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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Writ Appeal (MD).No.1372 of 2017

K.Rajkumar

... Appellant/Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home Department,
Secretariat,
Chennai.

2.The Director General of Police,
Tamil Nadu,
Chennai 4.

3.The Inspector General of Police,
Armed Police,
Trichy 12.

4.The Deputy Inspector General of Police,
Armed Police,
Chennai 10.

... Respondents

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent Act, against the order passed by this Court in W.P.(MD).No.12682 of 2017 dated 10.07.2017.

Prayer in WP(MD). 12682/ 2017 :

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a writ of Certiorarified Mandamus calling the records relating to the proceedings of the 1st Respondent made in G.O (D) No.563 Home (Pole.IX) Department, dated 05.05.2017 confirming the proceedings of 2nd Respondent made in C.No.A.P 3 (1)/ 243826/ 2005 dated 02.02.2006, confirming the proceedings of 3rd Respondent made in C.No.A.2/ Appeal.64/2005 dated 01.02.2005 confirming the proceedings of the 4th Respondent, made in T.R.No.34/97, dated 22.11.2014 and quash the same and consequently direct the respondents to reinstate the petitioner in service and award all consequential benefits.

For Appellant

: Mr.R.Murali

For Respondents

: Mr.A.K.Baskara Pandian

Special Government Pleader



J U D G M E N T

(Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**)

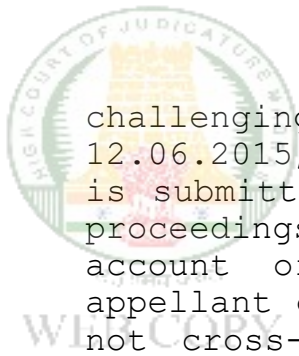
This appeal filed by the writ petitioner is directed against the order in W.P.(MD).No.12682 of 2017, dated 10.07.2017. By the said writ petition, the appellant challenged the decision of the Government in G.O.(D).No.563, Home (Pol.IX) Department, dated 05.05.2017, confirming the punishment of removal from service imposed on the appellant, who was working as the Sub Inspector of Police in the Tamil Nadu Special Police IX Battalion, Manimuthar, formerly Sub Inspector of Police, Tamil Nadu Special Police VII Battalion, Palani. The writ petition was dismissed by the Single Bench by the impugned order and the operative portion of the order reads as follows:

"6. I do not find any perversity in the orders passed by the disciplinary as well as appellate authorities. The reason is, when the petitioner in spite of having nine long chances to appear before the Enquiry Officer to cross-examine the complainant, who is an injured witness in spite of his presence in the enquiry, he has deliberately, refused to cross-examine him. This has been repeatedly pointed out by the Enquiry Officer in his report."

2. Mr.R.Murali, learned counsel for the appellant submitted that the charge memo in the departmental proceedings which was issued to the appellant in April 1997 pertains to his involvement in a criminal case, wherein allegation was made that the appellant had injured another person with an object on 23.04.1995 at 00.15 hours causing bleeding injuries. It is submitted that parallelly criminal case was also registered against the appellant and he was pursuing the matter before the criminal Court. At this juncture, proceedings were served on the appellant and the appellant appeared for an oral enquiry and it is true that the appellant could not appear for few of the enquiries conducted by the Enquiry Officer, because of the trial in the criminal case and a request was made to the Department not to proceed with the departmental proceedings till the conclusion of the trial by the criminal Court. It is submitted that the criminal proceedings ended in order of conviction and solely based on the conviction, the disciplinary authority by F.Order dated 22.11.2004, removed the appellant from service with immediate effect. The appellant preferred an appeal before the Inspector General of Police, Armed Police, Trichy, which was rejected by order dated 01.02.2005. Thereafter, the appellant filed further appeal before the Director General of Police, Tamil Nadu, Chennai, which was also rejected by order dated 02.02.2006. The order of punishment of removal from service dated 22.11.2004 and the order passed by the First Appellate authority, dated 01.02.2005, were put to challenge in W.P.No.36076 of 2005. The said writ petition was pending for

benefit of
withdraw

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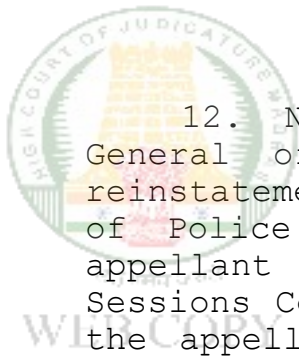


challenging these orders were dismissed as withdrawn, by order dated 12.06.2015, and no liberty was granted to the appellant. Further, it is submitted that the appellant did not participate in the enquiry proceedings and the charge framed against the appellant is on account of his involvement in a criminal case. Further, the appellant did not participate in the enquiry proceedings and he did not cross-examine the prosecution witnesses, which would clearly state the offence committed by the appellant. The appellant having been part of the Uniformed Service, the order passed by the authorities should not be interfered and should be confirmed.

9. We have heard the learned counsel for the parties and perused the materials placed on record.

10. The first contention raised by the learned counsel for the appellant is that the order of dismissal is a non-speaking order. We have our own doubt as to whether there is any other order enclosed along with the F-Order as it is normally done. Even assuming that the order served on the appellant is the only order of removal from service, we find that the order cannot be totally faulted, because on the date, the appellant had been convicted by a criminal Court after full-fledged trial. The evidences which were brought before the criminal proceedings were also brought before the domestic enquiry. Though the charge as framed does not state that the appellant has brought disrepute to the police force, the statement of witnesses, refers to the same. Therefore, the charge along with the statement of the witnesses, which proposed to be the prosecution witnesses have to be read together and it cannot be in a dispassionate manner.

11. After receipt of the charge memo, the appellant did not give any explanation and he was not regular in attending the departmental enquiry. The learned counsel for the appellant referred to the enquiry proceedings report and submitted that there is no fault on the part of the appellant, but, it is the enquiry officer, who was not available. Even assuming that such a submission is correct, after particular stage, the appellant did not participate in the domestic enquiry. His contention is that he wanted the deferment of the departmental proceedings. This was not considered. But the appellant did not move the Court for deferment of the departmental proceedings, but, merely stayed away from the proceedings, which resulted in holding the charge free. This was considered by the disciplinary authority and though the order is a brief order, since it is based on the witnesses, who were examined in the criminal Court, the appellant was removed from service. The appeal filed by the appellant before the first appellate authority was rejected and the order states that there is no procedural irregularity. The grounds of appeal filed before the first appellate authority have not been placed before this Court.



12. Not stopping there, the appellant moved the Director General of Police to set aside the order of punishment and reinstatement in service. This was examined by the Director General of Police and it was rejected on 02.02.2006. Thereafter, the appellant filed the earlier writ petition and was waiting for the Sessions Court to get the criminal case acquitted. The acquittal by the appellate Court was on benefit of doubt. After judgment was delivered by the Sessions Court, the appellant withdrawn the earlier writ petition and approached the Government for exercising its discretion in the matter, which was rejected. The dates and events clearly show that the appellant exhausted all the remedies and ultimately he is before this Court.

13. We should not forget the fact that the appellant was part of the Uniformed Service. The Sessions Court did not honorarily acquitted the accused. The appellant had been granted the benefit of doubt. Even assuming that he was acquitted on that ground that his presence was doubtful in the scene of occurrence and that alone will not automatically result in an order of reinstatement, especially in a disciplinary force.

14. The decision in the case of **Food Corporation of India** (*supra*) is entirely on different facts and it did not pertain to a person, who was working in the disciplinary force, but employee in Food Corporation of India. Therefore, from the facts of the said case, we find that the said decision has no application to the case on hand.

15. The decision in the case of **Punjab National Bank** (*supra*) cannot be applied to the facts of the present case, especially, when the appellant has to be blamed for not participating in the domestic enquiry. The conviction of the criminal Court was very much in woke at the relevant point of time. Therefore, we do not find the order to be a non-speaking order, but an order which is brief and contains the findings rendered by the Criminal Court. Therefore, the decision in **Punjab National Bank** (*supra*) does not render assistance to the appellant.

16. Finally, the decision in the case of **Ram Lakhan Sharma** (*supra*) was relied on to support the contention that the Enquiry Officer cannot act as a Presenting Officer. No such allegation was raised by the appellant at any point of time and this belated plea at this juncture cannot be entertained. Thus, we find no ground to



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interfere with the order of punishment passed against the appellant.
For the above reasons, the appeal is dismissed. No costs.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Additional Chief Secretary to Government,
Home Department,
Secretariat,
Chennai.

2.The Director General of Police,
Tamil Nadu,
Chennai 4.

3.The Inspector General of Police,
Armed Police,
Trichy 12.

4.The Deputy Inspector General of Police,
Armed Police,
Chennai 10.

+1 CC to Mr.R.MURALI, Advocate (SR-86024[F] dated 10/09/2019)

+1 CC to Spl.GP (SR-86153[F] dated 10/09/2019)

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