

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.7500 of 2007
(O.A.No.98 of 2003)

A.Thangaraj

.. Petitioner

-vs-

1. The Principal Chief Conservator of Forests
15, Jeenis Road
Panagal Buildings
Saidapet
Chennai-15

2. The Conservator of Forests
Madurai Circle
Madurai

3. The District Forest Officer
Theni Division
Theni

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records on the file of the respondents 3, 2 and 1 in connection with the orders passed by them in their Proc.Se.Mu.A.No.E2/10201/98 dated 28.6.99, Se.Mu.A.A2/12050/2000 dated 28.8.2000 and Se.Mu.A.No.DA1/84977 dated 13.6.2002 respectively and quash the same.

For Petitioner :: Mr.R.Singaravelan

For Respondents :: Mr.N.Inbanathan
Government Advocate (Forests)

ORDER

The petitioner filed O.A.No.98 of 2003 before the Tamil Nadu Administrative Tribunal, Chennai challenging the punishment of reduction to the bottom scale of pay in the post of Forest Watcher for a period of five years with cumulative effect awarded by the third respondent, which stood modified by the second respondent-Conservator of Forests, Madurai to one of reduction to the bottom scale of pay for a period of three years with cumulative effect and

the said punishment was again confirmed by the first respondent on further revision. After sometime the matter came on transfer and renumbered as the present writ petition.

2. Mr.R.Singaaravelan, learned counsel for the petitioner, assailing the impugned orders, vehemently submitted that there is no basis for issuance of the charge memo against the petitioner, since the petitioner had specifically stated before the District Forest Officer, Theni, the third respondent herein on 23.5.98 about the cultivation of ganja in the disputed place. That clearly shows that the petitioner had not kept quiet wantonly with an intention to suppress the same, therefore, the charge memo ought not to have been issued against him. Adding further, he submitted that the report of the enquiry officer, while dealing with the charge no.3, also approves the case of the petitioner that he had informed about the cultivation of ganja to the departmental authorities, but further steps were not taken by the department. While so, the disciplinary authority, the third respondent herein ought to have accepted the report of the enquiry officer, which clearly shows that the petitioner had rightly brought to the notice of the department about the cultivation of ganja. Even a mere reading of the findings recorded against charge no.3 categorically show that only the department was responsible for not taking further action to destroy the ganja till it was subsequently destroyed on 23.5.98 by the concerned team. Continuing his arguments, he has submitted that when the other Forester against whom a similar charge was levelled had been imposed with the punishment of postponement of increment for a period of one year with cumulative effect, it is not known on what basis the petitioner alone can be prosecuted. Therefore, when the petitioner has rightly discharged his duties by bringing to the notice of the higher authorities in his representation dated 15.7.97 about the cultivation of ganja and its presence, the third respondent ought not to have imposed the punishment of reduction to the bottom scale of pay for a period of five years with cumulative effect in the post of Forest Watcher. Again when the petitioner, after being aggrieved by the impugned order passed by the third respondent, filed an appeal before the second respondent, he modified the punishment into one of reduction to the bottom scale of pay for a period of three years with cumulative effect, however, on further revision to the first respondent, the same was confirmed without there being any speaking order. When it is also the case of the respondents that after the petitioner reported about the cultivation of ganja by his representation dated 15.7.97, he has left the disputed place on 6.4.98 to another beat and as such having accepted the case of the petitioner that he has left Chinnaovulapuram beat of Cumbum range on 6.4.98, the question of levelling a charge against the petitioner that he had failed to destroy the same does not arise, as though he continued to serve in the said Chinnaovulapuram beat. Adding further he submitted that these factual details have not been taken into account by the first respondent. Although the second respondent had

reduced the punishment to the bottom of scale in the post of Forest Watcher for a period of three years with cumulative effect by his proceedings No.B2/12050/2000 dated 28.8.2000, the findings recorded by the enquiry officer have been completely overlooked. Therefore, the impugned orders which have been passed without application of mind by all the respondents and completely running contrary to the admitted findings of the enquiry officer are not liable to stay against the petitioner.

3. Opposing the above prayer, Mr.N.Inbanathan, learned Government Advocate for the respondents submitted that the petitioner, who was serving as Forest Watcher, was in-charge of Chinnaovulapuram beat of Cumbum range from 24.1.95 to 6.4.98. On receipt of information that ganja plants were cultivated in the forest area of Chinnaovulapuram beat, the District Forest Officer, Theni had formed a special party and instructed them to inspect the forest areas and report thereof. Accordingly, the special party headed by the Assistant Conservator of Forests, Cumbum had inspected the entire area on 23.5.98 and finally destroyed 7670 ganja plants in 1534 pits in the area of about 1 acre of land. Since the ganja plants destroyed by the special team were about 2 metres in height and the value of them was also about Rs.75 lakhs, in the presence of the District Forest Officer, as per the rules, the post of Forest Watcher being the feeder category in the Forest Subordinate Service, is wholly responsible in assisting the Forest Guard for the protection of forest areas under his range, he was chargesheeted under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules on 8.9.98 for the following lapses:-

'Charge.1

Not preventing the forest areas to the extent of about 1 acre from encroachments by anti-social elements.

Charge.2

Not destroyed the cultivated ganja plants in the forest areas under his charge.

Charge.3

Connived in cultivating ganja plants and submitted false reports to the superiors with the intention of suppressing the facts.'

The petitioner submitted his reply to the charge memo. But that was not satisfactory. Therefore, the District Forest Officer, Sivagangai Division was appointed as an enquiry officer. After completion of the enquiry, the enquiry officer sent his report stating that all the charges levelled against the petitioner were held proved. Subsequently, after examination of the report of the enquiry officer with reference to the connected records and material evidence, he was

awarded with the punishment of reduction to the bottom scale of pay for a period of five years with cumulative effect treating the charges levelled against him as held proved. Aggrieved by the same, the petitioner preferred an appeal to the second respondent, namely, the Conservator of Forests, Madurai and for the reasons recorded therefor, the second respondent, setting aside the order of the District Forest Officer, Theni, the third respondent herein on the ground that no reasonable opportunity was given to the delinquent officer as laid down in Chapter VI of the Handbook on Disciplinary Proceedings, directed the third respondent to rectify the defects from the place of error in the disciplinary proceedings and submit the report for final orders. Accordingly, on receipt of the report from the District Forest Officer, the second respondent has reduced the petitioner's pay to the bottom of scale for a period of three years with cumulative effect by order dated 28.8.2000. Against that order, the petitioner preferred a revision before the first respondent, who has rejected the same by confirming the order passed by the second respondent-Conservator of Forests on the ground that the appellate authority had examined all aspects pertaining to the disciplinary proceedings. Therefore, when the punishment imposed against the petitioner by the third respondent has been reduced to the bottom of scale for a period of three years with cumulative effect, the petitioner cannot have any grievance. Adding further, he submitted that the petitioner, as contended by the learned counsel for the petitioner, has submitted three representations, the first representation dated 15.7.97 reporting about the cultivation of ganja in Chinnaovulapuram beat. One another report also has been submitted by the petitioner on 29.1.98 indicating the cultivation of ganja in pasuoothukuzhi, perumal koil circle and the third report dated 27.4.98 also has been submitted indicating the cultivation of ganja in Aanimamara circle. On receipt of all these three representations, ganja cultivations were destroyed by the team. But with regard to Chinnaovulapuram forest area, he has not indicated the cultivation of ganja. Therefore, he was subjected to disciplinary proceedings under Rule 17(b) and finally finding no satisfactory explanation, he was imposed with the punishment referred to above. With regard to the argument advanced by the learned counsel for the petitioner on the issue of discrimination for imposing punishment against one Forester for postponing of his increment for a period of one year with cumulative effect, he has further replied that the petitioner, who was working as Forest Watcher, cannot be allowed to compare with the Forester, as his responsibility is more in comparison with the Forester.

4. Heard the learned counsel on either side.

5. It is an admitted case of both sides that the petitioner made three representations, the first one dated 15.7.97 indicating that there has been cultivation of ganja in Chinnaovulapuram beat. One another report dated 29.1.98 sent by the petitioner also indicates

that there was cultivation of ganja in passuoothukuzhi circle and the third report dated 27.4.98 pointing out the cultivation of ganja in Aanimamara circle. These three reports clearly show that the petitioner had then and there reported about the cultivation of ganja in the aforesaid areas. It is also the admitted case of the respondents that on receipt of the aforesaid three reports from the petitioner, finding out the places of ganja cultivation, they destroyed all the prohibited places of ganja cultivation. But the vital issue needs a consideration is that the findings of the enquiry officer clearly show that the petitioner had rightly reported about the ganja cultivation, therefore, it is pertinent to extract the relevant findings of the enquiry officer, as follows:-

' 'வனக்காவலரின் 16.12.98ம் தேதிய நேர்முக விசாரணையின் போதும், 23.5.98 அன்று தேனி மாவட்ட வன அலுவலரிடம் அவர் கொடுத்துள்ள வாக்குமூலத்திலும், கஞ்சா பயிரிட்டுள்ள இடத்தை அவருக்கு நன்றாக தெரியும் என்று ஒப்புக்கொண்டுள்ளார், மற்றும் வனவருக்கு இத்தகவலை தெரிவித்துள்ளார் எனினும், கஞ்சாவை அழிப்பதற்கு எவ்வித நடவடிக்கையும் வனவர் எடுக்கவில்லை.... ' '

A close reading of the findings clearly show that the petitioner had discharged his duties by submitting the appropriate reports. Indeed, the learned Government Advocate for the respondents also placed on record the reports of the Forest Guard dated 15.7.97, 29.1.98 & 27.4.98. No doubt, a reading of the above reports would also show that the petitioner had not kept quiet and was sending reports to the department for destruction of the ganja plants in the aforesaid places. While coming to the Chinnaovalapuram forest area, the District Forest Officer has also specifically found that he has sent his report. But it is not known as to why the third respondent/disciplinary authority, while considering the entire charges, has failed to apply his mind to the admitted findings recorded by the enquiry officer indicating that the petitioner, having suffered the major punishment of reduction of his pay to the bottom of scale in the post of Forest Watcher for a period of five years with cumulative effect, preferred an appeal before the second respondent-Conservator of Forests, Madurai, who also agreeing with the case of the petitioner, set aside the same on the ground that the third respondent, while conducting the enquiry under Rule 17(b), had not followed the principles of natural justice. However, while setting aside the same, the second respondent directed the third respondent to submit a report after curing the defects. Thereafter, when the third respondent again sent a report to the second respondent, he modified the punishment into one of reduction to the bottom scale of pay for a period of three years with cumulative effect. On further revision to the first respondent, he confirmed the same. But a reading of the impugned orders nowhere indicates as to how the petitioner, who had duly submitted various reports, can be found fault with for imposing the impugned punishment. Even in the

case of one Forester, for the very same charge, he was imposed with the punishment of postponement of increment for one year with cumulative effect, keeping in mind the aforesaid three reports dated 15.7.97, 29.1.98 and 27.4.98 and also the report of the enquiry officer that he had reported about the cultivation of ganja to the higher officers, both the disciplinary and appellate authorities ought to have accepted the case of the petitioner. As they did not do so, this Court, proceeding with the merits of the matter, is inclined to set aside the same. Accordingly, the impugned orders are set aside and the writ petition stands allowed. No costs.

ss

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Principal Chief Conservator of Forests
15, Jeenis Road
Panagal Buildings
Saidapet
Chennai-15
2. The Conservator of Forests
Madurai Circle, Madurai.
3. The District Forest Officer
Theni Division
Theni

+ 1 cc to Spl.Govt.Pleader (Forest) SR 18660

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prk26/5

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