

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

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THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No. 29849 of 2008 and
M.P.No.1 of 2008

A.Easuraj

...Petitioner

-Vs-

1. The Deputy Director,
Tamil Nadu Fire & Rescue Service,
North West Region,
Vellore-632 001./
i.c., Divisional Officer, Tamil Nadu
F& R Service, Tiruvallur

2. The Divisional Fire Officer,
Tamil Nadu Fire & Rescue Service,
Thiruvallur Division, Thiruvallur-602 001.

3. The Asst. Divisional Officer,
Tamil Nadu Fire & Rescue Service,
Kanchipuram Division, Kanchipuram

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records in pursuance of the charge memo No.1/2008 dated 9.4.2008 issued by the 1st respondent and consequential rejection order dated 26.11.2008 issued by the 2nd respondent herein and quash the same.

For Petitioner : Mr.M.KempRaj
For Respondents : Mr.P.Sanjay Gandhi AGP

O R D E R

The prayer in the writ petition is for a certiorari to call for the records in pursuance of the charge memo No.1/2008 dated 9.4.2008 issued by the 1st respondent and consequential rejection order dated 26.11.2008 issued by the 2nd respondent herein and quash the same.

2. The case of the petitioner is that he joined as a Fire-Man in Tamil Nadu Fire & Rescue Service Department on 09.09.1996 and finally, he was posted on 14.8.2006 to work at Avadi Fire & Rescue Service Station. During his service in the year 2008, the first respondent has issued a charge memo No.1/2008 dated 09.4.2008 under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules wherein the petitioner was charged for the violation of issuance of the fire license sumotuly to five persons without following the recommendations Code Nos.249,250 and 251 for, issuance of the fire license, after inspecting the said place for which the license is being issued.

3. Pursuant to the charges, enquiry was conducted. After completion of the enquiry, the petitioner for the alleged reasons of certain infirmities in the enquiry has sought for the de nova enquiry and to that effect, he has made representations to the respondents.

4. However, by order dated 26.11.2008 of the second respondent, the request of the petitioner was rejected on the ground that the enquiry was properly conducted as the petitioner had participated in the oral enquiry. Thereafter, he had obtained the statement given by the department witnesses and a copy of which also had been supplied to the petitioner which the petitioner had acknowledged. Moreso, the petitioner has also cross examined the department witnesses and after completion of the enquiry, the report of the enquiry officer had been given to the petitioner and he was asked to give his explanation by giving 15 days time. Inspite of all the usual formalities of the departmental enquiry having been adopted, the petitioner had not responded for the explanation called for after enquiry and therefore, according to the respondents, there is no plausible reason to accede the request of the petitioner to go for a de nova enquiry.

5. Heard both sides.

6. The learned Government Pleader appearing for the respondents referring to paragraph 13 of the counter affidavit filed by the second respondent has submitted that enquiry was properly conducted and the enquiry report was also served on the petitioner, who acknowledged the same. At paragraph 13 of the counter affidavit, the second respondent has further stated that the department is ready to provide the statement of witnesses recorded during enquiry for which the petitioner alone has to apply properly. The learned Government Pleader further submits that the enquiry was conducted properly where the petitioner fully participated, cross examined the department witnesses.

Therefore, the question of de nova enquiry as sought for by the petitioner does not arises in this case.

7. This Court has considered the rival submissions made by the parties.

8. It is an admitted fact that the enquiry was conducted with full co-operation of the petitioner as the petitioner fully participated in the enquiry and the witnesses of the department were also cross examined by the petitioner. Thereafter, the enquiry report was also supplied to the petitioner based on which, when the explanation of the petitioner was sought for, instead of replying to the said enquiry report, the petitioner had sought for a de nova enquiry and the same having been rejected by the respondents, the petitioner has approached this Court with the present writ petition.

9. When departmental enquiry is conducted even after conclusion if the punishment is inflicted, the Courts would normally not interfere as the departmental enquiry is conducted and concluded and punishments are given on the basis of preponderance of probabilities. When that being so, the present enquiry as against the petitioner has been conducted properly, there is no justification on the part of the petitioner to seek for a fresh enquiry for which, no justifiable reasons have been adduced by the petitioner before this Court.

10. As has been pointed out by the learned Government Pleader, quoting paragraph 13 of the counter affidavit filed by the second respondent, the respondents is also ready and willing to provide statement of witnesses recorded during enquiry.

11. In view of the said submissions made on behalf of the respondents, the petitioner would be at liberty to get the statement of witnesses recorded during the enquiry, if the petitioner is willing to get it. Apart from these aspects, there is no plausible reasons available for this Court to interfere with the impugned order issued by the second respondent.

12. Therefore, this Court is of the considered view that the writ petition deserves no merits. Hence, it is liable to be dismissed. However, it is open to the petitioner to make a request for supply of any copy of the statement given by the witnesses during the enquiry and if such request is made on behalf of the petitioner, respondents shall furnish the same immediately, within two weeks from the date of such request and after receipt of the same, the petitioner shall respond by way of reply to the enquiry report which has already been supplied to the petitioner and thereafter, it is open to the respondents to proceed pursuant of the enquiry report as well as the reply

to be filed by the petitioner in accordance with law to conclude such disciplinary proceedings.

13. With the above observations and directions, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst. Registrar

/ true copy /

Sub Assistant Registrar

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To

1. The Deputy Director,
Tamil Nadu Fire & Rescue Service,
North West Region,
Vellore-632 001./
i.c., Divisional Officer, Tamil Nadu
F& R Service, Tiruvallur

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Thiruvallur Division, Thiruvallur-602 001.

3. The Asst. Divisional Officer,
Tamil Nadu Fire & Rescue Service,
Kanchipuram Division, Kanchipuram

1 CC to Government Pleader SR.No.60189

1 CC to Mr.Kempray SR.No.60525

सत्यमेव जयते

W.P.No. 29849 of 2008

GMI (CO)
CS 12/11/2016

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