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Date : 24/08/2025

# T.A. Swaminathan Vs The Secretary to Government, Revenue Department and The Special Commissioner and Commissioner of Revenue Administration

**Court:** Madras High Court

**Date of Decision:** Oct. 4, 2013

**Hon'ble Judges:** T. Raja, J

**Bench:** Single Bench

**Advocate:** S. Vijayakumar, for the Appellant; R. Vijayakumar, Additional Government Pleader, for the Respondent

**Final Decision:** Dismissed

## Judgement

@JUDGMENTTAG-ORDER

T. Raja, J.
The petitioner herein seeks for issuance of a writ of certiorarified mandamus to call for the records relating to the order passed

by the Disciplinary Authority - Respondent No. 2 in R.C. No. Ser. 4(1)/65412/2003, dated 18.11.2004, and as confirmed in G.O. (D) No. 148,

Revenue Service (10-1) Department, dated 25.03.2009, served on 14.08.2009 by the appellate authority/R1, quash the same as null and void

and consequentially direct the respondents to pay all monetary benefits with due promotion to the petitioner within a reasonable time.

1-A) The petitioner herein was appointed as Junior Assistant on 04.01.1982 through the Tamil Nadu Public Service Commission (in short

''TNPSC'') and he was posted at Coimbatore. On 01.09.1989, he was promoted as Assistant, Pollachi Taluk.

B) On 08.10.1994, the Special Tahsildar attached to Civil Supplies Corporation, Pollachi, along with the Revenue Inspector, seized a

vehicle/tempo van bearing Registration No. TN-41 A-4322 belonging to one Gunasekaran as it was carrying paddy without proper permit.

Consequent thereto, on 01.03.1995, the said Gunasekaran lodged a complaint with the Directorate of Vigilance and Anti Corruption (DVAC), on

24.06.1995 proceedings were initiated by the DVAC and statements from various persons came to be recorded on the alleged complaint.

C) The petitioner herein, who was charged as Accused Officer-1 with reference to the above proceedings along with two co-delinquents, by virtue

of summons dated 01.06.2000, was required to appear for the TDP (Tribunal for Disciplinary Proceedings) Enquiry. The crux of the charge was

that the petitioner/AO-1, for the release of tempo van bearing Registration No. TN-41 A-4322 with 50 bags of paddy which was seized by the

Special Tahsildar (Civil Supplies) Pollachi and his staff on 08.10.1004 near Nalumoolai Sungam of Pollachi Taluk, had demanded Rs. 2,000/- and

Rs. 10,000/- respectively for himself and the then Special Tahsildar (Civil Supplies) Pollachi on 11.10.1994 at about 9 A.M. from the above said

Gunasekaran for sending a favourable report to the Additional Collector, Coimbatore on the application of Gunasekaran. Thus, actuated by

corrupt motive and in abuse of his official position and authority and with the intent to secure wrongful gain, AO-1 demanded and ultimately

accepted bribe of Rs. 2,000/- from Gunasekaran and thereby, he failed to maintain absolute integrity and devotion to duty in Government Service

and acted in a manner unbecoming of Government Servant.

D) The TDP, which conducted the inquiry against the petitioner-A1 and co-delinquents/A2 and A3, submitted its report, dated 27.12.2000, to

R2/Disciplinary Authority holding that the charge against the petitioner herein alone was proved and as against the co-delinquents/A2 and A3 ''not

proved''. Consequently, by letter dated 24.04.2003, the first respondent directed the 2nd respondent to pass final order against the petitioner.

Following such direction, a copy of the report of the Commissioner for Disciplinary proceedings was communicated to the petitioner vide letter,

dated 09.07.2004, from the 2nd respondent. The petitioner submitted his further representation on 18.10.2004. The Disciplinary Authority/R2,

after considering the representation of the petitioner along with the findings of the TDP, by order dated 18.11.2004, held the charge against the

petitioner as proved and awarded the punishment of stoppage of increment for 5 years with cumulative effect. As against the said order passed by

R-2, the petitioner moved an appeal before the first respondent-appellate authority on 18.02.2005.

E) Simultaneously, the petitioner also moved a writ petition before this Court in W.P. No. 8749 of 2009, seeking to set aside the order of

punishment passed by R-2 herein and this Court, by order dated 10.04.2008, by recording the submission of the petitioner''s counsel to the effect

that he would confine his argument to the limited extent of directing the appellate authority to consider and dispose of the appeal of the petitioner

dated 18.02.2005, disposed of the said writ petition by directing the appellate authority to dispose of the appeal within a period of twelve weeks.

F) Complaining non-compliance of the order, dated 10.04.2008, passed in W.P. No. 8749 of 2008, and seeking a direction to implement the said

order, the petitioner moved another writ petition in W.P. No. 16122 of 2009. In the meanwhile, by order dated 25.03.2009, the appellate

authority, disposed of the appeal, rejecting the plea of the petitioner and thereby, the writ petition became infructuous and, it was so dismissed.

Now, challenging the impugned order of punishment passed by the 2nd respondent as confirmed by the 1st respondent, the petitioner has come up

with the present writ petition.

2. In an assiduous endeavour to assail the impugned orders of punishment, learned counsel for the petitioner would submit at the first instance that

when the TDP recorded an emphatic finding in favour of co-delinquents/A2 and A3 by name N. Stephenraj and S. Natarajan to the effect that the

charges against them are not proved, such finding should have been recorded for the petitioner also particularly when those two co-delinquents had

more responsibilities than the petitioner. According to the learned counsel, from the beginning to end, the authorities at the hierarchy acted with

utmost bias against the petitioner, as otherwise, they would not have particularly targeted the petitioner while dropping the charges against the co-

delinquents. Therefore, the edifice of the proceedings is highly shaken so that ultimately, the punishment imposed is liable to be set aside. To

reiterate his submission, he referred to the following observation of the Apex Court in Man Singh Vs. State of Haryana and Others, ,

19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether

legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have

made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to

an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him.

Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as

a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is

to be just on the test of ''fair play'' and reasonableness. We have, therefore, examined the case of the appellant in the light of the established

doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal

as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in

fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise

Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly

on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the

appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised

proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order

of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in

different capacity with unblemished record of service.

Learned counsel added that in the present case also, co-delinquents, who faced charges arising out of the same alleged incident, were treated

differently, in that, persons with more responsibility escaped the punishment while individual with lesser responsibility compared to the co-

delinquents, like the petitioner, was imposed with the impugned punishment. Therefore, in the light of the above case law, the proceedings are liable

to be interfered with.

3. Next, he submitted that based on the TDP report in singling out the petitioner to hold him guilty and dropping the charges against co-delinquents,

the Disciplinary Authority should have independently applied his mind and similarly, the appellate authority as well. But, in the case on hand, the

proceedings of the authorities show that they did not apply their mind to the facts and allegations independently, particularly when the charge

framed against the petitioner is too vague and not seem to be specific with reference to the nature of duties and the violation on his part having

regard to the penal provisions under the Prevention of Corruption Act. By referring to the observation of this Court in V.P. Chellappa v.

Superintending Engineer, T.N.E.B. (2010-1-MLJ-714) to the effect that the order passed by the appellate authority should indicate application of

mind and reasons, however brief they may be, should be incorporated in the order, it is submitted that inasmuch as the 2nd respondent did not

apply his mind independently on the TDP report and similarly, the first respondent simply adopted the conclusion of the 2nd respondent, the entire

proceedings may have to be set aside.

4. Adding further, the learned counsel for the petitioner would submit that the authorities are so senile in disposing of the appeal, in that, they took

about 4 years even after this Court''s order dated 10.04.2008 and hence, the inordinate delay in disposal of the appeal by the authority would

definitely undo the vigor of the impugned proceedings particularly when such proceedings lack clear and detailed reasonings. By submitting that the

impugned orders are bound to fall on the ground of non-application of mind by both the disciplinary authority as well as the appellate authority with

reference to the evidence, procedure as well as quantum of penalty coupled with the inordinate delay in disposing of the appeal and also, the

authorities singled out the petitioner so as to target him for imposing the impugned punishment, learned counsel pleaded that this is a fit case

deserving acceptance by this Court for granting the relief sought for.

5. Per contra, learned Special Government Pleader, at the first instance, would submit that after service of the charge memo on 01.06.2000, during

the course of the disciplinary proceedings, the prosecutor had examined 12 prosecution witnesses and marked 11 exhibits on his side.

Interestingly, the petitioner herein did not even prefer to examine any witness on his behalf except to file a single exhibit. The statement-cum-

arguments submitted by the petitioner as well as oral submissions of the defence were duly taken into consideration by the TDP. Subsequent to the

TDP report, dated 27.12.2000, holding that the charge against AO-1 alone stands proved, a copy of the report was communicated to the

petitioner with a direction to submit his further representation, if any, on the findings. It was the stand of the petitioner that the alleged complaint

itself is an after-thought to wreak vengeance for seizure of the vehicle carrying the paddy without any permit and that the entire set of evidence

adduced to prove demand and acceptance of illegal ratification by the petitioner was manipulated and cleverly created to somehow rope him in.

According to the learned Special Government Pleader, such defence taken by the petitioner was rightly dismissed by the disciplinary authority by

independently applying his mind to the evidence on record and by observing that prosecution witness No. 3 is an eyewitness to the acceptance of

money by the petitioner. Further, the submission of the learned counsel for the petitioner that the Appellate Authority simply adopted the order of

the disciplinary authority and that there was inordinate delay of about four years in disposing of the appeal has to be just brushed aside in view of

the reason that, in fact, having regard to the report of the TPD followed by the impugned order passed by the 2nd respondent/Disciplinary

Authority, before disposing of the appeal, the Appellate authority solicited the views of the TNPSC. Therefore, when the appellate authority

disposed of the appeal with all seriousness that too after soliciting the views of the Commission, it is so unfortunate on the part of the petitioner to

attribute either non-application of mind or delay in disposing of the appeal.

Therefore, none of the submissions advanced on behalf of the petitioner to assail the impugned orders merits acceptance. So submitting, he

pleaded for dismissal of the writ petition in threshold.

6. After hearing both sides, I am not able to subscribe to any of the submissions advanced by the learned counsel for the petitioner in view of the

following reasons.

7. The anchor-sheet of the petitioner''s side argument was that the authorities acted without due application of mind and they selectively targeted

the petitioner obsessed with bias, in that, charges against persons with more responsibility i.e., co-delinquents/Accused Officers-2 and 3, were

held to be ''not proved'' while the charge against the petitioner was found to be proved. In this regard, it must be pointed out that even though the

TDP dropped the charges against the co-delinquents, after examining the said proceedings having regard to the provisions contained in Rule 10(b)

of the T.N. Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, the Disciplinary Authority differed with the findings of the TDP insofar

co-delinquent N. Stepehnraj/AO-2 by opining that the charges framed against him are proved. Such dissenting view of the Disciplinary Authority

was conveyed to the co-delinquent and therefore, the disciplinary proceedings against him are pending. Even otherwise, on a perusal of the orders

of the disciplinary authority as well as the appellate authority having regard to the conclusion arrived at by the TDP, this Court could see that in

fact, no motive or malice could be traced as claimed by the petitioner and further, there is some specific evidence in the form of the testimony of

PW-3 regarding acceptance of bribe by the petitioner. That is why, the disciplinary authority highlighted that obviously, the irrefutable

circumstances turn the needle of suspicion only against him (petitioner herein) and that the TDP has proved his guilt on the principle of

preponderance of probabilities on the basis of the materials placed. Apart from the above, the appellate authority also took pains to solicit the

views and opinion from the TNPSC. The Commission also offered its views thus,

In his appeal, the appellant had repeated the points what he had already submitted in his further representation. His plea that the other 2 officials

who were also put on defence by the Tribunal for Disciplinary Proceedings, Coimbatore and subsequently exonerated and he should also be

exonerated on par with them cannot be acceptable. Further, his contention that there is no documentary evidence or independent witness to show

that there was demand for illegal gratification is also not acceptable, since in a departmental action, ''preponderance of probability'' is also taken

into account to prove the charge and the Tribunal for Disciplinary Proceedings has proved the appellant''s guilt on the principles of preponderance

of probability, the proved charge of illegal gratification, is serious in nature, which warrants a severe punishment. However, the Disciplinary

Authority had taken a lenient view and imposed the punishment of stoppage of increment for five years with cumulative effect on the appellant.

Therefore, the Commission advises the Government to disallow the appellant''s appeal as devoid of merits.

In the above circumstances, the impugned punishment by R2 as affirmed by R1 cannot be faulted with, for, what was imposed against a serious

nature of misconduct that too well proved through the clear evidence of PW-3, who in his deposition as well during cross examination by the

accused-delinquents, clearly elicited the demand of bribe by specifying the amount demanded and accepted, being only a punishment imposed in a

lighter way, the present grievance of the petitioner, in my view, should not be given any importance at all. This Court took pains to go through the

entire evidence of PW-3 and the records made available in an endeavor to appreciate the arguments of the learned counsel for the petitioner,

however, the materials on record speak otherwise. Even though the act of guilt or misconduct warrants a much higher punishment, since the

authority has already imposed the punishment which is quite reasonable even though not proportionate to the tenor of the guilt, this Court does not

deem to proceed further to record any adverse finding against the petitioner. The decisions cited by the learned counsel for the petitioner are

distinguishable as they are exclusive to the set of facts involved in those cases, and the case on hand standing altogether on a different frame, in

that, the petitioner''s guilt having been proved beyond doubt and what is imposed is only a lighter punishment by the 2nd respondent by taking a

lenient view and such decision came to be endorsed by the 1st respondent only after soliciting the suggestions of the TNPSC, this Court does not

find any valid ground for interference.

In the result, Writ Petition fails and the same stands dismissed. No costs. Connected Miscellaneous Petitions stand closed.