



WP No.27287 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

WP No.27287 of 2008

The State of Tamil Nadu
Represented by its
Principal Secretary, Home Department,
Fort St.George,
Chennai-600 009.

... Petitioner

versus

1.P.Sivanandi, IPS

2.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari to call for the records of the Central Administrative Tribunal, Madras Bench in order dated 12.09.2007 passed in OA No.41 of 2007 and quash the same.



WP No.27287 of 2008

For the Petitioner

:Mr.S.Silambanan
Additional Advocate General
Assisted by Mrs.Geethathamaraiselvan
Special Government Pleader

For the Respondents

:Mr.N.Vijaynarayan
Senior Counsel
for Mr.V.Suresh Kumar
for first respondent
R2- Tribunal

ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

The petitioner Department has filed this writ petition challenging the order in OA No.41 of 2007, dated 12.09.2007, wherein the Tribunal has allowed the original application filed by the first respondent and set aside the charges framed against the him by the petitioner Department.

Brief facts of the case:

2.1. According to the petitioner Department, the first respondent was originally appointed to the Indian Police Service, based on the select list for the year 1995-96, and assigned the year of allotment as 1993. Subsequently,



WP No.27287 of 2008

the select list for the year 1994-1995 was reviewed on 24.03.1999 based on a direction given by the Tribunal in OA No.840 of 1995 etc. batch and in the revised select list for the year 1994-1995, the name of the first respondent was included and assigned the year of allotment as 1991. As per the revised select list for 1994-1995, the first respondent's name was considered for promotion as Deputy Inspector General of Police, along with the other officers of 1991 batch and later, he was promoted as Deputy Inspector General of Police on 09.08.2005.

2.2. Aggrieved by the said process, certain direct recruit of the All India Service Officers filed Original Applications in 595, 596 and 780 of 2005 before the Tribunal against the inclusion of the first respondent's name in the revised select list 1994-1995. The Tribunal, by its order dated 05.05.2006, quashed the select list for 1994-1995 and directed the State Government to re-do the select list for 1994-1995.



WP No.27287 of 2008

2.3. In the light of the said order dated 05.05.2006 of the Tribunal, the State Government reconsidered the seniority of the first respondent herein and posted him as Superintendent of Police, Home Guards, Trichy on the basis of his pre-revised seniority. The first respondent had acknowledged the same on 15.05.2006 and he was directed to join duty in the new post immediately. While so, the first respondent had submitted a leave application on 15.05.2006, requesting medical leave from 14.05.2006, a day prior to the transfer order, on the ground that he was suffering from ischemic heart disease Angina, and intimated that medical certificate would follow.

2.4. The Director General of Police, Tamil Nadu, Chennai vide Memos dated 22.05.2006, 30.05.2006 and 30.11.20016, directed the first respondent to appear before the Dean, Government General Hospital, Chennai for medical examination on 26.05.2006, 02.06.2006 and 07.11.2006 to find out the genuineness of the illness. But the first respondent did not appear before the said Board. The Dean, Government General Hospital, Chennai in his letters dated 23.05.2006, 25.05.2006 and



WP No.27287 of 2008

01.11.2006 had also requested the first respondent to appear before the Medical Board. But the first respondent did not appear before the Board. However, the first respondent herein was extending his leave on medical grounds by submitting leave applications dated 26.07.2006, 25.08.2006, 24.09.2006, 24.10.2006, 23.11.2006, 23.12.2006 with medical certificates without joining duty. In all the medical certificates furnished by the first respondent, it was stated that 'after careful examination and based on clinical condition and investigation done, the period of absence was absolutely necessary for restoration of health'.

2.5. While so, it was brought to the notice of the petitioner Department that while on medical leave, without getting permission from the competent authority, the first respondent had left the headquarters and travelled to New Delhi on 12.06.2006, and stayed at New Delhi till 13.06.2006. Therefore, enquiry was ordered by the petitioner Department by appointing an appropriate investigating agency. The said investigating agency confirmed that the first respondent, who is not expected to leave the



WP No.27287 of 2008

WEB COPY

headquarters while on leave, had been in New Delhi on 12.06.2006 and 13.06.2006, without prior permission from the competent authority. Therefore, the petitioner Department had initiated departmental disciplinary proceedings against the first respondent and charges were framed against him under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969, vide Letter No.SC/4387-5/2006, Home (SC) Department, dated 10.01.2007 and directed the first respondent to submit his explanation within 15 days from the date of receipt of the said letter.

2.6. The first respondent, without responding to said charge letter dated 10.01.2007, had filed Original Application in OA No.41 of 2007 before the Central Administrative Tribunal, Madras Bench, challenging the said charge letter dated 10.01.2007. The Tribunal, by order dated 12.09.2007, set aside the charge letter, and assailing the said order passed by the Tribunal, the petitioner Department has filed the instant Writ Petition before this Court.

3. Mr.S.Silambanan, learned Additional Advocate General submitted



WP No.27287 of 2008

that the petitioner Department has filed the writ petition before this Court on the following grounds:

(i) The Tribunal did not consider the gravity of charges framed against the first respondent viz; when the petitioner department has specifically directed the first respondent to appear before the Medical Board, the first respondent did not comply with the directions of the higher authorities.

(ii) The Tribunal erred to note that the first respondent, without obtaining any permission from the higher authorities, left the headquarters which is contrary to the Rules, and accordingly, charges have been framed and therefore, the charge memo cannot be quashed.

4. Learned Additional Advocate General, further submits that the case of the petitioner Department is that at the stage, when the first respondent was bound to make his explanation, before the authority concerned, if he had submitted his explanation and if the said explanation was to the



WP No.27287 of 2008

satisfaction of the authority concerned, the said authority might have exonerated him from the said charges. Therefore, the Tribunal did not consider the issue in a proper prospective. In such circumstances of the case, the memo cannot be quashed at the threshold stage, particularly when the first respondent had approached the Tribunal without exhausting the remedy available before the appropriate authority concerned.

5. Mr.N.Vijaynarayan, learned Senior Counsel appearing for the first respondent would vehemently contend that though in the normal course a charge memo cannot be interfered with by the Court, however, when the same is challenged on the grounds of malice or lack of jurisdiction, or that the charge is vague, such allegations have to be necessarily interfered with by the Court.

6. Learned Senior Counsel for the first respondent would further submit that the first respondent herein has raised a ground of malice and vagueness against the said charge memo. The specific contention of the first



WP No.27287 of 2008

respondent is that the first respondent had sent leave application with medical certificate and subsequently, he had also made similar requests before the petitioner Department for extending his medical leave Further, the Tribunal, in paragraph 17 of its findings, has recorded that the in-charge officer has stated that the first respondent has changed his residence and received the letter only on 29.05.2006, after the expiry of the date fixed for medical examination by the Dean, Government General Hospital, Chennai. The first respondent has informed about the said fact to the Director General of Police and the Dean and requested to fix another date. But before that, the first respondent has also challenged the order of the Tribunal before this Court in WPMP No.155548 of 2006 and obtained an interim direction from this Court that the petitioner Department should not compel the first respondent to join duty in terms of order dated 15.05.2006, and the said order was extended from time to time. Further, the first respondent had also sought for a clarification from the Director General of Police that after the passing of the order by this Court whether he has to appear before the Board. Therefore, there is no disrespect or disobedience shown to the order



WP No.27287 of 2008

WEB COPY

of higher authorities by the first respondent. Therefore, the petitioner Department, without any application of mind and with an ulterior motive, had framed charges against the first respondent.

7. Secondly, there is no provision under the All India Services (Discipline and Appeal) Rules, 1969, requiring an employee to seek permission from the office to leave the headquarters during medical leave. In the absence of any such Rule, the said charges, according to the learned Senior Counsel, are vague and there is no breach or violation of the said Rules. According to the learned Senior Counsel, the Tribunal has considered all the contentions and passed a reasoned order and therefore he seeks for dismissal of the Writ Petition.

8. Heard the parties and perused the materials available on record.

9. There are two main issues to be decided by this Court in this writ



WP No.27287 of 2008

petition. They are as follows:

(i) The first issue is that the first respondent continued to be on medical leave without proper sanction of leave by the competent authority and when the petitioner department has specifically directed the first respondent to appear before the Medical Board, the first respondent did not comply with the directions of the higher authorities.

(ii) The second issue is that while on medical leave, the first respondent had left the headquarters and travelled to New Delhi on 12.06.2006, and stayed at New Delhi till 13.06.2006, without obtaining any permission from the higher authorities.

9.1. As regard the first issue, learned Senior Counsel for the first respondent argued that the first respondent has informed the authority concerned that he has shifted his residence and therefore, he did not receive any intimation and thereafter, he made a request to the concerned authority to fix another date for his appearance before the Medical Board. In the meantime, he has also challenged the order of the Tribunal before this Court



WP No.27287 of 2008

in WPMP No.155548 of 2006 and obtained an interim direction from this Court that he should not be compelled to join duty in terms of the order dated 15.05.2006, and the said order has been extended from time to time. Further, he also sought for a clarification from the Director General of Police as to whether he has to appear before the Board since an interim order has been passed in his favour by the High Court. Due to the aforesaid bona fide reason, the first respondent could not appear before the Board.

9.2. Subsequently, the first respondent appeared before the Medical Board on 22.01.2007 and the Medical Board also has issued fitness certificate and thereafter he joined the duty. Therefore, in view of the above, it is clear that there is no intention on the part of the first respondent to disobey any instruction or direction of the higher authorities. This Court does not find any fault with the order of the Tribunal on this issue.

9.3. Further it is noticed that, based on the report of the Medical



WP No.27287 of 2008

Board, the Director General of Police has not rejected the request of the first respondent for medical leave, even when there was failure of the first respondent to appear before the Medical Board. No subsequent order has been passed rejecting the application for leave submitted by the first respondent. While so, the petitioner Department has framed charges against the first respondent without passing any order on his leave application. Therefore, the Tribunal has rightly come to the conclusion by rejecting the contentions of the petitioner Department. It is also the specific case of the first respondent that the non-appearance of the first respondent before the Medical Board was only due to reasons already assigned. Therefore, we are not inclined to accept the allegation of the petitioner Department that when the first respondent was directed to appear before the Medical Board, he did not comply with that direction of the higher authorities.

9.4. As regards the second issue, the learned Senior Counsel appearing for the first respondent argued that there is no specific provision under the All India Services (Discipline and Appeal) Rules, 1969, for getting



WP No.27287 of 2008

permission from the appropriate authority for leaving the headquarters, while the employee was on medical leave. Therefore, in the absence of any specific provision under the All India Services (Discipline and Appeal) Rules, 1969 or in any other Government Order in this behalf, framing of this charge by the petitioner Department is totally vague as there is no violation or breach of any specific Rule. In such circumstances, the contention of the petitioner Department cannot be accepted and the same is liable to be rejected.

9.5. In this regard, the learned Senior Counsel has relied upon the following judgments of the Hon'ble Supreme Court:

(i) *Anil Gilurker vs Bilaspur Raipur Kshetriya Gramin Bank and Another reported in (2011) 14 SCC 379*. The relevant portion of the Judgment is extracted hereunder:

14. This position of law has been reiterated in the recent case of Union of India v Gyan Chand Chattar and in para 35 of the judgment as



WP No.27287 of 2008

reported in SCC, this Court has observed that the law can be summarised than an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice and the charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges.

(ii) Anant R.Kulkarni reported in (2013) 6 Supreme Court Cases

515. The relevant portion of the Judgment is extracted hereunder:

32. In the instant case, there is no allegation of misappropriation/embezzlement of any charge which may cast a doubt upon the integrity of the appellant, or further, anything



WP No.27287 of 2008

which may indicate even the slightest moral turpitude on the part of the appellant. The charges relate to accounts and to the discharge of his functions as the Headmaster of the school. The appellant has provided satisfactory explanation for each of the allegations levelled against him. Moreover, he has retired in the year 2002. The question of holding any fresh enquiry on such vague charges is, therefore, unwarranted and uncalled for.

10. Therefore, in the light of the above decisions of the Hon'ble Supreme Court cited supra and accepting the submission made by the learned Senior Counsel for the first respondent, we are of the view that there is no necessity to interfere with the order of the Tribunal. There is no merit in the writ petition and the same is liable to be dismissed.



WP No.27287 of 2008

WEB COPY

11. In fine, the writ petition stands dismissed. There will be no order as to costs.

[D.K.K., J.] [P.D.B., J.]
19.10.2023

Index : Yes/No
Neutral Citation : Yes/No
mrn



WEB COPY



WP No.27287 of 2008

D.KRISHNAKUMAR, J.
and
P. DHANABAL, J.
(mrn)

WP No.27287 of 2008

19.10.2023