

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26.06.2018

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.10845 of 2013

and

M.P.No.1 of 2015

M.P.No.1 of 2013

A.Duraimurugan ... Petitioner

Vs

1.The Commandant,
Tamil Nadu Special Police II Battalion,
Avadi, Chennai-54

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

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

4.The Principal Secretary to Government,
Home Department,
Fort St.George,
Chennai-9

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the respondents in connection with the impugned orders passed by the first respondent in PR No.25/2009 Rule 3(b) dated 24.08.2010, by the 2nd respondent in RC No.C1/Appeal No.18/2010, dated 22.09.2010 by the 3rd respondent in RC No.236708/AP 3(1)/2010 dated 4.7.2011 and quash the same and consequently direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner .. Mr.K.Venkatramani, Sr.Counsel
for Mr.M.Muthappan

For Respondents .. Mr.J.Pothiraj, Spl.G.P.

ORDER

The petitioner was directly recruited as Grade-II Police Constable and appointed to service on 01.02.2008. On 29.04.2009, the petitioner was placed under suspension on the ground of pending enquiry into grave charges for his involvement in a road accident, which resulted in the death of another Police Constable, by name, Chandru. A criminal case was also registered in Cr.No.205/09 under Sections 279 and 304(A) of the Indian Penal Code. The petitioner was also issued with a departmental Charge Memorandum under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, on 03.07.2009. The two charges framed against the petitioner are reproduced below:

"1)Whether on deputation with coastal security force, on 23.04.2009, while on casual leave, forgetting his responsibility, he along with another person in a drunken state drove a motor cycle TN 07 AD 8100 and while passing the Katchery Road by rash and negligence act, caused the death of one Chandru PC 2069 thereby committed irreprehensible conduct;

2)By violating traffic rules, thereby involved in a criminal case in Crime No.205/AM3/09 under Sections 279, 337 and 304(A) IPC, and thereby brought ill reputation to the police department."

2.In the Departmental enquiry conducted on the charges, seven witnesses were examined on the Prosecution side and the main allegation against the petitioner was that he was driving the two wheeler under the influence of alcohol. On conclusion of the enquiry, a report was submitted holding the charges proved against the petitioner. The Disciplinary Authority/first respondent herein, agreed with the findings of the Enquiry Officer and imposed a penalty of 'removal from service', on the petitioner, on 24.08.2010. As against the punishment, the petitioner preferred an Appeal to the second respondent on 31.08.2010 and the same was rejected by a non-speaking order on 22.09.2010. A further mercy petition was filed to the third respondent and the same was also rejected, on 04.07.2011, by the third respondent. These orders are under challenge in the present writ petition.

3.The learned Senior Counsel Mr.R.Venkatramani, would, at the outset, submit that this is a clear case of no evidence and therefore, the question of imposing a harsh punishment of 'removal from service' and confirmation of the same on Appeal,

is liable to be interfered with. According to the learned Senior Counsel, admittedly there was no evidence at all to establish the charge that the petitioner had driven the two wheeler under the influence of alcohol. In fact, according to the petitioner, he was only a pillion rider and this fact has been supported by the most crucial evidence tendered by the informant-Chinnado, who was examined on behalf of the Prosecution in the departmental enquiry. In fact, his statement and evidence was recorded by the Enquiry Officer himself, but however, the same was discarded by the Enquiry Officer on the ground that there was inconsistency in his evidence, since he had given a different version during the preliminary enquiry. His evidence was not considered only on the ground that the evidence was given after a delay of 10 months and therefore, the same could not be relied upon.

4.The learned Senior counsel would further submit that the fact as to whether the petitioner was driving the two wheeler or the other person, who travelled along with the petitioner, Mr.Murugan, had driven the two wheeler had not attained any certainty because of the fact that the First Information Report, which was registered, was not taken forward and nothing progressed on the criminal side till date. In the absence of any direct evidence to show that it was only the petitioner, who rode the two wheeler on the day of accident, the petitioner cannot be accused of, for causing the death of the Police Constable and cannot be held to be guilty of the misconduct alleged against him. In the absence of conclusive proof as to who rode the two wheeler on the day of the accident, the finding of guilt of the petitioner, in the departmental enquiry, can only be perverse and not supported by any piece of acceptable evidence.

5.The Learned Senior Counsel would further submit that the evidence of P.W.7 regarding the injury suffered by both the pillion rider as well as the rider of the two wheeler tallies with the Medical Report, which would unequivocally establish the fact that the petitioner was only a pillion rider. This fact was unfortunately overlooked by the Enquiry Officer. According to the learned Senior Counsel, in the Medical Report it is merely stated that the petitioner was found to have consumed alcohol, and it has not authenticated as to who rode the two wheeler on the day of accident. Therefore, the findings of the Enquiry Officer are invalid and unacceptable and are liable to be rejected as being without any evidence.

6.Further, the learned Senior Counsel would also submit that the order passed by the Disciplinary Authority/First Respondent is a non-speaking order, since the order did not analyse any aspect of evidence whether it was available or not

in the enquiry. In the order passed by the Disciplinary Authority, he has concluded that 'there was a possibility of the petitioner could have caused the accident' and such a presumption does not have any legal or factual backing. The orders passed by the Second and Third respondents are also non-speaking orders and the same are contrary to Rules and therefore, they are invalid. He would therefore submit that the entire disciplinary action, including the imposition of penalty, requires to be set aside on the basis of no evidence.

7. Upon notice, Mr. J. Pothiraj, learned Special Government Pleader has entered appearance for the respondents and a detailed counter Affidavit has been filed on behalf of the respondents.

8. According to the learned Special Government Pleader there was preponderance of probability of guilt on the part of the petitioner based on Prosecution statements and reliable documents and since the charges were serious in nature, the Disciplinary Authority had decided to impose major punishment of 'removal from service', on the petitioner. According to him, the Appellate Authority, in his order has recorded that he had carefully gone through the minute file and agreed with the Disciplinary Authority. Therefore, it cannot be said that there was no proper consideration on the part of the Appellate Authority or on the part of the Reviewing Authority. He would also submit that from the circumstances, it appears that the petitioner was one who rode the two wheeler and he was only trying to shift the blame on the other person, who was actually a pillion rider.

9. According to the learned Special Government Pleader the petitioner was only trying to take advantage of the confusion created by the informant witness, viz., Chinnado, who had given inconsistent evidence. According to the learned Special Government Pleader, the earlier statement of the said Chinnado was more reliable than the subsequent statement and therefore, that was taken into consideration for imposing the penalty on the petitioner.

10. This Court, having considered the materials and on perusal of the records, is of the view that the crucial point which is required to be considered, in order to hold the petitioner guilty of the charges or otherwise, is the fact of who had driven the two wheeler on the day of accident, on 23.04.2009. As rightly contended by the learned Senior Counsel for the petitioner, there was no direct evidence at all that the petitioner herein had driven the two wheeler on the day of accident. In the absence of conclusive and clear evidence as to

who rode the two wheeler on the said day, the charges could not have held to be established at all. Any other conclusion in this regard as arrived at by the Enquiry Officer, can only be on the basis of personal opinion and presumption and cannot be held to be a valid conclusion.

11. Moreover, as rightly contended by the learned Senior Counsel for the petitioner, the injuries sustained by both the pillion rider as well as the rider tallied with the Medical Report, as deposed by P.W.7, in which event, it could be inferred that the petitioner might not have driven the two wheeler on the day of accident. In any event, there is a glaring lack of uncertainty to the crucial fact as to who drove the two wheeler on the day of accident. Unfortunately, the First Information Report, which was registered, was not taken forward and the criminal investigation had not come out with any element of certainty in regard to the fact as to who drove the two wheeler on the day of accident. It is informed to this Court that no further action has been taken after registration of the First Information Report. In the absence of any certainty on the said aspect, this Court is unable to accept the findings of the Enquiry Officer holding the charges proved against the petitioner.

12. Even otherwise the orders passed by the Disciplinary Authority, Appellate Authority as well as the Reviewing Authority are per se non-speaking orders and the same cannot be sustained in law at all. In fact, it is incumbent upon the Disciplinary Authority as well as the other higher authorities to apply their mind more effectively, particularly when there was no direct evidence made available in the departmental enquiry. Unfortunately, in the present case, the approach of the authorities has been extremely casual and mechanical, and they have not appreciated the entirety of the circumstances of the case, which led to the imposition of major penalty of 'removal from service' on the petitioner. In any event, in the circumstances of the case, it cannot be said that the petitioner was the one, who drove the two wheeler on the day of accident, without any amount of certainty. In such view of the matter, this Court has no hesitation in allowing the Writ Petition as the charges framed against the petitioner cannot be said to be proved, as there was no direct evidence available at all for establishing the charges against the petitioner. On the other hand, there can be an inference in favour of the petitioner that he might not have driven the two wheeler on the day of accident. In such circumstances, the impugned orders, passed on the basis of findings of the departmental enquiry, cannot be sustained and therefore, the impugned order passed by the first respondent dated 24.08.2010; the order passed by the second respondent dated 22.09.2010 and the order passed by the third respondent

dated 4.7.2011 are all set aside and consequently the respondents are directed to re-instate the petitioner in service. The respondents are also directed to comply with the direction issued by this Court within a period of eight weeks from the date of receipt of copy of this order.

In fine, the writ petition stands allowed as above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Commandant,
Tamil Nadu Special Police II Battalion,
Avadi, Chennai-54
- 2.The Deputy Inspector General
of Police,
Armed Police,
Chennai-10.
- 3.The Director General of Police,
Tamil Nadu, Chennai-4.
- 4.The Principal Secretary to Government,
Home Department,
Fort St.George,
Chennai-9.

+1cc to Mr.M.Muthappan, Advocate Sr.42122
+1cc to the Government Pleader Sr.40961

W.P.No.10845 of 2013

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srg 30/07/2018