

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

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THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.No.13664 of 2007
(O.A.No.3827 of 2003)

A.Abdul Razak

... Petitioner

Vs.

1.The District General of Police,
Chennai.

2.The Superintendent of Police,
District Superintendent Office,
Tiruvarur District.

... Respondents

PRAYER : Originally this petition has been filed as Original Application No.3827 of 2003 before the Tamil Nadu Administrative Tribunal at Chennai and after abolition of TNAT, petition has been transferred and numbered as W.P.No.13664 of 2007.

Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records from the second respondent and quash the order D.O.1303/2002/C.No.K1/PR.12/2002 dated 23.11.2002 passed by the second respondent and consequently, direct the second respondent to reinstate the petitioner with continuity of service, back wages and all other attendant benefits.

For Petitioner : Mr.P.Vijendran

For Respondents: Mr.P.Chinnadurai
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order of the second respondent in D.O.1303/2002/C.No.K1/PR.12/2002 dated 23.11.2002, quash the same and consequently, direct the second respondent to reinstate the petitioner with continuity of service, back wages and all other attendant benefits.

2. The petitioner has filed the Original Application before the Tamil Nadu Administrative Tribunal, Chennai. Subsequently, due to abolition of the Tribunal, this matter was transferred to this Court and renumbered as W.P.No.13664 of 2007.

3. The petitioner, while serving as Grade-I PC in Vaduvloor Police Station, suspended from his service and subsequently, a charge memo was issued against him and he was called for explanation. After receiving the explanation, an Enquiry Officer was appointed. Since, during the enquiry, the petitioner did not appear and had not cooperated with the enquiry, the Enquiry Officer proceeded with an exparte order and filed the enquiry report, giving the finding that the charge leveled against the petitioner was proved. Based on the enquiry report, the Disciplinary Authority called for further explanation from the petitioner. Since some criminal cases were pending against the petitioner, the petitioner was absented from duty and has also absconded, therefore, the enquiry report along with the second show cause notice could not be served on the petitioner and the final order was passed dismissing him from service. Challenging the said order, the petitioner filed the original application which was transferred to this Court and was renumbered as a writ petition in W.P.No.13664 of 2007.

4. The learned counsel appearing for the petitioner would contend that the explanation submitted by the petitioner was not considered and without giving sufficient opportunity to the petitioner, domestic enquiry was conducted and exparte order was passed. He would further submit that the copy of the enquiry report was not served on the petitioner and no opportunity was given to cross examine the witnesses. He was also not being called for any further explanation, which violates the principles of natural justice. Therefore, the punishment order passed by the Disciplinary Authority is liable to be set aside.

5. The learned Additional Government Pleader would submit that the petitioner was involved in criminal cases and he was also arrested before he was suspended from his service, therefore, the departmental proceedings were initiated against

him and explanation offered by the petitioner was not satisfying. Thereafter, the enquiry was conducted and during the enquiry, the petitioner did not appear despite the sufficient opportunity being given to him. Since he has not appeared before the Enquiry Officer, the Enquiry Officer was left with no other option except to conduct an ex parte enquiry and found the charge leveled against the petitioner to be proved. Subsequently, the Disciplinary Authority sent the copy of the enquiry report along with second show cause notice and the same was not served, since the petitioner was absconding and was not attending the office during the relevant period. Even after providing sufficient opportunity to the petitioner, the petitioner voluntarily did not avail the opportunity and in order to escape from the criminal cases, he has been absconding. Therefore, non-serving of the enquiry report and also seeking for further explanation from the petitioner, is not only the fault on the part of the respondent, but it is due to the circumstances that they could not serve the report. However, the charge leveled against the petitioner was proved and there is no merit in the Writ Petition.

6. Heard the learned counsel for the petitioner and learned Additional Government Pleader and perused the materials placed on record.

7. Admittedly, the petitioner was serving as Police Constable in Vaduvor Police Station. The charge memo was issued against the petitioner and subsequently an enquiry was also conducted. However, sufficient opportunity was being given to the petitioner but he did not avail the same, therefore, the Enquiry Officer proceeded with an ex parte enquiry and made a statement of records that the charges leveled against the petitioner were proved. Thereafter, the Enquiry Officer submitted his enquiry report before the Disciplinary Authority and the Disciplinary Authority attempted to serve the copy of the enquiry report to the petitioner and also called for further representation. Since the petitioner was absented from duty and was also not available in the address given by the petitioner, the enquiry report could not be served. The Disciplinary Authority was left with no other option except to pass the final order.

8. It is an admitted fact that since the petitioner had been absconding, the enquiry report was not served to him. Therefore, this Court finds that since the petitioner was not served with the enquiry report and further representation was not being given by the petitioner before the Disciplinary Authority, in order to give one more opportunity to the

petitioner, the order passed by the Disciplinary Authority is liable to be set aside. However, the filing of the enquiry report stands proved and the Disciplinary Authority is directed to serve the copy of the enquiry report to the petitioner at the address mentioned herein (A.Abdul Rajak, S/o. Abdul Patha, No.5/207, Pallivasal Street, Pullivallam, Tiruvarur District - 610109) and call for further representation within a period of one week from the date of receipt of a copy of this order. Thereafter, the petitioner is directed to give his representation within a period of 10 days from the date of receipt of the enquiry report. After receipt of the further representation from the petitioner, the Disciplinary Authority is directed to consider and pass final orders on the same, within a period of two weeks from the date of receipt of such representation.

9. With the above directions, this Writ Petition stands disposed of. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/
Sub Asst. Registrar

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To

1.The District General of Police,
Chennai.

2.The Superintendent of Police,
District Superintendent Office,
Tiruvarur District.

+1 cc to Mr.P.Vijendran Advocate sr41488

+1 cc to the Government Pleader High Court sr41690

vgII(co)
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