

In this writ petition, the punishment of reduction in pay by three stages for three years with cumulative effect, imposed on the petitioner by the third respondent in his proceedings dated 6.7.2000, as confirmed by the second respondent in appeal on 7.1.2001 and further confirmed in review on 10.3.2002, is challenged.

2. The facts of the case as stated in the affidavit are as under,

(a) Petitioner joined in service as Police Constable Grade-II on 17.1.1986 and he was initially posted at Madurai Rural Armed Reserve. Subsequently he was transferred to Bodi Taluk Police Station during December, 1992; to Tirupparamkundram Police Station during February, 1994; Usilampatti Prohibition and Enforcement Wing during July, 1994; and to Chekkanur Police station during July, 1995. He was promoted as Grade-I Police Constable on 1.8.1998 and served in various stations and in April 2001 he was working in Koodalpuhur Police Station. Petitioner states that he got a clean record of service and was awarded with nine rewards for his honesty, integrity and efficiency.

(b) It is the case of the petitioner that he was issued with a charge memo dated 30.3.2000 on the allegation that on 13.3.2000 while returning home after finishing Jallikattu guard duty within the Vikramangalam Police Station limits, petitioner made search of the Ambassador Car bearing registration No.TNI 6886 during night hours along with another Grade-I PC.886, on his own accord and without permission from his superior officers and checked the travellers Pushpam, aged about 35 years, wife of Malaichamy; and Vennila, wife of Santhanam, without any instructions from superior officers and received Rs.470/- from them without bringing them to the Police Station.

(c) Petitioner submitted his explanation stating that on 13.3.2000 at about 9.30 p.m. while he was at Usilampatti bus stand, there was a crowd shouting in the bus stand and the petitioner, though was not on duty, enquired the reasons and came to know that one Pushpam and three of her relatives came from Madurai to Usilampatti during odd hours after attending a function at Madurai and as there was wordy quarrel between them in respect of taxi charges to proceed to their village, he, as a duty conscience person and on humanitarian ground, intervened and pacified them, apart from arranging a taxi for them to proceed to their village and the petitioner was not aware about what had happened thereafter and that he went to his village along with the other constable viz., T.S.Manikandan. Petitioner further stated that no complaint was made against him either by the said Pushpam or Vennila as to the alleged receipt of Rs.470/- by the petitioner, but in fact, Pushpam made a complaint against one Ramar, Taxi Driver, and in that regard a case was registered in Crime No.214 of 2000 on 14.3.2000 and even in the said complaint no allegation was made against the petitioner. According to the petitioner, as the charge memo was issued based on no complaint, the same is improper and illegal. The case alleged by the petitioner is that the Inspector of Police, Usilampatti, on his own accord recorded statements from the witnesses and issued report against the petitioner and other constable.

(d) Petitioner further states that an enquiry was conducted by the Deputy Superintendent of Police, Usilampatti and he submitted enquiry report dated 29.5.2000 placing reliance only on the evidence of PW-5, the Inspector of Police, who allegedly recorded the statement of the complainant viz., Pushpam. But, the petitioner states, in the cross examination PW-1 Pushpam categorically denied

petitioner's role stating that he did not demand or receive any money and no complaint or statement was made by her before the Inspector of Police, but she was directed to sign in a statement without even disclosing the contents therein. Similar was the answer given during cross examination by Pws.2 to 4. Hence, the petitioner submitted that the Enquiry Officer's finding is solely based on the evidence of PW-5 the Inspector of Police, who has no knowledge about the incident and requested to exonerate him from the charges.

(e) However, the third respondent in his proceedings dated 6.7.2000 accepted the report of the Enquiry Officer and imposed the punishment of reduction in pay by three stages for three years with cumulative effect, holding that all the prosecution witnesses narrated the incident at the time of preliminary enquiry, but turned hostile during oral enquiry. It is stated in the order that strict proof of the guilt is necessary only in the criminal proceedings and not in the departmental proceedings in which preponderance of probabilities is sufficient. The petitioner preferred an appeal before the second respondent, who also passed an order without any reason and rejected the appeal by order dated 7.1.2001 and the same was challenged before the first respondent by way of review petition, which was also rejected without any speaking order and without considering the points raised by the petitioner. Hence the writ petition.

3. The respondents filed a counter affidavit in which it is stated that the petitioner was maintaining a clean record of service prior to the award of punishment now imposed. It is further stated that PW-1 to PW-4 have made cogent statements at the first instance during preliminary enquiry, but turned hostile and deposed against the prosecution only during final enquiry and hence the Enquiry Officer placed reliance on their earlier statements and held the charge as proved. Therefore, according to the respondents, there is no illegality in relying the earlier statements of the witnesses and consequently no interference is called for in the impugned order of punishment.

4. The learned counsel appearing for the petitioner argued that the punishment of reduction of pay by three stages for three years with cumulative effect was imposed on the petitioner solely based on the earlier statements said to have been made before the Inspector of Police, but the same witnesses turned hostile during their oral enquiry and hence the same cannot be relied on to prove the alleged charge against the petitioner. According to the learned counsel, the conclusion arrived at by the Enquiry Officer and Disciplinary Authority is contrary to the law laid down by the Honourable Supreme Court and this Court, as there is no legal evidence to prove the alleged charge against the petitioner and therefore the findings of the Enquiry Officer is to be treated as perverse as the same is based on no evidence. The learned counsel further argued that it is the duty of the appellate authority and reviewing authority to consider the grounds raised in the appeal petition/Review petition and they are expected to pass orders stating reasons, since their orders are subject to judicial scrutiny and non-consideration of the points by the appellate authority and reviewing authority is in violation of the statutory rules and against the decisions of the Honourable Supreme Court and this Court. The learned Counsel further submits that the criminal case registered against the Taxi Driver Ramar in Crime No.214/2000 of Usilampatti Police Station under section 376 of IPC was referred as mistake of fact and a report to that effect was also filed before the Second Additional Sessions Judge, Madurai. The learned counsel for the petitioner placed reliance on the decision of the Supreme Court reported in (200 4) 10 SCC 87 (Union of India v. Mohd. Ibrahim) in support of

his contentions.

5. The learned Government Advocate argued that the charge against the petitioner having been found proved during the enquiry, the punishment order issued against the petitioner is legally valid and the appellate authority and the reviewing authority merely confirmed the said order and therefore there is no illegality or impropriety in the orders of the respondents and prayed for dismissal of the writ petition.

6. I have heard the rival submissions made by the learned counsel appearing for the petitioner as well as the learned Government Advocate.

7. In the decision reported in (2004) 10 SCC 87 (Union of India v. Mohd. Ibrahim) the Honourable Supreme Court in the facts and circumstances of the case before it held that the order of dismissal was vitiated as the findings have been based on consideration of statement of the persons examined during the preliminary enquiry and for the said fact the Tribunal set aside the order of dismissal which was upheld by the High Court and there is no error in the said order setting aside the dismissal order.

8. A Division Bench of this Court by order dated 22.2.2005 in W.P. Nos.29862 & 32581 of 2002 (The Deputy Inspector General of Police, Villupuram and others v. V.Vanniaperumal and others) upheld the order of the Tribunal which set aside the order of removal from service. Paragraphs 6 and 8 of the judgment can be usefully referred to, which reads thus, "6. We have carefully considered the relevant materials and the rival contentions. We have already referred to the charges levelled against the applicants. It is also relevant to note that apart from the applicants two more officers have also been implicated along with them. They are one Sattanathan, Sub-Inspector of Police and Antony, Inspector of Police. It is brought to our notice that Sattanathan is no more and so far as the other officer Antony is concerned lesser punishment has been imposed. Now we are concerned with the charges levelled against both the applicants. In the light of the conclusion arrived at by the Tribunal, we perused the finding of the Enquiry Officer. It is not in dispute that all the prosecution witnesses except PW.3, who is none other than the Deputy Superintendent of Police, the other witnesses viz., P.Ws.1,2,4 and 5 turned hostile before the Enquiry Officer and not supported their earlier statement made at the preliminary enquiry. The Enquiry Officer having noted the above aspect curiously submitted a report holding that all the three charges levelled against them are proved based on the preliminary enquiry.

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8. In our case, we have already referred to the fact that the prosecution witnesses viz., P.Ws.1,2,4 and 5 turned hostile and not supported their preliminary version. However, the Enquiry Officer basing reliance on their earlier statement in the preliminary enquiry found that all the charges levelled against them are proved. In the light of the decision of the Supreme Court referred to above, after fullfledged enquiry was held the preliminary enquiry had lost its importance. Further, we find no substance or material to arrive at a conclusion that "since all the three counts were proved by the prosecution beyond reasonable doubts, convincingly, I agree with the findings of the Enquiry

Officer, ...". We are satisfied that there is no material to arrive at such a conclusion by the Deputy Inspector General of Police, while passing an order removing the applicants from service. All these aspects have been considered by the Tribunal in a proper manner and there is no acceptable material or evidence to take different view as that of the Tribunal. We find no merits in both the writ petitions. Accordingly, they are dismissed. No costs. Consequently, the connected miscellaneous petitions are dismissed." The said conclusion was arrived at by the Division Bench based on the decision of the Honourable Supreme Court reported in 1997 I SCC 299 (Narayana Dattatraya Ramteerthakhar v. State of Maharashtra).

9. In the present case, it is admitted by the respondents that PWs.1 to 4 have disclaimed their earlier statements and turned hostile and deposed against the prosecution, but the Enquiry Officer solely relying on the earlier statements held the charge as proved. Admittedly PW-5 Inspector of Police has no personal knowledge about the alleged incident. The earlier statements said to have been made before the 5th respondent are specifically denied by Pws.1 to 4. During cross examination also Pws.1 to 4 denied the contents of the statements said to have been made before the Inspector of Police P.W.5.

10. Taking into consideration all the above aspects, I am of the considered view that the Enquiry Officer has found the charge as proved against the petitioner on no evidence and the findings given by the Enquiry Officer as well as the Disciplinary Authority are perverse and therefore the punishment imposed against him is unsustainable.

11. The appellate authority and the reviewing authority also have not considered the point in issue in this case and merely confirmed the order without stating any reason and the said action of the appellate authority and reviewing authority is also unsustainable as it is in violation of Rule 23 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, wherein it is stated that the appellate authority shall consider whether the facts on which the order was passed have been established; whether the facts established afford sufficient ground for taking action; and whether the penalty is excessive, adequate or inadequate and pass orders confirming, enhancing, reducing, or setting aside the penalty; or remitting the case to the authority, which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case. It is further stated that the appellate authority shall make a speaking order.

12. A Division Bench of this Court in the decision reported in 2004(3) Law Weekly 32 (M.Nagarajan & Others v. The Registrar, High Court & Another) considered the scope of Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and held that the said rule is a mandate to be followed and the appellate authority shall give reasons and shall not pass any non-speaking order. The Division Bench in its judgment followed an earlier Division Bench decision of this Court reported in 1983 (2) MLJ 513 (Srinivasan v. Government of Tamil Nadu).

13. In the light of the principles laid down in the decisions cited supra, I hold that the impugned order of punishment dated 6.7.2000 passed against the petitioner, as confirmed by the appellate authority by order dated 7.1.2001 and reviewing authority by order dated 10.3.2002, is unsustainable and the same is set aside. The writ petition is allowed. No costs.

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1. The Inspector General of Police, Law and Order, South Zone, Madurai 2.
2. The Deputy Inspector General of Police, Madurai Range, Madurai.
3. The Superintendent of Police, Madurai District, Madurai.