

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2015

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

W.A.No.978 of 2011
and
M.P.No.1 of 2011

- 1.The Superintendent of Police
and Commandant,
Home Guards, Udhagamandalam,
Nilgiris.
 - 2.The Inspector General of Police,
Home Guards and Director of
Civil Defence,
475, Link Road,
Nandanam, Chennai - 35.
 - 3.The Additional Director General
of Police,
Home Guards and Civil Defence,
475, Link Road, Nandanam,
Chennai - 35.
- ... Appellants/Respondents
- Vs.
- P.Amalraj ... Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 21.08.2009 made in W.P.No.426 of 2003 filed for issuance of a writ of certiorari calling for the records of the third respondent herein in connection with C.NO.131/3693/HG/2000 and quash the order therein dated 30.01.2001.

For Appellants .. Mr.R.Rajeswaran,
Spl. Govt. Pleader

For Respondent .. No appearance

JUDGMENT

(The Judgment of the Court was delivered by V.Dhanapalan,J)

The writ appeal is directed against the order dated 21.08.2009 made in W.P.No.426 of 2003, whereby the learned single Judge set aside the order of removal of the respondent from the organisation and allowed the writ petition.

2.The respondent herein is the writ petitioner and he filed the writ petition to quash the order of the third appellant herein in C.No.B1/3893/HG/2000 dated 30.01.2001. The case of the respondent/writ petitioner is as follows:

(i)The respondent/writ petitioner joined the Nilgiris Home Guards on 01.03.1981 and he was serving as a Platoon in Udhagamandalam Unit from 1981 onwards. The respondent/writ petitioner was also appointed as a guest lecturer for the Tamil Nadu HGs and Civil Defence Training Institute, Ooty by the ADGP (HO) and SP(N). The Home Guards office was functioning at Hindustan Photo Films with the permission of the Superintendent of Police. While so, an anonymous petition in the names of staff members of the Hindustan Photo Films was received by the first appellant office, levelling certain allegations against the respondent/writ petitioner viz., he was misbehaving in a way over and above his official capacity, signing the letters for and on behalf of the Superintendent of Police and harassing the junior colleagues. Based on the said petition, a show cause notice dated 14.10.1998 was issued by the first appellant and the respondent/writ petitioner was called upon to give explanation. The respondent/writ petitioner has requested the first appellant to furnish the copy of the anonymous petition and the relevant documents relied upon by the enquiry officer to enable him to give a detailed explanation. In his reply, the respondent/writ petitioner specifically stated that the alleged occurrence took place in the year 1995 only at the instruction of his senior officer and the same was also ratified by the concerned officer.

(ii)According to the respondent/writ petitioner, without following the procedure laid down in Chapter 12(b) of the Tamil Nadu Home Guards Rules, 1963, the first appellant removed him from service. Challenging the order of the first appellant, the respondent/writ petitioner preferred an appeal before the second appellant on 15.02.1999. However, the second appellant, without properly appreciating the relevant rules applicable, by order dated 01.07.1999, confirmed the order of the first appellant. Aggrieved against the same, the respondent/writ petitioner preferred further appeal before the third appellant on 10.08.2000. Though the appeal was presented on 10.08.2000, the third appellant has not passed any orders and the respondent/writ petitioner was not called upon to

participate in the enquiry. Hence he filed a writ petition in W.P.No.10230 of 2000 to direct the third appellant to conduct the enquiry and pass appropriate orders on the memorandum of appeal filed by him. This Court, by order dated 30.10.2000, directed the third appellant to consider and pass suitable orders on the appeal after providing an opportunity to the respondent/writ petitioner within a period of four weeks from the date of receipt of the order. Thereafter, the respondent/writ petitioner made a representation to the third appellant dated 08.11.2000 by enclosing the copy of the order and requested the third appellant to do the needful. However, the third appellant confirmed the order of the second respondent. Challenging the same, the respondent/writ petitioner preferred a writ petition in W.P.No.426 of 2003.

(iii) In his order, the learned single Judge relied on Rule 12(4) of the Tamil Nadu Home Guard Rules, 1963 issued in exercise of the power conferred by Section 15 of the Tamil Nadu Home Guards Act, 1962 and held that instead of following the said rule, a discreet enquiry by the Deputy Superintendent of Police was conducted, that too, on an anonymous petition. It was also observed by the learned single Judge that after conducting the discreet enquiry, the enquiry report was not communicated to the respondent/writ petitioner, though the ultimate order of removal of the respondent/writ petitioner was based on the said enquiry report. The learned single Judge also held that there was violation of principles of natural justice. Aggrieved against the same, the authorities are before this Court with this appeal.

3. We have heard the learned Special Government Pleader appearing for the appellants and also perused the records.

4. A circumspection of the facts would reveal that the respondent/writ petitioner was serving in the Home Guard Organisation since 1981 and based on an anonymous petition, a show cause notice dated 14.10.1998 was issued, calling upon the respondent/writ petitioner to give explanation. Further, a discreet enquiry was conducted and the respondent/writ petitioner was removed from service without following rule 12(4) of the Tamil Nadu Home Guard Rules, 1963 as well as the principles of natural justice. The said Rule reads as follows:

"All cases of indiscipline shall be brought before an orderly room consisting of the Adjutant, a Divisional Commander and a Company Commander, charges framed and the Home Guard charged shall be given an opportunity to explain the charge against him. The findings of the orderly room and its recommendation shall be forwarded to the Area Commander who shall decide what further action is to be taken in the matter."

5.The above Rule makes it crystal clear that enquiry should be conducted in a fair manner by issuing charge memo and affording an opportunity to the charged employee to explain his/her position and the discreet enquiry report shall be communicated to the delinquent. But in the instant case, the said procedure has not been followed, which would amount to violation of principles of natural justice. The learned single Judge has rightly held that there was violation of Rule 12(4) of the Tamil Nadu Home Guard Rules, 1963 and also violation of principles of natural justice. We do not find any infirmity in the order of the learned single Judge. Therefore, we are of the considered opinion that the order impugned in this writ appeal is perfectly valid and accordingly, we confirm the same, by dismissing the writ appeal.

6.In the result, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

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+ 1 cc to the Government Pleader Sr.19408

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