



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.24426 of 2003

WEB COPY

C.P.Varghese

...Petitioner

vs

1.Divisional Security Commissioner,
Railway Protection Force,
Palghat Division, Palghat.

2.Inspector,
Railway Protection Force,
Podanur.

3.The Deputy Chief Security Commissioner,
Railway Protection Force, V Floor,
Moore Market Complex,
Chennai.

4.The Chief Security Commissioner,
Railway Protection Force,
6th Floor, MMC,
Chennai.

...Respondents

(R3 & R4 impleaded as per order
dt.18/12/09 in WMP.No.958/09 in
WP.No.24426/03)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pursuant to the Charge-sheet (i) No.J/XP227/153/01/ CPV/C227/ONR/2002 of 15.04.2002 of first respondent (ii) Order No.J/XP227/153/01/CPV/C227/ONR/2002 dated 21.07.2004 of the first respondent (iii) Order on the appeal dated 30.11.2004 by the Deputy Chief Security Commissioner/third respondent and (iv) Order No.X/P.227/CPV/PGT dated 17.03.2009 of the Chief Security Commissioner/fourth respondent and quash the same and to direct the respondents to reinstate the petitioner with all consequential benefits and other benefits. (Prayer amended as per order dated 09.03.2010 in WMP.No.27/2010 in WP.No.24426/2003)



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For Petitioner : Mr.D.Sreenivasan
Mr.M.Senthil Kumar

For Respondents : Mr.M.T.Arunan

O R D E R

The petitioner, while working as a Constable in the Railway Protection Force at Tandiarpet, Marshalling Yard, Chennai Division, was called by some Home Guards in respect of the theft committed by Railways Guards on 10.08.1987. He went and chased the persons who were rolling lorry tyres, which were loaded on the tri-cycle and kept at the open place. He reported the matter to the Sub Inspector of Railway Protection Force, namely V.S.Hari, and thereafter petitioner proceeded on leave on 22.08.1987.

2.On 26.08.1987, the Inspector of Crime Intelligence Branch, Chennai conducted a survey and registered Crime No.18/1987 under Section 3(a) of the Railway Property (unlawful possession) Act, 1966. After expiry of leave, the petitioner returned to Chennai on 30.08.1987 and on that day, the petitioner was detained by the Inspector of Railways Protection Force and on production before the learned Judicial Magistrate, Poonamallee, he was remanded on 02.09.1987.

3.The Criminal Court convicted the petitioner and sentenced him to undergo rigorous imprisonment for one year with fine of Rs.5,000/-. On appeal, he was acquitted on 21.08.2001. In the meanwhile, on 19.06.2001, the respondents had dismissed the petitioner from service.

4.He made representation for reinstatement on account of acquittal in the Criminal Case. Since the respondents did not reinstate, the petitioner filed W.P.No.12829/2001 for the same. During the pendency of which, he was reinstated. The respondents have initiated departmental proceedings and coined a charge memo dated 15.04.2002. Since the departmental proceedings proceeded on the same set of charges, he challenged the same in the present Writ Petition.

5.The learned counsel for the petitioner would vehemently contend that the Charge Sheet dated 15.04.2002 issued after a period of 15 years for an offence said to have happened on



10.08.1987 is highly belated and liable to be quashed. Further, for the very same set of charges, the criminal proceedings was conducted and after detailed enquiry, the petitioner was acquitted. Therefore, initiation of proceedings after 15 years for the very same set of charges, is highly illegal and liable to be quashed.

6.The learned counsel for the respondents would contend that the petitioner had indulged in unlawful possession of railway property and as per the statement given by the other accused, as well as, the purchasers of the property, the charge has been framed. The conduct of the criminal proceedings is not a bar for conducting disciplinary proceedings departmentally. Due to the pendency of the criminal proceedings, the departmental enquiry was not conducted and after completion of the criminal proceedings, they initiated the departmental proceedings. Therefore, the Charge Memo issued need not be interfered with.

7.I heard the submissions and perused the materials available on record.

8.At the outset, it is seen that the charge is based on the statements given by the very same persons, who were arrayed as accused in the criminal case. Findings of the Criminal Court show that the vital witness, namely one V.S.Hari, Sub Inspector of Railway Protection Force, was not examined, inspite of the fact the petitioner recorded incident in the general diary on the date of incident and proceeded on leave on the next day. From the evidence, it can be inferred that certain articles were lying, even 15 days before the date of the alleged incident. The material witness, namely The Sub Inspector of Railway Protection Force, was not examined, much less cited as a witness. The charge is based on the statements of the eye witnesses recorded somewhere in 1987. Those witnesses were examined by Criminal Court and their evidence did not prove the charge. A reading of imputation to the charges would disclose that there are several material discrepancies and other official connected to the incident were left out and it gives an impression that the charge memo is made only with a view to fix the petitioner. Since the charge framed against the petitioner in 2002 and the charge framed before the Criminal Court are one and the same and trial is already over for the same set of charges, the petitioner shall not be tried once again on the evidence of the same witnesses. Secondly, nothing prevented the respondents for initiating departmental proceedings as early as in 1987. The delay by itself vitiates the disciplinary proceedings. Apart from that, I do find the the Criminal Court found that the charges were not proved recording the reasons for the same. The



said decision by the competent Criminal Court after elaborate set of charges departmentally, that too relying on the very same materials. This process will subvert the doctrine of equity, fair play and good conscience and amounts to double jeopardy. Hence, I am of the considered opinion, that the impugned Charge Memo issued, after a delay 15 years, against the person acquitted of the very same offence vitiates entire disciplinary proceedings.

9. Accordingly, the impugned Charge Memo in proceedings No.J/XP227/153/01/CPV/C227/ONR/2002 dated 15.04.2002 issued by the first respondent herein is set aside and the Writ Petition is allowed. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

hvk

To

1.Divisional Security Commissioner,
Railway Protection Force,
Palghat Division, Palghat.

2.Inspector,
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3.The Deputy Chief Security Commissioner,
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Chennai.

4.The Chief Security Commissioner,
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6th Floor, MMC,
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+1 cc to Mr.M.Senthil kumaran Advocate sr10561

+1 cc to Mr.M.T.Arunan Advocate sr10816

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