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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-06-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.25954 of 2013 and 14488 of 2014

And

MP Nos.1 of 2013 and 1 of 2014

T.Saravanan

..Petitioner in both WPs

vs.

The Inspector General of Police (Railways),

Chennai - 600 008.

..R-1 in both WPs

The Deputy Inspector General of Police (Railways),

Chennai - 600 008.

..R-2 in both WPs

The Superintendent of Police (Railways),

Chennai - 600 008.

..R-3 in both Wps

The Additional Director General of Police,

(Law and Order),

Chennai - 600 004.

..R-4 in WP 14488/2014

WP 25954 of 2013 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the orders of the first and third respondents dated 13.03.2013 and 06.11.2012 issued in their poceedings in R.C.No.A2/5669/2012 and Na.Ka.No.F1/P.R.29/2005 respectively and quash the same and consequently direct the third respondent to pay all consequential service and monetary benefits to the petitioner.

WP 14488 of 2014 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the orders of the third respondent in his proceedings Na.Ka.No.F1/P.R.31/2005 dated 09.07.2012 acknowledged by the petitioner dated 14.08.2012 and the order of the 1st Respondent dated 30.10.2012 issued in his poceedings in R.C.No.A2/3918/2012



and quash the same and consequently direct the third respondent to pay all consequential service and monetary benefits to the petitioner, including eligible promotion on par with his immediate junior.

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For Petitioner in both WPs : Mr.P.I.Thirumoorthy

For Respondents in both Wps : Mr.A.M.Ayyadurai,
Government Advocate.

C O M M O N O R D E R

The writs on hand have been instituted questioning the validity of the order of punishment and also the appellate order confirming the punishment imposed by the Original Authority.

2. The writ petitioner was working in Railway Police as Constable. A criminal case was registered against him during the year 2005 with an allegation that instead of handing over the seized Ganja bundles in the train to the Railway Police Station, the petitioner sold the seized Ganja bundles to a seller, namely, Chinnammal and utilised the said money for his personal purpose. Departmental disciplinary proceedings were initiated and the petitioner was placed under suspension on 02.05.2005. For his involvement in a criminal case, two charge memos were issued under Rule 3(b) of the Tamil Nadu Police Subordinate Services Discipline and Appeal Rules. The first charge memo dated 10.08.2005 under 3(b) issued in PR No.29/2005 reveals that the charge memo against the writ petitioner is that he was involved in the criminal case and committed an offence. Another charge memo dated 16.08.2005 in PR No.31/2005 states that the writ petitioner did not stay at Jolarpet as mentioned in the suspension order during the period of suspension and he send the medical leave applications to the authorities during the period of suspension contrary to the rules. Further, the petitioner refused to receive the instructions directing him to stay at Headquarters of Jolarpet during the period of suspension and to appear for the enquiry at Erode. The departmental enquiry was conducted with reference to the charges framed against the writ petitioner.

3. The writ petitioner filed WP No.11869 of 2006, challenging the charge memo. The writ petition was dismissed on 18.03.2011 and in the meanwhile, the criminal case registered against the writ petitioner ended with an order of acquittal. Thus, the order of suspension was revoked. However, based on the departmental enquiry proceedings, the third respondent issued the order of punishment of stoppage of increment for two years without cumulative effect. The petitioner preferred an appeal



before the second respondent and the said appeal was also rejected. Further, the review was also rejected.

4. The learned counsel for the petitioner mainly contended that in identical circumstances, the learned Single Judge of this Court in WP No.29289 of 2010 has taken a view that the Department cannot impose the punishment if the criminal case ended with an order of acquittal. The order of suspension was in the year 2013. Relying on the said order, the learned counsel for the petitioner made a submission that the writ petitioner was acquitted from the criminal case and therefore, the impugned punishment, though a minor punishment, is to be set aside.

5. Based on the principles settled by the Apex Court, the Madurai Bench of this Court has passed orders in WP(MD) No.17378 of 2019 dated 21.02.2022, wherein in paragraph-5 of the said judgment, it has been observed as under:-

"5. Regarding simultaneous proceedings (i.e. departmental disciplinary proceedings and criminal case), this Court has elaborately considered the issue and the following principles have been summarized:-

(i) It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously as the case may be;

(ii) An order of suspension, if required, may be issued in the prescribed format as per the rules;

(iii) If the records and evidences are available with the disciplinary authority, then without any loss of time, charge memorandum shall be issued and the disciplinary proceedings may go on;

(iv) The question to be considered is whether simultaneous proceedings may go on or not?;

(v) The departmental domestic enquiry and the criminal trial shall proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry;

(vi) The nature of both proceedings and the test applied to reach final conclusion in the matter are entirely different.

(vii) If the case involves complicated questions of fact and law and the disciplinary authority is not in possession



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of the required materials for the purpose of conducting enquiry, then administrative decision may be taken to keep the departmental proceedings in abeyance. till the disposal of the criminal case. However, the advisability and desirability has to be determined considering the facts of each case by the authority concerned. Therefore, it would be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible.

(viii) There is no legal bar for both proceedings to go on simultaneously.

(ix) Acquittal by a criminal Court would not debar an employer from exercising power in accordance with service rules and regulations in force. The two proceedings, criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of departmental enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service rules.

(x) In the criminal case, the burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a Court of law. In departmental enquiry, on the other hand penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. To convict a person under criminal law, high standard of proof is required. Even the benefit of doubt would be a benefit for the accused in a criminal case. However, no such strict proof is required in a departmental disciplinary proceedings. Therefore, there is absolutely no bar for the respondents to continue the departmental disciplinary proceedings and conclude the same and pass final orders.

(xi) An order of conviction if any passed in the criminal case or in criminal appeal, after disposal of the disciplinary proceedings, then if necessary the Head of the department or the Government may



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exercise the power of review as the case may be under the relevant rules.

(xii) Order of acquittal if at all passed in the criminal case or in criminal appeal, the same would not affect the final orders already passed in the departmental disciplinary proceedings based on the domestic enquiry conducted, in view of the fact that acquittal in a criminal case cannot be a ground for seeking exoneration from the departmental disciplinary proceedings.

(xiii) If the criminal case was registered under the Prevention of Corruption Act, 1988 and if the original records are seized by the investigating agency, then the disciplinary authority may obtain the true copies of the documents and proceed with the departmental disciplinary proceedings.

(xiv) As far as the departmental corruption allegations are concerned, it is not necessary that the disciplinary authority should wait for the final disposal of the criminal case registered under the Prevention of Corruption Act, 1988".

6. It is the settled principle that pendency of criminal case is not a bar for the continuance of the departmental disciplinary proceedings. Even during the pendency of the criminal case if the Disciplinary Authority is having materials on record to proceed with the enquiry, then there is no impediment and the authority is well within its power to proceed with the enquiry, conclude the disciplinary proceedings and pass appropriate final orders. In case of conviction in a criminal case, subsequent proceedings can be initiated in accordance with the Rules in force. Therefore, even in case of acquittal in a criminal case, the Department is empowered to continue the disciplinary proceedings and impose punishment as contemplated under the Discipline and Appeal Rules. In the present cases, two set of charges are framed. The said charges are not only with reference to the allegations in the criminal case, but also relating to the other misconducts. Therefore, the very ground raised by the petitioner is untenable.

7. In the present cases, the respondents have considered the order of acquittal and imposed minor penalty of stoppage of increment for two years without cumulative effect. In the event of conviction, major penalty would have been imposed. Thus, the authorities have applied their mind and in



respect of the proved charges of misconduct in the departmental disciplinary proceedings, they have imposed minor punishment of stoppage of increment for two years without cumulative effect and such a punishment cannot be set aside merely on the ground that the writ petitioner was acquitted in the criminal case with reference to the charges framed in the criminal case.

8. This being the factum established, this Court do not find any infirmity in respect of the impugned order of punishment as well as the appellate order and revision order, confirming the order of punishment.

9. Accordingly, the writ petitions are devoid of merits and stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Inspector General of Police (Railways),
Chennai - 600 008.

2.The Deputy Inspector General of Police (Railways),
Chennai - 600 008.

3.The Superintendent of Police (Railways),
Chennai - 600 008.

4.The Additional Director General of Police,
(Law and Order),
Chennai - 600 004.

+1cc to Government Pleader SR. No. 34900

+2ccs to Mr.P.I.Thirumoorthy, Advocate SR. No. 35284

WP 25954 of 2013
and

WP 14488 of 2014

AJS (CO)

PR (23/06/2022)