

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2019

CORAM

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.6465 of 2010

A.Dhanabal

... Petitioner

Versus

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

2.The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore-18.

3.The Superintendent of Police,
Erode District, Erode.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the entire records relating to the impugned order passed by the first respondent in his proceedings No.G.O.(2D). No.391, Home (POLICE-VI) Department, dated 11.09.2009 confirming G.O.(3D).No.95, Home (POL-VI) Department dated 29.12.2008 and quash the same.

For Petitioner : Ms.R.Hemalatha
for Mr.C.Prakasam

For Respondents: Mr.J.Ramesh,
Additional Government Pleader.

O R D E R

The petitioner was working as Head Constable (1154) in Vellakoil Police Station at Vellakoil in Tiruppur District. It is stated that he was a part of the team that conducted a raid in connection with illicit arrack on 22.02.2001, wherein, one Mani was arrested under Section 4(1)(a) of TNP Act. After the arrest, the said Mani was produced before the Judicial Magistrate, Perundurai (Erode Incharge) and he was kept under judicial custody in Sub Jail, Erode.

2.It is stated by the learned counsel for the petitioner that the said Mani, while under the judicial custody, suffered

massive heart attack, and while he was being transferred to the Government hospital, Erode, he passed away.

3.The learned counsel for the petitioner states that the body of the deceased Mani was received by the relatives under strong protest. In view of the same, a CBCID enquiry was conducted as against the Wine Shop owners. Based on the report of the CBCID, a criminal case was filed against the wine shop owners, which ended in acquittal.

4.Thereafter, an enquiry was conducted as against the petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Services (D & A) Rules, 1955 on the following charge:-

"Gross neglect of duty in having connived with HC 941 Thangaraj (now Sub-Inspector of Police) to register a case against one Mani, S/o Kaliappa Nadar, Murugantholuvu, Chennimalai (since deceased) in Vellore Police Station, Cr.No.21/2001 u/s 4(1)(a) TNP Act and to record that the said Mani was arrested 22-2-2001 at 08.30 hrs. fully knowing the fact that the said Mani was kept illegally in Vellore Police Station from the night of 21-2-2001 itself"

5.The Additional Superintendent of Police, Prohibition Enforcement Wing, Erode was appointed as Enquiry Officer. The Enquiry Officer, after conducting the enquiry, came to the conclusion that the charge is not proved. The evidence of P.W.1 witness of the prosecution was not accepted because it was found that the deposition was based on hearsay.

6.The Deputy Inspector General of Police, Coimbatore Range went through the report of the Enquiry Officer and also the explanation given by the petitioner. The Disciplinary Authority decided to accept the explanation offered by the petitioner and drop the proceedings and the further action by observing as under:-

"6.I have gone through the explanation of the delinquent with connected records carefully and dispassionately. Since in the oral enquiry the PW.1 could not give any clear statement as to what time and date he was brought to the Police Station etc., and she had not even seen Mani in the Police Station, her evidence was only a hearsay, and there is no direct evidence for the detention of Mani in Vellore Police Station on 21-01-2001 by the delinquent. Hence, I accept the explanation of the delinquent and drop further action in this PR"

7.After the proceedings against the petitioner were dropped, the Government decided to initiate suo-motu revision under Rule 15(A) of the Tamilnadu Police Subordinate Services (Discipline

and Appeal) Rules mentioning the following reasons:-

"The reasons given before the enquiry officer by the delinquent police personnel and the Not Proved minutes drawn by the enquiry officer in this case are not acceptable and that a review may be necessiated in as much as illegal custody is concerned."

8. Accordingly, a show cause notice was issued under Rule 15 (A) (1) of the Tamilnadu Police Subordinate Services (Discipline and Appeal) Rules to the petitioner. The petitioner gave a representation. After considering the representation, the Government passed the order imposing punishment of stoppage of increment for a period of two years with cumulative effect. The only reason given in the order imposing punishment reads as follows:-

"The government have examined the above request of Thiru. A.Dhanapal, Head Constable 1154, Erode district carefully and independently with the relevant records. The government have decided to impose a punishment of 'stoppage of increment for a period of two years with cumulative effect on Thiru.A.Dhanapal, Head Constable, 1154, Erode district."

9. The petitioner filed a review petition. The review has been rejected by the impugned order, which reads as follows:-

"The Government have examined the request of Thiru.A.Dhanabal, Head Constable, 1154, Vellakoil Police Station, Erode District carefully and independently with the relevant records and decided to reject the request of the review petitioner. Accordingly, Government order that the review petition preferred by Thiru.A.Dhanabal, Head Constable 1154, Vellakoil Police Station, Erode District to set aside the punishment of "Stoppage of increment for a period of two years with cumulative effect" be rejected as devoid of merits."

This impugned order is under challenge in the instant writ petition.

10. The learned counsel for the petitioner states that once the Enquiry Officer, after examining all the witnesses, came to the conclusion that the charges are not proved and the said report has been accepted by the Disciplinary Authority, there should have been valid and weighty reasons for the department to initiate the suo-motu revision under Rule 15(A) (1) of the said

Rules and the learned counsel for the petitioner further submitted that the order initiating suo-motu revision is bereft of any reason as to why and what has prompted the Government to initiate the suo-motu revision and further, the order imposing punishment also does not given any reason as to why the proceedings before the Enquiry Officer were wrong and as to why the conclusion arrived at by the Enquiry Officer has to be set aside.

11.The learned Additional Government Pleader for the respondents would submit that there were valid reasons for deviation from the findings of the Enquiry Officer and the Government is empowered to initiate suo-motu enquiry.

12.It is a settled law that there has to be valid and weighty reason for the Government initiating suo-motu proceedings under Rule 15(A) of the Tamilnadu Police Subordinate Services (Discipline and Appeal) Rules. Rules 15 and 16 are invoked only when there is failure on the part of the Enquiry Officer to conduct the enquiry in a proper manner and when there is complete non-application of mind on the part of the Disciplinary Authority. Therefore, for initiating the suo-motu proceedings under Rule 15(A) of the above said Rules, valid reasons have to be assigned. The order of the Government, while imposing the punishment does not give any reason as to why the finding of the Enquiry Officer is being discarded. Nothing has been discussed in the impugned order on these aspects.

13.Moreover, no further evidence has been let in, which would justify the Government to come to the conclusion other than what was arrived at by the Enquiry Officer. The order passed by the Government is completely without any reasons and it cannot be sustained. Nothing has been stated as to why the conclusion of the Enquiry Officer and the evidence of PW.1 cannot be accepted. In the absence of any material or reasons, the impugned order imposing punishment cannot be sustained.

14.The incident occurred 18 years back. Considering the facts and circumstances, it may not be proper to remand the matter once again to the Government to re-consider the said order. The impugned order imposing punishment is set aside. Accordingly, the Writ petition is allowed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home (Police-VI) Department,
Fort St. George,
Chennai-9.
 - 2.The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore-18.
 - 3.The Superintendent of Police,
Erode District, Erode.
- +1cc to the Govt.Pleader, Vide Sr.No.77740

W.P.No.6465 of 2019

Kak(17/10/2019)



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