



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.10.2019
CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.20660 of 2016

and

W.M.P.(MD)No.14768 of 2016

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... Petitioner

vs.

1. The Director General of Police,
Law and Order,
Chennai.
2. The Deputy Inspector General of Police,
Tirunelveli,
Tirunelveli District.
3. The Superintendent of Police,
Thoothukudi,
Thoothukudi District.

... Respondents

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 proceedings passed by the first respondent in Rc.No.118305/AP.2(1)/2015, dated 21.06.2016 and thereby, confirming the order passed by the second respondent in Na.Ka.No.C4/Me.Mu.32/2015, dated 06.05.2015 and also by confirming the order passed by the third respondent in C.No.F1/P.R.No.142/2013, dated 18.02.2015, quash the same and consequently, direct the respondents herein to regularize the period of petitioner's suspension as duty period and allow the petitioner to retire from service on the date of superannuation w.e.f. 30.04.2014 with all attendant benefits.

For Petitioner : Mr.M.Muthugeethayan
For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader

ORDER

This Writ Petition has been filed seeking to quash the proceedings of the first respondent in Rc.No.118305/AP.2(1)/2015, dated 21.06.2016, by confirming the order passed by the second respondent in Na.Ka.No.C4/Me.Mu.32/2015, dated 06.05.2015 and also by confirming the order passed by the third respondent in C.No.F1/P.R.No.142/2013, dated 18.02.2015, and a consequential direction to the respondents herein to regularize the period of



petitioner's suspension as duty period and allow the petitioner to retire from service on the date of superannuation w.e.f. 30.04.2014 with all attendant benefits.

2.The petitioner while working as Special Sub-Inspector of Police at North Police Station, Erode, by the order dated 13.05.2013, was suspended from service. A charge memo dated 22.12.2013, containing two charges was issued to the petitioner. The petitioner filed W.P.(MD)No.1734 of 2014 challenging the said charge memo. This Court, by order dated 23.04.2014, dismissed the said Writ Petition, directing the third respondent to complete the disciplinary proceedings initiated against the petitioner, within three months from the date of receipt of a copy of that order. While so, the petitioner attained the age of superannuation on 30.04.2014. The third respondent, by the order dated 30.04.2014, retained the petitioner in service until the disposal of the Writ Petition filed by the petitioner. Against the order passed in W.P. (MD)No.1734 of 2014, dated 23.04.2014, the petitioner filed W.A.(MD) No.907 of 2014. This Court, by order dated 21.07.2014, dismissed the said Writ Appeal directing the third respondent to complete the disciplinary proceedings initiated against the petitioner, within three months from the date of receipt of a copy of that judgment.

2(i).The third respondent ordered domestic enquiry. The Enquiry Officer after considering the materials on record, held that the first charge leveled against the petitioner was not proved, but the second charge was proved. The third respondent issued a second show cause notice and the petitioner has submitted his explanation. The third respondent, by order dated 18.02.2015, dismissed the petitioner from service. The second respondent, by order dated 06.05.2015, confirmed the order of dismissal passed by the third respondent and the first respondent, by order dated 21.06.2016, confirmed the orders of the respondents 3 and 2 in the review petition filed by the petitioner. Against the said order, the petitioner has come up with the present Writ Petition.

3.The learned counsel appearing for the petitioner submitted that on 14.03.2013 at 07.30 p.m., a murder had occurred and on complaint, the same was registered on 15.03.2013 as Crime No.173 of 2013 under Sections 302, 307 and 324 IPC, on the file of the Town Police Station, Erode. The Investigating Officer after investigation, filed charge sheet on 28.08.2013. The petitioner is not arrayed as an accused. The Enquiry Officer, by his letter dated 10.04.2013, requested the Deputy Superintendent of Police, Erode, to take disciplinary action against the petitioner, as he contacted the accused over phone on 14.03.2013. The Deputy Superintendent of Police, Erode, vide his letter dated 11.04.2013, requested the Superintendent of Police, Erode, to take disciplinary action against the petitioner. Based on the request of the Investigating Officer dated 10.04.2013 and the letter of the Deputy Superintendent of Police, Erode, dated 11.04.2013, the petitioner was suspended from



service on 13.05.2013 and the charge memo dated 22.12.2013 was issued to him.

3(i).The learned counsel appearing for the petitioner submitted that the Investigating Officer without properly investigating the matter i.e., without properly enquiring the first accused, viz., Arun @ Arunprasath with regard to conversation which the petitioner had with him over phone, on assumption, had informed the Deputy Superintendent of Police, Erode, that the petitioner was involved in the murder of one Ravi @ Steel Ravi @ Ravichandran on 14.03.2013. The said Arun @ Arunprasath is police informer and the petitioner knows him for a long time. On the date of occurrence, the vehicle of the petitioner was not functioning properly while he was travelling in a Car to Erode after visiting Tiruvannamalai. The Investigating Officer enquired the persons, to whom the petitioner talked over phone on 14.03.2013 and all of them have stated that the petitioner spoke to them with regard to the problem he had in the Car while travelling. The Investigating Officer recorded the statement of Arun @ Arunprasath separately to that effect, but he did not furnish the same to the Deputy Superintendent of Police, Erode. The Investigating Officer, on assumption, had reported the same to the Deputy Superintendent of Police, Erode, that the petitioner was involved in the offence and he did not furnish the information received to the higher authorities. The petitioner was working with K.G.Sivakumar, Inspector of Police, North Police Station, Erode. The petitioner furnished the information received by him to the said K.G.Sivakumar, Inspector of Police, his immediate superior and also Ravichandran, Special Sub-Inspector of Police and Varadharajan, Special Sub-Inspector of Police, who are in the investigation team. On the instruction of K.G.Sivakumar, Inspector of Police, the petitioner canceled his leave and joined duty on 15.03.2013. The witnesses examined in the domestic enquiry also deposed to the said effect. The Investigating Officer - Ramesh, who gave a complaint against the petitioner admitted that he gave the complaint only on assumption as the petitioner was repeatedly talking to Arun @ Arunprasath on the date of occurrence. The Investigating Officer did not enquire the person, who has sent anonymous letter in the name of Professor Kalyani, Tindivanam. The Enquiry Officer without properly appreciating the evidence let in by the disciplinary authority and in the cross-examination by the petitioner, erroneously held that the second charge leveled against the petitioner was proved. The third respondent without properly considering the materials on record, mechanically accepted the report of the Enquiry Officer and passed the order of dismissal. Respondents 2 and 1 also without giving any reason, dismissed the appeal and review filed by the petitioner.

3(ii). The learned counsel appearing for the petitioner further submitted that while dismissing the Writ Petition and the Writ Appeal filed by the petitioner challenging the charge memo, this



proceedings within three months. The respondents have no power to continue the enquiry beyond the time granted by this Court and therefore, the entire disciplinary proceedings are liable to be quashed on this ground.

3(iii).The learned counsel appearing for the petitioner further submitted that Arun @ Arunprasath (A1), Kattu Subbu @ M.P.Subramanian (A5) and others were not found guilty and they were acquitted by the learned II Additional Sessions Judge, Erode, by judgment dated 19.04.2018.

3(iv).In support of his submissions, the learned counsel appearing for the petitioner relied on the following judgments:-

(i) **Allahabad Bank and others Vs. Krishna Narayan Tewari** reported in **2017 (2) SCC 308**, wherein at Paragraph 7, it has been held as follows:-

'7. ... But it is equally true that in a case where the disciplinary authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty-bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was initiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the enquiry officer or the disciplinary authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. '

(ii) The judgment of this Court **dated 24.09.2018, made in W.A. (MD)No.305 of 2014 [S.Karikalan Vs. The Principal Secretary to Government, Home (Pol.VI) Department, Chennai and others]**, wherein at Paragraph 6, it has been held as follows:-

'6.We have considered the submissions made and perused the entire records. We find on two grounds the order of the disciplinary authority as confirmed by the appellate authority requires interference. Firstly, in a departmental proceeding, it is for the department to substantiate the charges. Though what is required is preponderance of probabilities, there has to be basic materials to proceed against the delinquent officer. In the case on hand, both the management witnesses who spoke about the occurrence, deposed otherwise. Apart from the witnesses 10 and 11, there is no other witness to speak about charge No.2. All the other witnesses are official witnesses, who registered information and thereafter investigated the offence. From these witnesses, it is not possible for this Court to come to a conclusion that charge

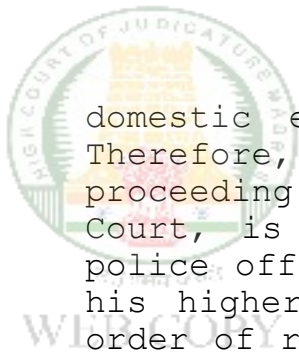


No2 has been proved. Thus, we are of the view that conclusion arrived at by the disciplinary authority as confirmed by the appellate authority cannot be sustained in the eye of law.''

3(v).The learned counsel appearing for the petitioner also submitted that there is no evidence produced before the Enquiry Officer and the finding of the Enquiry Officer is perverse and prayed for allowing of this Writ Petition.

4.The respondents filed counter affidavit. Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the respondents submitted that based on the preliminary enquiry and statement of witnesses and the materials collected by the Enquiry Officer, the petitioner was suspended from service. The petitioner was well aware of the movement of the accused persons in Crime No.173 of 2013, but he did not communicate the same to his superior officers. This resulted delay in fixing the accused and the investigation was belated. The Investigating Officer obtained the mobile phone call statement of the petitioner as well as Arun @ Arunprasath, which would reveal that they contacted for 29 times and spoke 28 minutes. Therefore, the plea that the said fact would reveal the contention of the petitioner that they spoke about the problem in the Car, cannot be accepted. Similarly, the petitioner contacted Kattu Subbu @ M.P.Subramaniam for 9 times and spoke 29 minutes before and after the occurrence and he should have communicated the same to his higher officials. The third respondent initiated proceedings against the petitioner even before the receipt anonymous letter dated 08.04.2013. The said letter was marked as Exhibit, but it was not the only document for initiation of disciplinary proceedings against the petitioner. Many witnesses were examined and depositions were recorded. The deposition of witnesses is the cause for the commencement of the departmental proceedings against the petitioner. Therefore, the contention of the petitioner that the said anonymous letter should have been investigated, is without merits.

4(i).The third respondent has produced the evidence as well as material facts and substantiated the second charge levelled against the petitioner. The Enquiry Officer in the enquiry, after considering all the documentary evidence and material facts, gave a finding that the first charge was not proved and the second charge was proved. A copy of the said report was furnished to the petitioner and he was called upon to submit his explanation. After considering all the materials, the third respondent, by order dated 18.12.2015, removed the petitioner from service. Respondents 2 and 1 after considering the various objections raised by the petitioner in the appeal and review, the file relating to the disciplinary proceedings and the order of the third respondent, confirmed the said order by giving valid reasons. As per the order and judgment passed by this Court in W.P.(MD)No.1734 of 2014 and W.A.(MD)No.907 of 2014, respectively, the third respondent has completed the

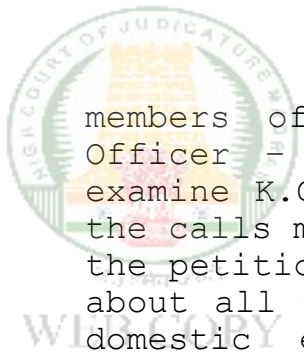


domestic enquiry within the time limit granted by this Court. Therefore, the contention of the petitioner that disciplinary proceeding was not concluded within the time limit granted by this Court, is contrary to the facts. The petitioner as responsible police officer failed to convey the information received by him to his higher officers and spoiled the image of police force. The order of removal of the petitioner by the third respondent and the order of the respondents 2 and 1 are proportionate to the gravity of charges leveled against the petitioner and prayed for dismissal of the Writ Petition.

5.I have heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials on record.

6.From the materials on record, it is seen that the petitioner was issued with a charge memo containing two charges. The first charge is that he had contacted with the accused in Crime No.173 of 2013 registered under Sections 302, 307 and 324 IPC and abetted the commission of said offence. The second charge is that the petitioner did not inform the higher officials of secret information received by him over phone relating to Crime No.173 of 2013. In the domestic enquiry, the Enquiry Officer has held that the first charge was not proved and the second charge was proved. A reading of second charge shows that the said charge is vague. The disciplinary authority has not stated the secret information alleged to have received by the petitioner. In the domestic enquiry, six witnesses were examined. None of the witnesses including the accused in Crime No.173 of 2013 deposed the conversation the petitioner had with them relate to any information in Crime No.173 of 2013. On the other hand, the first accused, Arun @ Arunprasath and P.W.3 - Nagarajan deposed that the petitioner spoke to them repeatedly on 14.03.2013 with regard to the problem he had in the Car while coming to Erode. They also deposed that the petitioner requested them for information to rectify the defect in the Car. The Investigating Officer - S.Ramesh, who was examined as P.W.5 has deposed that based on the number of calls the petitioner made to Arun @ Arunprasath and Kattu Subbu @ M.P.Subramaniam, reveal that the petitioner was involved in the offence. From his evidence, it is seen that without any acceptable evidence and based on the assumption, the Investigating Officer has given complaint against the petitioner, which was the basis for the disciplinary proceedings initiated against the petitioner. The Investigating Officer, in his cross-examination by the petitioner, admitted that K.G.Sivakumar, Inspector of Police, North Police Station, Erode, was the immediate superior to the petitioner.

7.From the Call Register in the possession of the Investigating Officer, the petitioner pointed out the calls made by him to K.G.Sivakumar and also to Ravichandran, Special Sub-Inspector of Police, Police Court and Services, Tharajan, Special Sub-Inspector of Police, who were



members of the investigation team, headed by the Investigating Officer - S.Ramesh [P.W.5]. He also admitted that he did not examine K.G.Sivakumar, Ravichandran and Varadharajan with regard to the calls made by the petitioner on the same day. The contention of the petitioner that he informed his immediate superior K.G.Sivakumar about all the informations, he received is not controverted in the domestic enquiry. It is pertinent to note that P.W.5 - Investigating Officer has stated that anonymous letter was received by him on 08.04.2013 and based on that, he submitted complaint to the Deputy Superintendent of Police, Erode. On the other hand, in the counter affidavit, the respondents have taken a contrary stand that anonymous letter was not the basis for initiating disciplinary proceedings against the petitioner. No evidence was let in before the Enquiry Officer as to how they came to possession of the call statement. It is pertinent to note that it is admitted that along with the anonymous letter dated 08.04.2013, the Deputy Superintendent of Police, Erode, as well as P.W.5 Investigating Officer received mobile phone call statement of the petitioner. The respondents have not enquired whether really the Professor Kalyani, Tindivanam, has sent the said letter and as to how the call statement of the petitioner's mobile number was obtained by the person, who sent anonymous letter dated 08.04.2013.

8.During the course of hearing, the learned counsel appearing for the petitioner has produced the judgment dated 19.04.2018, passed by the learned II Additional Sessions Judge, Erode, in S.C.No.30 of 2018. The learned II Additional Sessions Judge, Erode, had acquitted all the accused including Arun @ Arunprasath (A1) and @ Kattu Subbu @ M.P.Subramaniam (A5). The findings of the Enquiry Officer with regard to the second charge leveled against the petitioner that the petitioner had received secret information with regard to Crime No.173 of 2013 and he did not pass on the said information to his higher authorities, is without any basis and the same is perverse. Based on the said perverse findings only, the third respondent had removed the petitioner from service and the respondents 2 and 1 confirmed the same. In the judgments relied on by the learned counsel appearing for the petitioner, it has been held that this Court can interfere with the punishment imposed in the domestic enquiry, if the findings of the Enquiry Officer, is unsupported by any evidence whatsoever or no reasonable person could have arrived at such finding. In the present case, the respondents have failed to prove not only the first charge as held by the Enquiry Officer, but also, the second charge leveled against the petitioner.

9.For the above reasons, the impugned order of the first respondent in Rc.No.118305/AP.2(1)/2015, dated 21.06.2016, confirming the order passed by the second respondent in Na.Ka.No.C4/Me.Mu.32/2015, dated 06.05.2015 and also by confirming the order passed by the third respondent in C.No.F1/P.R.No.142/2013, is set aside. The respondents are directed to pay



the eligible retiral benefits and other attendant benefits to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

10. In the result, this Writ Petition is allowed as prayed for. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Director General of Police,
Law and Order,
Chennai.
2. The Deputy Inspector General of Police,
Tirunelveli,
Tirunelveli District.
3. The Superintendent of Police,
Thoothukudi,
Thoothukudi District.

+1 CC to SPL GP (SR-94631[F] dated 25/10/2019)

+1.CC. To Mr.M.Muthugeethayan, Advocate in SR No.94408

W.P.(MD)No.20660 of 2016
24.10.2019

smn2

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