

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.12.2018

CORAM
THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.29522 of 2018
& WMP No.34494 of 2018

Union of India,
represented by the Inspector General of Police,
Puducherry-605 001. .. Petitioner

Vs.

1.The Central Administrative Tribunal,
Madras Bench, rep., by its Registrar.

2.V.Kesavan ... Respondents

Writ petition is filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari to call for the records from the file of the first respondent Tribunal in OA.No.558 of 2014 preferred by the second respondent before the first respondent and quash the impugned order passed by the first respondent in OA.No.558 of 2014 dated 15.03.2017.

For petitioner : Mr.Syed Mustafa,
Special Government Pleader

For Respondents: R1-Tribunal
Mrs.Hema Sampath S.C., for
Mr.Prakash Adiapadam for R2

ORDER

(Order of the Court was made by M.M.SUNDRESH,J.)

This writ petition has been filed by the petitioner challenging the order of the Tribunal, which was pleased to set aside the show cause notice issued against the second respondent proposing to impose punishment while accepting the report of the Enquiry Officer.

2.The second respondent was appointed to the post of Police Constable in the year 1991. Thereafter, he was promoted to the post of Head Constable in the year 1998 and thereafter, as Assistant Sub Inspector of Police in the year 2010. One Sivashanmugam lodged a complaint against the second respondent

before the Inspector General of Police, Puducherry, alleging that a sum of Rs.1,00,000/- (Rupees one lakh only) has been received by him for arranging a job for his son. On receipt of the said complaint, charges have been framed on 05.09.2011. Not satisfied with the reply given, a decision was made to proceed with charges by appointing Enquiry Officer. In the mean while, the second respondent was reinstated without the outcome of the proceedings. The Enquiry Officer completed the enquiry and submitted his report on 05.02.2013. Thereafter, a show cause notice was issued calling for explanation with respect to the proposed punishment on 12.04.2013. At that stage, the second respondent, challenging the charge memo dated 05.09.2011, has filed O.A.No.558 of 2014 before the Central Administrative Tribunal.

3.The Tribunal went into the merits and set aside the show cause notice issued on 12.04.2013, though challenge was only to the charges framed, on the premise that the complainant himself has not pressed the complaint. Challenging the same, the present writ petition has been filed.

4.The learned counsel appearing for the petitioner has submitted that neither the charge memo nor the show cause notice can be quashed by going into the merits of the case by taking the role of the Disciplinary Authority. Therefore, there is a fundamental error committed.

5.The learned Senior Counsel appearing for the second respondent would submit that even after the order passed by the Tribunal on 15.03.2017, no challenge has been made. It is only after the subsequent order passed directing the petitioner to consider the promotion followed by filing of the contempt petition, the present writ petition has been filed. Inasmuch as the very complainant himself has withdrawn the complaint and deposed accordingly, there is no basis for the charges and therefore, no interference is required.

6.The facts are not in dispute. Admittedly, the charges have been framed as early as on 05.09.2011. The second respondent participated in the proceedings before the Enquiry Officer. Even prior to that, the complainant changed his stand. The Enquiry Officer has inquired not only the complainant but also eight other witnesses viz., P.Ws.1 to 9. All the witnesses have been examined and cross-examined. Thereafter, a detailed Report was given. In pursuant to the Enquiry Officer's Report notices were issued to the second respondent including on the proposed punishment. At that stage, the second respondent approached the Tribunal challenging the charge memo.

7. Law is quite settled that a charge memo per se cannot be challenged by going into the merits of the case. We are not dealing with the case, which involves lack of jurisdiction with mala fides. The second respondent, after having participated in the enquiry, cannot challenge it and that too, after a period of about three years culminated in the Report of the Enquiry Officer. A show cause notice issued accepting the report of the Enquiry Officer on the proposed punishment will not give a cause of action. After all, the Enquiry Officer's Report is a piece of evidence will be appreciated by the Disciplinary Authority. Ultimately, it is for the Disciplinary Authority to consider vis-a-vis the Enquiry Officer's Report. Further, after considering the above, a decision is arrived at by the Disciplinary Authority. It is well open to the delinquent officer to challenge the same in the manner known to law. Suffice it to state that at that stage, the charges framed cannot be challenged.

8. The Tribunal has committed an error by going into the merits of the case. In a departmental enquiry, what is required is preponderance of probabilities. The complainant has limited role to play apart from complaint. He is not a person interested in the ultimate result of the Disciplinary Authority. Even in the case on hand, Enquiry Officer has taken into consideration other witnesses as well. Therefore, looking from any perspective, we are unable to subscribe to the view of the Tribunal, as we may note that the Tribunal ought not to have set aside the show cause notice, which has not been sought for by the second respondent while laying a challenge to the charges framed.

9. In such view of the matter, the order passed by the Tribunal stands set aside and accordingly, the writ petition stands allowed. No costs. However, we have not expressed anything on the merits of the case. Therefore, all the issues both on facts and law are left open. We direct the Disciplinary Authority to pass orders within a period of eight weeks from the date of receipt of a copy of this order. The second respondent is also permitted to give further representation raising all the contentions before the Disciplinary Authority. In the event of any adverse order being passed, it is well open to the second respondent to challenge it in the manner known to law. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Registrar,
Central Administrative Tribunal,
Madras Bench.

+1cc to Mr.Prakash Adiapadam, Advocate, S.R.No.88252

W.P.No.29522 of 2018

RK(CO)

rrs 19/02/2019



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