

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Writ Petition No.18276 of 2007

(O.A.No.1585 of 2004)

T.DattisJoyson (HC.No.968)

Armed Reserve, Nagercoil

Kanyakumari District

..Petitioner

Vs

1.Superintendent of Police

Kanyakumari District

...Respondent

Prayer : Originally this petition has been filed as Original Application No.1585 of 2004 before the TamilNadu Administrative Tribunal at Chennai and after abolition of TNAT, petition has been transferred and numbered as W.P.18276 of 2007

Writ Petition filed praying to issue a writ of Certiorari to call for the records in No.L3/P.R.26/2001 on the file of the respondent and quash the order of punishment dated 24.03.2004 passed by the respondent in No.L3/P.R.26/2001.

For Petitioner : N.A.

For Respondents : Mr.K.Magesh,
Special Government Pleader

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ORDER

The case of the petitioner is that the petitioner was working as Head Constable with effect from 02.04.1996 in Kanyakumari District. The allegation against the petitioner is that the petitioner's mother and brothers are residing at Thiruparappu, Alamparaivilai. Thiruparappu Town Panchayat owns a building in Door No.20/123 in Thirparappu Ampankalai Road leading

to Thirparappu Falls. Panchayat officials were engaged in painting the said building. The petitioner employed Constable Ponnaiyan as guard in Sittar II Dam for the period 12.00 hours to 14.00 hours on 07.10.2000 and came to Thirparappu at 13.00 hours and prevented the panchayat officials from painting the building. The petitioner abused the Executive Officer of Thirparappu Town Panchayat, who sought the assistance of Head Constable 1394 Selvaraj and Headconstable 578 Gnandoss. Those two head constables advised the applicant to restrain himself. The petitioner abused them also. These two Head constables informed Kulasekaram Police Station by wireless. HC 154 Krishnan, PC 555 Lazar and PC 980 Suyambuselvam from Kulasekaram Police Station came to the scene. The petitioner fled the scene. HC 1394 Selvaraj and HC 578 Gnanadoss submitted report. The reports were sent to the respondent. The respondent issued instructions on 14.11.2000 to initiate action against the petitioner. Hence, a case in Crime No.736/2000 under Section 353 of IPC was registered against the petitioner in Kulasekaram Police Station. Subsequently the Department also issued charge memo to the petitioner on 23.03.2001. The petitioner filed O.A.No.3110/2001 to quash the charge memo and the Tribunal stayed the disciplinary proceedings till the disposal of the criminal case and further directed the respondent to proceed according to the decision of the criminal case.

2. Subsequently, after filing the charge sheet, the petitioner filed discharge petition before the learned Judicial Magistrate, Padmanabapuram in M.P.NO.1416/2003. The learned Magistrate discharged the petitioner on the ground that offence u/s.353 of IPC was not made out. Thereafter, the respondent issued an instruction to the Enquiry Officer to complete the proceedings within 15 days and the petitioner filed Original Application before the Tribunal in O.A.No.3110/2001 stating that the respondent violated the direction issued by the Tribunal in O.A.2153 of 2003 which was filed challenging the charge memo dated 22.02.2001 issued in P.R.No.26/2001. The Tribunal held that since the petitioner was discharged from criminal case in M.P.No.1416 of 2003, as far as Charge No.1 is concerned, is quashed and directed the respondent to proceed with Charge Nos.2 and 3.

3. Subsequently, the Enquiry Officer proceeded with Charge Nos.2 and 3 and after examining the witnesses, found that charge Nos.2 and 3 were proved against the petitioner. After issuing the explanation, second show cause notice was issued and thereafter, the disciplinary authority awarded the punishment of reduction in time scale of pay by two stages for a period of two years.

4. Challenging the said punishment, the petitioner has filed O.A.No.1585 of 2004 before the Administrative Tribunal. Due to the abolition of the Administrative Tribunal, the Original Application was transferred to this Court and the application was renumbered as W.P.No.18276 of 2007.

5. The learned counsel for the petitioner would submit that while he was working as Head Constable, Kanyakumari in the year 2000, the charge memo was issued to the petitioner. The petitioner challenged the charge memo before the Administrative Tribunal. The Tribunal held that charge memo and disciplinary proceedings, are concerned, after completion of the criminal case, the respondent can proceed with the departmental proceedings in accordance with law. After investigation in the criminal case, though the petitioner filed discharge application before the Magistrate and the Magistrate was pleased to discharge and once he discharged from main charge, enquiry cannot be conducted. The respondent proceeded with the charge memo, even after discharge petition was ordered in his favour on 17.03.2003. The petitioner filed O.A.No.2153 of 2003 challenging the charge memo dated 22.02.2001 issued in P.R.No.26/2001. The Tribunal by order dated 27.06.2003 held that so far as charge No.1 is concerned, the petitioner was proceeded before the Judicial Magistrate, Padmanabapuram and the Magistrate has passed an order discharging the petitioner from criminal liability and the prayer of the petitioner is that the charge memo may be quashed. Charge No.1 cannot be gone into and so directed the respondent to delete the charge No.1 and no bar to proceed against the petitioner in respect of charge Nos. 2 and 3. The petitioner sought some documents for perusal and effective defence. The charge is for absenting from duty spot on 07.10.2000. Further, charge is that the petitioner has not properly maintained the para register. In the remark column, the Deputy Superintendent of Police has stated that in the said register, there are no entries relating 08.10.1000 and 09.10.2000. But according to the learned counsel for the petitioner, entries were there for 8th and 9th October 2000 and those sheets have been tampered. Therefore, the petitioner was very much in duty even on the occurrence date on 07.10.2000. The defence witnesses Head Constables should have also there on duty. At that time, they have clearly stated that the petitioner was very much present there. Further, the petitioner used to maintain the register as per instructions given by the Superintendent. Therefore, charge levelled against the petitioner not proved. The enquiry officer failed to consider the explanation offered by the petitioner and also the defence witnesses, and gave the finding that charge Nos.2 and 3 proved and the disciplinary authority also failed to consider the

further explanation given by the petitioner and awarded the punishment of reduction in time scale of pay by two stages for a period of two years. It is further contended by the learned counsel for the petitioner that once the petitioner filed Crl.M.P.No.1460 of 2003 before the criminal court and the Magistrate has passed an order discharging the petitioner from criminal liability and the allegations relating to offence punishable under Section 353 IPC not made out, the further charges made against the petitioner also not valid and hence, the enquiry should be in favour of the petitioner and the enquiry officer ought to have discharged the petitioner from the charges but the disciplinary authority failed to consider the same and awarded the punishment, which warrants interference.

6. The respondent has filed the reply affidavit before the Administrative Tribunal, stating that regarding Charge No.1, since the criminal case for the offence under Section 353 IPC was discharged, the tribunal also based on the discharge from the criminal liability, quashed charge No.1, in the petition filed in O.A.No.2153 of 2003 for quashing the charge memo, however, the tribunal issued directions that there is no bar for the respondent to proceed against the petitioner in respect of charge Nos. 2 and 3. Therefore, the respondent given directions to the enquiry officer and proceeded with the enquiry. The Enquiry Officer also conducted the enquiry and examined the witnesses and the disciplinary authority gone through the entire enquiry report and awarded punishment, therefore, the O.A., which was presently filed for quashing the order of punishment is not maintainable. The Enquiry Officer, based on the oral and documentary evidence, given report and the disciplinary authority gone through the explanation given by the petitioner and awarded punishment of reduction in the time scale of pay by two stages for a period of two years, against which, the petitioner has got a remedy of filing an appeal. Therefore, the petitioner without availing the remedy of preferring appeal and review petition, approached the Tribunal. As per rules in force, except the punishment of dismissal or removal, a person is not entitled to prefer any petition in Tamil Nadu Administrative Tribunal against the punishment, without exhausting the departmental remedial measures.

7. In view of the specific observation of Administrative Tribunal in its order dated 09.03.2004 in O.A.No.1003 of 2004 that the applicant can approach this Tribunal by way of an O.A., and that too after exhausting the remedies open to him under the Service Rules. So without exhausting the alternative remedy of preferring appeal and review under the Service Rules, the petitioner has approached the Tribunal and therefore, the O.A., filed by the petitioner before the Administrative Tribunal is

not maintainable. However, on merits, with regard to 2nd count of charge, the petitioner had left his duties at Chittar Dm on 07.10.2000 at 1300 hours, and gone away to Thiruparappu without any leave or permission. Prosecution witness Nos.1 and 2 i.e, H.C.1394 Selvaraj and H.C.578 Gnanadass, who were on bandobust duty at Thirparappu have clearly deposed that on 07.10.2000 at 1300 hours, the petitioner came there and obstructed the painting work being carried out by one Painter engaged by Thirparappu Panchayat authorities. The witnesses clearly deposed that the petitioner did not bother to turn his ears to the advice of HC.1394 and 578, his colleagues in Police Force but created nuisance by abusing them and higher officers. The petitioner who was deputed for a particular duty is expected to perform the duty allotted to him sincerely and promptly and he was having no business at all to come over to Thirparappu nearly six kilometers away from his duty place and pick up quarrel and hindrance to Panchayat work.

8. Regarding Charge No.3 is concerned, the petitioner who was deputed as Guard Commander is responsible to supervise the turnout of the other guard/PCs and to change the rotation of Guard P.Cs. The preliminary enquiry officer who conducted the enquiry had clearly pointed out that the petitioner had not maintained the Sentry Relief Book from 08.10.2000-06.00 hours to 09.10.2000 16.00 hours. The corrections made in the Sentry Relief Book in page No.26 and entries made therein from 1600 hours as Sl.Nos. 6 to 11 instead of beginning with Sl.Nos.I and II are more than enough to prove that the petitioner had failed to make entries in the Sentry Relief Book then and there and had written the Sentry Relief Book at a later time. Therefore, the petitioner neglected his duty to maintain the sentry relief book. There is no necessity for any other officer to make alterations in the sentry relief book at a later date. Explanation was called for from the petitioner regarding the above said charges. The explanation given by the petitioner was not satisfactory. Therefore, the Enquiry Officer also, after enquiry, found that Charge Nos.2 and 3 are clearly established. Though Charge No.1 was quashed by the Tribunal in O.A.No.2153 of 2003 by order dated 27.06.2003, after going through elaborately on the deposition of P.W.1, P.W.2 and P.W.3 who had clearly spoken that the petitioner was present in Thirparappu and obstructed the panchayat authorities on 7.10.2000 at 13.00 hours during which time he was expected to be present at Chittar Dam II guard duty. Therefore, Charge Nos.2 and 3 clearly proved and there is no merit in the contention of the learned counsel for the petitioner and the writ petition is liable to be dismissed.

9. Heard and perused the documents.

10. Admittedly, the petitioner was working as Head Constable in Kanyakumari in the year 2000. Charge memo was issued against the petitioner under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 in P.R.No.26 of 2001 for the following charges:-

Charge No.1:- Indisciplinary conduct in having obstructed the maintenance work carried out in Thirparappu Panchayat building at Door No.20/123 and the performance of the two Police Constables deputed from Kulasekaram P.S. for bandobust to that place on 07.10.2000 at 13.00 hours., and thereby, involved as an accused in Kulasekaram P.S. Cr.No.736/2000 u/s.353 IPC.

Charge No.2:- Indisciplinary conduct in having absented himself from Chittar Dam-II Guard incharge duty from 07.10.2000 at 13.00 hours gone to Thirparappu and involved as an accused in Kulasekaram P.S.Cr.No.736/2000 u/s.353 IPC.

Charge No.3:-Gross neglect of duty in having failed to make entry in ChittarDam.II Guard Para book from 08.10.2000 - 06.00 hours to 09.10.2000 - 16.00 hours.

11. Though the petitioner earlier filed Original Application, before the Tribunal in O.A.No.3110/2001, wherein the petitioner sought to quash the disciplinary proceedings in P.R.No.26/2001, the Tribunal stayed the disciplinary proceedings till the disposal of the criminal case and further directed the respondent to proceed according to the decision of the criminal case. It is also an admitted fact that the petitioner was discharged from the criminal case for the offence under Section 353 IPC by the Judicial Magistrate, Padmanabapuram in CrI.Case No.1416 of 2003 dated 17.03.2003. As per the directions of the Tribunal in O.A.Nos.2153 of 2003 filed by the petitioner again to quash the charge memo, Charge No.1 was quashed and as per further directions of the Tribunal, the respondent conducted the disciplinary proceedings in respect of charge Nos.2 and 3. Enquiry was conducted against the petitioner and the Enquiry Officer examined 14 witnesses on the side of the Department and three documents were exhibited. On the side of the defence, 4 witnesses were examined and three documents were marked.

12. As already stated, the first charge is concerned, as per the order of the criminal courts, charge No.1 was only not proved and the enquiry was conducted in respect of 2nd and 3rd charges. With regard to 2nd charge, the petitioner left his duty at Chittar Dam post, and absented himself without any leave or permission from the vital guard duty and made hindrance to panchayat work, abused the panchayat and police officials on duty and involved in a criminal case in Kulasekaram Police Station Crime No.736/2000 under Section 353 IPC. Prosecution Witnesses 1 and 2 i.e., HC.1394 Selvaraj and HC.578 Gnanadoss who were on bandobust duty at Thiruparappu have concretely deposed that on 07.10.2000 at 13.00 hours, petitioner came there and obstructed the painting work carried out by Thirparappu Panchayat Authorities. The advice given by HC.1394 and HC 578 his colleagues not bothered by the petitioner. The petitioner abused the two Head Constables. The Head Constables 1394 Selvaraj and 578 Gnanadoss informed Kulasekaram Police Station by wireless. HC 154, Krishnan, PC 555 Lazar and PC 980 Suyambuselvam from Kulasekaram Police Station came to the scene. The petitioner fled the scene. P.W.2 HC 578 Gnanadoss recorded his statement about the occurrence on 07.10.2000 and his statement was recorded on 12.01.2001 before Deputy Superintendent of Police / the preliminary enquiry officer and the same is marked as Ex.P.1. P.W.3 has deposed in the oral enquiry on similar lines as deposed by P.W.2 whose statement was earlier given before the Enquiry Officer. P.W.3 also stated that while he was on duty at Kulasekaram Police Station, HC.555 and 980 given information that petitioner interfered in the panchayat painting work without attending bandobust duty. When P.W.1 and 2 reached Thirparappu falls, after seeing them, the petitioner ran away. P.W.3 HC 154 Krishnan gave statement to the effect that HC 555 and HC 980 gave information that petitioner interfered in the bandobust duty at Thirparppu and while he enquired into the matter, reports given by Constable 1394 and 578 were filed before Head Constable 829 Lakshmanan and regarding the occurrence, he examined one Sundaravel. The above statement given by P.W.3 was recorded by the Preliminary Enquiry Officer on 17.01.2001 and the said statement is Ex.P.3. P.W.4 also deposed that he made oral enquiry about the allegations against the petitioner who interfered with the painting work and filed his statement on 18.01.2001 before the Enquiry Officer as Ex.P.4. P.W.6, 7 and 8 have also spoken about the statement given before the Preliminary Enquiry Officer which were marked as Exhibits P.6, P.7 and P.8. The Department witnesses have clearly spoken about the presence of the petitioner at Thirparappu instead of attending duty at Sittar Guard Duty. Therefore, from the evidence of department witnesses on 07.10.2000 at 13.00 hours, it was clearly found that the petitioner was not in the workspot where he was allotted duty

but he came to Thirparappu and prevented the Panchayat Officials from discharging their duty. Therefore, the Enquiry Officer found that charge No.2 was proved as against the petitioner.

13. As far as Charge No.3 that no entries were made by the petitioner in the para register from 6.00 hours on 08.10.2000 to 16.00 hours on 09.10.2000, it is the contention of the learned counsel for the petitioner that the petitioner entered the Para register regularly and there was no tampering with the Para Register, but the witness was not available for cross examination. Therefore, from the records filed before the enquiry officer and also the other records available shows that the petitioner had absented himself without leave or permission from vital guard duty of Sittar dam and damaged the important registers maintained by the Police Department and also involved in criminal case.

14. Though the Magistrate discharged the petitioner from Charge No.1 on the basis of the discharge of the petitioner in the criminal case filed on the basis of the charge sheet, the departmental proceedings is concerned, the department conducted preliminary enquiry and also subsequently in the departmental enquiry, examined the witnesses who have clearly stated that the petitioner was involved in creating hindrance at Thirparappu Panchayat Building on 07.10.2000 at 1300 hours. The witnesses 1 to 5 have clearly stated the presence of the petitioner at the spot. He was not in the duty spot i.e., allotted Sittar dam duty. As far as Charge No.3 is concerned, he did not maintain entries in the relief book from 08.10.2000 06.00 hours to 09.10.2000 at 16.00 hours. But the petitioner clandestinely removed the pages of Sentry Relief Book for 08.10.2000 and 09.10.2000. The petitioner who was deputed for a particular duty is expected to perform the duty allotted to him sincerely and promptly and was having no business at all to come over to Thirparappu nearly six kilometers away from his duty place and to pick up quarrel and hindrance to panchayat work, especially when he was posted in Bandhobust duty. Regarding the 3rd charge is concerned, the Sentry Relief Book was not maintained by the delinquent officer, the petitioner who was deputed as Guard Commander is responsible to supervise the turnout of the other guard P.Cs and to change the rotation of Guard P.Cs. The preliminary enquiry officer who conducted the enquiry had clearly pointed out that the petitioner had not maintained the Sentry Relief Book from 08.10.2000 - 06.00 hours to 09.10.2000 16.00 hours.

15. It is seen from the available records that the petitioner tampered the official records and manipulated the entries on 08.10.2000 - 06.00 hours to 09.10.2000 16.00 hours which shows the the conduct of the petitioner who not only deliberately absented from Guard Duty but to escape from his charge No.3, involved in Charge No.2, that he created hindrance at Thirparappu and interfered with the painting work of the Panchayat Building.

16. The Enquiry Officer, after elaborately examining the witnesses on the department side and the defence and going through documents/ statement filed in Exhibits, came to the conclusion that Sentry Relief Book was not maintained on 08.10.2000 and 09.10.2000. From the oral and documentary evidence, the Enquiry Officer found that the charges 2 and 3 levelled against the petitioner were proved and the matter was placed before the Disciplinary Authority and the Disciplinary Authority, after issuing show cause notice to the petitioner and considering his representation/explanation and also the Enquiry Officer's Report found that the Charge Nos.2 and 3 levelled against the petitioner are proved. Therefore, the Disciplinary Authority awarded punishment of reduction of Time scale of pay by two stages for a period of two years.

17. Considering the facts and circumstances of the case and the submissions made and on a perusal of the reply affidavit filed by the respondent, it is apparent that the petitioner's service is governed by Tamil Nadu State and Subordinate Service (Discipline and Appeal) Rules and therefore the petitioner has got remedial measures to prefer appeal, review and Mercy petition to authorities. In the case on hand, the punishment is one of reduction of time scale of pay by two stages and not the punishment of removal from service or dismissal from service. Therefore, the petitioner cannot approach the Tribunal straight away without availing the alternate remedy available in the Statutory Rules. Further, the petitioner herein filed one after another Original Application before the Tribunal and lastly against the punishment imposed by the Disciplinary Authority. The petitioner should have filed appeal or review or mercy petition before the concerned Authority and only if the higher authority of the Department reject the appeal or review of the petitioner, then only he can approach the Tribunal. Therefore, the entire narration of facts clearly shows that the petitioner is not ready to follow the procedures laid down in Statutory Rules. Even otherwise, on merits, the petitioner's Original Application before the Tribunal is not maintainable, as the entire materials available on record including the report of the

Enquiry Officer and the impugned order passed by the Disciplinary Authority, show that the punishment imposed cannot be interfered with by this court since the scope of judicial review on the question of proportionality of punishment is very limited and restricted to exceptional cases and in the case on hand, charge Nos.2 and 3 are clearly proved and therefore, this court does not find any merits in the Writ Petition and hence, the petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

sd/

ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

nvsri

To

1. Superintendent of Police
Kanyakumari District

Writ Petition No.18276 of 2007
(O.A.No.1585 of 2004)

BR (CO)

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