



W.P.(MD)No.11055 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.04.2025

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THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.11055 of 2019

and

W.M.P.(MD)N.8417 of 2019

M.P.Nagarajan

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home (Pol.IVA)Department, Chennai-9.

2.The Additional Director General Police,
(Law & Order),
Mylapore, Chennai-600004.

3.The Deputy Inspector General of Police,
Dindigul Range, Dindigul.

4.The Superintendent of Police,
Theni District, Theni.

5.The Principal Accountant General of Tamil Nadu (A&E),
361, Anna Salai, Teynampet, Chennai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records leading to the issue of the order Rc.No.AP.II (3)/65588/2009 dated 12.05.2009 passed by the second respondent and G.O.(D) No.89 Home (Pol.IVA) Department dated 23.01.2018 passed by the first



W.P.(MD)No.11055 of 2019

respondent and quash the same and consequently to direct the respondents to refix the petitioner's pay (including the suspension period) and grant promotions and disburse the back wages, other service and monetary benefits, revise pensionary benefits within a specific date to be fixed by this Court.

For Petitioner : Mr.A.Thirumurthy
For R1 to R4 : Mr.K.R.Badurus Zaman,
Government Advocate.
For R5 : Mr.P.Gunasekaran

ORDER

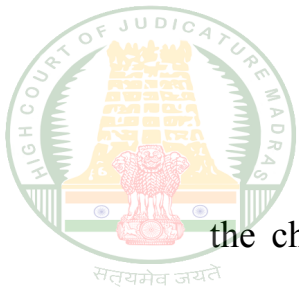
Under assail is the order dated 12.05.2009 passed by the Additional Director General Police, (Law & Order) and G.O.(D) No.89 Home (Pol.IVA) Department dated 23.01.2018 passed by the Additional Chief Secretary to Government, Home (Pol.IVA)Department, Chennai-9.

2.The case of the writ petitioner is that the petitioner was working as Sub Inspector of Police. While he was working as Sub Inspector of Police at Tenkarai Police Station, Periyakulam, Theni District, the Superintendent of Police, Theni District placed him under suspension vide order dated 05.01.2008 alleging that he demanded Rs.10,000/- to



W.P.(MD)No.11055 of 2019

release the tractor, which was used for illicit transportation of soil on 04.01.2008. He came to know that the owner of the tractor one Thiru.Abuthahir had directly made a complaint against him on 05.01.2008 to the Superintendent of Police, Theni District alleging that on 04.01.2008, evening when his tractor was transporting soil from his thoppu to his Mangobar factory, the petitioner took the tractor to the police station and abused and threatened him and demanded Rs.10,000/- to release the tractor. After getting Rs.10,000/- from the driver, the petitioner released the tractor. The Deputy Superintendent of Police, Periyakulam Division conducted preliminary enquiry on 08.01.2008 to 11.01.2008 and during preliminary enquiry, one Ramesh, auto driver and one Periyasamy, who accompanied the auto driver, had deposed that the tractor trailer had only traces of sand and Muruguvel, an employee of Abuthahir gave Rs.10,000/- to the said Ramesh to hand over to the petitioner and the petitioner refused to receive the said amount and scolded the driver. In spite of the above said deposition, the Preliminary Enquiry Officer had furnished a false report. In pursuance of the false report given by the preliminary enquiry officer, the Deputy Inspector General of Police, Dindigul Range issued charge memo dated 08.04.2008 containing three charges. The petitioner has submitted his explanation to



W.P.(MD)No.11055 of 2019

the charge memo. The Deputy Superintendent of Police, DCB, Theni was appointed as enquiry officer. Certain documents mentioned in Annexure-3 were not at all supplied. During the enquiry, the complainant Abuthahir turned hostile witness and completely contradicted his earlier statements. Further, witnesses also gave statements denying the demand and receipt of money and also to that effect he refused to receive money. The accused driver also appeared in the Court and admitted the offence and remitted fine amount of Rs.100/- on 05.01.2008. The enquiry officer held that all the charges were proved. In the meantime, the Superintendent of Police, Theni District revoked his suspension from 05.01.2008 and he was posted at Control Room, District Police Office, Theni and he rejoined duty on 28.01.2009. The Deputy Inspector General of Police, Dindigul Range did not apply his judicial mind and on simply relied upon the enquiry report, passed an order dated 02.02.2009 awarding major punishment of compulsory retirement from service with effect from 12.12.2009. On 03.02.2009, an erratum was issued in the punishment order dated 02.02.2009. Aggrieved over the punishment, the petitioner preferred an appeal to the Additional Director General of Police (L&O) on 15.02.2009. Without referring his appeal, the the Additional Director General of Police (L&O)



W.P.(MD)No.11055 of 2019

has issued proceedings dated 12.05.2009 stating that “Suo-Motu Review” was taken up and just modified the punishment from compulsory retirement to reduction in time scale of pay by three stages for three years. He was reinstated into service vide order dated 20.05.2009 and he rejoined duty on 01.06.2009. He sent reminder to consider his appeal and prayed to set aside the punishment. He was retired on superannuation on 28.02.2015. He filed a review petition before the Government with a prayer to quash the order dated 12.05.2009 passed by the Additional Director General of Police (L&O). In response to his review petition, G.O.(D)No.89 dated 23.01.2018 was issued and rejected his claim. Hence, the writ petition.

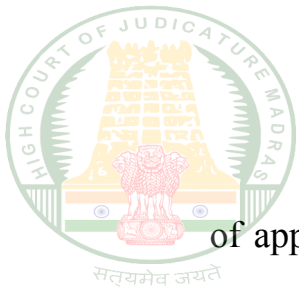
3.The learned counsel appearing for the petitioner would submit that the order impugned dated 12.05.2009 has been passed in violative of Rule (6) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955. The respondents 2 and 3 did not state any reasons for rejection of his explanation / appeal before imposing the punishment and hence, the punishment order is liable to be set aside on the ground of non-speaking order. The witnesses examined during the Departmental enquiry, not deposed anything against the petitioner, thus, charges were



W.P.(MD)No.11055 of 2019

not proved. But the enquiry officer has given an erroneous findings. He would submit that during the enquiry, the complainant Abuthahir has not deposed anything against the petitioner and therefore, the charges 1 and 2 are not proved. Similarly, the tractor driver Karuppiah has admitted his guilt and pay fine amount before the Judicial Magistrate Court, Periyakulam and therefore, the charge No.3 has also not proved. The enquiry officer wantonly ignored the depositions of the witnesses and wrongly come to a conclusion. Though the complainant himself admitted that his own complaint is a false complaint, the enquiry officer framed charges based on the said complaint, which is not sustainable under law.

4.He would submit that without considering his statutory appeal preferred under Rule 5 and 6 of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 against the punishment order, the second respondent has passed an order reducing punishment order under the guise of *suo motu* review, which is arbitrary and illegal. If the appeal would have been considered, the entire punishment order will be quashed. The order impugned is liable to be set aside on the ground of suppression of fact regarding his appeal together with grounds



W.P.(MD)No.11055 of 2019

of appeal are pending, denial of opportunity to represent his case in the appeal and in the suo-motu review. There are violations of statutory procedures and statutory procedural violations have rendered the review by the Government meaningless, without application of mind, mechanically considered in a casual manner and the same is liable to be set aside. To strengthen his contentions, he has relied upon the judgment of the Hon'ble Supreme Court reported in **1963 SCC Online SC 16** in a case of **Union of India Vs. H.C.Goel** to show that technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished. He has also relied upon the another judgment of the Hon'ble Supreme Court reported in **(1990) 4 SCC 594** in a case of **S.N.Mukherjee Vs. Union of India** to show that object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fairplay in action." The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority.



W.P.(MD)No.11055 of 2019

WEB COPY

5. Per contra, the learned Government Advocate appearing for the respondents 1 to 4 would submit that the petitioner had went on night rounds on 04.01.2008 in a private auto without any Police personal along with him which will show the intention behind the vehicle check up done by the petitioner. The complaint lodged against the petitioner by alleging that he demanded a sum of Rs.10,000/- to release the tractor. Based on the complaint made by the complainant which was grave in nature, the petitioner was placed under suspension on 05.01.2008 and the departmental action was initiated. He would submit that detailed enquiry was conducted after affording opportunity to the petitioner. Three charges were framed against the petitioner, against which, he had tendered his explanation with various false allegations. The enquiry officer had conducted his enquiry after affording opportunity to him and had examined various witnesses and held that all three charges are proved. After furnishing copy of the enquiry report, he had submitted his further representation. Thereafter, the Deputy Inspector General of Police, Dindigul Range, after considering the relevant materials, imposed major punishment of compulsory retirement from service with a detailed order dated 02.02.2009. The petitioner had not preferred any appeal thereafter. But the issue has been taken by the Additional Director



W.P.(MD)No.11055 of 2019

WEB COPY

General of Police (L&O) on the *suo-motu* review and reduced the punishment into reduction in time scale of pay by three stages for three years. With this modification of punishment, he was reinstated into service. He would submit that he had not preferred any appeal till 24.01.2017 and it was only on 25.01.2017, after a lapse of 8 years, he had preferred a representation before the Additional Chief Secretary to the Government, Home Department and the same had been rejected and the order impugned came to be passed. To strengthen his contentions, he has relied upon the judgment of the Hon'ble Supreme Court reported in **1995 (6) SCC 749** in a case of ***B.C.Chaturvedi Vs. Union of India*** and the judgment reported in **2004 (12) SCC 579** in a case of ***Principal Secretary to Government of A.P. Vs. Adinarayana***. Yet another judgment reported in **AIR 2005 SC 4217** in a case of ***Ajit Kumar Nag Vs. General Manager***. He would submit that the judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made.

6.This Court has considered the submissions made on either side and perused the materials on record.



W.P.(MD)No.11055 of 2019

7.It is seen from the records that while the petitioner was working as Sub Inspector of Police at Thenkarai Police Station. He had went to night rounds on 04.01.2008 in a private auto without any police personnel along with him for vehicle check up. He had taken the tractor for transporting sand to the police station and registered a case by showing minor offences. But the next day one Abuthahir preferred a complaint against the petitioner by alleging that he demanded a sum of Rs.10,000/- for release of vehicle. A case was registered against the Driver one Karuppiah, who drove the said tractor. The said Karuppiah had appeared before the Judicial Magistrate Court, Periyakulam in STC.No.28 of 2008 and has admitted his guilt and paid a sum of Rs.100/- as fine vide order dated 05.01.2008. Based on the complaint made by the complainant, the petitioner was placed under suspension on 05.01.2008 and the departmental action was initiated against him. On 08.04.2008, charge memo was issued under Section 3(b) of the Tamil Nadu Police Subordinate Service Rules, 1955 containing the following charges:-

1.On 04.01.2008 at about 12.00 night, the petitioner intercepted the tractor TN59 Z 3062 which was transporting illicit sand, near Periyakulam Govt.Hospital and took it to the Police Station and received Rs.10,000/- for releasing the tractor and subsequently since the delinquent came to know that the tractor owner Abuthahir



WEB COPY



W.P.(MD)No.11055 of 2019

was about to make a complaint to higher Police Officers, the petitioner returned the amount which is a misconduct, for which the petitioner was placed under suspension by the Superintendent of Police, Theni District vide order D.O. 11/2008-C.No.F1/523/2008 dated 05.01.2008.

2.Transport of illicit sand in the tractor TN59 Z 3062 on 04.01.2008 at about 12.00 night was not reported to the Revenue Officers and case was not registered for illicit transport of sand but registered the case on the ground of “driving the vehicle with one front light” vide the Police Notice No.166913 and thus derelict the duty of a responsible Sub-Inspector of Police.

3.The charge of “driving the vehicle with one front light” was not registered at the spot but the tractor was taken to the Police Station and the tractor number was wrongly entered in the Police Notice No.166913 as TN 59 Z 3063 instead of TN 59 Z 3062 and did not fill up the column No.2, 3, 5 and 6 in the 2nd and 3rd copies of the police notice and thereby suppressed the fact and derelict the duty.

8.On 24.04.2008, the petitioner submitted his explanation and denied all the three charges. The explanation submitted by the petitioner was not satisfactory. The Deputy Superintendent of Police (District Crime Branch) was appointed as Enquiry Officer on 09.06.2008. The petitioner had requested to supply all the documents and the same were



W.P.(MD)No.11055 of 2019

supplied to the petitioner. During the Departmental Enquiry, on the side of the Department, P.W.1-Abuthahir, P.W.2-Karuppiah, P.W.3-Muruguvel, P.W.4-Ramesh, P.W.5-Periyasamy, P.W.6-Kanagaraj, Head Constable, P.W.7-Muthukumar, Inspector of Police and P.W.8-Kanagaraj, Deputy Superintendent of Police, Periyakulam were examined. Fourteen documents have also been marked, on the side of the department. The petitioner had cross-examined the departmental witnesses. The petitioner did not examine any witnesses to defend his case. The enquiry officer has conducted his enquiry, after affording opportunity to the petitioner and had examined witnesses and based on the documents and evidences, ha had submitted his report by holding that all the three charges were proved, vide his enquiry report dated 11.11.2008. A copy of the enquiry report was furnished to the petitioner and he has submitted his further explanation dated 25.11.2009 and denied all the allegations and report of the enquiry officer. The Deputy Inspector General of Police, Dindigul Range, based on the report submitted by the enquiry officer, has passed a detailed order dated 02.02.2009 and thereby, imposed major punishment of compulsory retirement from service with immediate effect. The third respondent had considered the evidence on record and imposed major punishment and he



W.P.(MD)No.11055 of 2019

was relieved on 12.02.2009. On 03.02.2009, an erratum was issued with regard to the order passed by the third respondent dated 02.02.2009.

9. According to the petitioner, on 15.02.2009, he had preferred an appeal before the Additional Director General Police(Law & Order), Chennai. According to the respondents, the petitioner had not preferred any appeal. However, the above issue had been taken up by the second respondent on suo motu review and had reduced the major punishment into reduction in time scale of pay by three stages for three years and the period of reduction which shall not operate to postpone future increment. With the above modification, the petitioner was reinstated into service from the date of receipt of a copy of that order vide order dated 12.05.2009. The Superintendent of Police, Theni District has passed an order dated 13.11.2009 wherein it has been stated that the suspension period spent by the petitioner was ordered to be treated as eligible leave including Extraordinary Leave to the extent. Thereafter, the Superintendent of Police has passed an order dated 29.03.2014 implementing the punishment imposed by the Additional Director General of Police. The petitioner retired on attaining superannuation on 15.02.2015.



W.P.(MD)No.11055 of 2019

10.The petitioner filed a review petition before the Government under Rule 15 (A)1(iv)(a) of the Tamil Nadu Police Subordinate Service Rules, 1955 dated 25.01.2017. Considering the review petition submitted by the petitioner, the order impugned came to be passed in G.O.(D) No.89 Home (Pol.IVA) Department dated 23.01.2018 by rejecting the claim of the petitioner.

11.The learned counsel appearing for the petitioner would submit that the appeal preferred by the petitioner dated 15.02.2009 was not at all considered by the Director General of Police and therefore, the respondents have violated the procedures.

12.A perusal of the review petition dated 25.01.2017 submitted by the petitioner shows that there is a mention about the appeal preferred by him before the Director General of Police and there is no acknowledgment proof has been submitted to establish the above said fact. It is settled proposition that the stand of proof in Departmental proceedings is different from criminal trial. It is pertinent to mention that the Hon'ble Supreme Court of India, in a judgment reported in *Aironline 2020 SC 795* in a case of *State Of Rajasthan vs Heem Singh*



W.P.(MD)No.11055 of 2019

wherein it has been held that “the verdict of the criminal trial did not conclude the disciplinary enquiry. The disciplinary enquiry was not governed by proof beyond reasonable doubt or by the rules of evidence which governed the criminal trial”. It is relevant to refer the judgment of the Hon'ble Supreme Court of India in a case of ***Union of India & Ors Vs. P.Gunasekaran*** wherein laid down preponderance of probabilities for exercising of judicial review. The Hon'ble Supreme Court held as follows:-

12.Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in*



WEB COPY



W.P.(MD)No.11055 of 2019

conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.



W.P.(MD)No.11055 of 2019

WEB COPY

13.It is also refer the judgement of the Hon'ble Supreme Court in **2022 Livelaw (SC) 304** in a case of **State of Karnataka & Anr. Vs. Umesh** wherein it has been stated as follows:-

17.In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether: (i) the rules of natural justice have been complied with; (ii) the finding of misconduct is based on some evidence; (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and (iv) whether the findings of the disciplinary authority suffer from perversity; and (vi) the penalty is disproportionate to the proven misconduct.

14.By keeping in mind on the above tests, in the instant case on hand, none of the above tests for attracting to interference of order impugned. The enquiry was conducted in accordance with the principles of natural justice. The findings of the enquiry officer and the disciplinary authority are substantiate with reference to the evidence which was



W.P.(MD)No.11055 of 2019

adduced during the enquiry. It is settled law that the acquittal by a criminal Court does not preclude a departmental enquiry against the delinquent officer. The object of a Departmental enquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. It is seen from the records that an enquiry was conducted in adherence to the statutory provisions and principles of natural justice. The charges are specific, definite and giving details of the incident, which formed the basis of charges. The punishment imposed is proportionate to the gravity of the misconduct. This Court is of the view that there is no reasons to interfere with the order impugned. There is no merit in this writ petition and the same is liable to be dismissed.

15.In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

NCC : Yes / No
Index : Yes / No
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02.04.2025



W.P.(MD)No.11055 of 2019

WEB COPY

- To
- 1.The Additional Chief Secretary to Government,
Home (Pol.IVA)Department, Chennai-9.
 - 2.The Additional Director General Police,
(Law & Order),
Mylapore, Chennai-600004.
 - 3.The Deputy Inspector General of Police,
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 - 4.The Superintendent of Police,
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 - 5.The Principal Accountant General of Tamil Nadu (A&E),
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W.P.(MD)No.11055 of 2019

M.JOTHIRAMAN, J.

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W.P.(MD)No.11055 of 2019

02.04.2025