

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.10233 of 2007

N.Samiappan

... Petitioner

vs.

1.The Secretary to Government,
Home (Police-II) Department,
Fort St. George, Chennai - 600 009.

2.The Superintendent of Police,
District Police Office,
Erode District.

3.The Registrar,
Tamil Nadu Administrative Tribunal,
High Court Building,
Chennai - 600 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, calling for the records of the pertaining to the order of the Third respondent namely the Tamil Nadu Administrative Tribunal, Chennai dated 11.03.2002, in dismissing the O.A.No.130 of 2001 pertaining to the order of the first respondent in G.O. (2D)No.190, Home (Police-II) Department dated 09.06.2000 and quash the same and to pass such further or other order necessary orders granting promotion and monetary benefits to the petitioner within the stipulated time.

For Petitioner : Mr.V.Raghupathi

For Respondents : Mr.A.Kumar (for R1 and R2)
Special Government Pleader

ORDER

(Order of the Court was delivered by M.V.MURALIDARAN,J.)

This writ petition is filed to issue a Writ of Mandamus, calling for the records of the pertaining to the order of the third respondent namely the Tamil Nadu Administrative Tribunal, Chennai dated 11.03.2002, in dismissing the O.A.No.130 of 2001 pertaining to the order of the first respondent in G.O.(2D) No.190, Home (Police-II) Department dated 09.06.2000 and quash the same and to pass such further or other order necessary orders granting promotion and monetary benefits to the petitioner within the stipulated time.

2.The case of the petitioner is that he joined as Constable in Tamil Nadu Police Service on 10.12.1970. While the petitioner was working as a Grade-I Constable in Anthiyur Police Station alleged to have committed grave misconduct along with other police persons attached to the above said Police Station. Therefore a charge memo was issued against him and others by the 2nd respondent herein under Rule 3 (b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. The charge against the petitioner and others was an allegation of demanding and accepting illegal gratification of Rs.3000/-. An enquiry officer was appointed and enquiry was conducted and the finding of the enquiry officer is that out of three charges leveled against the petitioner, charge No.1 and 2 were held to be proved and the 3rd charge was not proved. Thereafter the 1st respondent passed the order in G.O.(2D).No.190 dated 09.06.2000 by imposing a punishment of stoppage of increment for one year with cumulative effect. By challenging the said order of the 1st respondent, the petitioner filed O.A.No.130 of 2001 before the Tamil Nadu Administrative Tribunal, Chennai. On enquiry, the Tamil Nadu Administrative Tribunal by its order dated 11.03.2002 dismissed the Original Application filed by the petitioner. Aggrieved over the same the petitioner has filed this writ petition.

3.According to the petitioner the alleged occurrence said to have taken place during the year 1988, whereas a charge memo after a lapse of 7 year i.e in the year 1995 is being issued. The above said latches/delay in issuing the charge memo has not been considered by the respondents as well as the Tribunal. Further the above said charge memo issued against him is baseless, wherefore the punishment imposed against him on the basis of the above said charge memo is liable to be quashed. The further contention of the petitioner is that the Tribunal erred in dismissing the Original Application filed by the petitioner despite holding that the charge memo in respect of the incident taken place on 14.07.1988 was served on the petitioner on

12.01.1989. Furthermore the Tribunal failed to appreciate the fact that the enquiry was concluded in the year 1997 and final orders were passed 3 years later i.e., on 09.06.2000, in such case tribunal ought not to have dismissed the Original Application.

4.The respondent filed counter affidavit and contended that the petitioner committed grave misconduct in active conniving with one Mr.Durairaj the then Sub-Inspector (Law and Order) and Head Constable 853 namely V.Ramachandran of Anthiyur Police Station while securing Madalaimuthu, Sebastian and Ramasamy of Nagalur Village along with few others to their Anthiyur Police Station on 14.07.1988 and further demanded illegal gratification of Rs.3000/- from them. In pursuance of the aforesaid demand on 14.07.1988 they received Rs.2000/- from Mr.Kolandaisamy as illegal gratification and thereafter they released all the three of the above without registering a case. For the above said misconduct of the petitioner and others, the 2nd respondent herein initiated departmental proceedings by issuing three charge memos. The petitioner has filed O.A.No.389 of 1991 before the Tamil Nadu Administrative Tribunal, Chennai (herein after referred as Tribunal) and challenged the charge memo issued against him. The Tamilnadu Administrative Tribunal, Chennai by order dated 07.10.1994 directed the respondents to complete the disciplinary proceedings and pass final order on before 31.08.1995. As per the direction of Tribunal in other Original Application, cancelled the earlier charge memo and served the reformed charge memo to the petitioner on 11.07.1995. In the meantime, the time granted by the Tamilnadu Administrative Tribunal was expired by 31.08.1995 and therefore the respondents filed M.A. for extension of time on 31.08.1995 and the same was represented with certain correction on 24.01.1996.

5.On receipt of the revised charge memo, the petitioner filed O.A.No.3573 of 1996 and challenged the said charge memo issued in P.R.No.104 of 1995 the same came to be dismissed on 03.03.1997. The 2nd respondent the enquiry officer in the minute entry dated 31.03.1997 held that charges 1 and 2 were proved and charge No.3 was not proved. The corresponding P.R. file was sent to Director General of Police, Chennai on 31.03.1997 and in turn the file was sent to the Government for orders. In consequence of the same the government vide G.O.(2D) No.190 Home (Police-II) Department dated 09.06.2000 awarded a punishment of stoppage of increment to the petitioner for 1 year with cumulative effect. The petitioner has challenged the said order before the Tamilnadu Administrative Tribunal, Chennai in O.A.No.130 of 2001 and the same was dismissed against which the present writ petition is filed. The contention of the petitioner that the

statements were recorded behind the back of the petitioner is not correct. In the case of Head Constable 853 V.Ramachandran who participated in the promotion test for Sub-Inspector of Police for the year 1994 and subsequently he was sent to training and completed training in 1997. On this ground the Tamilnadu Administrative Tribunal ordered that he was entitled for the benefit. There is no irregularity or infirmity in the order of punishment and there is no interference is warranted in the order of the Tamilnadu Administrative Tribunal, Chennai. Hence the respondents prayed to dismiss the writ petition.

6.We heard Mr.V.Raghupathi, learned counsel appearing for the petitioner and Mr.A.Kumar, learned Special Government Pleader appearing for the respondents 1 and 2.

7.It reveals from the records that the petitioner has challenged the order of punishment of stoppage of increment for one year with cumulative effect passed by the 1st respondent dated 09.06.2000. He was formerly working as Grade-I Constable at Andiyur Police Station. Three charges were framed against him, out of which two charges were held to be proved. Thereafter final order was passed by the 1st respondent in G.O.(2D) No.190 Home (Police-II) Department dated 09.06.2000 imposed the punishment of stoppage of increment for a period of 1 year with cumulative effect. The said order was challenged by the petitioner before Tamilnadu Administrative Tribunal, Chennai in O.A.No.130 of 2001 and the same was dismissed. Against which the petitioner has filed the present writ petition.

8.According to the learned counsel for the petitioner the charge memo issued to the petitioner and others are with a delay of 7 years from the date of alleged illegal gratification. Further, the Head Constable 853 V.Ramachandran filed O.A.No.5509 of 1999 before the Tamilnadu Administrative Tribunal, Chennai to quash the charge memo, was allowed by the Tribunal by order dated 07.08.2001. As against the same the 2nd respondent herein and Deputy Inspector General of Police, Coimbatore filed separate writ petitions in W.P.Nos.10858 of 2003 and 21711 of 2002 before this Court and the same were dismissed by holding that the Department Disciplinary Proceedings initiated by the authorities were not completed before 31.08.1995. Considering the lapse in initiating the Departmental Proceedings and non-compliance of order of the Tamilnadu Administrative Tribunal the charge memo dated 12.07.1995 was set aside.

9.Therefore, the learned counsel for the petitioner contented that the charge memo quashed by the Tamilnadu Administrative Tribunal, Chennai by order dated 07.08.2001 relating to V.Ramachandran Head Constable 853 and the charge memo of the petitioner is one and the same. When the charge memo

itself was set aside by the Tribunal in the case of the Head Constable V.Ramachandran and which was affirmed by this Court in W.P.Nos.21711 of 2002 and 10858 of 2003 dated 26.10.2005, the order of punishment imposed on the petitioner is liable to be quashed.

10.The learned counsel for the petitioner drawn our attention to the order passed by the Tribunal in O.A.No.190 of 1993 wherein one of the alleged delinquent T.R.Vasudevan who was working as Sub-Inspector of Police at Andiyur Police Station has challenged the charge memo and the same was allowed. The Tribunal by its order dated 23.11.2001 quashed the charge memo relating to the said T.R.Vasudevan. The charges relating to the petitioner and the said T.R.Vasudevan are one and the same. Therefore, the respondents herein cannot conduct an isolated enquiry for the charges against the petitioner alone, which is unsustainable in law and the charges against petitioner cannot be held to be proved and on that basis punishment cannot be imposed.

11.Whereas the learned Special Government Pleader vehemently contended that the Tribunal has rightly dismissed the Original Application filed by the petitioner and the same is not warranted interference by this Court. In so far as the two cases referred above by the learned counsel for the petitioner, the learned Special Government Pleader submitted that those cases were filed challenging the charge memo and the Tribunal has set aside the charges against the above said delinquent. Whereas the present case on hand the petitioner has challenged the order of punishment of stoppage of increment for a period of one year passed by the 1st respondent. The order of punishment was imposed on the petitioner only for proven charges. Therefore, the above said decisions will have no application to the case on hand.

12.Considering the rival submissions, we have to see whether the punishment imposed on the petitioner is liable to be interfere with or not and the order of the Tamilnadu Administrative Tribunal is called for interference by us or not?

13.With regard to inordinate delay in initiating the Disciplinary proceedings the Apex Court in 2005 (4) CTC 403 has held as follows:

"14.Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the

interests of the Government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

15. We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retrial benefits in accordance with law. The retrial benefit shall be disbursed within three months from this date. No costs".

14. In the present case on the hand, the original charge memo was issued to the petitioner in the year 1989 and the same was reformed as per the direction of the Tribunal and the revised charge memo was issued on to the petitioner 12.07.1995. For the incident happened in the year 1988 charge memo was served on 12.07.1995. Further as per the direction of the Tribunal the respondent should have completed the enquiry and passed final order on or before 31.08.1995. However, the 1st respondent passed final order only on 09.06.2000. There is no explanation from the respondent for non-compliance of the order of the Tribunal. In the draft reply affidavit filed by the respondent, it is stated that they filed extension application on 31.08.1995 and the same was represented on 24.01.1996. Thereafter, there is no particulars regarding the extension application and nothing revealed in the draft reply affidavit filed by the respondent as to what happened to the extension of time application. Furthermore the explanation offered by the respondents for non completion of enquiry within the stipulated time is not satisfied. Further, the two orders referred by the Learned Counsel for the petitioner relating to the very same charges disclose that the tribunal has set aside the charge memo in respect of two others. However, the Tribunal has not considered the said order and held that lesser punishment has been given to the petitioner taking into consideration of the long period of disciplinary proceedings. In our view the said finding is not proper. When the very same charges relating to two other persons namely T.R.Vasudevan and V.Ramasamy were set aside, the petitioner alone cannot be held liable. Further the law laid down by the Apex Court in the above judgment would squarely applicable to the present case on hand. Therefore, the

issuance of charges, further proceedings thereon and the impugned punishment are not sustainable. In the light of the discussion above, we have no hesitation to set aside the order passed by the Tribunal and the punishment imposed on the petitioner.

15. In the result:

(a) the writ petition is allowed and the order of the 3rd respondent dated 11.03.2002 in O.A.No.130 of 2001 and the order of the 1st respondent in G.O.(2D) No.190 Home (Police-II) Department dated 09.06.2000 are hereby quashed;

(b) the petitioner is entitled for promotion and all other attended monetary benefits.

(c) the said exercise shall be completed within a period of twelve weeks from the date of receipt of copy of this order. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Home (Police-II) Department,
Fort St. George, Chennai - 600 009.
2. The Superintendent of Police,
District Police Office,
Erode District.
3. The Registrar,
Tamil Nadu Administrative Tribunal,
High Court Building,
Chennai - 600 104.

+1cc to Mr.B.V.Raghupathi, Advocate SR.No.18213

W.P.No.10233 of 2007

SK(CO)
GN(10/07/2017)