



W.P. No.24017 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.24017 of 2013

K.Mahendren

... Petitioner

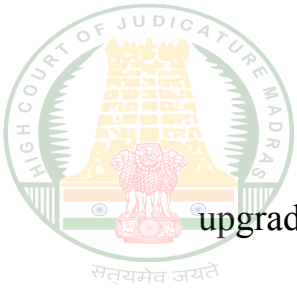
Vs.

1.The Superintendent of Police,
District Police Office,
Tiruvannamalai District
@ Tiruvannamalai.

2.The Deputy Inspector General of Police,
Vellore Range, Vellore.

...Respondents

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 pertaining to the order of the first respondent herein in his P.R.No.66/2012 dated 18.03.2013 and the order passed in D.O.No.194/2013, H2/P.R.66/2012 dated 18.02.2013 imposing a punishment of postponement of next increment for 3 years with cumulative effect and the consequential order passed by the second respondent herein in his C.No.B2/AP.35/5984/2013 dated 15.05.2013 rejecting the petitioner's appeal petition and quash the same and direct the respondents herein to grant all service and monetary benefits and consequently direct the second respondent herein to upgrade the petitioner as Special Sub Inspector of Police with effect from the date of



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upgradation of immediate juniors.

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For Petitioner : Mr.R.Prem Narayan

For Respondents : Mr.S.Arumugam
Government Advocate

ORDER

The petitioner herein, while working as Head Constable, was subjected to disciplinary proceedings by issuing a charge memo under Rule 3(b) of Tamil Nadu Police Subordinate Service (D&A) Rules, 1955 on the ground that the petitioner has given a prior information to the boot-leggars regarding an impending surprise visit, in connivance with them, disrespecting his superiors and also on the ground that he scolded certain persons who came to the police station for lodging a compliant. As the petitioner has denied the charges, the enquiry officer was appointed to enquire into the charges and accordingly, the enquiry officer conducted an enquiry and submitted his report dated 25.01.2013. Thereafter, a copy of the report of the enquiry officer was furnished to the petitioner on 25.02.2013, and on submission of explanation/objection by the petitioner, the 1st respondent passed an order dated 18.03.2013 imposing the punishment of “postponement of his next increment for three years which shall operate to postpone his future increment” vide proceedings dated P.R.66/2012 dated 18.03.2013. Aggrieved



by the said order, the petitioner filed an appeal dated 09.04.2013 before the 2nd respondent. However, the said appeal was also rejected by the 2nd respondent by an order dated 15.05.2013 confirming the punishment imposed on the petitioner by the 1st respondent. It is aggrieved by the said orders dated 18.03.2013 and 15.05.2013, passed by the 1st and 2nd respondents respectively, the petitioner approached this Court by filling the present writ petition.

2. Mr.R.Prem Narayan, learned counsel appearing for the petitioner mainly contended that the enquiry officer conducted the enquiry into the charges in gross violation of principles of natural justice by acting as a prosecutor and cross-examining the witnesses on behalf of the department, thereby causing great prejudice to the petitioner and conducting the entire enquiry in a biased manner. He specifically contended that the Government witnesses 1, 2, 3, 7, 9, 10 & 11 were declared hostile by the enquiry officer and he himself cross-examined the said witnesses and finally concluded that the said witnesses were managed by the petitioner to depose in his favour and based on such conclusion, the charges that are levelled against the petitioner were held to have been proved. Based upon the said report of the enquiry officer dated 25.01.2013, the impugned orders have been issued imposing the



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punishment as noted above.

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3. This Court, after having gone through the report of the enquiry officer, is convinced that the enquiry officer has declared the above-mentioned witnesses as hostile and cross-examined them. The enquiry officer himself, acting as a prosecutor and cross-examining the said witnesses on behalf of the department is totally contrary to service jurisprudence and the same is in utter violation of the principles of natural justice. The enquiry officer is the one who is supposed to act unbiasedly and as a quasi-judicial authority and is expected to render unbiased finding basing upon the material placed before him by the Department as well as the delinquent employee.

4. As seen from the report of the enquiry officer and the observations made by the enquiry officer, it is evident that the attitude of the enquiry officer is pregnant with prejudice, against the delinquent employee, and without there being any evidence in support of the charges, the enquiry officer, having held that the Government witnesses have been won over by the petitioner, came to the conclusion that the charges that are levelled against the petitioner are proved. Such an action on the part of the enquiry officer is



highly arbitrary, illegal and violative of Article 14 and 21 of Constitution of India.

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5. This aspect of the matter is not more res integra, as held by the Hon'ble Apex Court in the case of Union of India and Ors. Vs. Ram Laxhan Sharma reported in AIR 2018 SC 4860. In the said decision, the Hon'ble Apex Court having taken note of the various decisions of the Hon'ble Apex Court came to the conclusion that the enquiry officer cannot act as a prosecutor and cross-examine the witnesses examining on behalf of the department/prosecution. The relevant portion of the said order are as under:

“35. thus, the question as to whether Inquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High court came to the conclusion that Inquiry Officer himself led the examination in chief of the prosecution witness by putting questions. The High Court further held that the Inquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paragraphs 9 and 10 of the judgment of the High Court giving rise to civil Appeal No.2608 of 2012.

36. The High Court having come to the conclusion that Inquiry Officer has acted as prosecutor also, the



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capacity of independent adjudicator was lost which adversely affecting this independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases.”

6. In this connection it is also necessary to notice another decision of the Hon'ble Apex Court in the case of ***State of Uttar Pradesh and Ors. Vs Saroj Kumar Sinha*** reported in ***2010 2 SCC 772*** wherein it was held as under:

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is



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manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

7. In the light of the settled legal position, and despite the petitioner bringing this aspect to the notice of the 2nd respondent, the 2nd respondent has also failed to take into consideration and, in a mechanical manner, confirmed the orders of the 1st respondent. The 1st respondent, while passing the order dated 18.03.2013, has failed to take into consideration all these aspects and settled legal position. Thus, the impugned orders, passed in such a laconic manner, and the enquiry report, cannot be sustained under law. Accordingly, the impugned orders are hereby quashed.

8. In the normal course, this Court would have remanded the matter back to the respondents for conducting a fresh enquiry strictly in accordance with law. But here is the case that the allegations that are levelled against the petitioner are pertaining to the year 2012, and as on date 13 years have lapsed and all the witnesses that are examined on behalf of the Government has spoken in favour of the petitioner, disproving the charges and therefore, this Court is of the considered view that it is not a fit case where the respondents should afforded an opportunity to redo the exercise *denovo* at this length of



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time. Accordingly, the impugned orders dated 18.03.2013 and 15.05.2013 are quashed and the writ petition is allowed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

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

To:

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District Police Office,
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- 2.The Deputy Inspector General of Police,
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MUMMINENI SUDHEER KUMAR,J.

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