2016. Following which, the petitioner's suspension was revoked and he was reinstated in service by the Deputy Inspector General of Police, Dindigul range, vide order dated 30.01.2017. In the consequential proceeding, the Superintendent of Police, Dindigul directed the petitioner to report duty at Dindigul range on 31.01.2017.

7. In the meanwhile the Deputy Superintendent of Police, Periyakulam has conducted investigation in respect of the case in Crime No.1077 of 2010 registered in Periyakulam Police Station under Section 174 Cr.P.C in connection with the death of Chandrasekar. The investigating officer has recorded the statement of various witnesses and after conducting an elaborate investigation, the Deputy Superintendent of Police filed a final report before the Jurisdictional Magistrate as (Action Dropped). The witnesses including the wife of the deceased has categorically stated during the investigation that her husband met with an accident when he was returning from Kodaikanal. The wife of the deceased had further stated that her husband had come to the house on 20.11.2010 at about 8.30 P.M, with injuries. On enquiry, he had informed to



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his wife that when he was coming down from the hill area by motorcycle, he lost his control over the bike which has sledded and rolled down. In the process, the deceased had sustained multiple injuries, bruise and contusion all over the body.

8. In the meanwhile, the Revenue Divisional Officer, Periyakulam filed a private complaint before the learned Judicial Magistrate, Periyakulam vide unnumbered P.R.C of 2014 against the petitioner and three others alleging that they have committed the offence under Section 342 and 304 (II) read with 34 of Indian Penal Code. Aggrieved by the filing of the private complaint the petitioner filed CrI.OP(MD)No. 22888 of 2016 before this Court seeking to quash the said private complaint and this Court quashed the same by order dated 05.04.2019 holding that the private complaint filed by RDO, Periyakulam is illegal and without jurisdiction.

9. On the basis of the Government Order, vide G.O.Ms.No. 85, Public (Law & Order-A) Department dated 21.01.2013 issued by the 2nd respondent, the petitioner was issued with a charge memo dated 10.04.2015 framing two



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charges against him by the 5th respondent on the basis of the report submitted by RDO, Periyakulam and DSP, CBCID. The Superintendent of Police, Theni district was appointed as Enquiry Officer for conducting oral enquiry with respect to the said charges. 30 witnesses were examined on the side of the prosecution during oral enquiry and no document was produced before the Enquiry Officer during the oral enquiry. The petitioner was given opportunity to cross-examine the witnesses produced by the prosecution. None of the witnesses made any specific allegations incriminating the petitioner in the alleged suspicious death of the said Chandrasekhar. Since most of the witness did not speak anything against the petitioner, strangely the Enquiry Officer himself cross examined the witnesses with malafide intention to implicate the petitioner in the departmental proceedings.

10. On the side of defence DW 1 to DW 4 and DW 6 were examined during oral enquiry. DW1 to DW4 who are police personnel attached with Periyakulam Police Station had stated in the enquiry that the deceased was not at all brought to the Periyakulam Police Station on 20.11.2010. Further, DW6, one Senthilkumar who had been performing duty at Devadhanapatti Police



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shooting range for more than 10 months during the relevant period, deposed before the Enquiry Officer that the deceased was not brought to the police shooting range on 20.10.2010 and as alleged by the prosecution. However, after enquiry, the Enquiry Officer submitted his report dated 11.03.2019 holding that both the charges framed against the petitioner as proved by the prosecution. The Enquiry Officer mainly relied on the deposition of P.W.31, Inspector of Police, CBCID and P.W.32, Revenue Divisional Officer, Theni. On the basis of the enquiry report, the petitioner was issued show cause notice by the disciplinary authority on 20.08.2020 seeking explanation, for which the petitioner submitted a detailed explanation on 24.09.2020.

11. However, without considering his explanation, the disciplinary authority namely the 6th respondent passed the impugned order of punishment dated 05.11.2020 by which the petitioner was imposed with a major punishment of removal from service. The petitioner filed an appeal before the 4th respondent as against the order of punishment dated 05.11.2020 and the appeal was dismissed by the 4th respondent by order dated 02.04.2021. As against the same, the petitioner filed a mercy petition before the 3rd respondent



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on 04.09.2021. The 3rd respondent modified the punishment of “removal from service” into that of “Postponement of increment for a period of 2 years without cumulative effect” by order dated 21.10.2021. Challenging the impugned order of punishment passed by the 6th respondent, vide proceedings dated 05.11.2020 and the consequential orders dated 02.04.2021 passed by the 4th respondent and 21.10.2021 passed by the 3rd respondent, the petitioner has filed this writ petition.

12. The learned counsel for the petitioner Mr. Shanmugaraja Sethupathi took me along each and every contention raised in the writ petition and as well as in the grounds of writ petition.

13. Per contra, the learned Additional Advocate General Mr. R. Baskaran as assisted by the learned Special Government Pleader Mr.S.Shaji Bino took me along the various contentions raised in their counter affidavit.

14. Heard the rival submissions raised by both the parties. Anxiously and carefully perused the materials available on record.



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15. The entire crux of this case revolves around two criminal cases in Crime No.1071 of 2010 dated 15.11.2010 and Crime No.1077 of 2010 dated 21.11.2010 on the file of the Periyakulam Police Station. One Jeya Kumar preferred a complaint for theft committed in a dwelling house in a case in Crime No. 1071 of 2010 on the file of the Periyakulam Police Station dated 15.11.2010 which was registered under Sections 457 and 380 of the Indian Penal Code against four persons in which the first accused to third accused were arrested and the fourth accused namely Chandrasekhar absconded.

16. On 21.11.2010 an information was received from one Chinnavar @ Edward that the aforesaid absconding fourth accused in Crime No. 1071 of 2010 namely Chandrasekhar was found to be suffering with chest pain at about 2 A.M on 21.11.2020 at Periyakulam to Madurai Main Road and he was immediately taken to the Government Hospital, Periyakulam by the said Chinnavar @ Edward. From there he was further referred to Theni Medical College Hospital wherein he was found to be brought dead. On the basis of the information given by Chinnavar @ Edward a case in crime No. 1077 of 2010 on the file of Periyakulam Police Station was registered under Section 174 of



Criminal Procedure Code. On information of the death of the said Chandrasekhar, his relatives gathered and staged road roko on Theni-Badlagundu road near Ambedkar statue accusing police of killing him by physical violence. Following which, the Deputy Superintendent of Police, Periyakulam requested the Revenue Divisional Officer, Periyakulam to conduct inquest over the body of the deceased. The Revenue Divisional Officer, Periyakulam conducted inquest and had sent the body for Autopsy. The RDO, Periyakulam had sent a preliminary report stating that the public assumed that the death of Chandrasekhar was suspicious by police torture and found multiple injuries over the body and requested to take further action in this regard.

17. In view of the same, the District Magistrate and the District Collector, Theni District, vide proceedings dated, 22.11.2010 directed the Sub-Divisional Magistrate and Revenue Divisional Officer, Periyakulam to hold a full-fledged magisterial enquiry under Section 151(3) of the Tamil Nadu Police Standing Orders into the incident of the allegation of causing death of Chandrasekhar against the Police Personnel on 21.11.2010 and submit a report. RDO, Periyakulam vide proceedings dated --.12.2010 signed on 20.06.2011,



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filed a report before the District Collector, Periyakulam observing that though there had been no eyewitness to the custodial torture all the circumstances point out that the incident to be true and based upon circumstances the Revenue Divisional Officer, Periyakulam concluded that the petitioner along with other officials had visited the house of the victim Chandrasekhar on 20.11.2010 at about 10.30 P.M in search of the theft articles which was done illegally, without following any established principles, which was said to have done after taking the custody the said victim.

18. It was further elaborated in the said report that according to the statement of ward member one Chinnavar @ Edward, it was the police officials who took Chandrasekhar from his house and accommodated him to the hospital and further the victim was found with various external injuries all over the body which establishes the factum of custodial torture. Further, vide the said report, the RDO had recommended for strict disciplinary action against the petitioner and the other wing officials. Besides the RDO enquiry, the Inspector of Police CBCID, Madurai city was directed to conduct an enquiry by the Additional



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Director General of Police, CBCID vide proceedings dated 18.05.2017 in this regard.

19. On the basis of the said direction given by the Additional Director General of Police, CBCID, the Inspector of Police, CBCID conducted an enquiry to find out the circumstances which led to the death of the victim Chandrasekhar. On the basis of the said enquiry conducted by the Inspector of Police, Deputy Superintendent of Police, CBCID, Madurai range submitted a report dated 29.09.2011 requesting to take appropriate action against the petitioner and other police personnel who were involved in the custodial death of the victim Chandrasekhar at Periyakulam Police Station. Based on the report of the Deputy Superintendent of Police, CBCID, Madurai range dated 29.09.2011 the Government, vide G.O.Ms.No. 85, Public (Law & Order) Department dated 21.01.2013, directed to take appropriate disciplinary action against the petitioners and other erring officials.

20. In the meanwhile, the wife of the deceased Chandrasekhar namely C.Jelina Epsibha filed a writ petition before this Court in W.P.(MD)No. 3939



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of 2011 seeking to direct the Government to appoint a Judicial Officer to conduct Judicial Enquiry under Section 176 (1) of the code of Criminal Procedure and to provide adequate compensation of Rs.25,00,000 (Rupees Twenty Five Lakhs only) and further to initiate necessary departmental action against the petitioner and the other police officers. The Superintendent of Police, Theni had defended the petitioner and the other officials who were alleged to have involved in the custodial death of the victim Chandrasekhar in the aforesaid writ petition by filing a counter affidavit in favor of the petitioner and the other officials.

21. In the in the interregnum period, the Deputy Superintendent of Police, Periyakulam conducted investigation in respect of the case in Crime No. 1077 of 2010 registered in Periyakulam Police Station under Section 174 Cr.P.C with respect to the death of Thiru.Chandrasekhar. The specific allegation as against the petitioner and the other officials is, that on, 20.11.2010 at about 7 P.M., the petitioner and other officials had taken the victim Chandrasekhar to the Police Station with respect to the Crime No. 1071 of 2010 registered on 15.11.2010 in Periyakulam Police Station. On being informed of



the death of the said Chandrasekhar, massive protest was organized by the relatives and other political parties as against the alleged custodial death of the said Chandrasekhar.

22. Post-mortem report of the deceased Chandrasekhar revealed 20 external injuries which is elaborated as follows:

- a) *Abrasion of size 2 cms * 0.5 cm seen over the left shoulder.*
*On dissection: Contusion of size 3 cms * 2 cms* 0.5 cm seen.*
It was dark red in colour.
- b) *Abrasion of size 2 cms * 0.5 cm seen over the right shoulder.*
*On dissection: Contusion of size 3 cms * 2 cms * 0.5 cm seen.*
It was dark red in colour.
- c) *Contusion of size 8 cms * 4 cms seen over the lower back.*
(lumbo-sacral region)
On dissection: It was 2 cms muscle depth.
It was dark red in colour.
- d) *Right ankle was swolloned on the lateral aspect.*
(12cms 9cms)*
- e) *Left ankle was swollened on the lateral aspect.*
(11cms 8.5cms)*
*On dissection: Contusion of size 12 cms * 9.5 cms * 4 cms muscle depth seen. It was dark red in colour.*



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*f) On dissection: Contusion of size 16 cms * 20 cms * entire 8 cms muscle depth seen over the right gluteal region.*

It was dark red in colour.

*g) On dissection: Contusion of size 14 cms * 24 cms* entire 8 cm muscle depth seen over the left gluteal region.*

It was dark red in colour.

h) On dissection: Contusion of size 13 cms 16 cms * entire 4 cms muscle depth seen over the left hip.*

It was dark red in colour.

*i) On dissection: Contusion of size 16 cms * 12 cms * entire 4cms muscle depth seen over the right hip.*

It was dark red in colour.

j) On dissection: Contusion of size 13 cms 13 cms * entire 2 cms muscle depth seen over the left popliteal fossa.*

It was dark red in colour.

*k) On dissection: Contusion of size 7 cms * 5 cms * 1 cm muscle depth seen over the right popliteal fossa.*

It was dark red in colour.

*l) On dissection: Contusion of size 15 cms * 12cms * 6cms muscle depth seen over the lateral aspect of left ankle joint.*

It was dark red in colour.

*m) On dissection: Contusion of size 13 cms * 15 cms * 4 cms muscle depth seen over the lateral aspect of right ankle joint.*

It was dark red in colour.



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- n) *On dissection: Contusion of size 10 cms * 16 cms * 4 cms
muscle depth seen over the back of left elbow joint.
It was dark red in colour.*
- o) *On dissection: Contusion of size 10 cms * 7 cms * 5 cms
muscle depth seen over the back of left upper arm.
It was dark red in colour.*
- p) *On dissection: Contusion of size 16 cms * 7 cms * 2 cms
muscle depth seen over the back of left seapular region.
It was dark red in colour.*
- q) *On dissection: Contusion of size 6 cms * 10 cms * 2 cms
muscle depth seen over the back of right upper arm.
It was dark red in colour.*
- r) *On dissection: Contusion of size 16 cms * 16 cms * 3.5 cms
muscle depth seen over the front of left knee joint.
It was dark red in colour.*
- s) *On dissection: Contusion of size 14 cms * 16 cms * 3.5 cms
muscle depth seen over the front of right knee joint.
It was dark red in colour.*
- t) *On dissection of abdomen: Contusion of size 12 cms * 12 cms
seen over the transverse mesocolon. It was dark red in colour.*

23. The RDO had recorded the statement of eight persons on 21.11.2020
in which one Ravi, S/o. Nappan had categorically deposed that on 20.11.2010



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at about 7 P.M, he directly saw the petitioner and other police securing and transporting the said deceased Chandrasekhar from Vadakarai Police Station. Interestingly in due course of time, the deceased wife Mrs. C.Jelina Epsipa who had even filed a writ petition in W.P.(MD)No. 3939 of 2011 seeking a judicial enquiry for the custodial death of her husband including compensation to a tune of Rs. 25,00,000 (Rupees Twenty Five Lakhs only) and departmental action as against the erring police officials in a somersault took an “U” turn, giving a statement to the Deputy Superintendent of Police, Periyakulam who was investigating Crime No.1077 of 2010 that, her husband had sustained injuries while he was riding a two-wheeler from high range when he lost control over the bike and and fell down sustaining a number of injuries all over his body. Interestingly all the other witnesses also parrated the same as that of his wife on the basis of which the Deputy Superintendent of Police, Periyakulam had filed a final report before the Jurisdictional Magistrate as Action Dropped in the aforesaid Crime No.1077 of 2010. Consequently, the said writ petition in W.P. (MD)No. 3939 of 2011 was also withdrawn by the wife of the deceased.



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24. This court is not inclined to go into the details of the sudden change in mind of the wife of the deceased and other witnesses who had deposed against the petitioner and other officials at the first instance before the RDO and the investigating officers of CBCID. In the meanwhile, the petitioner was visited with charge memo dated 10.04.2015 and the detailed departmental enquiry was conducted as against him. 30 prosecution witnesses were examined on behalf of the department and the petitioner was given ample opportunity to cross-examine all the department side witnesses, 5 witnesses were examined on the side of the delinquent. The Superintendent of Police, Theni District who diligently conducted the departmental enquiry by giving appropriate opportunity to the delinquents to cross-examine the witnesses produced by the prosecution and by furnishing all the documents whatever required by the delinquents for the purpose of defending their case. Thereafter, the Enquiry Officer, after affording opportunity to the petitioner and after considering all the evidence and defends put up by the petitioner had filed a proven minute dated 11.03.2019.



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25. Based on which a show cause notice was issued to the petitioner on 28.08.2020 for which the petitioner also submitted a detailed explanation dated 19.10.2020. Thereafter, considering the proven minute the explanation of the petitioner the evidence on record and the depositions, the 6th respondent passed the impugned order of removal from service in ந.க.எண்.பி1/2413/2019 த.ப.எண்.21/2015 under rule 3 (AA) (Theni district) dated 05.11.2020 and the same was served upon the petitioner on 06.11.2020. Though the petitioner preferred an appeal as against the said impugned order of punishment before the 4th respondent, the 4th respondent after perusing all the records had dismissed the appeal, vide proceedings dated 02.04.2021 bearing R.C.No. 841368/CON.III(3)/2020. As against the same the petitioner preferred a review petition before the 3rd respondent and the 3rd respondent after perusing all the records and by considering the same on merits and on mercy grounds had modified the said punishment of removal from service into one of postponement of next increment for 2 years without cumulative effect vide proceedings in R.C.No. 841368/CON-.III(3)/2020 dated 21.10.2021.



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26. The learned counsel for the petitioner emphatically submitted that the Enquiry Officer having examined 32 witnesses, none of which witnesses had supported the allegation related to the charges framed as against the petitioner, the Enquiry Officer ought not to have held the two counts of charges framed as against the petitioner as proved. Despite the relatives including the wife of the deceased having categorically deposed before the Enquiry Officer that the deceased met with an accident when he was returning from Kodaikanal and that he had sustained injuries only in that accident the Enquiry Officer had blindly proceeded to hold that the delinquents are guilty. The learned counsel for the petitioner attacked the impugned orders that they were based on presumption and conjunctures.

27. The learned counsel for the petitioner further submitted that in the absence of eyewitness to the occurrence of custodial torture and harassment, the impugned order is bad in the eye of law. The learned counsel for the petitioner relied upon various judgments which are as follows:

(i) W.P.No.23644 of 2018 dated 28.08.2019; and



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(ii) Ajit Kumar Nag .Vs. General Manager (PJ) Indian Oil Corporation Ltd., Haldia and others dated 19.09.2005 reported in (2005) 7 SCC 764;

The Hon'ble Apex Court in the case of ***BC Chaturvedi .Vs. Union of India and others reported in 1995 6 SCC 749*** has dealt with a similar case and the relevant portion of which is applicable to this case is extracted as follows:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is



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guilty of the charge. The Court / Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court / Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

28. In yet another case of ***Ajit Kumar Nag .Vs. General Manager (PJ) Indian Oil Corporation Ltd., and others reported in (2005) 7 SCC 764***, the Hon'ble Apex Court has dealt with a similar case and the relevant portion of which is extracted as follows.

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in



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accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."



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29. Fully fortified by the aforesaid judgments of the Hon'ble Apex Court, though a closure report has been filed by the investigating officer in Crime No. 1077 of 2010 of Periyakulam Police Station before the Jurisdictional Magistrate, nothing has been elaborated as to the reason behind the mind change of mind of the various witnesses including the victim's wife who had turned hostile in favour of the petitioner and the other delinquents.

30. Further, this court is of the considered view that judicial review is not an appeal from a decision taken in the departmental proceedings. Further considering the fact that the punishment of removal from service has been considered with a compassionate mind by the 3rd respondent by reducing the punishment of removal from service to one of next increment for a period of 2 years without cumulative effect. In view of the same, observing that the said punishment is not shockingly disproportionate, I am not inclined to interfere with the impugned orders.



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31. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

04.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml
To

- 1.The Secretary to Government,
Home Department,
Secretariat, St.George Fort,
Chennai-600 009.
- 2.The Secretary to the Government,
Public (Law & Order) Department,
Secretariat, St.George Fort,
Chennai-600 009.
- 3.The Director General of Police,
O/o. The Director General of Police,
Chennai-600 004.
- 4.The Additional Director General of Police,
(Law & Order),
O/o.The Director General of Police,
Chennai-600 004.
- 5.The Deputy Inspector General of Police,
O/o. The Deputy Inspector General of
Police,
Dindigul Range, Dindigul.



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6. The Deputy Inspector General of Police,
O/o. The Deputy Inspector General of
Police, Ramanathapuram Range,
Ramanathapuram.



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L.VICTORIA GOWRI, J.

Sml

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