



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

WEB COPY

CORAM :
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.7791 of 2010

E.Sivakumar

... Petitioner

Versus

1.State of Tamil Nadu,
Rep.by its Secretary to Government,
Home Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Commissioner of Police,
Tirunelveli District.

3.The Deputy Commissioner of Police,
Law and Order,
Tirunelveli.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to the issuance of Writ of Certiorari, calling for the records relating to the third respondent impugned order of dismissal dated 18.04.2005 and the order passed by the first respondent in Re.No.244368/Ap2(1)/2008, dated 13.06.2008 and quash the same.

For Petitioner : Mr.N.G.R. Prasad
for Mr.V.Stalin

For Respondents : Mr.K.M.D.Muhilan,
Government Advocate.

ORDER

This Writ Petition is filed by the petitioner challenging the order dated 18.04.2005 passed by the third respondent imposing the punishment of dismissal from the service, which was confirmed by the first respondent, dated 13.06.2008 on appeal.

2.The case of the petitioner is that the petitioner was working as Police Constable. While so, he was served with a charge memorandum dated 31.08.2004, containing three charges.



The first charge against him is that after availing leave from 27.04.2004 to 04.03.2004, he did not report on 05.04.2004, except for sending an unilateral extension letter for leave, he remained on unauthorised absence for two days. The second charge against him is that he was involved in a criminal case in Crime No.44 of 2002, which related to the offence of dacoity of a Railway Passenger being robbed of Gold and Cash by the uniformed Police Personnel, when the Train was about to leave from the Tirunelveli Junction. The third one is a consequential charge bringing disrepute to the Police Department by committing the charge No.1 & 2. The petitioner submitted his explanation to the charge memorandum stating that as far as the first charge is concerned, the had availed leave to visit his relative in Chennai and returned from Chennai, but he was physically unwell, therefore, under such circumstance only, he sent a telegram and that he remained on leave for two more days and the same cannot be put to against him, especially, when the two days leave was regularised and his pay was also granted. Therefore, according to him, there was no misconduct in respect of the charge No.1.

3.As far as the second charge is concerned, it was explained by him that he was not at all involved in the criminal offence and further, his name was not included in the First Information Report and he was unnecessarily added as an accused and he was successfully defending the proceedings. Even without waiting for the outcome of the proceedings of the criminal case the present charges were framed and he was proceeded against. Therefore, having committed no misconduct, the third charge is baseless.

4.However, the explanation was not accepted and an Enquiry Officer was appointed, who, after conducting enquiry, submitted his report on 05.02.2005, based on which the second show-cause notice was issued and he had given a detailed explanation by stating that the Enquiry Officer did not even examine the de-facto complainants viz., the said Shanthilal, who had lost his gold and cash. Absolutely without any evidence, whatsoever, the Enquiry Officer had returned the finding of guilt against him and prayed for exoneration from the charges. However, it was not accepted and the order of dismissal from service was issued on 08.04.2005.

5.Against the order of punishment, the petitioner submitted an appeal to the first respondent and the first respondent, appellate authority, also by its order dated 13.06.2008 confirmed the punishment. Hence, the present Writ Petition.

6.The case of the respondent is that the petitioner was



an accused/A6 in the case in Crime No.44 of 2004 on the file of the Railway Police Station, Tirunelveli for having allegedly committed the offences under Section 120-B, 394, 395, 468 of Indian Penal Code and Section 5(a) of the Explosive Substances Act, 1908. The offences are serious in nature and therefore, the above said three charges were framed against him. The enquiry was conducted in accordance with law and the relevant evidence was reigned in by the presenting officer and upon consideration of the evidence on record, the Enquiry Officer has duly returned the finding of guilt against all the charges. The petitioner was given an opportunity to show cause against the enquiry report by forwarding the enquiry report to him and his additional explanation was duly considered by the disciplinary authority. The disciplinary authority was unable to agree with the explanation and agreed with the findings of the Enquiry Officer and therefore, the punishment of dismissal from service was imposed. The appellate authority also considered the grounds of memorandum of appeal and confirmed the dismissal from the service in the appeal and hence the writ petition is to be dismissed.

7.Heard, Mr.N.G.R. Prasad, Learned Counsel for the petitioner and Mr.K.M.D. Muhilan, Learned Government Advocate appearing for the respondents.

8.The Learned Counsel for the petitioner has taken this Court through the charge of memorandum and enquiry proceedings would contend that as far as the first charge is concerned, in view of the fact that Enquiry Officer himself recorded the version of the petitioner that the leave has been subsequently regularised and it is not disputed by the respondent, there is absolutely no proof of misconduct of the charge No.1.

9.As far as the second charge, the Learned Counsel would submit that to prove the offence of dacoity, apart from examining the Investigating Officer, the de-facto complainant, who allegedly given the complaint, P.W.1 in the criminal case has to be examined. P.W.7, who is an eye witness in the Train, was never examined before the departmental enquiry. Therefore, the petitioner had lost the valuable opportunity to prove that he was not involved in the criminal offences. In the absence of acceptable evidence on record, the second charge is not at all attempted to be proved by the respondents. He would further submit that the Investigating Officer, does not have any personal knowledge, therefore, examination of the Investigating Officer will not make any difference.

10.Alternatively, he would submit that even assuming that



WEB C

the charge against the petitioner is held to be proved, he would submit that subsequently, the Criminal Court went into the evidence in detail and by a Judgment dated 26.03.2007 in S.C.No.212 of 2005, the Learned First Additional & Sessions Judge, Tirunelveli, after appreciating the testimony of 87 witnesses examined by the prosecution and held that the petitioner is not guilty of the above said offences. Earlier, the petitioner had prayed for deferring of the enquiry proceedings, pending the trial in the Criminal Court, which was also not done by the respondent. Subsequently, the verdict of the Criminal Court has to be taken into account and in similar matters of Criminal Court acquitting the accused of the very same charge, by two decisions of this Court in The Secretary, Virudhunagar Hindu Nadars' Senthikumara Nadra College Committee, Virudhunagar. Vs. Dr. K.Rajaram Pandian and others¹, and in N.Seelan Vs. The General Manager, (Personnel), Air India Ltd., Southern Region, Chennai and others², it has been held that it would be appropriate that the punishment shall be modified as one of Compulsory retirement. He would submit that in this case also, the petitioner has put in almost 11 years of service and once the Criminal Court has found him not guilty, it would not be fair to leave him high and dry and atleast the 11 years of service should be considered.

11.The Learned Counsel for the petitioner would rely upon the Judgment of this Court in M.Gunasekaran Vs. The Superintendent of Police, TNHB Complex, CCIW CID, Chennai - 40 and others³, to press home the proposition that the punishment of dismissal from service is disproportionate to the charge levelled against the petitioner. He would further rely upon the Judgment of the Division Bench of this Court in R.Ramesh Vs. The Deputy Inspector General of Police, Kancheepuram Range, Kancheepuram and others⁴ for the same proposition that this Court should interfere where the punishment is disproportionate to the charge alleged.

12.Countering the said submissions, Mr.K.M.D. Muhilan, Learned Government Advocate appearing for the respondents would submit that in this case, the contention of the petitioner is that the Criminal Court acquitted him for the self-same charge is factually not correct. The charge is different in the departmental proceedings where the charge relates to involvement in criminal case and not the commission of offenses as such. It is his further submissions that in the criminal case he was

1 2017 (6) CTC 393

2 W.P.No.30008 of 2004, Order dated 25.04.2019

3 W.P.No.16415 of 2009, order dated 15.06.2011

4 Writ Appeal No.58 of 2011, dated 27.01.2011



acquitted by granting the benefit of doubt as the degree of proof in the criminal case is proof beyond the doubt. He would rely upon the Judgment of the Hon'ble Supreme Court of India, in Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jayabhai⁵, to press home the point that the departmental proceedings and criminal case are independent in nature as the acquittal in criminal case, will not have direct bearing on the departmental enquiry, unless and otherwise, the Criminal Court has factually found that the charge against the petitioner is incorrect or the petitioner was never involved in the offence .

13.As far as the submissions relating to the the first charge is concerned, he would submit that it is only the petitioner's case that his leave was accepted in respect of the extended period, but, however, from the counter affidavit, it is clearly stated that it was not accepted, and it was unilaterally extended by sending a telegram. Upon being searched the petitioner in the criminal case the petitioner was absconding. He would submit that in view of the serious nature of the charges, this is not a case where the punishment can be said to be disproportionate. Even though the petitioner has challenged only the original and appellate orders, the revision preferred by the petitioner was also dismissed by order dated 13.06.2008 and thereafter, he also submitted a mercy petition, which was also dismissed on 13.07.2009.

14.It is clear that this Court in exercising the power under Article 226 of the Constitution of India, would examine the impugned orders within the parameters of the judicial review i.e., i) Whether the procedure adopted by the respondent in accordance with the rules and principles of natural justice?; ii) Whether the finding of guilt with respect to the charge is based on some evidence or whether it is perverse in nature? ; iii) Whether the punishment is wholly disproportionate, so as to shock the conscience of the Court?.

15.The Learned Counsel appearing on behalf of the petitioner is unable to point out any procedural lapse. His submissions are that as far as the charge of involvement in the criminal case/dacoity is concerned, the respondent examined only the Investigating Officer and not the concerned persons, who had first hand knowledge, namely, P.W.1 & P.W.7 in the criminal case, who are de-facto complainants and the person accompanied with him in the Train. In the absence of same, the evidence of the Investigating Officer is only a hearsay. I am unable to accept the said contention of the Learned Counsel, because, as far as the departmental proceedings is concerned, the charge is



not the actual commission of dacoity or other offenses, but, it is the involvement in criminal case. The charge is extracted hereunder:-

WEB COPY

"2.Highly reprehensible and grave misconduct in having involved in crime by committing dacoity of Gold bar/Gold Jewell's/cash all worth Rs.18 Lakhs heinous from one Gandhilal and Lalith Kumar along with other accused persons on 4.3.2004 at 20.00hrs. In S1 Coach Berth No.9 and 10 in Train No.6124 Ananthapuri Express Train at Tirunelveli Junction Railway Station and thereby having been arrested in Tirunelveli Railway Police Station Crime No.44/2004 u/s 397 and remanded to judicial custody and thus brought discredit to Police Force."

16.Therefore, the assertion the charge is one and the same before the Criminal Court and the departmental enquiry itself is incorrect. Further, the Criminal Court has only found that the recovery was not proved in the manner known to law and acquitted the petitioner only by giving the benefit of doubt. The acquittal of the Criminal Court in this case, will not in any manner affect the departmental proceedings. As rightly relied upon by the Learned Government Advocate appearing for the respondent, the Hon'ble Supreme Court of India, in a recent Judgment of Maharashtra State Road Transport Corporation⁶, as stated supra, has held in paragraph No.23, which reads as follows:-

"23.Even from the judgment and order passed by the criminal court it appears that the criminal court acquitted the respondent based on the hostility of the witnesses; the evidence led by the interested witnesses; lacuna in examination of the investigation officer; panch for the spot panchnama of the incident, etc. Therefore, criminal court held that the prosecution has failed to prove the case against the respondent beyond reasonable doubt. On the contrary in the departmental proceedings the misconduct of driving the vehicle rashly and negligently which caused accident and due to which four persons died has been established and proved. As per the cardinal principle of law an acquittal in a criminal trial has no bearing or relevance on the disciplinary proceedings as the standard of proof in both the cases are different and the proceedings operate in different fields and with different



WEB COPY

objectives. Therefore, the Industrial Court has erred in giving much stress on the acquittal of the respondent by the criminal court. Even otherwise it is required to be noted that the Industrial Court has not interfered with the findings recorded by the disciplinary authority holding charge and misconduct proved in the departmental enquiry, and has interfered with the punishment of dismissal solely on the ground that same is shockingly disproportionate and therefore can be said to be an unfair labour practice as per clause No.1(g) of Schedule - IV of the MRTU & PULP Act, 1971"

(Emphasis Supplied)

17. Thus the Criminal Court finds whether the offenses alleged to have committed is proved by the prosecution beyond doubt so as to impose punishment on the accused, while the objective in the departmental enquiry is to ascertain whether his conduct is unbecoming of a member of the police force having involved in a criminal case, getting arrested and facing the criminal case. As such, when the essence of the charge and objectives are different, as per the above dicta of the Hon'ble Supreme Court of India, I hold that the acquittal in the criminal case has no bearing on the departmental proceedings.

18. That leads us to the alternative submissions made on behalf of the Learned Counsel for the petitioner. The first submission made on behalf of the petitioner is by citing the Judgments referred supra, that whenever, the Criminal Court acquits the petitioner, even granting the benefit of doubt, it would be trite to alter the punishment as one of the compulsory retirement. There is no such proposition of law which is laid down in the above judgments. As far as the Division Bench judgment in The Secretary, Virudunagar Nadars Senthilkumara Nadar College Committee⁷, is concerned, that was a case were based on the subsequent acquittal in the criminal case, the appellate authority ordered reinstatement of the employee into service which was confirmed by the Learned Sing Judge. Disagreeing and finding that subsequent acquittal on benefit of doubt will not have any bearing, on the facts of the case, modified the reinstatement with backwages as one of compulsory retirement. Similarly, in N. Seelan⁸ also, compulsory retirement was ordered as it was found that the enquiry officer's findings were perverse and even then the petitioner could not be ordered

7 2017 (6) CTC 393

8 W.P.No.30008 of 2004, Order dated 25.04.2019



to be reinstated into service. In this case, the charge was not about involvement in the criminal case of dacoity. The fact that the petitioner was the member of the uniformed services has to be borne in mind and nature of the allegation that he was prosecuted as accused/ A6 in the sessions case for his involvement in dacoity committed on a person, who was a jeweller, returning from Tirunelveli to Chennai and in the busy Tirunelveli Junction, when the Train started moving the offence was committed, has to be considered by this Court. Therefore, considering the nature of the charge and the position of the petitioner being a member of the uniformed service, I do not think that this is the fit case to modify the punishment as one into a compulsory retirement. I am also not in agreement with the submissions of the Learned Counsel that the punishment is disproportionate, in view of the seriousness of the charges.

19.I am unable to accept any of the contentions raised on behalf of the petitioner. Therefore, the Writ Petition fails and accordingly, dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Klt

To

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

2.The Commissioner of Police,
Tirunelveli District.

3.The Deputy Commissioner of Police,
Law and Order, Tirunelveli.

+1cc to Mr.Row & Reddy, Advocate SR.No.17185
+1cc to the Government Pleader SR.No.17459

W.P.No.7791 of 2010

PMK (CO)
GN(25/03/2022)