

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2019

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THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE Ms. JUSTICE P.T.ASHA

W.P.No.174 of 2018 and W.P.No.6265 of 2018
and
W.A.No.1754 of 2017 and W.A.No.1364 of 2019
and
W.M.P.Nos.232 to 234 of 2018

W.P.No.174 of 2018:

V.K. Surendranath

...Petitioner

vs.

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

2.The Joint Commissioner of Police (Traffic),
Vepepry,
Chennai- 600 007.

3.The Deputy Commissioner of Police,
Traffic South,
Chennai.

...Respondents

W.P.No.6265 of 2018:

V.K. Surendranath

...Petitioner

vs.

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

2.The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore,
Chennai - 4.

...Respondents

W.A.No.1754 of 2017 and W.A.No.1364 of 2019:

V.K. Surendranath

...Appellant in both appeals

Vs.

1.The Secretary to Government,
Home (police II) Department,
Fort St. George,
Chennai - 600 009.

2.The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.

3.The Joint Commissioner of Police,
Traffic North,
Vepery,
Chennai - 600 007.

...Respondents in both appeals

Prayer in W.P.No.174 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 1st respondent in connection with the impugned order passed by him in G.O.(2D).No.346, Home (police 2) Department, dated 27.11.2017 and quash the same.

Prayer in W.P.No.6265 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st respondent to consider the claim of the petitioner for promotion as Additional Superintendent of Police, Category - II, in the ensuing panel of 2017-2018 without reference to the punishment of censure in the light of the representation made by the petitioner dated 26.02.2018 within a reasonable time.

Prayer in W.A.No.1754 of 2017 and W.A.No.1364 of 2019:

Writ Appeals filed under Clause 15 of Letters Patent against the orders passed by the Hon'ble Mr. Justice S.M.Subramaniam, in W.P.No.4542 of 2016 and W.P.No.36994 of 2015 dated 08.08.2017.

WP.No.4542 of 2015:Writ Petition filed under Article 266 of the Constitution of India, seeking for the issue a Writ of Certiorarified Mandamus directing the respondents to consider the claim of the petitioner for promotion as Additional Deputy

Commissioner of Police (AR) without reference to the pending disciplinary proceedings initiated by the 3rd respondent in PR No.96/2012 dt 21.9.2012 within a reasonable time.

WP.No.36994 of 2015:Calling for the records of the 3rd respondent in connection with the impugned charge memo issued by him in PR No.96/2012 dt 21.9.12 and quash the same and direct the respondent to consider the claim of the petitioner for promotion as Additional Dy Commissioner of Police (AR) by including his name in the panel for the year 2013-14 and promote him as Additional Dy Commissioner of police and grant him all consequential service and monetary benefits within a reasonable time.

For Petitioner	:	Mr.K. Venkataramani Senior Counsel for M/s.M. Muthappan in all cases
For Respondents 1 to 3 in WP. 174/18 and 1,2 in WP.6265/18 and 1 to 3 in WA.1754/17 & 1364/2019	:	Mrs.A. Srijyanthi, Special Government Pleader

COMMON JUDGMENT

(Judgment of the Court was made by P.T. ASHA, J.,)

The above Writ Petition is filed to quash the order passed in G.O.(2D).No.346, Home (Police II) Department dated 27.11.2017. This Writ Petition has been posted before this Court pursuant to the orders passed by the Hon'ble Chief Justice to list along with W.A.No.1754 of 2017.

2.The petitioner is presently serving as an Assistant Commissioner of Police (AR) at the Anna Nagar Traffic Sub Division. A charge made in the year 2012, that he had been collecting bribe for traffic violations, is the genesis for the present Writ Petition. A chronicle of the dates and events hereinbelow given would give a brief insight into the charges framed against the writ petitioner and passing the resultant impugned orders:

28.09.1987	-The writ petitioner is directly recruited as Sub Inspector of Police (Category-I) (AR).
2000	-Promoted as Inspector of Police (Category-II).
2008	-Further promoted as Assistant Commissioner of Police (AR)

14.12.2009 -The petitioner was appointed as Assistant Commissioner of Police, Flower Bazaar Range, Chennai.

29.01.2010 -Within a month of his taking charge a surprise inspection has been conducted where amounts had been recovered from the Sub Inspector Ramachandran, Head Constable Balamurugan and Head Constable Dhanasekaran following which an investigation was conducted.

21.09.2012 -Two years after the surprise inspection, a charge memo was issued alleging that while serving as an Assistant Commissioner of Police in the Flower Bazaar Range, Chennai, during the period 23.01.2010 to 29.01.2010, the petitioner had received a bribe of Rs.1,000/- from out of a sum of Rs.10,770/- which was collected by the Head Constable Dhanasekaran.

13.10.2012 -A detailed explanation is given by the petitioner denying the charges.

29.01.2013 -The 3rd respondent/Deputy Commissioner of Police, Traffic South Zone, was appointed as Enquiry Officer to conduct an oral enquiry against the petitioner and 12 others.

18.02.2013 -The Enquiry Officer commenced his enquiry.

17.09.2013 -Oral enquiry was completed.

29.09.2013 -The petitioner submitted his statement of defence in response to the letter asking him to submit his written statement of defence.

25.11.2013 -The Enquiry Officer, namely, the 3rd respondent submitted his report holding that by preponderance of probabilities the charges framed stood proved.

02.01.2014 -This Court passed an order in W.P.No.34837 of 2013 directing the 3rd respondent to expedite the enquiry in the disciplinary proceedings and complete the same within a period of six weeks from the date of receipt of a copy of that order.

3rd week of

February 2014 -A copy of the order was forwarded to the respondents.

05.06.2014 -The petitioner was asked to submit his further representation on the Enquiry Officer's report by the 1st respondent.

02.08.2014 -The petitioner submitted his representation to the Enquiry Officer's report.

-Since the petitioner's name was not being recommended for the promotion panel on account of the pendency of the disciplinary proceedings, the writ petitioner had filed W.P.No.25402 of 2014 for a Mandamus, directing the respondents to consider the claim of the petitioner for promotion to the post of Additional Deputy Commissioner of Police (AR) without reference to his pending disciplinary proceedings.

18.09.2014 -This Court had issued directions to the 1st respondent to pass final orders on the second show cause notice dated 02.06.2014 within a period of three weeks.

-The respondents do not comply with the order of this Court.

19.01.2015 -Contempt notice was issued by the petitioner for not complying with the order in W.P.No.25402 of 2014.

-There was no response to the contempt notice.

-In the meanwhile, the petitioner's junior was promoted as Deputy Commissioner of Police. Since no orders were passed in the disciplinary proceedings, W.P.No.4542 of 2015 was filed by the writ petitioner for a Mandamus to consider the representation of the petitioner for promotion as Additional Deputy Commissioner of Police (AR), without reference to the disciplinary proceedings.

23.02.2015 -While ordering notice in the Writ Petition, the respondents were injuncted by an interim order from promoting officers from the post of Additional Deputy Commissioner of Police (AR) until further orders.

November 2015 -Since no orders were passed on his promotion as well as the disciplinary proceedings, the petitioners filed W.P.No.36994 of 2015 for quashing the charge memo.

08.08.2017 -Both W.P.No.4542 of 2015 and W.P.No.36994 of 2015 are dismissed.

27.11.2017 -The 1st respondent passed an order imposing the punishment of censure although the Authority observed that the presence of the name of the officer would not be admissible evidence. Challenging this order, the writ petitioner is before this Court.

3.The writ petitioner had challenged the order passed in W.P.No.4542 of 2015 by filing W.A.No.1754 of 2017. W.A.No.1364 of 2019 has been filed against the order in W.P.No.36994 of 2015.

4.Heard Mr.K.Venkataramani, learned Senior Counsel for M/s.M.Muthappan, counsel for the petitioner and Mrs.A.Srijayanthi, learned Special Government Pleader for the respondents.

5.A mere perusal of the dates and events listed above would clearly indicate that despite the specific orders of this Court, the respondents had shown supine indifference in complying with the directions in W.P.No.34837 of 2013 dated 02.01.2014 and W.P.No.25402 of 2014 dated 18.09.2014. In the above orders, this Court had directed the disposal of the disciplinary proceedings within a time frame. However, the respondents had neither sought for extension of time nor did they proceed to pass orders and it is only as late as in the year 2017 that the impugned order has been passed.

6.The charge against the writ petitioner is purely based on surmises and conjectures. The allegation is that the inspection team had recovered a sum of Rs.10,000/- from one Head Constable Dhanasekaran and a chit was found indicating that a sum of Rs.10,770/- was for distribution. The amounts were shown against the names of police officials and against a sum of Rs.1,000/- the word "AC" has been written. Therefore, the inspection team had concluded that the word "AC" relates to the

writ petitioner, who was then Assistant Commissioner of Police, Flower Bazaar Police Station, Chennai. The inspection team has not recovered the said money from the writ petitioner. The copy of the Enquiry Report which was made available to this Court would show that the first witness on the Government side, Mr. Mohan, who was an Ex-Officer of the Revenue Department, and the Member who conducted the inspection, would in his cross examination admit in the First Information Report and in his report that he had not made any mention about the white chit which has now been taken as proof of complexity of the Writ petitioner in the bribe taking allegations. The witnesses had also admitted that he had not given any statement under Section 161(3) of the Code of Criminal Procedure, but had only submitted his report. The other Members of the team Mr. M. P. Natarajan who was the Ex.-Deputy Superintendent of Police belonging to Anti-corruption Department, would in his cross examination, admit that nowhere in the report they had made any mention about the seizure of the license which was also one of the seizure made from the Sub Inspector of Police Murthy. He would also admit that their initial report did not contain any detail about the white chit and also the report had only dealt with an amount of Rs.19,420/- that was seized and no other documents were reflected in the initial report.

7. Likewise, the third witness would also admit that nowhere was the name of the writ petitioner written. He would also admit that the statement under Section 161(3) of CrPC was taken after several months. Mr. S. Thirunavukkarasu, who was the Deputy Superintendent of Police, Vigilance and Anti-Corruption, would submit that there was no complaint from the public that the appellant and his staff were taking bribe.

8. In fact, a reading of the deposition of the witnesses does not indicate the involvement of the writ petitioner. He has been made a delinquent and found guilty only on the basis of a white chit on which the word "AC" has been returned. A perusal of the impugned order would clearly show that the 1st respondent had not been convinced with the evidence, but however, has proceeded to issue the punishment of censure only on the basis of preponderance of probabilities. The 1st respondent has in fact observed that mere presence of the name on a piece of paper is not admissible in evidence. The total non application of mind on the part of the 1st respondent is evident from a reading of the order which is as follows:

"3. The Government have carefully and independently examined the charge, defence statement of the delinquent officer, the findings of the Inquiry Officer and further representation of the delinquent officer on the findings of the Inquiry Officer along with the connected records. The mere

presence of names including the delinquent officer on a piece of paper is not an admissible evidence. However, based on the principle of "preponderance of probability", the Government have decided to impose the punishment of "Censure" on Thiru.V.K.Surendranath, Assistant Commissioner of Police, Chennai. Accordingly, the Government Order that the punishment of "Censure" be imposed on the proven charge in PR.No.96/2012."

9. The 1st respondent has totally overlooked the fact that the charge memo has been issued two years after the alleged incident and the enquiry has spread for over a period of five years, despite the directions of this Court to dispose of the disciplinary proceedings at the earliest. There is no material imputing any kind of misconduct on the part of the writ petitioner.

10. In the Judgment reported in (2009) 12 Supreme Court Cases 78 [Union of India and others v. Gyan Chand Chattar], the Hon'ble Supreme Court was summarizing as to how a departmental enquiry should be conducted. The Hon'ble Supreme Court has held as follows:

"In view of the above, law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct."

11. In the instant case, a mere perusal of the impugned order, namely, the order of the 1st respondent, would itself demonstrate that the evidence that is let in on the side of the respondents does not categorically impute any misconduct against the writ petitioner.

12. For these reasons, the order passed by the 1st respondent

dated 27.11.2017 is set aside. The 1st respondent shall consider the writ petitioner for promotion.

13. In the light of the above order, no further orders are required in W.A.No.1754 of 2017, W.A.No.1364 of 2019 and W.P.No.6265 of 2018. The Writ Appeals are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

mps

To

- 1.The Secretary to Government,
Home (police II) Department,
Fort St. George,
Chennai - 600 009.
- 2.The Additional Chief Secretary to Government,
Home (Police II) Department,
Fort St. George,
Chennai - 9.
- 3.The Director General of Police,
Dr. Radhakrishnan Salai,
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Chennai - 600 004.
- 4.The Joint Commissioner of Police,
Traffic North,
Vepery,
Chennai - 600 007.
- 5.The Deputy Commissioner of Police,
Traffic South,
Chennai.

+2 cc to Mr.M.Muthappan Advocate sr68498 & 68499

W.P.Nos.174&6265 of 2018 &
W.M.P.Nos.232 to 234 of 2018
& W.A.No.1754 of 2017 &
W.A.No.1364 of 2019

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