

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.2813 OF 2012

S.Pavun

..

Appellant

Vs

1. The Director General of Police,
Chennai - 4.

2. The Secretary to Government,
Home (Police IV) Department,
Fort St. George, Chennai - 9.

..

Respondents

Appeal preferred under Clause XV of Letters Patent against
the order dated 27.10.2009 made in W.P.No.2931 of 2007.

W.P.No.2931 of 2007:-

Petition seeking a Writ of Certiorarified Mandamus calling
for the records of the first respondent herein regarding the
punishment of reduction in time scale of pay by one stage for
one year without cumulative effect passed in his Proceedings
No.Na.Ka.179940/con I(1)/92 dated 05.11.97 and the consequential
order of the second respondent herein passed in the G.O.(ID)
NO.1061 Home (Pol.IV) Department dated 20.12.99 and quash the
same with all consequential monetary and service benefits.

For Appellant .. Mr.K.Venkataramani,
Sr.Counsel
for Mr.Ayngaraprabhu

For Respondents.. Ms.A.Sri Jayanthi,
Spl.Govt. Pleader

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellant was issued with a charge memo. The charge framed against the appellant is to the effect that the appellant was attempting to destroy the general diary with malafide intention. Finding that the explanation given by the appellant was not satisfactory, the enquiry officer was appointed. The enquiry officer found that the charge is not proved. Based upon the enquiry officer's report, the disciplinary authority passed the following order:

"I have carefully gone through the minute and connected records. The prosecution witnesses 1 and 2 did not withstand their earlier statements during oral enquiry and cross examination. I agree with the findings of the enquiry officer and acquitted of the charge. "

2.The appellate authority thereafter took up the matter suo motu and issued a show cause notice to the appellant. After receiving the reply, the punishment of reduction in time scale of pay for one year without cumulative effect was ordered. This order was passed on the factual premise that the appellant tore the paper he was holding when permission was given to take a copy of the general case diary. It was witnessed by Head Constable 410 Dasarathan and another Armed Force Constable Dhanasekaran.

3.The appeal filed by the appellant was also dismissed. Therefore, he filed a writ petition. Considering the seriousness of the charge framed, the learned single Judge dismissed the writ petition and hence the present writ appeal.

4.Learned senior counsel appearing for the appellant submits that all the authorities including the learned single Judge committed error in holding that the charge against the appellant is proved. We are dealing with the case where both the eye witnesses turned hostile. The statement given in the preliminary enquiry cannot be taken as such. Therefore, the order requires interference.

5.Learned Special Government Pleader submits that inasmuch as all the authorities have held that the charge is proved, no interference is required.

6.In a departmental proceedings, it is for the Department to substantiate the charges framed against the delinquent officer. There is no difficulty for the authority in reviewing the

decision of the disciplinary authority notwithstanding the fact that he is also the appellate authority. To that extent, we do not find any violation of principle of natural justice particularly when appeal provision is provided, which is also exhausted by the appellant. However, the impugned order was passed, based upon the statement given by the police constable in the preliminary enquiry. Admittedly, before the enquiry officer, they turned hostile. To put it differently, they did not support the case of the presenting officer. There is no difficulty in holding that the report of the enquiry officer is a piece of evidence to be appreciated by the competent authority. However, while holding the charge is proved, the materials available on record will have to be assessed. These materials would include the statement given by the persons to substantiate the charges. But there are no materials available during the enquiry by way of oral evidence, the statement in the preliminary enquiry alone cannot be taken into account. Such a statement is only prima facie in nature meant for the purpose of framing charges alone. At that point of time, the delinquent officer would not have any chance to cross-examine the witness and therefore the same cannot be termed as admissible in law. In any case, earlier statement has not been reiterated by the witness. Therefore, in view of the subsequent statement given, earlier statement loses its significance.

7. In such view of the matter, we are of the view that the very charge levelled against the appellant has not been proved. Under those circumstances, we are constrained to interfere with the order passed. Learned single Judge, in our considered view, got carried away with the nature of charge framed. Thus, the order of the learned single Judge, confirming the orders impugned in the writ petition, stands set aside. Consequently, the orders impugned in the writ petition are also quashed. Accordingly, the writ appeal stands allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Director General of Police,
Chennai - 4.

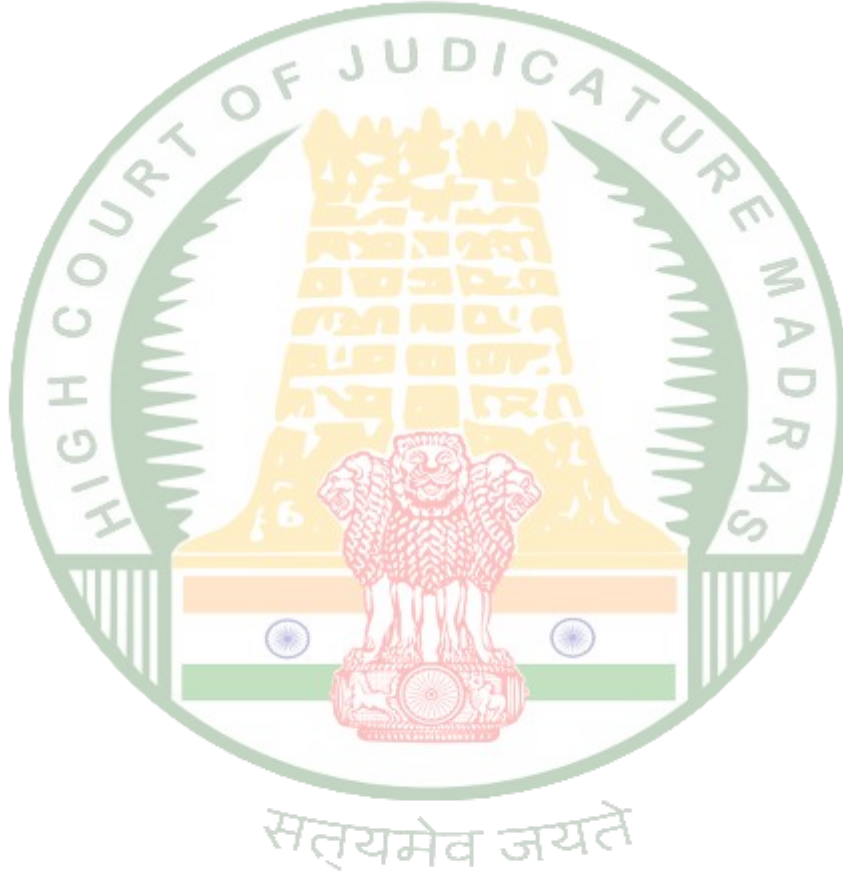
2. The Secretary to Government,
Home (Police IV) Department,
Fort St. George, Chennai - 9.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.87013

+1cc to the Government Pleader, S.R.No.86670

W.A.No.2813 of 2012

SSI (CO)
CS/29/01/2019



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