

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2020

Coram

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.24467 of 2014

K.Veeramani

...Petitioner

-vs-

1.The Divisional Fire & Rescue Service Officer,
Thiruvarur Division,
Thiruvarur.

2. The Deputy Director of Fire & Rescue Services
Central Zone,
Tiruchirapalli .

...Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue writ of Certiorari calling for the records of the respondents in connection with the impugned order passed by the 1st respondent in Ku.Pa.No.06/2012 in Pa.Aa No.113/2013 in Na.Ka.No.9312/Aa1/2013 dated 3.10.2013 and 2nd respondent in Na.Ka.No.228/Aa1/2014 in Pa.AA No.157/2014 dated 20.06.2014 and quash the same.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.S.Thangavel, Spl. Govt. Pleader

ORDER

This writ petition has been filed to quash the order passed by the 1st respondent in Ku.Pa.No.06/2012 in Pa.Aa.No.113/2013 in Na.Ka.No.9312/Aa1/2013, dated 03.10.2013 and also the order of the 2nd respondent in Na.Ka.No.228/Aa1/2014 in Pa.AA No.157/2014, dated 20.06.2014 and for grant of further relief.

2. It is the case of the petitioner that he was appointed as Fireman on 1.12.2002 in Nagapattinam Division. While serving as such at Sirkali Fire station, a charge memo was issued to the petitioner containing four charges. The petitioner denied all the charges and further stated that one Xavier attacked him and both of them sustained injuries and he underwent treatment at another hospital. Not satisfied with the reply, enquiry was conducted and 6 witnesses were examined, who

were not cross examined. Without considering his request for want of certain documents, the 1st respondent by order dated 24.10.2013 held the charges against the petitioner proved, wherein after further explanation was called for from the petitioner to which the petitioner submitted his further explanation. However, not satisfied with the same, the disciplinary authority imposed the punishment of cut in two increments with cumulative effect. Without exhausting appeal remedy, the petitioner challenged the said punishment by filing writ petition in WP No.34152 of 2013 and this Court by its order dated 3.10.2013 issued directions to the petitioner to approach the appellate authority for appeal remedy. On the appeal filed by the petitioner, the 2nd respondent without independent application of mind, confirmed the order of the 1st respondent and rejected the appeal on 20.06.2014. Hence, the present writ petition.

3. Learned counsel appearing for the petitioner submits that the enquiry was not conducted in a fair and proper manner, as the enquiry officer failed to provide him with certain documents, which were sought for by the petitioner, which finds mention in the annexure to the charge memo. It the further submission of the petitioner that though the petitioner and one Xavier indulged in scuffle and assaulted each other, however, enquiry was proceeded with only against the petitioner to the exclusion of the said Xavier for which there is no explanation given by the respondent. It is the further submission of the learned counsel for the petitioner that the evidence available on record does not call for imposition of major punishment on the petitioner and the punishment imposed is disproportionate to the charges levelled against the petitioner and the said punishment affects the pensionary benefits, the same requires to be interfered with by this Court.

4. Per contra, learned Special Government Pleader appearing for respondents vehemently opposed the contentions of the petitioner and submitted that the enquiry was conducted in a fair and proper manner. The misconduct of the petitioner has been proved beyond doubt and the disciplinary authority on overall consideration of the materials and independent application of mind has imposed the punishment of cut in two increments increments with cumulative effect. It is further submitted that the punishment, if not shocking and disproportionate to the charges, courts shall not interfere with the same, as it is within the domain of the disciplinary authority to impose the punishment. Therefore, it is submitted that no interference is called for with the order impugned herein.

5. This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

6. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.

7. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may

substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

8. The facts in issue are not in dispute. There was a scuffle and subsequent assault between the petitioner and one Xavier, which is in fact admitted by the petitioner. It is to be pointed out that the petitioner is a member of the disciplined force and is required to maintain discipline and working standards. Indulging in quarrel and assault with his co-worker definitely sets a bad precedent among the disciplined force and the said conduct definitely needs to be deprecated. The materials available on record reveal that witnesses have been examined to prove the culpability of the petitioner in the indisciplined act and the petitioner has not cross-examined the witnesses. The ground of attack, mainly is on the non-furnishing of certain documents, which have been mentioned in the annexure to the charge memo. True it is that the petitioner has sought for the said documents. However, it is to be pointed out that it is not the case of the petitioner that reliance was placed on those documents to return a finding against the petitioner. Mere mentioning of certain documents in the charge memo without it being relied upon or marked in the enquiry would not in any way be detrimental to the case of the petitioner. Therefore, it is not open to the petitioner to harp on the fact that the non-furnishing of the said documents has caused prejudice to the petitioner in any manner. The ancillary contention relating to not taking any action against the other person, who also indulged in the said scuffle, cannot stand to benefit the petitioner, as it is not the case of the petitioner that the entire episode of assault was started by the said Xavier. Merely because another person was also involved in the assault would not be a ground to take action against the other individual as well, as it is for the petitioner to prove that the whole assault was the result of the attack started by the other person. There being no material to the said effect placed either before the enquiry officer or before this Court, the said contention pales into insignificance. Therefore, this Court is of the considered view that the finding of guilt on the part of the petitioner stands established and no interference is warranted with the same.

9. The only point that is left for this Court to decide is whether the punishment imposed on the petitioner is disproportionate to the charges framed and shocks the conscience of the Court.

10. To the above, it can be held without a second thought that the answer of this Court is in the negative. The punishment imposed on the petitioner, in no way could be termed

to be disproportionate to the delinquency and further it cannot also not be said that it shocks the conscience of this Court. The task entrusted on this Court is only to find out whether the authorities have applied their mind to the materials before passing the order of punishment. This Court, on a perusal of the materials placed is of the firm opinion that the punishment imposed on the petitioner could in no way be said to be disproportionate and shocking to the conscience of this Court. The punishment, in the considered view of this Court is just and reasonable and, this Court is of the opinion that no interference is warranted with the impugned order of punishment passed by the respondents.

11. For the foregoing reasons, this Court is of the considered view that no interference is warranted with the findings and the punishment imposed on the petitioner and therefore this writ petition is liable to be dismissed. Accordingly, the petition is devoid of merits and accordingly, the same is dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Divisional Fire & Rescue Service Officer,
Thiruvavur Division,
Thiruvavur.

2. The Deputy Director of Fire & Rescue Services
Central Zone,
Tiruchirapalli .

+1 CC to The Government Pleader sr 37760.

W.P. No.24467 of 2014

BR(CO)
SP(31/12/2020)

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