WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.1157 OF 2021
AND
C.M.P.NO.3109 OF 2021

Mr.K.Veeramani ... Appellant/Petitioner

.Vs.

1. The Divisional Fire and Rescue Service Officer,
   Thriuvarur Division,
   Thiruvarur.

2. The Deputy Director of Fire and Rescue Services,
   Central Zone,
   Thriuchirappali. ... Respondents/Respondents

PRAYER:-

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 23.11.2020 made in W.P.No.24467 of 2014.

Prayer in W.P.No.24467 of 2014:-

Petition filed under Article 226 of the Constitution of India to issue a 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 03.10.2013 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 Appellant : Mr.M.Alagu Goutham

For Respondents : Mr.C.Jayaprakash
Government Advocate

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

JUDGMENT

(Delivered by Krishnan Ramasamy,J.,)

This Writ Appeal is directed against the order passed by the learned Single Judge, in W.P.No.24467 of 2014, dated 23.11.2020.

2. The brief facts of the case are as follows:-

i) The unsuccessful writ petitioner is the appellant herein. The appellant was appointed as Fireman by direct recruitment through a selection conducted by the Tamil Nadu Uniformed Services Recruitment Board (for short, 'TNUSRB') and was posted in the Nagapattinam Division on 01.12.2002. Thereafter, he was posted as such at Sirkali Fire Station from 13.11.2009. On 24.09.2012, at about 11.00 hours, it is alleged that the Station Fire Officer called one Xavier, Fireman, for inspecting a new Fire Station, which was under construction. The Fireman Xavier came inside the rest room, insulted the appellant, combed his hair, which fell on the appellant. Further, he pitted on the appellant, kicked him by his leg and attacked him on his chest. Regarding the said incident, a preliminary enquiry was conducted by the Divisional Officer and the appellant was issued with a charge memo under Rule 17 (b) of Tamil Nadu Civil Service (Discipline & Appeal) Rules in P.R.No.6 of 2012, dated 28.09.2012, containing as many four charges.

ii) Thereafter, a detailed enquiry was conducted by the Assistant Divisional Officer and a report was submitted to the first respondent/Divisional Officer for further action. Based on such report, the Divisional Officer (DO) imposed the punishment of stoppage of increment with cumulative effect for two years, vide order, dated 03.10.2013. Challenging the said order of punishment, dated 03.10.2013, the appellant filed W.P.No.34152 of 2013, before this Court and this Court, vide order, dated 08.04.2014, dismissed the Writ Petition, however, granted liberty to him to approach the Appellate Authority. Accordingly, the appellant filed an Appeal before the Appellate Authority. The Appellate Authority, by order, dated 20.06.2014, rejected the Appeal and confirmed the order passed by the DO. Aggrieved against which, the appellant has filed W.P.24467 of 2014. The learned Single Judge after hearing both the parties, by order, dated 23.11.2020, dismissed the Writ Petition. Against which, the present Appeal is preferred.

3. Mr.M.Alagu Goutham, the learned counsel appearing for the appellant would submit that, on 24.09.2012, at about 11.00 p.m. one Xavier, under the pretext that he was called by a Station Officer for an inspection of a Station Fire Office, which was

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

under construction, entered the room, where, the appellant was taking rest after attending his call duty, and insulted him using unparliamentary words. He also combed his hair purposely allowing the broken hair to fall on the appellant. Thereafter, the said Xavier started to attack the appellant on his chest, and the appellant, who was unable to bear with such wrathful behaviour of Xavierr, scolded the Xavier, and later, there was some altercation, which slowly developed into exchange of blows, and on hearing, the noise of the appellant for help, some of the Firemen entered the leisure room and noticed the incident. In the said incident, the appellant sustained injuries and he was referred to the Sirkali Hospital for taking treatment, and due to the seriousness of the injuries, the appellant was referred by the Medical Officer, Sirkali to HQ Hospital, Nagapattinam, for further treatment.

3.1 Therefore, the learned counsel submitted that the incident occurred not purely owing to the delinquent act of the appellant but also due to the delinquency on the part of the Xavier, whereas, departmental action was taken only against the appellant and a charge memo under Rule 17 (b) of TNCS (D& A) Rules in P.R.No.6 of 2012, dated 28.09.2012, came to be issued against him containing as many four charges and no charges were framed against the said Xavier. Further, it is submitted that the Enquiry Officer examined six witnesses, viz., P.W.1 to P.W.6 and the appellant was allowed to cross-examine, however, he was not allowed to examine any evidence and submit any documents to defend himself. Therefore, he submitted that the findings of the Enquiry Officer that the incident took place due to the delinquent act of the appellant is wrong and and the consequential report submitted by him holding that the charges were proved is not tenable.

3.2 Further, it is submitted that in fact, regarding the said incident, a complaint was also preferred by the appellant, wherein, it is stated that the appellant pushed the Xavier, due to which, he sustained bleeding injury on the ear. Whereas, evidence deposed was to the effect that the appellant slapped the Xavier, resulting in bleeding injury on the ear. Thus, there are contradictory statements in the original complaint and in the final, but, the Enquiry Officer came to the wrong conclusion that incident occurred due to the act of the appellant and based on such wrong findings, the Divisional Officer imposed the punishment, which in turn, was confirmed by the Appellate Authority, which is a not a speaking order. Further, the learned counsel submitted that the learned Single Judge also failed to consider all these aspects in a proper perspective and dismissed the Writ Petition, holding that the punishment imposed in no way can be treated to be disproportionate to the delinquency committed by the appellant. Therefore, he prayed to set aside

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the order passed by the learned single judge and remand the matter back for re-consideration.

4. On the other hand, Mr.C.Jayaprakash, learned Government Advocate for the respondents submitted that occurrence is not disputed. The witnesses to the said incident also deposed that the delinquent slapped the co-employee Xavier, due to which, he sustained bleeding injury on the ear. However, the learned Government Advocate fairly submitted that no action was taken against Xavier, and he justified the same by stating that as he is not the cause for the incident, and whole incident occurred due to misbehavior of the appellant, no action was taken against the said Xavier. The Enquiry Officer also conducted a detailed enquiry in this regard, and on examination of witnesses and documents, filed a report holding that the charges were proved and based on the same, the first respondent imposed the punishment of stoppage of increment for two years with cumulative effect and the same was confirmed by the second respondent/Appellate Authority. Therefore, the learned Government Advocate submitted that when the report of the Enquiry Officer clearly states that the incident occurred due to sudden provocation of the appellant, he has been departmentally proceeded with, and merely because, no action was taken against Xavier that per se will not absolve the delinquent from the charges, and by citing the same, the appellant cannot seek any exemption/benefits. Therefore, the learned Government Advocate submitted that all these aspects were considered by the learned Single Judge in a proper perspective and hence, prayed to dismiss the Writ Appeal.

5. We have heard the learned counsel for the appellant and the learned Government Advocate for respondents and perused the materials placed on record.

6. We have given due attention to the submissions made by the learned counsel on either sides. It is the contention of the appellant that the order passed by the second respondent/ Appellate Authority is not a speaking order. According to the appellant, the incident occurred not solely due to the appellant, but also owing to the bellicosity nature of Xavier, inasmuch as, it is he, who first entered into the Leisure room, where, the appellant was already there, taking rest after attending call duty and the said Xavier combed his hair wantonly allowing the same to fall on the appellant. Thereafter, he spitted on the appellant, when the same was objected to by the appellant, he kicked the appellant by his leg, attacked him on his chest and the appellant provoked by anger, slapped the Xavier, who in turn, slapped him. Thus, the fight developed from words to blows and in the incident, not only Xavier was wounded but also the appellant, whereas, the Enquiry Officer

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

wrongly concluded that the appellant was cause for the incident and held that the charges were proved against him, based on which, the Divisional Officer passed the order, dated 03.10.2013, imposing the punishment, which in turn was confirmed by the Appellate Authority, vide order, dated 20.06.2014. Therefore, according to the appellant, Xavier was the casus belli for the incident, whereas, he has been let free and the appellant alone was departmentally proceeded with and punished, which is arbitrary. Further, the second respondent, being the Appellate Authority ought to have gone into points raised in the Appeal filed before him, but he failed to do so, and in a few lines held that the punishment imposed by the first respondent is supported with material evidence and the punishment is also not excessive, and therefore, the order passed by him is not a speaking order.

6.1 We are not inclined to agree with the contentions putforth by the appellant. On a perusal of the Enquiry Officer's report, it is seen that a detailed enquiry was conducted by the Enquiry Officer by examining six witnesses, in which, the appellant was also allowed to cross-examine witnesses of the employees on his side. There are eye witnesses to the incident, who have deposed that there was altercation and exchange of blows between the appellant and Xavier in the rest room; even thereafter, the fight between them still persisted; when the Xavier was called for rapid vehicle drill by his officer; the appellant beaten Xavier on his chest, as a result of which, the said Xavier hit on the bus, and sustained bleeding injury on the ear. Thus, all these aspects have been dealt with by the Enquiry Officer in an elaborate manner and held that the charges against the appellant were proved. Based on the said report, the first respondent imposed the punishment of stoppage of increment with cumulative effect for two years and when the matter went in appeal before the second respondent/Appellate Authority, he considered the fact that the delinquency committed by the appellant' is very serious in nature, though felt that major punishment should have been imposed, however, considering the welfare of the appellant's family, decided to impose minor punishment of stoppage of increment with cumulative effect for two years. In fact, we are of the view that this punishment awarded is not proportionate to the charges levelled against the appellant, as the charges are serious in nature, the Officer ought to have imposed some other major punishment.

6.2 Time and again, the Hon'ble Supreme Court as well as our Court held that once charges levelled against a delinquent employee is proved, then, it is for the Appointing Authority to pass orders as to what punishment should be imposed to the delinquent employee as per rules. Further, it is held that the Appointing Authority, keeping in view the nature and gravity of

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the charges, findings of the Enquiry Officer, the entire service record of the delinquent employee and all relevant factors relating to the delinquent, should exercise his discretion and impose the punishment as provided in the rules.

6.3 In fact, in the case on hand, second respondent/ Appellate Authority has taken into consideration the gravity of the charges committed by the appellant, the findings of the Enquiry Officer, the service record of the appellant in the disciplinary force, and ultimately, considering the welfare of the family of the appellant, imposed the minor punishment of stoppage of increment with cumulative effect for two years. As already stated above, the punishment appears to be very reasonable, and not disproportionate to the charges. The learned Single Judge also considered the punishment as just and fair. Thus, we are of the view that while the Appointing Authority has exercised his discretion, in inflicting the punishment, (whether minor or major) this Court cannot be expected to interfere with the quantum of punishment, of course, only in rare case, where, the Court feels that the punishment awarded is major, it substitutes the same, by interfering with such punishment. Thus, as opined above, the punishment awarded to the appellant is not disproportionate to the offence he committed, in fact, it should have been a major punishment, but for the reason assigned in the order of the Appellate Authority, he has imposed only the punishment of stoppage of increment with cumulative effect for two years. All these aspects were considered by the learned Single Judge in a proper perspective and passed a detailed order, and at this stage, it would be useful to extract the relevant portion of the order, which is as follows:-

> "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

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

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 of 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 xCourt is of the opinion that no interference is

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

warranted with the impugned order of punishment passed by the respondents."

6.4 Thus, on a perusal of the order passed by the learned Single Judge, we are of the view that the learned Single Judge has considered all the issues that are raised by the writ petitioner/appellant before us and has dealt with the same and we do not find any material available to shock our conscience to interfere with the order of the learned Single Judge and the findings of the Enquiry Officer. We do not find any illegality in the decision making process of the respondents, in arriving at such conclusion based on the findings of the Enquiry Officer, and the imposition of punishment on the delinquent by the first respondent, by order, dated 03.10.2013, which was confirmed by the second respondent, by order, dated 20.06.2014, which came up for judicial review before the learned Single Judge. Thus, we do not find any infirmity to interfere with the order passed by the learned Single Judge.

7. In the result, we find no merit in the Writ Appeal and accordingly, we dismiss the same. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sd

To

1. The Divisional Fire and Rescue Service Officer,
   Thriuvarur Division,
   Thiruvarur.

2. The Deputy Director of Fire and Rescue Services,
   Central Zone,
   Thriuchirappali.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.36155
+1cc to the Government Pleader, S.R.No.36591

W.A.NO.1157 OF 2021

SR-II(CO)
PBS/19/08/2021

https://hcservices.ecourts.gov.in/hcservices/