



Writ Petition No.4232 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04-03-2025**

CORAM

THE HONOURABLE MRS JUSTICE V.BHAVANI SUBBAROYAN

WP NO. 4232 of 2023

G.C.Thukkaram

S/o.G.G.Chakrawarthy, No.24A, New No.32,
Thirumangalam Road, Villivakkam, Chennai-49.

Petitioner(s)

Vs

1.The Additional Chief Secretary to Government,
Home (Police V) Department, Fort St. George,
Chennai-09.

2. The Additional Commissioner of Police (Head
Quarters)

I/c.Joint Commissioner of Police (Head Quarters),
Greater Chennai Police, Veppery, Chennai-07.

Respondent(s)

PRAYER

This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus to call for the records of the 1st respondent in connection with the impugned order passed by him in G.O.(2D) No.232, Home (Police V) Department dated 30.09.2021 and the subsequent rejection order passed by him in G.O.(2D) No.361, Home (Police V) Department dated 02.09.2022 and to quash the same and further direct the respondents to reinstate the petitioner into service with all service and monetary benefits.

For Petitioner(s):

S.Sivakumar



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For Respondent(s):
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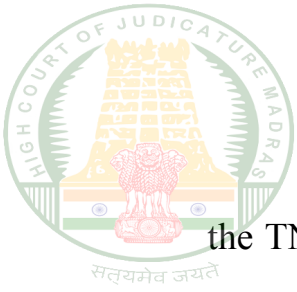
T.M.Rajangam, GA

ORDER

In this writ petition, the petitioner has challenged the impugned order dated 30.09.2021 in G.O.(2D) No.232, Home (Police V) Department, dated 30.09.2021 passed by the 1st respondent and also the subsequent rejection order passed by him in G.O.(2D) No.361 Home (Police V) Department dated 02.09.2022, quash the same and consequently, direct the respondents to reinstate the petitioner into service with all service and monetary benefits.

2.The brief facts, which led to the filing of the present Writ Petition are as follows:

The petitioner entered into service as Junior Assistant on compassionate Ground on 13.04.1987 and promoted as Assistant in the year 1997 and by merit and seniority further promoted as Superintendent in the year 2010. However, his further promotion to the post of Administrative officer for the panel 2017-18 was deferred on the ground of the pending departmental action, which were initiated against him under Rule 17 (b) of



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the TNCS (D&A) Rules and the 2nd respondent issued the charge memo in R.C.No.PR.I/CPO/633/100390/2016 dated 06.11.2017 and totally two charges were framed against him. After conducting the enquiry, the Enquiry Officer submitted his report to the Government on 20.02.2018 holding that the charges levelled against him as "not proved". However, the 1st respondent has disagreed with the views of the enquiry officer and came to the conclusion that the charges are "proved" and issued the notice dated 01.02.2019 and directed the petitioner to submit his further explanation on the deviated views within a period of 15 days. The petitioner also submitted his further explanation on 03.09.2019 stating that the enquiry officer has analyzed the issue in detail and rightly came to the conclusion that the charges are not proved and there is no wrong with the enquiry officer report and prayed to drop the further action. However, on receipt of the further representation of the petitioner, the 1st respondent has passed the impugned order, imposing the punishment of "Compulsory retirement".

3. According to the petitioner, the 1st respondent has failed to follow the established procedure while imposing the punishment, which is against the law laid down by this Hon'ble court and as well as the Hon'ble apex



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court, since they failed to issue two notices in the case of dissenting view.

The above punishment is shockingly disproportionate to the nature of delinquency and the charges levelled against the petitioner are totally incorrect and has no basis and it is a case of no evidence and in fact the complainant itself not supported the prosecution and there is no expert opinion regarding audio or video. But unfortunately, the 1st respondent came to the conclusion that the charges against the petitioner are proved. Hence it is clear that the 1st respondent has proceeded with the matter without any valid evidence in order to punish the petitioner in one way or another and it clearly shows the mala fide attitude of the respondent. Further, the opinion obtained from TNPSC, has not been served on the petitioner before passing the final order. Aggrieved by the impugned orders, the petitioner has come forward with the present Writ Petition.

4.A detailed counter affidavit has been filed on behalf of the respondents, wherein, it has been stated that the petitioner while working as Superintendent in the Office of the Commissioner of Police, Greater Chennai Police, Chennai from 25.01.2012 to 28.09.2015, a complaint was lodged against him and also against one Thiru M.Babu, Senior



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Administrative Officer, alleging that they demanded bribe. Therefore, for the delinquencies committed during the said period, he was dealt with on a charge under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Though the Enquiry Officer, who conducted the enquiry, held that the charges are not proved vide his report, dated 20.02.2018, the Government, after careful and independent examination of the charges framed against the petitioner herein, statement of defense of the delinquent officer, findings of the Inquiry Officer and further representation of the petitioner herein on the deviated views of the Government, along with the connected records, have decided to hold the charges as "Proved" and for the proven charge, the Government have arrived at a provisional conclusion to impose the punishment of "compulsory retirement on the petitioner. As required, under the Tamil Nadu Public Service Commission Regulations, 1954, the views of the Tamil Nadu Public Service Commission were obtained by the Government on the proposed Punishment. The Tamil Nadu Public Service Commission has offered its views in their letter, dated 28.04.2021. As the Tamil Nadu Public Service Commission's opinion obtained by the Government is an official communication between the Government and the Tamil Nadu Public Service Commission, it is enclosed



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with the final orders and served to the petitioner along with the copy of the

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Government order. The entire views of the Tamil Nadu Public Service Commission and facts of the case has been detailed in the Government Order (2D) No. 232, Home (Pol.V) Department, dated 30.09.2021. The Government in G.O. (2D) No. 232, Home (Police V) department, dated: 30.09.2021 have imposed the punishment of "Compulsory Retirement" on the petitioner herein in accordance with law and in accordance with the principles of preponderance of probability, as clarified in various judgements of Hon'ble Supreme Court. Therefore, the 1st respondent, on careful consideration of evidence recorded during the enquiry, deviated with the findings of the Enquiry Officer and after complying with the statutory procedures, has rightly awarded the punishment of compulsory retirement in accordance with the Rules governing the disciplinary matters, which requires no interference. With these averments, the 1st respondent sought for dismissal of the Writ Petition.

5.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents and perused the entire materials placed on record.



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6. The learned counsel appearing for the petitioner would contend that even though the Enquiry Officer has categorically held that the charges against the petitioner were not proved, however, deviating the findings of the Enquiry Officer, the disciplinary authority has proceeded and even though is no clinching evidence to hold the guilt of the petitioner and passed the impugned order of punishment of compulsory retirement against the petitioner, which cannot be sustained. He would further contend that the impugned order has been passed by the 1st respondent contrary to the procedure contemplated where the disciplinary authority disagrees with the findings of an Enquiry Officer, the authority must record the reasons for disagreement and provide a copy to the delinquent, along with a show-cause notice before imposing any punishment. He pointed out that it is mandatory on the part of the disciplinary authority to give two notices, setting out his tentative conclusions to the charged employee and after hearing the delinquent employee, the disciplinary authority can arrive at final finding of guilt and thereafter, the employee would again have to be served with a notice relating to the punishment proposed, whereas, in the present case, no notice was given to the petitioner before passing the impugned order.

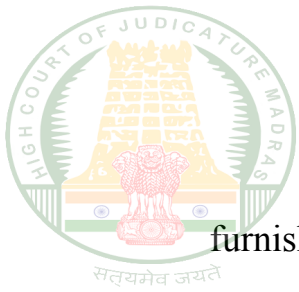


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Therefore, on this ground, according to the learned counsel for the petitioner, the impugned order is liable to be set aside. In support of his contentions, the learned counsel would rely upon the following decisions, viz.,

- i) “***Lav Nigam versus Chairman & Md.ITI Ltd., and another***” reported in (2006) 9 SCC 440;
- ii) “***G.Arunachalam and others versus The Addl.Chief Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai-05***” (Order, dated 04.01.2017 passed by the learned single Judge of this Court, (M.Sathyanarayanan, J., as he then was) in W.P.Nos.31516 of 2016 etc.
- iii) “***K.Saroja versus The Additional Chief Secretary/Commissioner of Commercial Taxes***” reported in 2017 SCC OnLine Mad 20907.

7.The learned counsel would further contend that though the 1st respondent sought for opinion of the Tamil Nadu Public Service Commission as regards to the proposed punishment and after obtaining the opinion, as per the principles of natural justice they would require to supply of a copy of the same to the delinquent officer before passing the impugned order of punishment. But in the present case, the first respondent has not



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furnished the same, which vitiates the impugned order. In this regard, he relied upon a decision of a Division Bench of this Court reported in “***Union of India versus The Registrar, CAT and another***” reported in (2005) 2 MLJ 154.

8.The learned counsel would also contend that even the complainant who lodged the complaint, has not identified the petitioner and he wrongly mentioned the name in his complaint, but the 2nd respondent framed the charges with a new name, i.e. G.Ramu & Thukkaram, whereas, the petitioner name is G.C.Thukkaram and he has no alias name. Further, the complainant has not supported the case and deposed that he wants to withdraw the complaint, but unfortunately, the respondent has taken a different view and interpreted the statement in different manner. The learned counsel also pointed out that there is no credibility in the statement of the complainant and due to vengeance, he lodged a false complaint against the petitioner with DVAC by using some video which pertains to a different incident took place in the office and hence, the video and audio clippings have no significance and without the Investigating Officer has failed to get the forensic expert opinion. He would further contend that the impugned punishment of



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compulsory retirement is shockingly disproportionate to the charges levelled against the petitioner. With these contentions, the learned counsel for the petitioner sought for setting aside the impugned order by allowing the present Writ Petition.

9. On the other hand, the learned Government Advocate for the respondents would contend that even though the Enquiry Officer held that the charges were not proved, but the Government disagreed with the findings of the Enquiry Officer, recorded its deviated views and communicated the same to the delinquent officer and called for further explanation and thereafter, after considering the further explanation submitted by the petitioner and after obtaining the opinion of the TNPSC, the 1st respondent has rightly passed the impugned order of punishment proportionately to the charges held proved, which requires no interference. As regards the non-furnishing of the opinion of the TNPSC is concerned, he would submit that the disciplinary authority communicates the opinion of the TNPSC by mentioning the same in the order passed by it and that would be sufficient. With these contentions, the learned Government Advocate sought for dismissal of the Writ Petition.



WEB COPY 10. Admittedly, in the present case, the Enquiry Officer, having conducted the enquiry, has given his report, holding that the charges were not proved. However, the 1st respondent deviated from the findings of the Enquiry Officer. It is settled law that when the authority disagrees with the enquiry officer's report, the same should be intimated to the petitioner, on which ground the authority differs with the report of the enquiry officer. Thereafter, the petitioner should be served with a second show cause notice calling for an explanation well in advance and thereafter only a final order has to be passed. Whereas according to the petitioner, such second show cause notice, intimating that the authority disagrees with the report of the enquiry officer, has not been issued. A similar issue has been dealt with by the Hon'ble Supreme Court in the case of ***"S.P.Malhotra V. Punjab National Bank and Others"*** reported in (2013) 7 Supreme Court Cases 251, wherein in Paragraph Nos.13 and 14, it is held as follows:-

“13. In ECIL, only the first issue was involved and in the facts of this case, only second issue was involved. The second issue was examined and decided by a three-Judge Bench of this Court in Kunj Behari Misra wherein the judgment of ECIL has not only been referred to, but extensively quoted, and it has clearly been stipulated that



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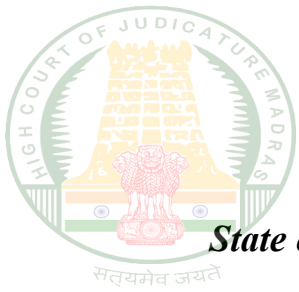
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wherein the second issue is involved, the order of punishment would stand vitiated in case the reasons so recorded by the disciplinary authority for disagreement with the enquiry officer had not been supplied to the delinquent and his explanation had not been sought. While deciding the said case, the Court relied upon the earlier judgment of this Court in *Institute of Chartered Accountants of India V. L.K.Ratna*.

14. Kunj Behari Misra itself was the case where the disciplinary authority disagreed with the findings recorded by the enquiry officer on 12.12.1983 and passed the order on 15.12.1983 imposing the punishment, and immediately thereafter, the delinquent officers therein stood superannuated on 31.12.1983. In Kunj Behari Misra this Court held as under: (SCC P.97, para 19):

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

The above view has been reiterated in '*Yoginath D.Bagde versus*



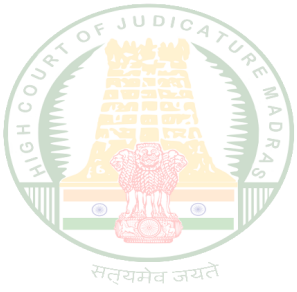
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State of Maharashtra” reported in (1999) 7 SCC 739. In this case also Rule

9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979

did not specifically provide for a disciplinary authority to give an opportunity of hearing to the delinquent officer before differing with the view of the enquiry officer. The Court said: (SCC p.758, para 29):

“But the requirement of 'hearing' in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the 'TENTATIVE' reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of 'not guilty' already recorded by the enquiring authority was not liable to be interfered



with."

WEB COPY In the case of “*Lav Nigam versus Chairman & Md.ITI Ltd., and another*” reported in (2006) 9 SCC 440, the Hon'ble Supreme Court, while referring to the above mentioned judgments, has held that if an employee has been exonerated by the enquiry officer, the disciplinary authority is bound to give a notice to the employee concerned if such authority takes a different view and thereafter alone can they arrive at a final finding of guilt. In para 13 and 14, it has concluded as under:

“13. We have already quoted the extracts from the show-cause notice issued by the disciplinary authority. It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The notice to show cause was merely a show cause against the proposed punishment. In view of the long line of authorities, the decision of the High Court cannot be sustained. The appeal is accordingly allowed and the decision of the High Court is set aside.

“14. The proceedings may be recommenced from the stage of issuance of a fresh show-cause notice by the disciplinary authority to the appellant indicating his tentative disagreement with the findings of the inquiry officer.”



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11.As regards non-furnishing of the opinion of the TNPSC to the petitioner is concerned, a Division Bench of this Court in the case of “**Union of India versus The Registrar, CAT, Chennai and another**” reported in (2005) 2 MLJ 154, has held as under in para 6 as under:

“6. In this regard, reliance was placed on the judgment of the Supreme Court in the case of State Bank of India v. D.C. Aggarwal A.I.R. 1993 S.C. 1997. This judgment was rendered after the 42nd amendment to Constitution, which came into force on 3.1.1977. The question posed before the Supreme Court is, whether the disciplinary authority while imposing punishment, major or minor, can act on material which is neither supplied nor shown to the delinquent. In that case, the report of the Chief Vigilance Commissioner has not been supplied to the delinquent. After considering the same, the Supreme Court has held,

"4.... Law on natural justice is so well settled from series of decisions of this Court that it leaves one bewildered, at times, that such bodies like State Bank of India, who are assisted by hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no option except to set aside such orders. Imposition of punishment to an employee, on material which is not only not supplied but not disclosed to him, has not been countenanced by this Court. Procedural fairness



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is as much essence of right and liberty as the substantive law itself. "

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In the light of the principle laid down in the above case, irrespective of Rule 17 of the CCS (Conduct) Rules, inasmuch as the disciplinary authority relied on the advice of the UPSC before imposition of punishment, it is but proper to supply copy of the said report to the delinquent before passing an order of punishment. Accordingly, we hold that the applicant was entitled to a copy of UPSC advice before imposition of punishment. This has been rightly found by the Tribunal." (emphasis is added)

12.As a logical sequitur to the aforesaid reasons and in view of the decision cited herein above, this Court is of the considered view that the impugned order, dated 02.09.2022 passed by the 1st respondent, cannot be sustained and the same is liable to be set aside.

13.Accordingly, the impugned order in G.O.(2D) No.232 Home (Police V) Department, dated 02.09.2022 is hereby set aside and the matter is remanded back to the authority for fresh consideration. The respondents shall issue second show cause notice to the petitioner duly intimating the reasons for disagreeing with the report of the enquiry officer and after



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affording him an opportunity of personal hearing, he shall pass appropriate orders in accordance with law as expeditiously as possible .

14. With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs.

Dn

04.03.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

To

1. The Additional Chief Secretary to Government,
Home (Police V) Department, Fort St. George, Chennai-09.
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