

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.17457 of 2007
[O.A.No.726 of 2004]

Karuppiah,
Lak 1210,
Armed Reserve,
Madurai Rural,
Madurai.

... Petitioner

Vs

1. The Superintendent of Police,
Madurai Rural,
Madurai.
 2. The Deputy Inspector General of Police,
Madurai Range.
 3. The Additional Director General of Police,
(Law and Order)
Madras - 600 004.
- ... Respondents

Prayer: Originally this petition has been filed as Original Application No.726 of 2004 before the Tamil Nadu Administrative Tribunal at Chennai and after abolition of TNAT, petition has been transferred and numbered as W.P.No.17457 of 2007.

Petition filed praying to issue a writ of Certiorarified Mandamus to set aside the order of compulsory retirement passed by the first respondent in P.R.117/91, dated 28.01.1992 which was confirmed by the second and third respondents in their proceedings C.No.A2/Appeal 13/92 dated 02.06.1992 and Rc.No.19876/AP 11(2) dated 06.05.1993 and consequently to reinstate the applicant in service with all attendant and consequential benefits.

For Petitioner : Mr.S.J.Jagadev

For Respondents : Mr.K.Magesh
Special Government Pleader

ORDER

The petitioner originally filed the application before the Tamil Nadu Administrative Tribunal at Chennai in O.A.No.726 of 2004, subsequently, the said Administrative Tribunal was abolished and the said O.A., has been transferred to the file of this Court and it is taken as writ petition in W.P.No.17457 of 2007.

2. This writ petition is filed praying to set aside the order of compulsory retirement passed by the first respondent dated 28.10.1992 which was confirmed by the second and third respondents in their proceedings dated 02.06.1992 and 06.05.1993 respectively and to consequently reinstate into service with all attendant and consequential benefits.

3. (a) The petitioner was working as Constable in Armed Reserve, Madurai Rural and put 27 years of service and he was compulsorily retired on 28.01.1992 by the first respondent on the following charges:

(i) Reprehensible conduct in having been in drunken mood on duty on 11.10.1988 at 5.30 hours.

(ii) Driving Police Vehicle (standard van) on 11.10.1988 at 5.30 a.m., in a rash and negligent manner in drunkenmood and caused accident to the vehicle.

(b) Departmental proceedings was initiated against the petitioner. The Enquiry Officer gave a finding that drunkenness is not proved. However, he held that the petitioner was guilty of the 2nd charge that he caused accident by rash and negligent driving.

(c) However, the disciplinary authority disagreed with the findings of the Enquiry Officer even on first charge and found that both the charges against the petitioner was proved and passed punishment order dated 28.01.1992 of compulsory retirement. Against the order of the disciplinary authority, the petitioner preferred appeal, which was also dismissed. Hence, the present writ petition.

4. Learned counsel for the petitioner submits that the petitioner took the police vehicle on 10.10.1988 at about 18 hours to produce the said vehicle on 11.10.1988 at 5.30 hours before the Superintendent of Police AR, Madurai Rural for inspection of the vehicle. The petitioner informed the S.I., of Periyakulam Police Station about the break failure of the vehicle. The S.I., then instructed him to take the vehicle for inspection though the petitioner informed about the faulty condition of the vehicle. The disciplinary authority, in respect of charge No.2, pointed out that the plea of the delinquent is that the break of the vehicle was not in condition and the chasis of the vehicle was also cut on his

way to Madurai. In this connection, the evidence of the Motor Vehicle Inspector who inspected the vehicle had clearly stated that at the time of accident, the condition of the break was examined and found to be 60% correctly working and the steering and tyre condition are satisfactory. But the petitioner explained before the enquiry officer that on his way to Madurai Vehicle Inspection, chasis cut and the break failure occurred. Therefore, the petitioner submits that it is not correct to say that the negligence is on the part of the petitioner for the accident that happened on 11.10.1988.

5. Secondly, the petitioner counsel submits that the Disciplinary Authority failed to consider the report given by the Medical Officer who has clearly stated that there is no smell of alcohol in the breath of the petitioner. In the drunkenness certificate, it is clearly stated that the symptoms of drunkenness such as smell of alcohol in the breath is conspicuously absent. The basis for the issue of drunkenness certificate would effect that the petitioner has consumed liquor but not under its influence is with respect to two symptoms viz., "unsteady walk and incoherent speech". The petitioner counsel submits that though the enquiry officer has given the finding that Charge No.1 was not proved, the disciplinary authority failed to consider the certificate given by the doctor. Further at the time of examination of drunkenness, he was not subjected to chemical analysis. In the absence of the same, the department has failed to prove that the petitioner is guilty of both the charges levelled against him. The Enquiry Officer also given the finding that charge No.1 was not proved, but only the 2nd charge is proved. However, the Disciplinary Authority failed to appreciate the same and come to conclusion that petitioner is guilty of both charges levelled against him and therefore, imposed punishment of compulsory retirement. In the appeal filed by the petitioner, the punishment order imposed was confirmed and dismissed the petitioner's plea, which is against the proposition of law. The petitioner counsel submits that the order of disciplinary authority is liable to be set aside.

6. The learned Special Government Pleader would submit that though the Enquiry Officer found that the charges against the petitioner was not proved, the Disciplinary Authority gone in detail the findings of the Enquiry Officer and the deposition of oral and documentary evidence and independently gone into all the reports marked in the matter and come to a conclusion that the charges are proved. The drunkenness certificate of the petitioner shows that he consumed alcohol but he was not under the influence of alcohol. Therefore, in such circumstances, the Enquiry Officer found that charge No.2 is proved against the petitioner. The Disciplinary Authority also applied his mind and he also appreciated the finding. As such, there is no perversity in the order passed by the

Disciplinary Authority. The Appellate Authority also dismissed the appeal and confirmed the finding given by the Disciplinary Authority.

7. Heard and perused the records.

8. The petitioner was working as Constable/LNK in the Armed Reserve, Madurai. The petitioner was issued with charge memo in respect of the accident that he caused on 11.10.1988 at 5.30 hours. The two charges levelled against him was (i) he was in drunkenmood on duty on 11.10.1988 at 5.30 hours and (ii) he was driving police vehicle at 5.30 a.m., on 11.10.1988 in a rash and negligent manner and caused accident.

9. It is not disputed by the petitioner that he met with an accident and subsequently, it was found in the medical examination that he consumed liquor but not under the influence of liquor and that the accident had occurred. Charge No.1 is concerned, though the petitioner would submit that the department has not proved the charge against him, a perusal of the records would go to show that the doctor has clearly given the opinion that the petitioner consumed alcohol and that he was not under the influence of alcohol. Charge No.2 is concerned, Motor Vehicle Inspector has clearly stated that the accident was not due to mechanical defect. The suggestion given by the petitioner is that there is possibility of chasis cut in the vehicle. But there is no evidence to show that the accident was only due to mechanical defect. Further it is submitted that criminal case was ended in acquittal against the petitioner. Filing of the criminal case has nothing to do with the departmental proceedings. In this case, the department has initiated disciplinary proceedings against the petitioner for the accident that was caused by him on 11.10.1988 at 5.30 hours. From the oral and documentary evidence, the disciplinary authority found that the charges levelled against the petitioner were proved and the appellate authority also confirmed the same.

10. On a careful perusal of the entire records, this court finds that in case of disciplinary enquiry the strict rules of Evidence Act have no application. The doctrine of proof beyond doubt has no application. Preponderance of probabilities from material on record are enough to arrive at the conclusion whether or not the delinquent has committed misconduct.

11. A reading of the evidence of the doctor who examined the petitioner and the evidence of Motor Vehicle Inspector who inspected the vehicle, gave opinion that there is no mechanical defect in the vehicle and the disciplinary authority arrived at a conclusion that charges are proved and awarded punishment. This court does not find any perversity in

the order passed by the Disciplinary Authority and the Appellate Authority and there is no merit in the writ petition and accordingly, the writ petition is dismissed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Superintendent of Police,
Madurai Rural, Madurai.
2. The Deputy Inspector General of Police,
Madurai Range.
3. The Additional Director General of Police,
(Law and Order) Madras - 600 004.

+1cc to the Government Pleader SR.36740

W.P.No.17457 of 2007

RR(CO)
CB(16/12/2020)



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