

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 22.12.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.11788 of 2010

G.James Madhukar Chanthinath

... Petitioner

Vs

1.The Director
Fire and Rescue Services,
Egmore, Chennai - 600 008.

2.The Divisional Officer,
The Fire and Rescue Services,
Chennai City North Division,
Chennai -104.

3.The Deputy Director,
The Fire and Rescue Services,
Chennai City North Division,
Chennai - 104.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the second Respondent in Ku.Pa.No.1/2006 dated 17.10.2006 as well as the proceeding in Rc.No.21091/B4/2008 dated 05.05.2009 passed by the first Respondent and quash the same and consequently directing the first Respondent to reinstate the Petitioner with back wages.

For Petitioner : Mr.N.S.Nandakumar
for Mr.Krishnakumar

For Respondents : Mr.G.K.Muthukumar
Spl. G.P.

O R D E R

The Petitioner was dismissed from service by order dated 17.10.2006 of the second Respondent, which was affirmed by order dated 05.05.2009 of the first Respondent. The said orders are impugned in this writ petition and the Petitioner seeks reinstatement with back wages.

2. The Petitioner joined as a Fireman in the Egmore Fire Station, Chennai, in the year 1981. While working in the office of the Fire and Rescue Service Station, V.O.C. Nagar, Chennai City North Division, Chennai, a show cause notice was issued to him on 17.07.2003 with regard to two charges, namely, unauthorized absence from duty from: 17.02.2003 to 09.03.2003; and 10.03.2003 to 04.07.2003. Pursuant to an enquiry in this connection, the charges were held to be proved as per the minutes of proceedings, which were signed on 21.04.2004. There is no evidence of punishment being imposed on the Petitioner in respect of the aforesaid misconduct.

3. Later, a show cause notice was issued to him on 03.07.2006 to show cause as to why action should not be taken against him in respect of three charges: (i) unauthorized absence from duty from 12.09.2003 to 30.05.2004 and the failure to appear before the medical board on 02.07.2004; (ii) not joining at the Poonamallee Fire Station, where he was transferred on request with effect from 01.07.2004, for a period of two years till date without prior information; (iii) not paying the rent of Rs.5690 for the Manali Fire and Rescue Services Quarters between March 2003 and June 2004, and not reporting for work and not paying rent from 01.07.2004 for a period of two years in contravention of rules, which amounts to an offence under Rules 18, 94, 95, 110, 593(m) and 695 of Part I of the Manual of the Tamil Nadu Fire and Rescue Services. Pursuant thereto, an enquiry was conducted. Based on the enquiry, the enquiry officer is said to have submitted a report dated 29.08.2006. According to the Petitioner, the said report was not served on him but the Respondents state that it was served on him. He further states that notice of the enquiry was communicated to him on 08.08.2006 asking him to be present at the High Court Campus Fire Station but the Respondents changed the venue of the enquiry to Manali without prior communication to him. The Respondents refute this contention and state that the change of venue was communicated to him. In any event, the disciplinary proceedings were conducted ex parte and concluded by order dated 17.10.2006, which is an ex parte order of dismissal in respect of the three charges referred to supra.

4. Upon receipt of the proceedings dated 17.10.2006, the Petitioner submitted a mercy petition on 22.10.2008 to the Director of Fire and Rescue Services, Egmore. Upon consideration thereof, by order dated 05.05.2009, the mercy petition was rejected and the order of dismissal was confirmed. The present writ petition was filed in the said facts and circumstances.

5. I heard Mr.N.S.Nandakumar, the learned counsel for the Petitioner and Mr.G.K.Muthukumar, the learned Special Government Pleader for the Respondents.

6. The learned counsel for the Petitioner reiterated the facts set out above and emphasized that the notice of hearing in the enquiry proceedings fixed the venue at the High Court Fire Station, which was changed without proper notice to Manali. His next contention was that the enquiry report was not received by the Petitioner. On account of both these reasons, he submitted that the principles of natural justice were not complied with and, therefore, the disciplinary proceedings are vitiated.

7. With regard to the reasons for his inability to attend work, he referred to and relied upon 4 medical certificates that were issued to the Petitioner by Dr.K.Krishnan, Civil Surgeon, Assistant Professor, Department of Surgery, KMC & Govt. Royapettah Hospital, Chennai. Out of these, the first medical certificate dated 31.12.2004 certified that the Petitioner suffered from low back pain, viral hepatitis and gastritis and that his absence from duty for a period of 214 days from 01.06.2004 was necessitated by his health condition. The second medical certificate dated 31.12.2005 certified that he suffered from osteoarthritis with gastritis and low back ache, which necessitated his absence from duty for 365 days from 01.01.2005. The third medical certificate dated 06.08.2006 certified that he suffered from lumbosacral spondylitis, diabetes mellitus and gastritis, which necessitated his absence from duty for 221 days from 01.01.2006. The last of the medical certificates dated 09.08.2006 is a fitness certificate certifying that he is fit to resume work from 10.08.2006. On this basis, the learned counsel contends that the Petitioner's absence from duty was entirely on account of his ill-health and, therefore, the order of dismissal is liable to be interfered with.

8. On the other hand, the learned Special Government Pleader submitted that the Petitioner was employed in the Fire and Rescue Services, which is a uniformed and disciplined force, and given the nature of duties, it is absolutely necessary that employees attend to their duties regularly by maintaining utmost discipline. Consequently, he contends that the Tamil Nadu Fire Service Manual contains rules pertaining to the procedure to be followed if an employee is sick. By referring to Rule 202, he pointed out that it contains an elaborate procedure, which involves prompt reporting; entry of particulars in the register of personnel reporting sick; medical examination at the nearest Government hospital; issuance of a passport in Form No. Police D.10; preparation of a medical history sheet; and submission of the sick passport to the nearest Fire Station or the medical officer of the local Government or Municipal Hospital. In order to avail leave, the sick passport should be surrendered and a separate passport in Form No.31 should be obtained. The said passport

in Form - 31 would specify the period for which the employee is permitted to stay away from duty. Immediately upon expiry of the specified period, the employee should report at the station and produce the fitness certificate from the medical officer concerned. Mr. Muthukumar emphasized that such an elaborate procedure is prescribed on account of the nature of duties performed by the personnel at the Fire Rescue Department.

9. With regard to the disciplinary proceedings against the Petitioner, Mr. Muthukumar contended that the Petitioner had been absent from duty between 17.02.2003 and 09.03.2003 and from 10.03.2003 to 04.07.2003, which is a period of 138 days, and a show cause notice was issued and the charges of unauthorized absence were proved. He was again absent from duty from 12.09.2003 to 30.05.2004 and again from 01.07.2004 for a period in excess of two years. During the latter period, he did not seek permission or submit a medical certificate. Therefore, a charge memo was issued to him on 03.07.2006. The said charge memo contained three charges. The first two charges pertained to his unauthorized absence and failure to appear before the medical board, and the third charge pertained to his failure to pay rent for the quarters. In spite of receiving the charge memo, the Petitioner did not provide an explanation.

10. Mr. Muthukumar submitted that notice was issued to him in respect of the proceedings before the enquiry officer and he admitted receipt thereof, including in paragraph 4 of the affidavit in support of the writ petition, wherein he admitted receipt of notice on 08.08.2006 in respect of the enquiry on 17.08.2006. In spite of receiving the notice, he did not participate in the enquiry. With regard to the contention that the venue of enquiry was shifted from the High Court Fire and Rescue Service Station to Manali, Mr. Muthukumar pointed out that the Petitioner was residing in the quarters at Manali. Moreover, he did not communicate with the enquiry officer and request for a postponement of hearing on account of the change of venue. In fact, Mr. Muthukumar submitted that even after the hearing on 17.08.2006, the Petitioner did not request for an opportunity to participate in the enquiry proceedings.

11. With regard to the contention that the Petitioner did not receive the report of the enquiry officer, the learned Special Government Pleader referred to the typed set of papers filed by the Respondents. By referring to the communication dated 08.08.2006 from the Station Fire and Rescue Services Officer, V.O.C. Nagar, he pointed out that the said communication confirms that notice was served on the Petitioner at his house by the said officer. He also referred to the communication dated 29.08.2006 enclosing the minutes of

the proceedings dated 17.08.2006 of the enquiry officer and the communication dated 08.09.2006 confirming that the enquiry officer's report dated 29.08.2006 was served on the Petitioner on 08.09.2006. By referring to the aforesaid documents, Mr. Muthukumar contended that the principles of natural justice were duly complied with as regards the enquiry, and that in spite of putting the Petitioner on notice at the charge memo, enquiry and imposition of punishment stages, the Petitioner failed to participate in the enquiry proceedings or submit an explanation before the disciplinary authority. In these circumstances, the disciplinary authority examined the evidence against the Petitioner and concluded that the charges against the Petitioner were duly proved.

12. With regard to the medical certificates that were relied upon by the learned counsel for the Petitioner, the learned Special Government Pleader submitted that none of the medical certificates were received by the Respondents. He further submitted that the medical certificates do not evidence a condition that justified the absence of the Petitioner from duty for a period of more than two years. As regards the quantum of punishment, the learned Special Government Pleader pointed out that the punishment is commensurate with the gravity of the offences considering that the Petitioner was a member of a uniformed and disciplined force. He also pointed out that the disciplinary authority took into account the prior misconduct of the Petitioner, which is reflected in the order dated 17.10.2006 of the disciplinary authority. In specific, the said order refers to the Petitioner's unauthorized absence in the year 1997 and between 1999 and 2001 and again from 2003 onwards. Thus, he submitted that the continued unauthorized absence of the Petitioner over an extended period of time and his refusal to reform in spite of the leniency shown in the past justified the punishment of dismissal.

13. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

14. Three charges were levelled against the Petitioner. The first charge is that he had absented himself for more than 262 days between 12.09.2003 and 30.05.2004 and thereafter failed to appear before the Medical Board on 02.07.2004. The second charge was for not reporting for duty for two years from 01.07.2004 even after being transferred to the Poonamallee Fire and Rescue Service Station at his request. The third charge was for failing to remit the rent for the quarters between March 2003 and June 2004 and from 01.07.2004 onwards. The admitted position is that the Petitioner received the charge memo. This is clear from the fact that the Petitioner has not denied receipt thereof and,

in fact, has filed the charge memo in the typed set of papers. As regards the enquiry proceedings, once again, the Petitioner has admitted in paragraph 4 of the affidavit filed in support of the writ petition that he received the notice on 08.08.2006 in respect of the proceedings on 17.08.2006. In case the Petitioner was unable to attend the enquiry on 17.08.2006 on account of the change of venue from the High Court Fire Station to the Manali Fire Station, the Petitioner should have communicated the same to the enquiry officer either prior to or within a reasonable time after the proceedings on 17.08.2006. The Petitioner has not produced any evidence that he requested the enquiry officer to provide an opportunity to him by rescheduling the enquiry or the venue.

15. The learned counsel for the Petitioner contended that a copy of the enquiry report was not provided to the Petitioner. This contention was refuted by the learned Special Government Pleader, who relied upon the communication dated 08.09.2006. Upon perusal of the communication dated 08.09.2006, I find that it is a document signed by the Officer of the Fire and Rescue Service Station, V.O.C. Nagar, Chennai -39. The document does not indicate as to whom it is addressed to. In this communication, it is recorded that the enquiry officer's report dated 29.08.2006 was handed over to the Petitioner on 08.09.2006 at his house. The order of dismissal dated 17.10.2006 also refers to the receipt of the enquiry officer's report by the Petitioner on 08.09.2006 but the acknowledgment has not been produced before this Court. A further communication dated 28.09.2006 is enclosed which states that the Petitioner did not provide an explanation in respect of the enquiry officer's report until date. The order of dismissal also states that he did not provide an explanation. The Petitioner admittedly received the order of dismissal but did not inform the Respondents that he did not receive a proper enquiry notice or that he did not receive the enquiry officer's report. Instead, the Petitioner submitted a mercy petition on 22.10.2008, which is about two years later. Even this mercy petition has not been produced before this Court. When these facts and the evidence on record are viewed cumulatively, it is probable that the Petitioner received the enquiry officer's report although it is not possible to conclude with certainty that the Petitioner received the same. Therefore, the question that should be determined is whether this vitiates the disciplinary proceedings, and, for this limited purpose, the defence taken by the Petitioner should be considered.

16. On merits, the defence raised by the Petitioner is that he was medically unfit during the relevant period. In support of this contention, the medical certificates dated 31.12.2004, 31.12.2005 and 06.08.2006 are relied upon. All three medical certificates were issued by the same medical

doctor. The medical certificate dated 31.12.2004 pertains to the period of 214 days commencing from 01.06.2004. The reasons cited for the absence of the Petitioner is that he suffered from low back pain, viral hepatitis and gastritis. It is unclear as to why this condition warranted leave for a period of 214 days. The next medical certificate, which is dated 31.12.2005, pertains to the period of 365 days from 01.01.2005 to 31.12.2005. This certificate describes the medical condition of the Petitioner as osteo-arthritis, lower back pain and gastritis. Once again, it is unclear as to why this condition would warrant the absence of the Petitioner for 365 days. The third medical certificate is dated 06.08.2006. This certificate pertains to the period of 221 days from 01.01.2006. This certificate describes the medical condition of the Petitioner as lumbosacral spondylitis, diabetes mellitus and gastritis. Apart from the certificates, the Petitioner has not enclosed any diagnostic test results pertaining to the aforesaid conditions. In my view, none of the medical certificates inspire confidence. Besides, the Respondents deny receipt thereof and the Petitioner has not produced evidence of despatch to or receipt by the Respondents. There is no evidence that these certificates were annexed to the mercy petition either.

17. In effect, the Petitioner admits that he was absent from duty without permission for a period of more than two years extending from 01.07.2004 to 09.08.2006. Even at this juncture, the Petitioner has not provided any explanation as regards the charge of non-payment of rent for the quarters. Therefore, it is clear that the conclusion of the disciplinary authority that the charges against the Petitioner were proved cannot be faulted. The only question is whether the proceedings are vitiated on account of the absence of conclusive proof that the Petitioner received the enquiry report. Given the nature of the charge and the nature of the evidence that the parties have tendered before this Court, in my view, the lack of conclusive proof of receipt of the enquiry report does not have a material bearing on the case because the Petitioner has not been prejudiced. In *Managing Director, ECIL, Hyderabad v. B. Karunakar* (1993) 4 SCC 727, the Hon'ble Supreme Court concluded that the failure to provide the enquiry officer's report would vitiate the proceedings if prejudice is caused as a result but not otherwise. This is a not a case of admitted failure to provide the enquiry officer's report but a case of lack of conclusive proof of service although some evidence of service of the enquiry officer's report on the Petitioner is certainly available. In this connection, there is no dispute that the Petitioner received the charge memo, the notice as regards the enquiry proceedings and the original order of dismissal dated 17.10.2006. Upon receipt thereof, he submitted a mercy petition to the first Respondent on 22.10.2008. Thus, I

conclude that there is substantial compliance with the principles of natural justice and the disciplinary proceedings are not liable to be interfered with on this account.

18. The next issue is with regard to the nature and quantum of punishment. The settled legal position is that the disciplinary authority is vested with full jurisdiction to decide on the nature of punishment and interference on judicial review is limited to situations wherein the punishment is so grossly disproportionate to the offence as to shock the conscience of the court. In this case, the charges against the Petitioner pertain to unauthorized absence from duty and non payment of rent. Neither of the charges relate to offences involving moral turpitude such as misappropriation or acceptance of illegal gratification. Nonetheless, it should be borne in mind that the Petitioner was an employee of the Fire and Rescue Services, which is an uniformed force wherein discipline is of paramount significance. The record discloses that the Petitioner absented himself from 12.09.2003 to 30.05.2004 albeit on production of a medical certificate on 31.05.2004. Once again, he absented himself from 01.07.2004 for a period of more than two years. Earlier, proceedings were initiated against him on 17.07.2003 with regard to two charges, namely, unauthorized absence from duty from: 17.02.2003 to 09.03.2003; and 10.03.2003 to 04.07.2003. In addition, he did not pay the rent from March 2003 to June 2004 and thereafter from 01.07.2004 as regards the quarters. The order of dismissal records that he had been unauthorizedly absent in the year 1997 and between 1999 and 2001. When these facts and circumstances as evidenced by the documents on record are looked at cumulatively in the context of an employee in an emergency service organization such as the Fire and Rescue Services, it cannot be said that the punishment is so grossly disproportionate as to shock the conscience of the Court.

19. In the result, the Petitioner has failed to make out a case to quash the impugned orders. Consequently, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rrg

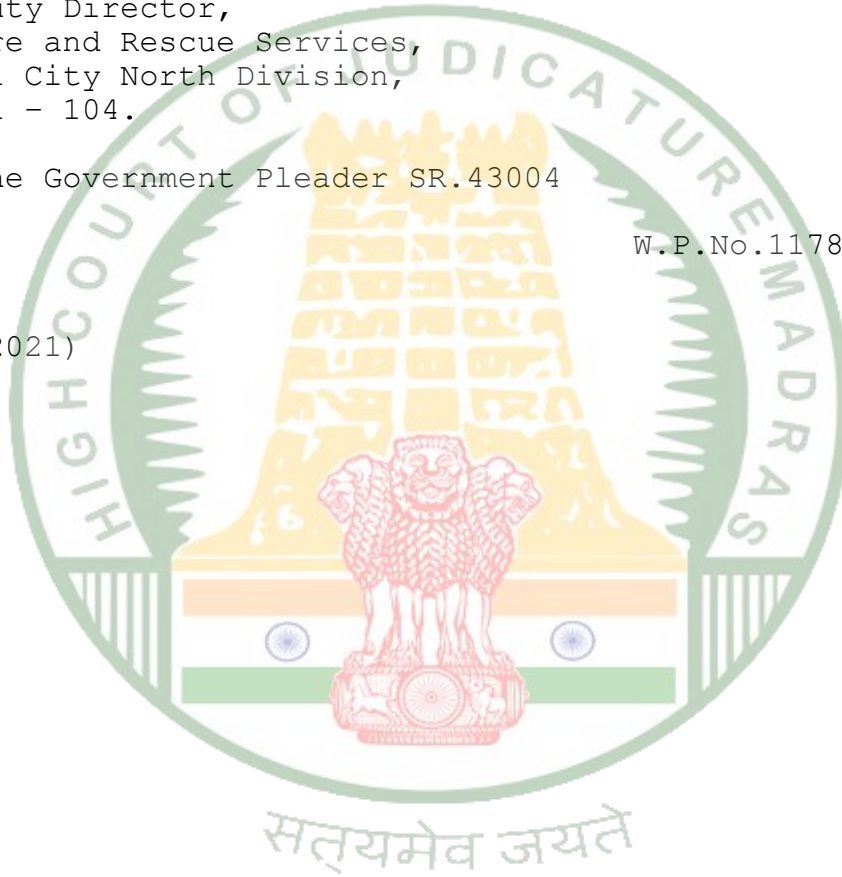
To

- 1.The Director
Fire and Rescue Services,
Egmore, Chennai - 600 008.
- 2.The Divisional Officer,
The Fire and Rescue Services,
Chennai City North Division,
Chennai -104.
- 3.The Deputy Director,
The Fire and Rescue Services,
Chennai City North Division,
Chennai - 104.

+1cc to the Government Pleader SR.43004

W.P.No.11788 of 2010

SR(CO)
CB(21/01/2021)



WEB COPY