



WEB COPY

W.P(MD)No.1526 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD)No.1526 of 2011

and

M.P(MD)Nos.1 & 2 of 2011

P.Senthattikalai

... Petitioner

-Vs-

1.The Secretary to Government,
Forest Department,
Secretariat,
Chennai.

2.The Principal Chief Conservator of Forest,
Jeenis Road,
Panagal Building,
Saidapet,
Chennai.

3.The Conservator of Forest,
Southern Region,
Tirunelveli-7.

4.The District Forest Officer,
Tirunelveli Division,
Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent in his proceedings in G.O.(D) NO.50, dated 06.02.2009, confirming the order passed by the third respondent in his proceedings in bV1/47320/02 dated 12.11.2003 confirming the order passed by the third respondent in E2/954/98 dated 30.08.1998 confirming the order passed by the fourth respondent in his proceedings Na.Ka.No.9574/97g2 dated 29.10.1997 and quash the same.

For Petitioner : Mr.M.Mohammed Rafi
for M/s.Ajmal Associates

For Respondents : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

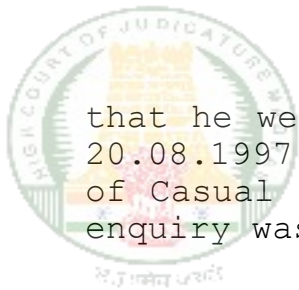


O R D E R

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 order passed by the first respondent in his proceedings in G.O.(D) NO.50, dated 06.02.2009, confirming the order passed by the third respondent in his proceedings in 1071/47320/02 dated 12.11.2003 confirming the order passed by the third respondent in E2/954/98 dated 30.08.1998 confirming the order passed by the fourth respondent in his proceedings Na.Ka.No.9574/97g2 dated 29.10.1997 and quash the same.

2. The petitioner was issued with charge-memo under Rule 17(a) of the Tamil Nadu Civil Services (Disciplined and appeal) Rules as he was absent from duty from 17.08.1997 to 20.08.1997. He received the same on 30.08.1997, but he has not submitted any explanation. Thereafter, the District Forest Officer, Tirunelveli Division in his proceedings dated 29.10.1997 has passed an ex-parte order postponing the increment of the Forest Guard for six months without cumulative effect treating the period of absence from 17.08.1997 to 20.08.1997 as leave without allowances.

3. Thereafter, the petitioner has filed an appeal in time. In the appeal, the petitioner has submitted the explanation through different means one directly to the District Forest Officer and another through the Ranger, Courtallam Range. The District Forest Officer has passed an order stating that the petitioner has not submitted any explanation. In the appeal he has requested enquiry of the Ranger and Forester in connection with the charge-sheet framed against him under Rule 17(a) of the said Rule. The said request was not considered as 17(a) did not confer any such right. The copy of the explanation submitted by the petitioner throw, no light on the charge against the petitioner but simply he has asked for enquiring the Ranger and Forester. The copy of the explanation submitted by the petitioner does not give any answer for the charge. Hence, the appeal of the petitioner has been considered with reference to the records. The petitioner has failed to justify his absence during the said leave period as no valid reasons were given in the said explanation. The Conservator of Forests has passed an order that the order passed by the District Forest Officer, Tirunelveli Division imposing punishment on the Forest Guard in District Forest Officer's No.9574/97E2, dated 29.10.1997 is upheld and the appeal of the Forest Guard is rejected. The petitioner has filed a review petition against the order of the Conservator of Forests Wild Life, Southern Region, Tirunelveli stating that he received the charge memo on 13.10.1997 only through Ranger and other are through District Forest Officer. The charge-memo was finalised on 29.10.1997 and ex-parte orders were passed without considering the explanation submitted by the petitioner. It is a clear case of vindictive action against the petitioner. The petitioner explained



that he went to Tirupathi Temple on 17.08.1997 and then returned on 20.08.1997 and joined duty on 21.08.1997 and it is only three days of Casual Leave. The authorities has not considered the same and no enquiry was conducted and rejected his explanation.

4. The District Forest Officer's statement that the petitioner's explanation was submitted directly to the District Forest Officer and the same is not received is not correct. The charge-memo was served through the Ranger and he submitted his explanation to the District Forest Officer through the Ranger which was submitted by him belatedly. The charge-Memo is based on the report of the Ranger and the charge-Memo is served through the Ranger. But the same District Forest Officer has passed ex-parte orders without referring to the Ranger for his remarks is against the principles of natural justice and it has to be set aside. The 15 days time given to him till 28.10.1997 and the ex-parte order passed by the District Forest Officer on 29.10.1997 and in a hurried manner without even conducting the enquiry, the order has been passed and it has to be set aside. His leave application dated 16.08.1997 to the Forest, Courtallam Section in person get his sanction and went to Tirupathi on 17.08.1997 and returned on 20.08.1997 and he joined duty on 21.08.1997. This fact has been suppressed by the Forester by not sending the leave letter to the Ranger. This is due to personal vengeance against him and due to bring certain activities of the Forester to day light in allowing Ganja cultivation in the upper reaches of Courtallam Range. The District Forest Officer has also taken similar steps and has passed orders without referring to the Ranger or pursuing further action.

5. It is submitted that aggrieved by the orders of the fourth respondent, the petitioner preferred an appeal to the third respondent wherein the petitioner stated that he sent explanation through the Forest Ranger, Courtallam on 22.10.1997 itself and another copy was sent directly to the fourth respondent. On a perusal of the records, it is seen that the letter submitted by the petitioner, reached the fourth respondent on 01.11.1997, was not at all an explanation. The petitioner levelled some allegation against the Forester and Forest Ranger Officer of Courtallam Range and stated further that, if the Forester and the Forest Range Officer of Courtallam Range were examined, the truth would come out. The third respondent after examined the case in detail reject the appeal of the petitioner. Aggrieved by the same, the petitioner filed a Review Petition before the second respondent, was also rejected. Thereafter, the petitioner filed a mercy petition before the first respondent. The petitioner raised allegations against the Forest Ranger and the Forester and there is no merit in the contentions of the petitioner. There is no material to prove the ground of malafides as raised by the petitioner against the fourth respondent. The punishment imposed is proportionate to the charge leveled against the petitioner and there is no illegalities as claimed by



6. It is stated that the petitioner is found guilty on two incidence (I) failing to prevent fire spread I Aaiyaraperi Beat on 17.08.1997 (ii) failing to prevent smuggling of timber through cycle on 19.08.1997. No explanation was given for both the charges. Instead, the petitioner alleged that he was on leave during the said period on 17.08.1997 to 20.08.1997. When these two incidences occurred it was found that the petitioner absented without proper sanction of leave during this period to escape from the disciplinary proceedings for his misconduct. Hence, the punishment order passed by the fourth respondent is just and reasonable one.

7. It is submitted that after calling for the records along with the letter dated 22.10.1997 and after considering the fact that there was no proper explanation, the appeal preferred by the petitioner was rejected by the third respondent. Since the petitioner not adduced any additional grounds for reviewing the case hence, the order was confirmed by the first respondent. It is submitted that there is no evidence to prove that the petitioner submitted his leave application on 16.08.1997 through proper channel. It is submitted that the punishment was awarded to the petitioner for the lapses mentioned in the unauthorized absence. Hence, the orders are correct. The orders have been passed only after scrutinizing of relevant records by the disciplinary authority. The petitioner had not reported for duty.

8. It is seen from the records that if the petitioner has submitted any leave application and only after sanctioning of leave he is entitled to go out headquarters. But the petitioner has not done so and without even getting any permission, on his own he has taken leave. When the explanation was called for, he did not give any proper explanation. He has examined two persons without any valid materials. He filed a Mercy Petition before the Government. The Government after considering the Mercy Petition of the petitioner has passed an Order in G.O.(D)No.50 Environment and Forest (V9A) Department and imposed a punishment of stoppage of increment for six months without cumulative effect as no fresh reasons has been stated by the counsel. It is stated by the petitioner that he had gone to Thirupathi after submitting the leave letter is without any valid reason as no sanction for leave has been issued by the authorities and the leave letter is only a Xerox copy of the leave letter and it is not the original letter and his explanation is without any valid reason and he was not aware of the forest fire and after the occurrence, he has filled up the feet note without even going to the feet.

9. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.



10. The punishment imposed is a minor punishment. The petitioner has not given any fresh evidence before the appropriate authority. The Government has properly perused the materials available on record and imposed a punishment, when there is no substantial material has been produced before this Court. When the incidents are taken place, the petitioner was absent and it is only an unauthorised absent and accordingly, the order passed by third respondent in his proceedings in 1971/47320/02 dated 12.11.2003 confirming the order passed by the fourth respondent in his proceedings in Na.Ka.No.9574/97g2, dated 29.10.1997 are legal and the petitioner's contention is rejected. Accordingly, the writ petition fails and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-12046[F] dated 17/03/2020)

+1 CC to M/s.SPL GP (SR-12287[F] dated 18/03/2020)

W. P (M) DNo.1526 of 2011

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