

S.Parthiban Vs. the Inspector General of Police and ors.

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Court : Chennai

Decided On : Mar-07-2012

Judge : M.Jaichandren, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No.11458 of 2009

Appellant : S.Parthiban.

Respondent : The Inspector General of Police and ors.

Advocate for Pet/Ap. : Mr.K.Venkatramani, Adv.

Judgement :

This writ petition is filed under Article 226 of the [Constitution of India](#) praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned order made in G.O.(2D) No.234 Home (SC) Department dated 3.6.2009 on the file of the 1st respondent herein and the consequential order made in D.No.652/2009 C.No.D1/19941/09 dated 18.6.2009 on the file of the 2nd respondent herein and quash the same.

ORDER

1. The present writ petition has been filed challenging the order made in G.O.(2D) No.234, Home (SC) Department, dated 3.6.2009, on the file of the first respondent

and the consequential order made in D.No.652/2009, C.No. D1/19941/2009, dated 18.6.2009, on the file of the second respondent imposing the punishment of dismissal from service, on the petitioner.

2. The petitioner has stated that he had joined as a constable in the Tamil Nadu Police service, on 1.8.1984. During his service, he was a part of several investigation teams, which had been given the responsibility of investigating a number of important and sensational cases. During the tenure of the petitioner's service, he was given 99 awards for meritorious service. The petitioner was also awarded the Chief minister's medal. He had been involved in investigating a number of cases against the police officers, which had ended in their conviction. While so, the Inspector General of Police, Chennai, had issued a memorandum, dated 6.2.2006, containing the following charge: Grave misconduct by demanding and accepting of bribe of Rs.1,000/- from Munusamy on 10.2.2000 at about 20.00 hrs in front of the residence of G.Harikrishnan, Inspector of Police, Crime Branch C.I.D., Villupuram (now Deputy Superintendent of Police) at Salaimedu for furnishing information regarding the developments in the case of Thirunavalur P.S.Cr.No.115/91 to the said Munusamy.

3. The petitioner had submitted a written statement of defence, on 9.6.2007. An enquiry officer had been appointed for conducting the enquiry. After conducting the enquiry, the enquiry officer had submitted a detailed report stating that the charge levelled against the petitioner had not been proved. However, the first respondent, by a communication, dated 26.5.2008, had called upon the petitioner to submit his representation, as it had been proposed to disagree with the findings of the enquiry officer. Pursuant to the said communication, the petitioner had submitted a written representation, dated 18.8.2008, to the first respondent, stating that he was not guilty of the charge levelled against him. However, the first respondent had not passed any order for a long time.

4. It had been further stated that the first respondent had passed an order, dated 12.2.2009, against the G.Harikrishnan, Inspector of Police, C.B.C.I.D., Villupuram, agreeing with the findings of the enquiry officer relating to the common charge levelled against the petitioner and the said G.Harikrishnan, even though the

charge against G.Harikrishnan was more serious in nature. As the first respondent had accepted the findings of the enquiry officer, in respect of G.Harikrishnan, the petitioner had made a representation to the first respondent, on 22.4.2009, requesting the first respondent to pass suitable orders, in respect of the charge levelled against him.

5. The first respondent, by his impugned order, in G.O.(2D) NO.234, Home (SC) Department, dated 3.6.2009, had held that the charge levelled against the petitioner had been proved, stating as follows: The government have examined the charge, explanation of the delinquent, findings of the inquiry officer, reason for deviation from the findings of the Inquiry Officer and the further representation of the delinquent on the deviated views of the Government, carefully and independently, along with the connected records and have decided to held the charge as proved. For the proven charge, it has been decided to impose the punishment of Dismissal from service on the delinquent. Accordingly, the government order that the punishment of Dismissal from service be imposed on Thiru S.Parthiban, HC 1422, formerly Crime Branch C.I.D., Villupuram, for the proven charges.

6. Based on the said order of the first respondent, dated 3.6.2009, the second respondent had passed the consequential order of dismissal from service against the petitioner, by an order, dated 18.6.2009. In such circumstances, the petitioner had preferred the present writ petition before this Court, under Article 226 of the [Constitution of India](#).

7. The learned senior counsel, appearing on behalf of the petitioner, had submitted that the impugned order of the first and the second respondents are arbitrary, illegal and void, as they are contrary to law and the principles of natural justice.

8. The learned senior counsel, appearing on behalf of the petitioner, had further submitted that the enquiry officer had rightly held that the charges levelled against the petitioner had not been proved, as there was no evidence to substantiate the charge. The enquiry officer had rightly, come to the conclusion that the evidence of P.W.2 and P.W.3 was not reliable, as they were closely related to A.Jothiraman, an accused in the case in crime No.115/91 on the file of Thirunavalur police

station. The evidence of the prosecution witnesses P.W.4, P.W.5 and P.W.6 had not been believed by the enquiry officer. As there was no acceptable evidence against the petitioner, the enquiry officer had arrived at the right conclusion that the petitioner was not guilty of the charge levelled against him.

9. The learned senior counsel had further stated that the first respondent ought not to have passed the orders on different dates following a common enquiry held against the petitioner and G.Harikrishnan. When the common charge against the petitioner and G.Harikrishnan had not been proved, it is not open to the first respondent to accept the findings of the enquiry officer, in respect of G.Harikrishnan, differing from such findings relating to the petitioner. It is a clear case of discrimination against the petitioner, due to mala fide reasons. The alleged incident, relating to crime No.115/91, had taken place in the year, 1991, and the investigation by the C.B.C.I.D. had started in the year, 1995. The charge levelled against the petitioner relates to the occurrence said to have taken place, on 10.12.2000, and the charge memo had been issued, only on 6.2.2006, based on which an enquiry had been held.

10. The learned senior counsel for the petitioner had further submitted that the disciplinary authority had differed from the findings of the enquiry officer, without having proper reasons to do so. The disciplinary authority should have substantial grounds to differ from the findings of the enquiry officer, which are in favour of the petitioner, before arriving at the decision to impose the punishment of dismissal from service on the petitioner. In fact, no show cause notice had been issued to the petitioner before the disciplinary authority had decided to differ from the findings in the report of the enquiry officer.

11. The learned senior counsel for the petitioner had further submitted that the grounds for disagreement, in respect of the charge levelled against the petitioner, had been furnished to the petitioner, along with the letter issued by the secretary to Government, Home (SC) Department, dated 26.5.2008. Annexure to the said letter reads as follows: The statement appeared to have been recorded by the Inquiry Officer from P.W.2 Munusamy and the statement of P.W.2 recorded by investigating officer of the Detailed Inquiry would clearly show that the

circumstances which compelled you, P.W.3 and on Manimaran to go to the residence of CB CID Inspector Thiru Harikrishnan, on the date of occurrence of this case and the fact of demand and obtainment of Rs.1,000/- by you when you along with P.W.3 and Manimaran came out of the residence of Thiru Harikrishnan at about 2000 hours on 10.12.2000. The evidence of P.W.2 has been corroborated by the circumstantial evidence even though P.W.3 did not speak anything incriminating against you to corroborate P.W.2. Thiru Manimaran who was also said to be present with P.W.2 at the time of obtainment of Rs.1,000/- by you had gone abroad and hence he could not be examined by the Inquiry Officer. The inference unwarrantedly drawn by the Inquiry Officer that the witnesses may have enmity against you is incorrect. The question raised by the Inquiry Officer as to whether the case in Thirunavalur PS Cr.No.115/91 was under investigation or pending trial at the time of occurrence of this case would not be so relevant, when considered the purpose for which you obtained Rs.1,000/- from P.W.2. II. The standard of proof required in the departmental disciplinary proceedings is only preponderance of probability and not proof beyond doubt.

12. The learned senior counsel for the petitioner had also stated that there should have been two show cause notices issued to the petitioner, before the order of punishment had been passed. The first show cause notice ought to have been issued stating that the disciplinary authority had decided to differ from the reasons given by the enquiry officer, in the enquiry report submitted by him, showing the grounds based on which such a decision had been taken. Based on the said notice, the petitioner ought to have been given an opportunity to make his statement against the said decision. Thereafter, if the disciplinary authority makes a decision to impose a punishment on the petitioner, holding that he was guilty of the charge levelled against him, a further opportunity is to be given to the petitioner to make his statement before the proposed punishment is imposed on him. However, in the present case, the disciplinary authority had failed to comply with the said requirements and therefore, the impugned orders passed by the first and the second respondents, imposing the punishment of dismissal from service on the petitioner, without following the said procedures are invalid in the eye of law.

13. He had further submitted that proper reasons had not been given for the passing of the impugned order, dated 3.6.2009, by the first respondent.

14. The learned senior counsel had also submitted that there was no circumstantial evidence, corroborating the evidence of P.W.2, as stated in the annexure to the letter, dated 26.5.2008, issued by the secretary to Government, Home Department. Therefore, the impugned order passed by the first and the second respondents are liable to be set aside.

15. The learned senior counsel for the petitioner had relied on the following decisions in support of his contention:

15.1. In *D.VEERASEKARAN Vs. MANAGING DIRECTOR, TASMAC*, (2010) 4 MLJ 1172), this Court relying on the decisions of the Supreme Court, in *LAV NIGAM Vs. CHAIRMAN MD, ITI LTD AND ANOTHER* (2006) 9 SCC 440, had held that in case the disciplinary authority differs from the view taken by the enquiry officer, he is bound to give a notice to the employee concerned, setting out the tentative conclusions. 15.2. In *LAV NIGAM Vs. CHAIRMAN MD, ITI LTD AND ANOTHER* (2006) 9 SCC 440, the Supreme Court had quoted its earlier decisions, in *PUNJAB NATIONAL BANK Vs. KUNJ BEHARI MISRA* (1998) 7 SCC 84) and *STATE BANK OF INDIA Vs. K.P.NARAYANAN KUTTY* (2003) 2 SCC 449, in holding that, when the disciplinary authority differs with the view taken by the enquiry officer, he is bound to give a notice to the delinquent employee, setting out his tentative conclusions. It is only after hearing the delinquent employee, the disciplinary authority would arrive at a final finding of guilt. Thereafter, the delinquent employee should be, once again, served with a notice relating to the punishment proposed.

16. In the counter affidavit filed by the respondent, the averments and the allegations made in the affidavit filed in support of the writ petition are denied.

17. It has been stated that, the first respondent, while differing from the view of the enquiry officer, had given proper reasons to do so. The petitioner had been given an opportunity to make a further representation before the order had been passed imposing the punishment of dismissal from service on the petitioner.

18. It had been further stated that the charge against the petitioner was grave in nature. Since, different charges had been framed against the petitioner and G.Harikrishnan, different orders had been passed by the state Government. As the petitioner was guilty of the charge levelled against him, the impugned orders had been passed removing him from service.

19. It had also been stated that the petitioner ought to have availed the alternative remedy available to him, as per the relevant provisions of law, before invoking the extraordinary jurisdiction of this Court by filing the present writ petition, under Article 226 of the [Constitution of India](#).

20. The learned counsel appearing for the respondents had relied on the following decisions in support of his contentions:

20.1. In HIGH COURT OF JUDICATURE AT BOMBAY THROUGH ITS REGISTRAR Vs. SHASHIKANT S.PATIL AND ANOTHER (2000) 1 SCC 416), the Supreme Court had held that the judicial review of a decision of the disciplinary authority is permissible, if there is a violation of the principles of natural justice or of certain statutory regulations. The decision of the disciplinary authority would also stand vitiated, if it had been passed on considerations extraneous to the evidence and the merits of the case, or if the conclusion made by the authority, on the face of it, is wholly arbitrary and capricious, that no reasonable person could have arrived at such a conclusion. It cannot, however, be overlooked that the disciplinary authority is the sole judge of the facts, when the enquiry has been properly conducted. If there is some legal evidence on which the findings can be based, the adequacy or the reliability of such evidence is not a matter to be canvassed before the High Court, under Article 226 of the [Constitution of India](#).

20.2. In UNION OF INDIA Vs. MOHD.RAMZAN KHAN (1991) 1 SCC 588, the Supreme Court had held as follows:

18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-

furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.

21. In view of the submissions made by the learned counsels appearing for the parties concerned, and on a perusal of the records available, and on considering the decisions cited supra, this Court is of the considered view that the impugned order passed by the first and the second respondents cannot be sustained in the eye of law.

22. It is seen that a charge had been levelled against the petitioner, by a memorandum, dated 6.2.2006, relating to an incident alleged to have taken place, on 10.2.2000. Based on the charge framed against the petitioner, an enquiry had been held, wherein the enquiry officer had given his findings stating that the charge levelled against the petitioner had not been proved. While so, the first respondent had decided to differ from the findings of the enquiry officer stating that there was sufficient circumstantial evidence to corroborate the evidence of P.W.2.

23. However, on a perusal of the enquiry report, it is clear that the charge levelled against the petitioner had not been proved. Further, the petitioner had not been put on notice, on the tentative decision of the disciplinary authority to differ from the findings of the enquiry officer. Though the petitioner had been asked to submit his representation, it cannot be said that the petitioner had been given sufficient opportunity to show that he was not guilty of the charge levelled against him, in the memorandum, dated 6.2.2006. Though the petitioner had submitted a representation dated 18.8.2008, the disciplinary authority had passed an order dismissing the petitioner from service, only on 18.6.2009, after a long delay. No proper reasons had been shown as to why a different yardstick had been followed, with regard to the decision to impose the punishment, in respect of the petitioner and G.Harikrishnan.

24. It is also noted that sufficient grounds had not been shown for the disciplinary authority to differ from the findings of the enquiry officer, in respect of the charge levelled against the petitioner. Even though this Court does not sit on appeal against the findings of the enquiry officer, it would only be appropriate for this Court to see as to whether there were sufficient grounds available on record, for

the disciplinary authority to differ from the findings of the enquiry officer, in order to impose the punishment of dismissal from service.

25. In such view of the matter, the impugned order of the first and second respondents are set aside, as they are devoid of merits. However, the petitioner shall not be entitled for the payment of backwages, in view of the facts and circumstances of the present case, as it is a discretionary remedy, as held by the Apex Court in its decision, in CHAIRMAN-CUM-MANAGING DIRECTOR, COAL INDIA LTD AND OTHERS Vs. ANANTA SAHA OTHERS (2011 (4) SCALE 398) There is nothing on record to show that the petitioner has been without any employment, when he has been out of service from 18.6.2009. Accordingly, the writ petition stands allowed. No costs.

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