

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 23.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.29555 of 2004

K.Sekar
B-6, Assistant Commissioner of
Police Quarters,
Kutcherry Road,
Chennai - 600 004.

...Petitioner

Vs

1.The State of Tamil Nadu,
rep by its Secretary (Home)
Police Department,
Fort St.George,
Chennai - 9.

2.The Director General of Police,
Tamilnadu,
Mylapore,
Chennai - 4.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records relating to 2nd respondents proceedings made in Rc.No.125249/GB V(3)/2000 dated 06.03.2002, as confirmed by the 1st respondent in G.O.2D No.38 Home (POL.2) Department dated 31.01.2003 to quash the same and consequently direct the respondents to consider the claim of the petitioner for promotion as Additional Deputy Commissioner from the date on which his immediate junior was promoted as such with all other consequential service & monetary benefits arising thereto.

For Petitioner : Mr.L.Chandrakumar

For Respondents: Mr.S.Sureshkumar, GA

O R D E R

The petitioner herein was charged for gross neglect of duty in having transferred the case registered in Coimbatore City B-1

Bazaar Police Station in Cr.No.727/98 to the Inspector of Police, Podanur Police Station after commencing investigation on 28.05.1988 after a delay of 7 months, after completion of investigation in the above cases. On failure to handover the properties in time, the Enquiry Officer had found the charges, owing to which the petitioner was imposed with a punishment of stoppage of increment for a period of one year without cumulative effect.

2. The learned counsel for the petitioner submitted that the authorities have failed to proceed against the actual Investigation Officers and that the petitioner herein had taken up the investigation only after the predecessors had registered the case. According to the learned counsel, the delay in transferring the investigation and handing over the material evidences, cannot be imputed on the petitioner herein and as such, the proceeding itself is vitiated. The learned counsel would also submit that in view of this, the petitioner's promotion to the post of Additional Superintendent of Police, has been deprived of and therefore, the punishment is liable to be set aside.

3. The learned Government Advocate, by placing reliance on the averments made in the Counter affidavit stated that there was a gross neglect of duty on the part of the petitioner in transferring the case to the Coimbatore City Police Station, after a delay of 7 months from the completion of investigation and also the failure to handover the properties in time, has facilitated the accused to get an order of acquittal. According to the learned Government Advocate, in view of the lapses on the part of the petitioner, and by taking into account the minor punishment imposed, no interference is required to the impugned order.

4. I have given careful consideration to the submissions made by the respective counsels.

5. It is seen that the petitioner herein had taken up the investigation of the case in Cr.No.727/88 on 27.05.1998. As per the findings of the Enquiry Officer, he had conducted investigation on various dates from 27.05.1998 till 29.09.1998 and has also recovered various properties based on the confession statement of the accused. After coming to the conclusion about the point of jurisdiction, he had chosen to transfer the CD file to Podanur Police Station, which came to be received by the then Inspector of Police, Podanur Police Station on 25.04.1989. After subsequent investigation, the charge sheet came to be filed only on 22.05.1992. The Trial Court, while acquitting the accused, had observed that there was a neglect of duty on the part of the petitioner herein in transferring the

case, after commencement of investigation, with a delay of nearly 7 months. The Trial Court had also observed that the failure to handover the properties seized by the petitioner herein in a proper manner, would go to the benefit of the accused and thereby, had acquitted the petitioner herein. It cannot be stated that the petitioner's predecessors alone are responsible for the delay. From the findings of the Enquiry Officer, it is seen that the investigation was taken up by the petitioner herein on 27.05.1988 and had the investigation been transferred immediately, the decision of the Trial Court may have been otherwise.

6. Nevertheless, the petitioner herein was dealt with charges under Rule 17(a) of the Tamilnadu Civil Services (Discipline & Appeal) Rules and has been imposed with a minor punishment. Since the findings of the Enquiry Officer reveals that there was a neglect of duty and also taking into account that the punishment can be termed as proportionate to the charges, I did not find any reason to interfere with the punishment imposed.

7. Accordingly, the writ petition stands closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jas/hvk

To

- 1.The Secretary (Home)
Police Department,
Fort St.George,
Chennai - 9.

- 2.The Director General of Police,
Tamilnadu,
Mylapore,
Chennai - 4.

+lcc to Mr.L.Chandrakumar, Advocate sr.39429
+lcc to Government Pleader sr.39880

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nr 02/07/2019