



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD)No.12682 of 2017

and

W.M.P.(MD)No.9796 of 2017

K.Rajkumar

.. Petitioner

Versus

1.The Additional Chief Secretary to Government,
Home Department,
Secretariat,
Chennai.

2.The Director General of Police,
Tamil Nadu,
Chennai - 4.

3.The Inspector General of Police,
Armed Police,
Trichy - 12.

4.The Deputy Inspector General of Police,
Armed Police,
Chennai - 10.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent, made in G.O.(D)No.563, Home (Pol.IX) Department, dated 05.05.2017, confirming the proceedings of the second respondent made in C.No.A.P.3(1)/243826/2005, dated 02.02.2006, confirming the proceedings of the third respondent, made in C.No.A2/Appeal.64/2005, dated 01.02.2005, confirming the proceeding of the fourth respondent, made in T.R.No.34/97, dated 22.11.2014 and quash the same and consequently, direct the respondents to reinstate the petitioner in service and award all consequential benefits.

For Petitioner : Mr.R.Murali

For Respondents : Mr.R.Karthikeyan

Additional Government Pleader

O R D E R

Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondents. By consent, the Writ Petition is taken up for final disposal.

2.The petitioner was slapped with a charge memo, dated 04.07.1997, issued under Rule 3(b) of the Tamil Nadu Police Subordinate Service [Discipline and Appeal] Rules, 1955 [in short 'the Rules'], in Punishment Roll No.34/1997, for the following delinquency:-

“23.04.1995 அன்று 00.15 மணிக்கு ஆயுதம் ஏந்திச் சென்று திரு.மணிகண்டேஸ்வர குமாரனையும், அவர்களது குடும்பத்தையும் கூட்டத்துடன் தாக்கி இரத்த காயங்களை உண்டு பண்ணிய குற்றம்.”

3.After receipt of the charge memo, the petitioner gave his representation on 12.06.1997, requesting postponement of departmental enquiry initiated under Rule 3(b) of the Rules after the result of the criminal case, since the criminal case registered also on the same set of charges is pending. Again, he has given one more representation to the Deputy Inspector General of Police, Armed Police (M & W), Trichy - 12. Finally, after giving several notices to the petitioner to appear for enquiry and finding that the petitioner also appeared for enquiry on 12.06.1997, 24.09.1997 and 14.12.1997, but refused to cross-examine the injured/complainant, namely, Manikandaeswara Kumaran, the Enquiry Officer concluded that the petitioner has deliberately avoided cross-examination of the said complainant/witness. Further, taking note of the fact that the petitioner has not even submitted his explanation and in spite of nine chances to appear for enquiry to cross-examine the other side witnesses, he had failed to make use of all the chances, the Enquiry Officer held that the charge levelled against the petitioner is established and accordingly, submitted his report.

4.On the basis of the Enquiry Officer's Report, the petitioner was issued with a second show cause notice, for which, he gave his explanation on 23.09.1998 claiming that he is innocent with a further request to accept his explanation to exonerate him from the factually erroneous charge. Although, in his explanation dated 23.09.1998, the petitioner has stated that the finding of the Enquiry Officer is not correct and baseless, the disciplinary authority, in his dismissal order, dated 22.11.2004, has given a finding that the petitioner has not attended the enquiry, despite sufficient opportunity was given to him and therefore, it is to be construed that he has nothing to offer in his defence. Moreover, the disciplinary authority also taking note of the fact that he was convicted in P.S.Cr.No.159/95, for the offences under Sections 147, 148, 452, 427, 323 and 324 I.P.C., in C.C.No.344 of 2002, dated 23.09.2004, by the learned Principal District-Munsif-cum-Judicial Magistrate, Eraniel, has passed the order of removal with immediate effect. Aggrieved by the same, the petitioner filed an



appeal before the Inspector General of Police, Armed Police, Trichy, the third respondent herein.

5. The appellate authority also going through the reasons given by the Enquiry Officer, which are referred to in the order of dismissal that the petitioner has failed to attend the enquiry and he also suffered an order of conviction in the hands of learned Principal District Munsif-cum-Judicial Magistrate, Eraniel, has confirmed the order of punishment of removal from service awarded by the DIG/AP/CNI. No doubt, the said order is a brief one.

6. I do not find any perversity in the orders passed by the disciplinary as well as appellate authorities. The reason is, when the petitioner in spite of having nine long chances to appear before the Enquiry Officer to cross-examine the complainant, who is an injured witness in spite of his presence in the enquiry, he has deliberately, refused to cross-examine him. This has been repeatedly pointed out by the Enquiry Officer in his report.

7. Taking note of the same and also coupled with yet another reason that the petitioner was already convicted by the Trial Court in Crime No.159/95, for the offences under Sections 147, 148, 452, 427, 323 and 324 I.P.C., the disciplinary authority passed the order of removal from service. The said order has been confirmed by the appellate authority.

8. The further contention of the petitioner that criminal case registered on the same set of charges ended in acquittal, vide judgment dated 27.03.2015, made in C.A.No.223 of 2004, cannot be accepted. It is well known that standard of proof applied in both departmental and criminal proceedings is entirely different. While the strict proof of evidence beyond reasonable doubt is required for criminal proceedings, preponderance of probability alone is suffice in departmental proceedings. The Enquiry Officer has rightly applied the said principle of preponderance of probability stating that although the petitioner participated in the enquiry, refused to cross-examine witnesses present before the Enquiry Officer and concluded the charge as proved. The disciplinary authority accepting the report of the Enquiry Officer and also considering one more reason that the petitioner was convicted by the Criminal Court, passed the order of removal removing the petitioner from service and the said removal has been confirmed by the appellate authority. However, now the petitioner has contended that the order of conviction granted by the Sessions Court, Kanyakumari at Nagercoil, is set aside in C.A.No.223 of 2004 and he has been acquitted. There is a clear finding that the petitioner herein, who was serving in a disciplined force and in stead of protecting the life and property of the public, has <https://hcrs.cse.civilians.org.in/bcse/Office/> and attacked one Manikandaeswara Kumaran and his family, out of enmity, therefore, the removal from service imposed on him in Punishment Roll No.34 of 1997 and further



affirmed by the appellate authority cannot be found fault with. Accordingly, this Court finds no merit in the Writ Petition. Hence, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/True Copy/

Sub Assistant Registrar.

To

- 1.The Additional Chief Secretary to Government,
Home Department,
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Chennai.
- 2.The Director General of Police,
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Chennai - 4.
- 3.The Inspector General of Police,
Armed Police,
Trichy - 12.
- 4.The Deputy Inspector General of Police,
Armed Police,
Chennai - 10.

+1CC to Mr.R.Murali, Advocate, SR.No. 64526

+1CC to the Special Government Pleader SR.No. 64540

W.P. (MD) No. 12682 of 2017

10.07.2017

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