

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 04.01.2019

Order Pronounced on:11.01.2019

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.12333 of 2013

and

MP.Nos. 1&2 of 2013

L.Sathiyaraj ... Petitioner

Vs.

1. The Director General of Police,
Tamilnadu, Chennai-600 004.
 2. The Commissioner of Police,
Tirunelveli City,
I/c. Deputy Inspector General of Police,
Tirunelveli Range.
 3. The Deputy Inspector General of Police,
Nellai District.
 4. The Superintendent of Police,
Thoothukudi District.
- ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records of the first respondent pertaining to the order R.C.No.113549/AP 2(1)/2012 dated 22.09.2012 and to quash the same and consequently direct the first respondent to reinstate the petitioner into service with all consequential benefits.

For Petitioner : Mr.Lenin Samuel

For Respondents : Mr.B.Anand for R.1 to R.4
Government Advocate

O R D E R

The instant writ petition is for a writ of Certiorarified Mandamus calling for the records pertaining to the order R.C.No.113549/AP 2(1)/2012 dated 22.09.2012 passed by the Director General of Police, Tamil Nadu, Chennai dismissing the review petition filed by the petitioner under Rule 15(a) of the Tamil Nadu Police Subordinate Service Rules, 1955.

2. The petitioner while working as a Grade-2 Police Constable in Thiruchendur Police Station, was served with a charge memo on 02.05.1996. The charges read as under:-

"(i) Highly reprehensible conduct in having entered into Asvini Lodge, Tiruchendur at 04.00 hrs on 02.03.1996 in a drunken mood and in uniform, knocked Room Nos.6,7,8 and 10 and caused inconvenience and disturbance to the inmates by abusing them, and thereby tarnished the image of the Police force during Masi Magam Festival.

(ii) Abandoning the cap carelessly in the lodge and absconding from the lodge when the lodge owner phone up to Inspector, Tiruchendur and gross neglect of duty in having absented himself from duty from 07.45 hrs on 02.03.1996".

3. An explanation was called for from the petitioner. An enquiry was held, in which 8 witnesses were examined on the side of the department. The witnesses were examined on various dates. Dates were also fixed for cross examination of the witnesses. The petitioner did not attend the enquiry when PW-1, 2, 6,7,8 were examined. They did not even choose to cross examine then, on the date fixed.

4. Though the petitioner stated that he was on medical leave, he did not produce any medical certificate substantiative to his illness. He has also not filed any defense document and has also not produced any witness. The Enquiry Officer found that the charges had been proved. PW-1 one Veerabagu, Auto Driver and PW-2 one Renganathan, Owner of Asvin Lodge had stated that the petitioner entered the lodge while in an inebriated state and knocked on the doors of the inmates residing in the

lodge and troubled them. Similarly, enquiry report also brings out that PW-3,4,5, who were also inmates, at the lodge substantiated the charges that they were disturbed.

5. On the basis of the enquiry report and the evidence, lead by the prosecution, the Disciplinary Authority awarded the punishment of removal from service. The petitioner filed an appeal. The appeal was dismissed by an order dated 18.11.1997. The petitioner preferred a review before the Inspector General of Police, which was also rejected by an order dated 09.06.1998. The order of the Appellate Authority and the Reviewing Authority was challenged in W.P.No.33643 of 2006. The writ petition was dismissed by an order dated 22.04.2010.

6. On appeal, the Hon'ble Division Bench in Writ Appeal No.1253 of 2010 found that the Appellate order does not indicate the consideration of any documents or the statements made by PWs-3,4,5,6, the inmates of lodge. The Hon'ble Division Bench set aside the order of the Appellate Authority and directed the Appellate Authority to consider the appeal and dispose it on within a period of 2 months from the date of receipt of the order.

7. The Appellate Authority by an order dated 19.09.2011 considered the appeal by once again looking into the documentary evidence and the deposition of witnesses. The Appellate Authority by order dated 19.09.2011 dismissed the appeal.

8. The petitioner once again filed a Review Petition to the Director General of Police. Since the Review Petition was not disposed off, the petitioner filed W.P.No.17909 of 2012 and this Court by an order dated 24.04.2012 directed the Director General of Police to dispose the Review Petition within a period of three months from the date of receipt of a copy of this order. The Reviewing Authority considered the points raised by the petitioner and rejected the same. Paragraph 15 of the order passed by the Reviewing Authority reads as under:-

"15. The points raised by the petitioner in his petition dated 28.09.2011 are dealt with below:-

S.No.	Points raised by the petitioner	Remarks
1.	His further representation for personal hearing was not considered.	In the High Court dated 22.04.2010, it has been brought out that the petitioner had made false representation before the tribunal on this matter as it was clarified by the respondents that the petitioner had not submitted any representation seeking personal hearing. Because of this, the Court had even mentioned that the petitioner had not approached the Court with clean hands. The minute records the fact that the petitioner did not submit any preliminary explanation and chose to absent himself during examination of some witnesses. The minute further establishes that many intimations were sent to the petitioner in the course of the enquiry, but he failed to respond and utilize the opportunity given to him. He also failed to submit to further written statement of defence.
2.	The petitioner's request to have the assistance of a retired government servant to defend himself was not considered.	There is no evidence to show that the petitioner made such a request. Considering the prosecution did not engage a counsel, the petitioner could not be said to have been prejudiced by not having some one to assist him.
3.	Copies of the document cited in the charge memo were not given to him.	Charge memo makes it clear that he was at liberty to peruse any records at the office of the enquiry officer. There is no evidence to show that the petitioner made any separate request. In fact, his request for Tamil Copy of the charge memo had been conceded.

S.No.	Points raised by the petitioner	Remarks
4.	The findings of the enquiry officer are placed on extraneous evidence. The disciplinary authority cannot form his opinion based on records which are not produced in the course of oral enquiry. Reliance on the preliminary enquiry report and statement of witnesses recorded during the preliminary enquiry are in violation of principles of natural justice.	I do not see any justification for the claim by the petitioner that the findings of the enquiry officer are based on extraneous evidence. The enquiry officer has formed his opinion based on the evidence elicited during the oral enquiry. Though the statements recorded in the preliminary enquiry have been cited as prosecution exhibits, the conclusions depend on the evidence elicited, mainly from PW.1 and PW.2 during the oral enquiry.
5.	The statements of witnesses PW.3, 4 & 5 during the enquiry have not been considered by the enquiry officer.	PW.3, 4 & 5 did not deny the fact that some one knocked at the door when they were staying in the rooms in the lodge. To this extent, their version corroborates the evidence of PW.1 and 2. PW.3, 4 & 5 are outsiders who will naturally not be familiar with the police men and may not be able to identify him.
6.	The Commissioner of Police should not have exercised the powers of appellate authority since he was only an incharge officer.	The Commissioner of Police was incharge of Tirunelveli Range DIG and hence he was authorized to pass orders.

It is this order which is under challenge in this writ petition.

9. Heard the counsel for the parties and perused the materials available on record.

10. The material on record would show that PW-1 and PW-2 had categorically deposed that the petitioner was in an inebriated state and caused nuisance in the lodge. This is sufficient to bring home the guilt of the petitioner. The Appellate Authority and the Reviewing Authority applied their minds and have dismissed the appellate review. The petitioner is a Constable in the Police Force. Indiscipline of this nature is completely unbecoming of a Police Officer. Indiscipline of any kind cannot be tolerated in the force. Three Authorities have looked into the conduct of the petitioner and have affirmed that the charges against the petitioner have been proved. Nothing had been brought to show that the findings of the Authorities is perverse or have been passed without any material.

11. The learned counsel also argued that the punishment is disproportionate to the misconduct. The Hon'ble Apex Court in Union of India v. Diler Singh reported in (2016) 13 SCC 71 has observed as under:-

"24. The learned counsel for the respondent has submitted that even if the charges have been proven, the punishment of dismissal in the obtaining factual matrix is absolutely harsh and shocking to the conscience. It is his submission that the punishment is disproportionate. The respondent was a part of the disciplined force. He has left the campus without prior permission, proceeded to the market, consumed liquor and quarrelled with the civilians. It has been established that he had consumed liquor at the market place, and it has been also proven that he had picked up quarrel with the civilians. It is not expected of a member of the disciplined force to behave in this manner. The submission, as has been noted earlier, is that the punishment is absolutely disproportionate. The test of proportionality has been explained by this Court in Om Kumar v. Union of India [Om Kumar v. Union of India, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039] , Union of India v. G. Ganayutham [Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806] and Union of India v. Dwarka Prasad Tiwari [Union of India v. Dwarka Prasad Tiwari, (2006) 10 SCC 388 : (2007) 1 SCC (L&S) 135] .

25. In Dwarka Prasad Tiwari [Union of India v. Dwarka Prasad Tiwari, (2006) 10 SCC 388 : (2007) 1 SCC (L&S) 135] , it has been held that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. When a member of the disciplined force deviates to such an extent from the discipline and behaves in an untoward manner which is not conceived of, it is difficult to hold that the punishment of dismissal as has been imposed is disproportionate and shocking to the judicial conscience.

26. We are inclined to think so as a member of the disciplined force, the respondent was expected to follow the rules, have control over his mind and passion, guard his instincts and feelings and not allow his feelings to fly in fancy. It is not a mild deviation which human nature would grant some kind of lenience. It is a conduct in public which has compelled the authority to think and, rightly so, that the behaviour is totally undisciplined. The respondent, if we allow ourselves to say so, has given indecent burial to self-control, diligence and strength of will power. A disciplined man is expected, to quote a few lines from Mathew Arnold:

"We cannot kindle when we will
The fire which in the heart resides,
The spirit bloweth and is still,
In mystery our soul abides:
But tasks in hours of insight will'd
Can be through hours of gloom fulfill'd."
Though the context is slightly different, yet we have felt, it is worth reproducing.

27. Consequently, the appeal is allowed, the judgment and decree [Diler Singh v. Union of India, 2012 SCC OnLine P&H 19043] passed by the High Court is set aside and that of the first appellate court is restored and the suit instituted by the respondent-plaintiff stands dismissed. In the facts and circumstances of the case, there shall be no order as to costs."

Similarly, in Govt. of T.N. v. S. Vel Raj reported in (1997) 2 SCC 708 has observed as under:-

"...The police force has to be a disciplined force and a member of the police force has to behave in a disciplined manner particularly when he is on duty. The respondent even though he was sent for official work and was on duty returned to the police station in "mufti" and in a drunken condition after consuming "arrack". He had returned to the police station to report to his superior officer as to what happened to the work which was entrusted to him. Under these circumstances, his behaviour has to be regarded as an act of gross misconduct. It is difficult to appreciate how the Tribunal could persuade itself to take a contrary view. In view of the facts and circumstances of this case it is not possible to say that the punishment which was imposed upon him was highly excessive. The appellate authority after considering his previous record and after giving him an opportunity to show cause against the proposed enhancement had passed the order of punishment..."

12. As stated earlier, the conduct of the petitioner who is Grade-2 Constable in the Police Force, which is a disciplined service is unbecoming of a police officer and such an Officer cannot be permitted to continue in service. The writ petition is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

gsp/pkn

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Director General of Police,
Tamilnadu, Chennai-600 004.

2. The Commissioner of Police,
Tirunelveli City,
I/c. Deputy Inspector General of Police,
Tirunelveli Range.
3. The Deputy Inspector General of Police,
Nellai District.
4. The Superintendent of Police,
Thoothukudi District.

+2cc to Mr.M.Lenin Samuel, Advocate, S.R.No.3202

W.P.No.12333 of 2013

sv (CO)
kak (21/02/2019)



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