



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.9039 OF 2018

(THROUGH VIDEO CONFERENCING)

S.Kumaran

... Petitioner

Vs.

1. The Joint Commissioner of Police
Traffic South
Greater Chennai City Police
Vepery, Chennai - 600 007.
2. The Commissioner of Police
Greater Chennai City Police
Vepery, Chennai - 600 007.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 1st respondent in connection with the impugned order passed by him in PR. No.05/PR(S)(1)/2015 u/r 3(b) in RC No.41/1277/Tr.PR/2016 in TZO No.569/2016 dated 26.10.2016 and confirmed by the 2nd respondent in his Ref. PR. No.05/PR.S(1)/2015 in Rc.No.PRV(1)/CPO/8/8795/2017 dated 19.12.2017 and quash the same.

For Petitioner : Mr.K.Venkataramani
Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.L.S.M.Hasan Fikal
Government Advocate

ORDER

Heard both sides and perused the materials available on record.



2. The petitioner was issued with a charge memo pursuant to which an Enquiry Officer was appointed and the Enquiry Officer had given a report dated 30.07.2016 holding the petitioner and others guilty of the charges framed against them. The allegation against the petitioner was that the petitioner and others, senior and junior colleagues in the department (Sub Inspector, Constable and Head Constable) had arrested for sexually harassed five women on whose behalf of one Kalaivani, Secretary, Indira Female Association, Chennai had given a complaint, pursuant to which, the disciplinary proceedings were initiated against the petitioner. After the report was filed by the Enquiry Officer, the petitioner had also given his further representation to the first respondent, who had passed the impugned order dated 26.10.2016.

3. A perusal of the impugned order dated 26.10.2016 of the first respondent shows that it has not alluded to the representation of the petitioner. Rule 3(b)(ii) of the Tamil Nadu Police Subordinate Services (Disciplinary and Appeal) Rules, 1955 specifically contemplates that any representation received, shall be taken into consideration before making any order imposing penalty, provided that such representation shall be based on the evidence adduced during enquiry only. The order passed by the first respondent dated 26.10.2016 merely records that two of the witnesses could not be traced and that the Enquiry Officer has drawn a proceeding to the fact that the whereabouts of both the witnesses are not known inspite of making efforts in C.No.1/PR/c/M/kP/r/2015 dated 08.06.2015.

4. It is further stated that the petitioner has not signed in any of the prosecution documents, stating that the statement of the witnesses were not recorded in his presence by the then Assistant Commissioner of Police, Vadapalani Range, who conducted the preliminary enquiry. It is noticed that the petitioner has also not co-operated in the disciplinary proceedings.

5. In any event, fact to the matter is that the petitioner has sent a representation dated 29.09.2016, which has not been considered by the respondents, while passing the impugned orders. The order of the second respondent, as also of the Appellate Authority, is also equally non-speaking.



6. Considering the same, the impugned orders of the first and second respondent dated 26.10.2016 and 19.12.2017 are quashed and the cases are remitted back to the first respondent to consider and pass appropriate orders on the representation dated 29.09.2016 in terms of Rule 3(b)(ii) of the Tamil Nadu Police Subordinate Services (Disciplinary and Appeal) Rules, 1955 who shall endeavour to pass such order within a period of six weeks from the date of receipt of a copy. The petitioner is also given liberty to file additional representation, if any within a period of two weeks from the date of receipt of this order.

7. This writ petition is disposed with the above observations. No costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

dm

To

1. The Joint Commissioner of Police
Traffic South
Greater Chennai City Police
Vepery, Chennai - 600 007.

2. The Commissioner of Police
Greater Chennai City Police
Vepery, Chennai - 600 007.

+1cc to the Government Pleader, S.R.No.45572

W.P.No.9039 of 2018

PCH(CO)
RLP(12/10/2021)