



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2020

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.10054 of 2009

and

M.P(MD)No.2 of 2009

S.Rengasamy

... Petitioner

vs.

1. The Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2. The Superintendent of Police,
Karur District,
Karur.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned G.O.(2D) No.664, Home (SC) Department, dated 10.11.2008 issued by the first respondent and quash the same and consequently restore to his original with all consequential benefits.

For Petitioner : Mr.M.Prabhakaran

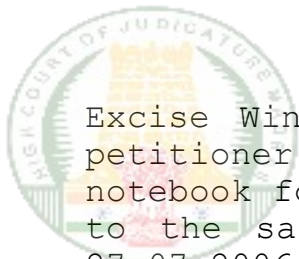
For Respondents : Mr.J.Gunaseelan Muthaiah

Additional Government Pleader

ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned G.O.(2D) No.664, Home (SC) Department, dated 10.11.2008 issued by the first respondent and quash the same and consequently restore to his original with all consequential benefits.

2. The learned counsel appearing for the petitioner would submit that the second respondent issued a charge memo in P.R.No.47/A5/Karur/06, dated 06.06.2006 calling upon the petitioner to submit his explanation in respect of two charges set forth therein. The first charge framed against the petitioner is that he did not maintain the General diary of Kuzhithalai Prohibition and



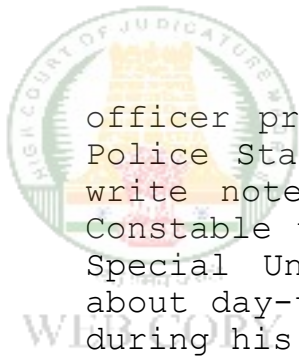
Excise Wing on 30.09.2001. The second charge framed against the petitioner is that he did not properly write or maintain the notebook for the period from 21.06.2001 till 26.11.2001. In response to the said charge, the petitioner submitted his explanation on 27.07.2006. The responsibility to maintain the General Diary of a Special Unit, such as PEW, lies with that of the Inspector of Police. Regarding entering the details of maintenance of notebook, he was never supplied with any notebook by the concerned Inspector of Police. As a matter of fact, Police Constable and Head Constable, who are sent beat and Special duty alone are required to enter the details in the notebook. As far as the functional special wing like PEW is concerned, a constable is not expected to write the notebook.

3. He further submitted that the second respondent was nominated as an Enquiry Officer and without even considering or cross checking the plea taken by the petitioner by examining the concerned Inspector of Police, the enquiry report was submitted by the second respondent holding that both the charges are proved. It is relevant to mention that the charge-memo was issued by the second respondent and the enquiry report was also submitted by the second respondent. Thereafter, he received a communication, dated 20.09.2007 from the first respondent. The first respondent forwarded a copy of the enquiry report and called upon him to submit his further representation. He submitted a further representation on 09.11.2007. Even though, the cause of action pertains to the year 2001, the charge-memo was being issued after a lapse of 5 years. There is no explanation whatsoever for this delay. Thereafter, the first respondent further proceeded to issue the impugned G.O.(2D).664, Home Department, dated 10.11.2008 imposed a penalty of stoppage of increment for a period of six months without cumulative effect. Therefore, the petitioner was constrained to file this Writ Petition.

4. The learned Additional Government Pleader appearing for the respondents by filing counter affidavit would submit that the petitioner was dealt with the following charges:-

- (i) Failed to main the General diary of PEW Kulithalai after 21.30 hours on 30.09.2001 by making proper entries and
- (ii) Failed to write and maintain his note book from 21.06.2001 to 26.11.2001.

For which, explanation was called for. In his explanation dated 27.07.2006 the petitioner has stated that the responsibility to maintain the General Diary of a Special Unit, like PEW, lies with that of the Inspector of Police as he is the custodian, but the liability is fastened on him. His contention is incorrect. According to Post Standing Order Vol.I order No.829, it is clear that in the absence of the Station House Officer, the General Diary will be in the charge of the person to whom the charge is made over by the Station House Officer. Moreover, as per the Police Standing Order No. 264, in the absence of the Station House Officer, the senior



officer present shall assume charge of the station. According to Police Standing Order 710 and 711 from Constable to Inspector must write notebook and it should remain in the station for 5 years. Constable to Inspector, who are serving either in the station or in Special Units should write notebook compulsorily by making entry about day-to-day duties performed by them, which is clearly educated during his training in Police Recruit School.

5. He further submitted that there is no necessity to examine the witness while drawing minute on a charge u/r 3(a) of TNPSS (D&A) Rules 1955 and the minute can be drawn based on the documentary evidences and the explanation of the delinquent. Compared to gravity of charge, a lesser punishment has been awarded to him in G.O.2D.664, Home Department, dated 10.11.2008 after due consideration of his further representation. The maintenance of General Diary is the duty of Sub Inspector, the station writer and sentry i.e., the petitioner also responsible to write General Diary in the absence of Station House Officer as per Police Standing Order 839 and 204. The petitioner has failed to act according to the procedure, but he has thrown the blame on the higher officials. Except a small communication gap which is also reasonable there was no delay in initiation of action against the petitioner. There was no violation of rules and regulations in issuing charge-memo and sending report by one and the same authority in departmental action under rule 3(a) of TNPSS (D&A) Rules 1955. Since the action was initiated according to the instructions of the Government, the minute has been sent to Government for passing orders as per their direction as the petitioner was involved in the allegation of corruption related to the raid by Vigilance and Anticorruption. Hence, he prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing for the petitioner as well as the Additional Government Pleader.

7. On going through the materials available on record it is seen that the petitioner has failed to main the general diary of Prohibition and Excise Wing, Kulithalai after 21.30 hours on 30.09.2001 by making proper entries and failed to write and maintain his note book from 21.06.2001 to 26.11.2001 for five months. On surprise check, it was found that the petitioner has not discharged his duty as per the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 and hence he was issued with charge-memo in P.R.No.47/A5/Karur/2006, dated 06.06.2006. The petitioner also submitted his explanation on 27.07.2006 had denied the said charges stating that it is not his responsibility to maintain the General Diary of a Special Unit, like Prohibition and Excise Wing lies with that of the Inspector of Police as he is the custodian.



Station House Officer, the General Diary will be in the charge of the person to whom the charge is made over by the Station House Officer. As per the Police Standing Order 204, in the absence of Station House Officer, the senior officer present shall assume charge of the station. The petitioner is a Grade-I Police Constable and he was serving as Sentry on 30.09.2001 at 08.00 hours and then, he was the Sentry from 13.00 hours after relieving Head Constable 309 made entry at 15.00 hours and the Sub-Inspector made entry at 16.30 hours and handed over the charge to Head Constable 309. At that time, both the writer and the Sentry did not make any entry after 16.30 hours. Hence, both the writer and the Sentry are responsible for not making proper entry in the General Diary. The petitioner has not maintained the said diary.

9.Regarding the maintenance of pocket notebook, the petitioner has stated that he was never supplied with any notebook by the concerned Inspector of Police, further only the Police Constables and the Head Constables, who are sent on beat and special duty alone are required to enter the details in the notebook and in special units like Prohibition and Excise Wing need not maintain the same. According to the Police Standing Order 710 and 711 from Constable to Inspector must write notebook and it should remain in the station for five years. Constable to Inspector, who are serving either in the station or in the Special units should write notebook compulsorily by making entry about day-to-day duties performed by them, which is clearly educated during their training in Police Recruitment School. The petitioner was not in a position to produce any materials to show that he is not entitled to maintain the pocket notebook or writing the general diary. As the explanations were not satisfactory the authorities concerned, who had examined the explanation and had passed the impugned order. The representation, dated 09.11.2009 submitted by the petitioner would show that though there was a communication gap between the Government and the Vigilance and Anticorruption Department regarding initiation of action against the petitioner, there was no bar to defend himself. When the charge was grave offence, only lesser punishment was awarded to him in G.O.2D.664, Home Department dated, 10.11.2008. After considering his explanation, a minor punishment of stoppage of increment for a period of six months without cumulative effect. It is also seen from the instructions from the Police Department, today the petitioner had already retired on 29.02.2020 and the said stoppage of increment will not have any effect on the pensionary and other benefits, like leave period benefits, it is only a minor punishment. Only increment of Rs.75/- per month has been cut and not much damage has been caused to the petitioner as he has already been promoted as Sub-Inspector of Police and retired from service as Sub-Inspector of Police.



10. Hence, this Court do not find any reason for setting aside the impugned order, dated 10.11.2008 and hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-

/ True Copy /

Sub Assistant Registrar(CS-)

To

1. The Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2. The Superintendent of Police,
Karur District,
Karur.

+1 CC to M/s.T.ANTONY ARULRAJ, Advocate(SR-9721[F]dated 03/03/2020)

+1 CC to M/s.SPL.GP (SR-9966[F] dated 04/03/2020)

**W.P (MD) No.10054 of 2009
03.03.2020**

ME/SAR /18.03.2020/5P/5C