



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.16503 of 2018

N. Ganesan

... Petitioner

Vs .

1.The State of Tamil Nadu,
Represented by its Secretary,
Home (Police V) Department,
Fort St. George,
Chennai - 9.

2.The Additional Director General of Police,
Law and Order, Tamil Nadu,
Chennai.

3.The Deputy Inspector General,
Dindigul Range,
Dindigul.

4.The Superintendent of Police,
Theni,
Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in pursuant to the impugned appellate order passed by the second respondent in Rc.No.174030/AP2(3)/2017 dated 11.05.2018 confirming the punishment order passed in Rc.No.PR-02/A2/2016 dated 11.07.2017 by the third respondent and quash the same as illegal.

For Petitioner : Mr.S.Chellapandian

For Respondents : Mr.P.Thambidurai,
Government Advocate (Civil Side).

ORDER

This Writ Petition has been filed to quash the impugned appellate order dated 11.05.2018 confirming the punishment order dated 11.07.2017.

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



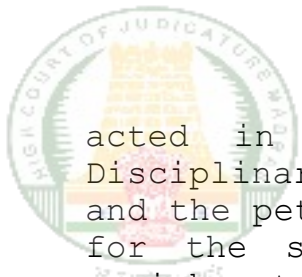
2. The brief facts of the case are that the petitioner joined in Tamil Nadu Police Service on 11.01.1986 as Grade II Constable and subsequently promoted on various cadres, finally he was working as Special Sub Inspector of Police at Allinagaram Police Station, Theni District. On 24.12.2015, a charge memo was issued and the petitioner had submitted an explanation. Dissatisfied with the petitioner's explanation, the third respondent appointed an enquiry officer. In the enquiry report, it was found that the charges are proved and pursuant to the enquiry report, the petitioner submitted further explanation. Without considering the petitioner's explanation, the respondents passed an order of punishment, whereby the postponement of increment for a period of two years without cumulative effect was imposed vide order dated 11.07.2017. The petitioner preferred an appeal before the second respondent and the same was dismissed vide order dated 11.05.2018. The charges against the petitioner are as follows:

Charge No.1: On 02.08.2015 at about 21.15 hours petitioner / delinquent failed to receive the Walkie-Talkie from the woman S.I whereby he was instrumental for missing the Walkie-Talkie which is a Government property supposed to be protected by him.

Charge No.2: On 03.08.2015 the delinquent independently appears on 17.00 hours instead of appearing for the morning roll call, whereby violated Rule 24 of Tamil Nadu Police Subordinate Officers Conduct Rules 1964.

3. The contention of the petitioner is that the first charge says that the Walkie-Talkie which was allotted to Woman SI went missing and the petitioner has duty to protect the Walkie-Talkie. Since it is missed, the petitioner is liable to be punished. The contention of the petitioner is that the Walkie-Talkie is allotted to woman SI. If the woman SI is not using the Walkie-Talkie, then the petitioner ought to use the Walkie-Talkie. On 02.08.2015, the petitioner was allotted the work of night patrol. The petitioner has used the moppet Walkie-Talkie which is attached with the two wheelers belongs to some other officer. The contention of the petitioner is that he is not responsible for the missing of Walkie-Talkie and it is not allotted to him. Hence the charge is very vague. Therefore, the petitioner prayed to allow the Writ Petition by setting aside the impugned order so that the petitioner gets further promotion in time.

4. The respondents relied on the enquiry report and records and on instructions submitted that the petitioner is responsible, in case the SI is not available in the Police Station. When the petitioner was allotted the night patrol duty, he is supposed to take the Walkie-Talkie along with him and so that he can report to the Station through Walkie-Talkie. The petitioner has



acted in negligent way and hence the petitioner is liable. Disciplinary proceedings were initiated against the said woman S.I. and the petitioner. The said woman SI was imposed punishment of fine for the said delinquency. The petitioner was imposed with the punishment of stoppage of increment for two years without cumulative effect. Hence the punishment was accorded proportionately and there is no infirmity.

5. Heard Mr.S.Chellapandian, learned counsel for the petitioner and Mr.P.Thambidurai, learned Government Advocate (Civil Side) for the respondents.

6. It is seen from the records that the petitioner was not the custodian of the Walkie-Talkie, it is allotted to the woman SI. In case, the woman SI has not taken the Walkie-Talkie along with her for patrol duty, then it is the petitioner who has to use the Walkie-Talkie. But in the present case, the petitioner has not taken the Walkie-Talkie while he was doing the patrol duty. In such circumstances, the responsibility to protect the Walkie-Talkie is on the para official in the police station. Hence the petitioner contended that he cannot be held liable. The woman SI was responsible since the Walkie-Talkie was allotted to the said woman SI, but the respondents have imposed only fine as punishment. The petitioner ought to take the Walkie-Talkie while he is allotted patrol duty, but the petitioner failed to do so. If the woman SI and the petitioner had not taken the Walkie-Talkie along with them then the para official in the police station is responsible to keep the Walkie-Talkie in safe custody.

7. Therefore, this Court is of the considered opinion that if the petitioner has taken the walkie-talkie and lost it, then he can be held responsible. If he has left the walkie-talkie in the Police Station itself, then the responsibility ought to be fixed on the official who is doing the para duty and not on the petitioner.

8. The second contention that was raised by the petitioner is that even though the charge is issued under Section 3(b), the statements were obtained behind the petitioner's back which means that the respondents have conducted only the summary proceedings to impose the minor penalty but has imposed the punishment of stoppage of increment for two years without cumulative effect. Since this punishment is affecting the promotional opportunity, the contention of the petitioner is that the petitioner ought to have been granted opportunity to cross examine and the statement ought to have been obtained in the presence of the petitioner. The contention of the respondents is that the procedure as contemplated in the service rules are followed. Therefore, this Court is of the considered opinion that the oral enquiry was conducted by the respondent and the same is as per service rules.



9. For the aforesaid reasons, this Court is of the considered opinion that the punishment of stoppage of increment for two years without cumulative effect is on the higher side since the co-delinquent was imposed with punishment of fine. Therefore the punishment is reduced as censure. The respondents are directed to consider the suspension period from 28.08.2015 to 27.01.2016 as duty period. The respondents are directed to implement this order and consider the petitioner's candidature for promotion. The said exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

10. With the above observations, this Writ Petition is allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Secretary to the Govt of Tamil Nadu,
Home (Police V) Department,
Fort St.George,
Chennai - 9.
- 2.The Additional Director General of Police,
Law and Order,
Tamil Nadu,Chennai.
- 3.The Deputy Inspector General,
Dindigul Range,
Dindigul.
- 4.The Superintendent of Police,
Theni,
Theni District.



5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S. CHELLAPANDIAN, Advocate (SR-19047[F] dated
18/04/2022)

+1 CC to M/s.SPL.GP (SR-19354[F] dated 19/04/2022)

W.P. (MD) .No.16503 of 2018
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MGJ(26.05.2022) 5P 8C