

W.P. No.22683 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

**Reserved on : 23.09.2024**

**Pronounced on : 31.01.2025**

CORAM :

**THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR**

**W.P.No.22683 of 2013**

V.Mohan

... Petitioner

Vs.

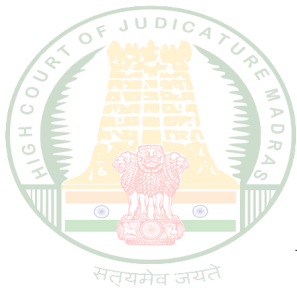
Secretary to Government,  
Revenue Department,  
Secretariat, Fort St. George, Chennai – 600 009.

...Respondent

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent in G.O (2-D) No.97 Revenue (Ser.3(i) Department dated 09.03.2012 and quash the same as illegal, arbitrary, and non est in law and consequently direct the respondent to promote the petitioner to the respective promotional post on par with his juniors by fixing his service seniority and granted all other attended service benefits if arrears of pay increments.

For Petitioner : Mr.L.Chandrakumar  
for Mr.M.Kempraj

For Respondent : Mr.P.Ananda Kumar  
Additional Government Pleader



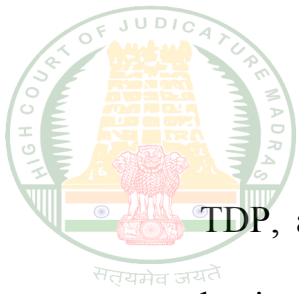
**ORDER**

While the petitioner and another were working as Revenue Inspector and VAO of Panakudi Firka, Radhapuram Taluk, Tirunelveli District, the disciplinary proceedings were initiated by issuing a charge memo dated 16.12.2005 by the Tribunal for Disciplinary Proceedings (hereinafter referred as 'TDP') containing a solitary charge against the petitioner and another delinquent employee namely P.Koilraj, Village Administrative Officer. The said charge reads as under:

**“Charge:**

*That while you were Working as Revenue Inspector Panagudi, (A.O.1), and you (A.O.2), were working as Village Administrative Officer, Parivirisooriyan Village, actuated by corrupt motive and in abuse of your official position and authority, initially demanded Rs.5000/- as bribe from Tr.M.Maninadar s/o. Muthiah Nadar, 36, Main Road, Thalavaipuram Village, Panagudi Post and finally reduced the demand to Rs.3000/- on 29.03.2001 at about 10.00 hours at your office (A.O.1) for releasing his tractor and trailer, which were detained for quarrying silt from Veerapandian gulam in Parivirisooriyan village in Radhapuram Taluk without any ease and accepted the amount of Rs.3000/- on 30.03.2001 at about 09.30 hours at your officer (A.O.1) and thereby you (A.O.1 and A.O.2) have exhibited lack of integrity in public service.”*

2. It was thereafter, the petitioner was placed on defence before the



WEB COPY

TDP, and he has denied the charge levelled against him. The TDP, after having conducted an enquiry into the matter, submitted its report on 01.11.2006 and thereafter, a copy of the said report was furnished to the petitioner and accordingly, the petitioner submitted his further explanation on 08.06.2007. It was thereafter, the Government issued orders in G.O.(2D).No.565, Revenue [Ser 3(1)] Department, dated 27.09.2010, imposing the punishment of stoppage of increment for three years with cumulative effect on the petitioner. Aggrieved by the said order, the petitioner approached the Madurai Bench of this Court by filing W.P.(MD).No.7552 of 2011, and a co-ordinate bench of this Court, by an order dated 08.07.2011, was pleased to set aside the order dated 27.09.2010, while granting liberty to the Government to pass a detailed and speaking order by considering the defence set up by the petitioner in his further representation dated 08.06.2007 against the report of the enquiry officer. The operative portion of the said order reads as under:

*“6. In view of the above settled legal position, and as there is a manifest illegality in the impugned order, this Court is inclined to set aside the impugned order. However, liberty is given to the first respondent to pass a detailed and speaking order with reference to the defence put up by the petitioner, in the further representation on the findings recorded by the Enquiry Officer, within a period of*



*8 weeks from the date of receipt of a copy of this order.”*

It was thereafter, the Government passed another order vide G.O.(2D).No.97,

WEB COPY

Revenue [Ser 3(1)], Department, dated 09.03.2012, once again imposing the very same punishment of stoppage of increment for three years with cumulative effect on the petitioner. It is aggrieved by the said order dated 09.03.2012, the petitioner approached this Court once again by filing the present writ petition.

3. Heard Mr.L.Chandra Kumar, learned counsel for the petitioner and Mr.P.Ananda Kumar, learned Additional Government Pleader for the respondents.

4. The learned counsel appearing for the petitioner strenuously contended that, inspite of this Court setting aside the earlier order of punishment dated 08.07.2011 on the ground that the further representation submitted by the petitioner was not at all taken into consideration while passing the said order, and granted liberty to the respondents to pass a fresh order by duly considering the further explanation submitted by the petitioner, the impugned order came to be passed in the very same fashion as it was



WEB COPY

passed on the previous occasion and therefore, the impugned order is liable to be set aside. He also further contended that the charge that was framed against the petitioner is a common charge for the petitioner as well as another delinquent employee i.e., Village Administrative Officer. The said Village Administrative Officer was finally imposed with punishment of Rs.500/- cut in pension for a period of three years, whereas the petitioner was treated differently by imposing the punishment of stoppage of increment for three years with cumulative effect, which is a major punishment. He also further contended that there is no evidence in support of the charges brought on record, but the enquiry officer himself held the charge has proved basing upon no evidence and by putting the entire burden on the petitioner herein and therefore, the impugned order passed by the respondent basing upon such report of the enquiry officer is solely unsustainable under law.

5. On the other hand, Mr.P.Ananda Kumar, learned Additional Government Pleader, contended that the respondent has strictly followed the procedure that is required to be followed, and the further explanation submitted by the petitioner was also taken into consideration, as is evident



from the impugned order and therefore, the impugned order does not require any interference by this Court. He also further contended that the findings recorded by the enquiry officer on the factual aspects are final, and this Court cannot interfere with the fact findings by re-appreciating the entire evidence.

6. This Court has carefully considered the submissions made on either side and also perused the entire material available on record.

7. As already noted above, on an earlier occasion, this Court in W.P.(MD).No.7552 of 2011 interfered with the order of punishment on the ground that there was no consideration of the case set up by the petitioner in his detailed further representation and therefore required the respondent to pass a speaking order with reference to the defence put up by the petitioner in his further representation on the findings recorded by the enquiry officer. But, a bare perusal of the impugned order, dated 09.03.2012 running into 8 pages, would show that the same is nothing but extracting the charge, explanation of the petitioner, findings of the TDP, further explanation of the petitioner, etc upto 7 pages and the consideration by the Government is only in para 6 of the order, which reads as under:



WEB COPY



W.P. No.22683 of 2013

*“6.The Government, after careful and independent examination of the findings of the Tribunal for Disciplinary Proceedings and further representation of the delinquent officer, have concluded that the charge against him is proved. For the proven charge, the Government have decided to impose a punishment of stoppage of increment for 3 years with cumulative effect on the delinquent officer. The Government accordingly order that the punishment of stoppage of increment for 3 years with cumulative effect be imposed on Thiru V.Mohan, formerly Revenue Inspector for the charge held proved against him.”*

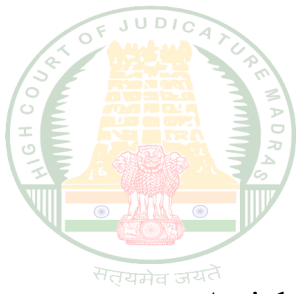
Except the above para, there is no other consideration in the impugned order on the defence set up by the petitioner and the stand taken by the petitioner in his further representation dated 08.06.2007.

8. No doubt, the further representation of the petitioner was extracted in extenso in the impugned order. But, mere extracting the contents of the further representation does not amount to consideration of the same. The consideration of his further representation and objections raised by the petitioner should reflect in the operative portion of the order. But there is no finding or reasoning assigned in the impugned order for not accepting the objection raised by the petitioner nor there is anything to show that the said objection was taken into consideration, and then the impugned order came to be passed. In the absence of any material to show that the contentions and



defence set up by the petitioner was considered by the respondent while passing the impugned order, the impugned order is liable to be struck down being arbitrary, unreasonable and violative of principles of natural justice, as was done in the case of earlier occasion as noted above. In case, if the impugned order is to be set aside on the very same ground as was done earlier, the natural consequence would be to grant liberty to the respondents to pass appropriate orders afresh in accordance with law.

9. As already noted above, the charge memo is of the year 2005, and as seen from the charge, the incidence which is the basis for framing the charge against the petitioner relates back to the year 2001. Thus, there is a delay of about four years in initiation of the disciplinary proceedings itself, and by now 25 years have lapsed since the date of alleged misconduct on the part of the petitioner, and the petitioner had also retired from service on attaining the age of superannuation. Therefore, this Court is not inclined to remit the matter back to the respondents for fresh consideration. Instead, this Court is inclined to examine as to whether the findings of the TDP as recorded in its report dated 01.11.2006 are sustainable or not?



WEB COPY

10. No doubt, this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot re-appreciate the evidence as an appellate authority. But in case, if the reasoning adopted by the TDP is found to be perverse or if such findings are recorded basing upon no evidence, the power of this Court to interfere with the disciplinary proceedings cannot be curtailed. In this connection, it is necessary to examine the findings recorded by the TDP in its report which reads as under:

**“CHARGES ANALYSIS AND FINDINGS**

*I verified the record (Ex.D4) produced by the Tahsildar, Radhapuram. According to which, the A.O.1 (Revenue Inspector) has sent a report to the Tahsildar, Radhapuram that he was engaged in demonstration of EVM to the public in R.C.Middle school at 11.00 A.M. in Pushpavanam village on 29.3.01 and then in Panchayat union school at 3.00 p.m. in Pambankulam village. Further the diary (Ex.D4) of the A.O.1 (R.I.) for the second fortnight of March 2001 submitted to the Tahsildar, Radhapuram, was also produced before me and it reveals that the A.O.1 was present in Thandayarkulam, Pushpavanam and Pambankulam villages for the purpose of demonstration of EVM to the public of the above villages on 29.03.01 and the next day i.e. on 30.03.01 also, the A.O.1 was present in Pariveerisooriyan, Rosemiapuram, Nathipparai, Veerapandiankulam and Thalavaipuram villages for the same purpose, as per the diary of the A.O.1 for the said period. There was no mention anywhere in the diary (Ex.D5) about the time of presence of A.O.1 (R.I.) on 29.3.01 and 30.3.01 at the Office of the A.O.1 (R.I.) in Panagudi village. The monitoring register, watching the receipt of Revenue Inspector's fortnightly diary was*



WEB COPY



W.P. No.22683 of 2013

*received from the Tahsildar, Radhapuram, A verification of the register reveals that the diary of (Fortnight ended 31.3.01) A.O.1 (R.I.) has been received in Taluk office, Radhapuram, on 3.4.01. Further as regards A.O.2 (VAO), he is said to have been present along with A.O.1 at the time of occurrence on 29.03.01. In this regard, a bundle of remittance chalans produced before the Tribunal for the month of March 2001 was perused by me. According to the challan No.1078 dated 29.03.01 Ex.D7), the A.O.2 has signed the challan on 29.03.01 to the effect of remittance of Land Revenue collection of Rs.2734/- made at Sub-Treasury, Radhapuram, Then, it was decided to verify the official by whom the Land Revenue collection was actually made at the Sub-Treasury. Radhapuram, on the particular day (i.e. 29.03.01) with reference to the register, if any, maintained by the Sub-Treasury. A letter was addressed to the Sub-Treasury Radhapuram to produce the said register to this office for perusal. The Sub-Treasury Officer, Radhapuram, in his letter No.Pdl.A1.20/06 dated 15.9.06 has stated that no such register is being maintained in his office.*

*The counsel for the A. O.s has stated that in view of damages caused to the drinking water pipelines laid across the Veerapandiankulam, the Revenue officials have prevented the lorries from going to the said tank for taking sand and purely aggrieved by this act, the PW1 and PW2 have given false evidence against the A.O.s. The personal register of the A.O.1 (Revenue Inspector) for the year 1999 was produced at defence side which has been marked as Ex.D.11. It is seen from the register that the A.O.1 (Revenue Inspector) has already dealt with a similar petition, seeking action to prevent the illegal mining of sand in Veerapandiankulam tank during July 1999 itself and disposed the petition on 20.7.99.*

*Further, there was an enquiry conducted by the Revenue Divisional Officer, Cheranmahadevi also on 22.9.03 in the same issue. The R.D.O., Cheranmahadevi*



WEB COPY



W.P. No.22683 of 2013

*had sent notices to the A.O.s and P.W.s to appear for his enquiry in his office. The A.O.1 (R.I.) and A.O.2 (VAO) appeared for RDO's enquiry on 22.09.03, whereas the PW1 (Mani nadar) and PW2 (Selvakumar) who affixed their signature on the enquiry notice, did not turn up for the enquiry. It was then decided by the RDO Cheranmahadevi that the complaints on the A.O.s made by the PW1 and PW2 were baseless and he sent a report to the Collector, Tirunelveli, recommending to drop further action against the A.O.s as per office letter No.A.5.11180/02 dated 9.10.03. (record of RDO's Office Cheranmahadevi containing the Flag marked as Ex.D2 and D3.)*

*Further, during the examination of PW1 and PW2 on 5.7.06 in my office, they deposed that the Village Assistants of Parivirisooriyan were also present at the Office of the A.O.1 at the time of the incident. When one of the Village Assistants Tr. Muthukumaravel was examined on 22.8.2006, he deposed that the pathway to the said tank was already blocked by way of erecting stone pillars to prevent the vehicles from taking sand from Veerapandiankulam, He further stated that on 30.3.2001, he along with the A.O.1 and A.O.2 had gone to conduct EVM demonstration at various villages at 6.30 7.00 A.M. on the said days and no such incident took place, as alleged by PWs. Further he deposed that the A.O.2 (VAO) himself has remitted the Land Revenue collection on 29.3.01 at Sub-Treasury, Radhapuram and not by himself on the particular day. As regards the A.O. (Revenue Inspector) he has not specifically mentioned the time of presence at various villages on 29.3.01 and 30.3.01 for EVM demonstration to public in his fortnightly diary submitted to the Tahsildar, Radhapuram. Hence, there are possibilities that the Accused officer -1 (R.I.) could have attended the said villages on 29.3.2001 & 30.3.01, evenafter the happening of the said incident of demand and acceptance of bribe from the P.Ws in his quarters at Panagudi village. Further, as regards A.O.2 (V.A.O.), the Zonal Dy. Tahildlar*



WEB COPY



W.P. No.22683 of 2013

*(P.W.6) has clearly stated that the Land Revenue collection is generally remitted in Sub-Treasury by the Village Assistant (Thalayari) himself and not by the Village Administrative Officer concerned. The Sub Treasury Officer, Radhapuram has also stated in his reply that no register is maintained in his office regarding the official by whom the Land Revenue remittance is generally made at Sub Treasury. In my opinion, the A.O.2 (V.A.O.) could not produce any valid records in his favour to prove his presence at Sub Treasury Radhapuram on the particular day (i.e.29.3.2001) for remitting the Land Revenue collection said to have been made by himself.*

#### CONCLUSION

*After a thorough analysis of both oral and documentary evidences of both prosecution and defence, I conclude that the charges (single charge) are held **PROVED** against the Accused Officers Thiruvallargal V.Mohan and P.Koilraj."*

11. From the perusal of the above, it is no doubt that the P.W1 and P.W2 have deposed that the petitioner has demanded a bribe of Rs.5,000/- and on negotiation, the petitioner was paid Rs.3,000/- for releasing a Tractor of the witnesses on 29.03.2001 and 30.03.2001. But the said oral statements of P.W1 and P.W2 are not substantiated by any other evidence of whatsoever nature either documentary or oral. The enquiry officer also, instead of placing reliance on the evidence that is adduced in support of the charges and bringing the charge home based on such evidence, proceeded to hold the charge as proved against the petitioner on the ground that the petitioner and other delinquent employee failed to establish that they were not in the place



where the bribe was alleged to have been paid to them. The petitioner, being a delinquent employee is not under obligation to disprove the charge, but it is for the employer to prove the charge by adducing the evidence in support of the charge. From nature of charge levelled also, the burden of proof is on the Department but not in the delinquent employee.

12. As, as seen from findings of the TDP, the TDP proceeded to hold the charge as proved against the petitioner, as the petitioner failed to establish that he was not at the place where the bribe was alleged to have been paid to him on 30.03.2001. Thus, the basis on which the charge is held to have been proved against the petitioner is totally perverse. Whether the petitioner is present at the place where the bribe is alleged to have been paid or not is totally an irrelevant factor. Unless and until it is established that the petitioner has made a demand for bribe and accepted the same basing upon the admissible evidence, there is no justification for the TDP to come to the conclusion that the charge is proved against the petitioner. Thus, it is evident that the findings of the TDP are based on the alleged failure of the petitioner to prove his absence at the place where the bribe is alleged to have been paid to the petitioner. Therefore, such a finding of the enquiry officer cannot be



sustained.

WEB COPY

13. Be that as it may, the co-delinquent employee of the petitioner was imposed with punishment of cut in pension of Rs.500/- for a period of three years and the said punishment is also stated to have become final basing upon the same report of the TDP. Thus, the respondent, having chosen to impose the punishment of cut in pension of Rs.500/- for a period of three years against the delinquent co-employee has not assigned any specific reasons for imposing the punishment of stoppage of increment for a period of three years with cumulative effect on the petitioner.

14. In the light of the above, as this Court has already expressed its view not to remit the matter back to the respondent once again for passing orders afresh, is of the considered view that the matter should be put at rest at this stage itself, by permitting the respondent to impose similar punishment to that of the co-delinquent employee, namely P.Koilraj, former Village Administrative Officer, and accordingly, the impugned order is quashed. The respondent is further directed to pass appropriate consequential orders for releasing the amounts that are payable to the petitioner and also to refix the



W.P. No.22683 of 2013

pension and pay all arrears of pension, as expeditiously as, possible at any rate, within a period of two (2) months from the date of receipt of a copy of this order. It is made clear that the petitioner shall not be entitled for any arrears of pay, consequent upon quashing the impugned order till the date of his superannuation.

15. Accordingly, the writ petition is allowed to the extent indicated above. The connected miscellaneous petitions, if any, shall stand closed. No costs.

**31.01.2025**

Index : Yes/No  
Speaking Order : Yes/No  
dpa

To:

The Secretary to Government,  
Revenue Department,  
Secretariat, Fort St. George, Chennai – 600 009.

Page No.15 of 17



WEB COPY



W.P. No.22683 of 2013

**MUMMINENI SUDHEER KUMAR,J.**  
dpa

Pre-Delivery Order made in  
W.P.No.22683 of 2013



WEB COPY



W.P. No.22683 of 2013

31.01.2025