



WEB COPY

W.P.No. 33316 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 33316 of 2018

S. Karthikeyan

... Petitioner

Vs.

1. The Superintendent of Police,
District Police Office,
Vellore District @ Vellore – 9.
2. The Deputy Inspector General of Police,
Villupuram Range,
In -charge Vellore Range, Vellore.
3. The Director General of Police,
Tamil Nadu, Chennai – 4.

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent herein in his C.No. PR.132/HI(1)/2011 u/r 3 (b) dated 13.04.2013 and the consequential order passed by the first respondent herein in his D.O.No.462/2013, C.No.PR.132/H1(2)/2011 u/r 2(b) dated 13.04.2013 imposing the punishment of removal from service and the consequential order of the second respondent herein passed in his C.No.B2/AP.41/2597/2012 dated 01.06.2013 rejecting the appeal petition and the further consequential order passed by the third respondent herein in his Rc.No. 113501/AP2(2)/2018 dated 27.08.2018 rejecting the mercy petition and quash the same and consequently direct the respondents herein to reinstate the petitioner in service with all consequential service and monetary benefits.



WEB COPY

W.P.No. 33316 of 2010



For Petitioner
For Respondents

: Mr. M. Santhanaraman
: Mr. S. Rajesh
Government Advocate
for R1 to R3

ORDER

The petitioner joined as Grade II police constable on 05.01.2006. On completion of police training, he was posted to Tamil Nadu Special Police VII Battalion at Palani. He was transferred to Armed Reserve, Vellore District. A charge memo was issued under Rule 3 (b) of the Tamil Nadu Police Subordinate Services (D&A) Rules. A criminal case was also registered against the writ petitioner in Cr.No.512/2005 and 513/2003 under Section 457, 461 & 380 IPC by the Ernakulam South Police Station. The petitioner was arrested on 29.10.2010. The criminal case ended with an order of acquittal, based on the benefit of doubt. However, the departmental disciplinary proceedings initiated against the writ petitioner was proceeded with by the competent authorities. The petitioner submitted a detailed explanation and not satisfied with the explanation, the disciplinary authority appointed an enquiry officer to conduct oral enquiry. The enquiry officer conducted an enquiry. However, the petitioner participated at the first enquiry on 17.08.2012 and during the subsequent enquiry, he had not



participated. The enquiry officer proceeded with the ex parte enquiry, since the petitioner has intentionally not participated in the enquiry proceedings.

Thereafter, the enquiry report was submitted holding that the charges are held proved and subsequently, the disciplinary authority provided an opportunity to submit further objection on the findings of the enquiry report. Final order was passed imposing the penalty of removal from service in proceedings dated 13.04.2013.

2. The petitioner states that allegation in the criminal case and the departmental disciplinary proceedings are one and the same. Therefore, the order of acquittal in the criminal case ought to have been considered by the authorities for the purpose of exonerating the writ petitioner from the departmental disciplinary proceedings.

3. The petitioner has further stated that as per the deposition of prosecution witnesses 1, 2 and 5, it is proved that the petitioner had involved in the criminal case and as per his confession, it is revealed that the charges are proved. The petitioner states that he has not given any such confession as stated in the impugned order.



4. The learned Government Advocate, appearing on behalf of the respondents, states that mere involvement of a member of the force in the criminal case itself is considered as a misconduct. The fact regarding the registration of a criminal case against the writ petitioner for the offence of theft was not disputed and it was established through the document. An order of acquittal was passed based on the benefit of doubt and therefore, the authorities considered all these factors and formed an opinion that the petitioner has committed an act of misconduct and the charges are held proved. The statutory appeal filed by the petitioner before the DIG, Vellore was also rejected on 01.06.2013. The further appeal before the DGP, was also rejected on 11.06.2018. The mercy petition filed by the petitioner was also rejected on 27.08.2018.

5. This Court is of the considered opinion that, the court in exercise of judicial review must restrict its review to determine whether:

- i) The rules of natural justice have been complied with;
- ii). The finding of misconduct is based on some evidence;
- iii) The statutory rules governing the conduct of the disciplinary enquiry have been absorbed;
- iv) Whether the findings of the disciplinary authority suffer from any



perversity;

v) Whether the penalty is disproportionate to the proven misconduct.

WEB COPY

6. In the present case, a charge memo was issued under Rule 3 (b) of the Disciplinary and Appeal Rules. The charge against the writ petitioner was serious and grave in nature. The petitioner being a member of the uniformed services involved in the theft case and a criminal case was registered by Ernakulam crime branch in the State of Kerala under sections 457, 461 & 380 IPC, the petitioner was arrested. Therefore, his involvement in the criminal case itself has been framed as a charge, which amounts to misconduct under the police conduct service rules. The petitioner was already in suspension and during the period of suspension, without informing his place of residence and without obtaining any permission, committed an act of misconduct. It is further stated in the charge memo that the petitioner even before the joining in the police force has involved in theft cases along with his friends. With reference to the charge memo, an enquiry was conducted. The enquiry officer afforded opportunity to the writ petitioner to defend his case and the petitioner participated in the first enquiry and thereafter remained absent. Therefore, the enquiry officer continued the ex parte enquiry and submitted his report holding that the charges are held proved. Based on the



proved charges, the disciplinary authority imposed the penalty of removal from service, which was confirmed by the appellate authority and thereafter by the revisional authority and the mercy petition filed was also rejected.

7. Mere acquittal in a criminal case is not a ground to seek exoneration from the departmental disciplinary proceedings. Even if the criminal court of law acquitted a person, the departmental authorities are empowered to impose penalty by conducting an independent enquiry by following the procedures as contemplated under the disciplinary and appeal rules. The standard of proof required to convict a person under criminal law are incomparable with the nature of proof required to punish a public servant under the disciplinary and appeal rules. Even preponderance of probability are enough to punish an employee under the disciplinary and appeal rules. Therefore, acquittal in a criminal case cannot be a ground to exonerate an employee from the departmental disciplinary proceedings.

8. In the present case, the enquiry officer has considered the material available on record and formed an opinion that the petitioner has caused disreputation to the department by involving himself in a theft case in the State of Kerala and other charges are also held proved, based on the evidences



available. Thus, there is no infirmity in respect of the departmental disciplinary proceedings conducted against the petitioner and the procedures as contemplated were also followed and finally regarding the proportionality, this Court do not find any infirmity as the punishment of removal from service cannot be construed as disproportionate to the proved charges against the writ petitioner, which are all grave in nature. Thus, the writ petition is devoid of merits and stands dismissed. No costs.

31.10.2022

mrn

Index : Yes / No

Speaking order / Non-Speaking order

To

1. The Superintendent of Police,
District Police Office,
Vellore District @ Vellore – 9.
2. The Deputy Inspector General of Police,
Villupuram Range,
In -charge Vellore Range, Vellore.
3. The Director General of Police,
Tamil Nadu, Chennai – 4.

S.M.SUBRAMANIAM, J.



WEB COPY

W.P.No. 33316 of 2018



mrn

W.P.No. 33316 of 2018

31.10.2022