



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2019

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

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W.P. (MD)Nos.9967 and 15402 of 2017

and

W.M.P. (MD)Nos.7628 to 7630 of 2017 and 18544 of 2018
in W.P. (MD)No.9967 of 2017

and

W.M.P. (MD)No.12208 of 2017 in W.P. (MD)No.15402 of 2017

R.Senthil Kumar ... Petitioner in both the W.Ps.

vs.

1.The Principal Secretary Home (Police II Department),
Fort St. George,
Chennai - 600 009.

2.The Director General of Police,
Mylapore,
Chennai - 600 004. ... Respondents in both the W.Ps.

Prayer in W.P.(MD)No.9967 of 2017:- Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O.(2D)No.104, dated 02.05.2017, issued by the first respondent, quash the same and consequently, direct the respondents to promote the petitioner as Inspector of Police with effect from the date when his juniors were promoted, i.e., on 26.05.2009, with all consequential monetary benefits.

Prayer in W.P.(MD)No.15402 of 2017:- Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the issuance of the impugned order passed by the second respondent in Endorsement in Rc.No.208528/NGB-I(1)/2009, dated 11.07.2017, quash the same and consequently, direct the respondents to promote the petitioner as Inspector of Police with effect from the date when the juniors of the petitioner were promoted i.e., on 26.05.2009 with all consequential monetary benefits.

For Petitioner : Mr.C.M.Arumugam
(in all the W.Ps.)

For Respondents : Mr.S.Dhayalan
(in all the W.Ps.) Government Advocate

COMMON ORDER

These Writ Petitions have been filed seeking to quash G.O.(2D) No.104, dated 02.05.2017, issued by the first respondent, and the impugned order passed by the second respondent, in Endorsement in Rc.No.208528/NGB-I(1)/2009, dated 11.07.2017 and also a consequential direction to the respondents to promote the petitioner as Inspector of Police with effect from the date when his juniors were promoted, i.e., on 26.05.2009, with all consequential monetary benefits.

2.The petitioner while working as Sub-Inspector of Police in Trichy Railway Police Station on 22.01.2007, one Saivam was arrested by the Railway Police in connection with a theft case. A case in Crime No.67 of 2017 was registered against the said Saivam, who was arrested by the Railway Police. While on transit the said Saivam to Madurai in connection with the above said case, the said Saivam jumped from the running train and subsequently, died on account of the injuries sustained by him. In this regard, a case in Crime No.69 of 2007 was registered.

3.In view of the death of the said Saivam, the disciplinary action was initiated against the petitioner and other police personnel. A charge memo dated 18.11.2009, was issued to the petitioner, containing four charges. The petitioner gave explanation to the said charge memo. Not being satisfied with the explanation, an Enquiry Officer was appointed. The Enquiry Officer after conclusion of enquiry, filed a report on 08.06.2013, holding that the charges 1 and 3 were not proved and charges 2 and 4 alone were proved. The petitioner submitted his further representation on 22.10.2013. According to the learned counsel appearing for the petitioner, when the first charge is not proved, the second charge is also not proved. As far as fourth charge is concerned, the Duty Register is maintained only by the Station House Officer, the Inspector of Police. The petitioner is only Sub-Inspector of Police and the records are maintained only by the Inspector of Police. As Station House Officer, the Inspector of Police alone must maintain the Duty Register. Without considering the materials, by the impugned G.O.(2D)No.104, Home (Police 2) Department, dated 02.05.2017, the first respondent imposed punishment of stoppage of increment for a period of two years without cumulative effect on the petitioner. The learned counsel appearing for the petitioner contended that the petitioner is still in entry cadre and the panel for promotion to the post of Deputy Superintendent of Police is being prepared.

4.The respondents filed counter affidavit along with vacate stay petition. Mr.S.Dhayalan, learned Government Advocate appearing for the respondents submitted that by G.O.Ms.No.298, Public (Law and



Order-A) Department, dated 03.04.2009, the Government directed the Director General of Police to initiate departmental action against the petitioner and seven other Police Personnel and Police Officers, for their misconduct. Four charges were framed against the petitioner. After concluding enquiry, the Enquiry Officer filed report and the said report was sent to the second respondent on 20.10.2011 to be forwarded for passing final orders. The first respondent, by letter dated 22.08.2013, called for further explanation from the petitioner. After receiving the explanation of the petitioner, dated 22.10.2013, the second respondent forwarded the same on 25.10.2013 along with enquiry report and punishment rolls relating to the other seven Police Personnel and Police Officers, who are all co-delinquents, for passing final orders to the first respondent.

5.The petitioner filed W.P.(MD)No.12450 of 2009 before this Court, for a direction to the respondents to consider the case of the petitioner for promotion to the post of Inspector of Police. This Court, by order dated 05.03.2013, directed the respondents to consider the case of the petitioner to the post of Inspector of Police, in accordance with the order of promotion issued on 26.05.2009, immediately on conclusion of disciplinary proceedings and directed the respondents to conclude the disciplinary proceedings, within a period of three months from the date of receipt of a copy of that order. According to the respondents, in view of the pendency of the Writ Petition, no final order was passed by them.

6.The first respondent after considering the materials in proper perspective imposed the punishment by the impugned Government Order. The charges levelled against the petitioner were proved in the domestic enquiry and punishment of stoppage of increment without cumulative effect for a period of two years is imposed for the proven charges of misconduct. The petitioner's name was recommended for promotion to the post of Inspector of Police for the year 2008-2009, but he was not promoted, as he was suspended from service with effect from 25.09.2009 and the charge memo issued against the petitioner was pending. The punishment imposed is proportionate to the charges levelled against the petitioner and prayed for dismissal of the Writ Petitions.

7.I have heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

8.From the above materials on record, it is seen that the four charges are levelled against the petitioner, which are as follows:-

'1.The delinquent registered the F.I.R. in Trichy Railway Police Station Cr.No.67/2007 under Section 41(ii)



Cr.P.C. as if the accused was present in the Police Station and suppressed the fact that the accused was not present in the police station at the time of registration of the F.I.R.

2.The delinquent Sub-Inspector of Police had failed to observe the injuries if any on the accused Saivam and not recorded the same in the FIR at the time of handing over.

3.The delinquent had given false statement that the dead body of the accused was sent to Government Hospital, Trichy, from the nearby railway track.

4.The delinquent had failed to maintain the Duty Roster after 16.01.2007.''

9.Before the Enquiry Officer, the witnesses admitted that the petitioner was not in the Police Station when the FIR in Crime No.67 of 2007 was registered. The said FIR was registered only by the Head Constable. In view of such evidence, the Enquiry Officer has rightly held that the first charge levelled against the petitioner was not proved. The second charge is that the petitioner failed to observe the injuries if any, on the accused Saivam and not recorded the same in the FIR at the time of handing over. In the enquiry, the witnesses have stated that the accused Saivam was bodily examined by one Lawrance, Head Constable and no injuries were found on the body of the said Saivam. In view of the same, the question of recording the injury in the FIR does not arise. All the witnesses have admitted that there was no injury on the body of the accused Saivam and therefore, the question of non-recording the injury in escort duty does not arise. Hence, the findings of the Enquiry Officer that the petitioner failed to record any injury in the escort order issued to his subordinates, is erroneous.

10.The Enquiry Officer held that the third charge against the petitioner was not proved. As far as the fourth charge is concerned, it is the contention of the learned counsel appearing for the petitioner that the petitioner was only the Sub-Inspector of Police and it is the duty of the Inspector of Police, who is the Station House Officer, to maintain the Duty Register. It is not the duty of the petitioner to maintain the Duty Register. The learned Government Advocate appearing for the respondents contented that it is the routine duty of the Sub-Inspector of Police, who is on duty on a particular day, to assign daily duty to Police Personnel, who are on duty on the day. The petitioner without discharging his duties, is contending that only his superior has to maintain the Register, which is not correct. To prove the said contention of the respondents, no documents were produced before the Enquiry Officer to show that it is the duty of the petitioner to maintain the Duty Register from 16.01.2007. The Writer of the Police Station, viz., Sekar was examined by the respondents to prove this charge. He



admitted that it is his duty to maintain the Duty Register. According to the said Sekar, the Sub-Inspector of Police, who is in-charge of Station on a particular day, allotted duty to the Police Personnel for the day. Further, the learned counsel appearing for the petitioner submitted that the said Sekar has not deposed the petitioner was Sub-Inspector of Police in-charge of the Station from 16.01.2007 onwards. The contention of the learned counsel appearing for the petitioner that there were three Sub-Inspectors of Police attached to the Police Station and the respondents have not proved that the petitioner was Sub-Inspector of Police in-charge of the Police Station for all the days from 16.01.2007.

11. When there are one Inspector of Police and three Sub-Inspectors of Police in the Police Station, it is for the respondents to prove that only the petitioner was in-charge of the Police Station from 16.01.2007 onwards. The Writer Sekar deposed that the petitioner was in duty, but he has not deposed that the petitioner was in-charge of the Police Station from 16.01.2007. The findings of the Enquiry Officer that the fourth charge against the petitioner was proved only on the ground that the petitioner denied that it is not his duty to maintain Duty Register, is erroneous.

12. From the materials on record, it is seen that the respondents have failed to prove all the charges levelled against the petitioner and the report of the Enquiry Officer that the charges 2 and 4 are proved against the petitioner, is erroneous and contrary to the evidence let in by the respondents. The first respondent has not properly appreciated the nature of charges, the explanation of the petitioner and the evidence before the Enquiry Officer and erroneously, imposed the punishment. Further, this Court, by order dated 05.03.2013, made in W.P.(MD)No.12450 of 2009, directed the respondents therein to conclude the disciplinary proceedings as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of that order. The first respondent, in spite of the order of this Court, dated 05.03.2013, has passed the final order only on 02.05.2017, after four years from the order of this Court. It is pertinent to note that the Enquiry Officer submitted his report on 08.06.2011 and the same was forwarded by the second respondent to the first respondent on 20.10.2011. The first respondent has taken four years to pass final orders.

13. For the above reasons, the impugned G.O.(2D)No.104, dated 02.05.2017, issued by the first respondent, is set aside and **Writ Petition(MD)No.9967 of 2017 is allowed as prayed for.** No costs. Consequently, connected Miscellaneous Petitions are closed.

14. In view of the passed in W.P.(MD)No.9967 of 2017, dated 07.11.2019, the impugned order passed by the second respondent in Endorsement in Rc.No.208528/NGB-I(1)/2009, dated 11.07.2017, is set



aside. The respondents are directed to consider the promotion of the petitioner as Inspector of Police on par with his juniors from 26.05.2009, when his juniors were promoted, if he is otherwise eligible. Accordingly, **W.P.(MD)No.15402 of 2017 is allowed.** No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Principal Secretary Home (Police II Department),
Fort St. George,
Chennai - 600 009.

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

+2CC TO MR.C.M.ARUMUGAM, Advocate Sr. No. 97027 & 97025

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 96993 & 96992

Common order in
W.P.(MD)Nos.9967 and 15402 of 2017
07.11.2019

NS (CO)

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