



W.P.(MD) No.990 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD) No.990 of 2020

Balaji

... Petitioner

-vs-

1.The Additional Chief Secretary to Government
Home (Pol VI) Department
Fort St. George, Chennai 600 002.

2.The Secretary to Government
Home (Pol.2) Department
Fort St. George, Chennai 600 009.

3.The Director General of Police,
Chennai 600 004.

4.The Superintendent of Police,
Trichy.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings issued by the first respondent in G.O.D.No.877 Home (Police VI) Department dated 08.08.2019 confirming



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the proceedings issued by the second respondent in G.O.2D No.406 Home (Police 2) Department dated 30.08.2016 and quash the same and consequently direct the respondents to promote the petitioner on par with his juniors with all monetary benefits in accordance with law.

For Petitioner : Mr.C.Jeganathan
For Respondents : S.P.Maharajan
Special Government Pleader

ORDER

Challenging the orders of the respondents 1 and 2 dated 08.08.2019 and 30.08.2016 respectively and for a direction to the respondents to promote the petitioner on par with his juniors with all monetary benefits, the present writ petition has been filed.

2. The case of the petitioner in nutshell is as follows:

The petitioner was appointed as a Constable in the Police department on 01.03.1986 and was posted at the armed reserve. Subsequently promoted as Grade-I Constable and as Head Constable on 13.11.1997 and 22.07.2002 respectively and he was working in the Palakarai Police Station. While so, he was suspended on 08.12.2008 vide



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proceedings of the Commissioner of Police, Trichy, for the incident that took place as early as on 03.07.1996, in which date, one Ananda Ganesan, who was a nearby Tea supplier to the bank officials of the Bank of Baroda Manachanallur Branch, committed suicide in the first floor of the bank by pouring kerosene and subsequently succumbed to the injuries. The deceased is said to have given a dying declaration to the Judicial Magistrate and also a statement to the Revenue Divisional Officer, Lalgudi. It is seen that after a lapse of 13 years, the petitioner was placed under suspension. For the said incident, charge memo was issued on 29.04.2009, for which, the petitioner submitted his explanation. Not being satisfied, charges were framed and an enquiry officer was appointed and on conclusion of enquiry, a report was submitted stating that the charges are proved, thereby a punishment of stoppage of increment for three years with cumulative effect was imposed on the petitioner on 30.08.2016. On appeal, the same was confirmed by the 1st respondent on 08.08.2019, challenging both the orders impugned, the present petition is filed.



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3. The learned counsel for the petitioner would assail the impugned order on two grounds:

(i) Nearly after 13 years of the alleged incident, the initiation of departmental proceedings is illegal, and

(ii) The petitioner was no way connected with the incident. In order to substantiate that he was not at all available at the time of occurrence, the petitioner examined as many as five witnesses, who are officials of the bank, who categorically deposed that the petitioner was not at all present at the time of the incident. In his absence, it is unbelievable to conclude that he is responsible for the incident and hence, the findings rendered by the disciplinary authority as well as appellate authority and the punishment imposed are bad in law and hence, prays for interference.

4. In order to substantiate his submission, the learned counsel relied upon the following decisions:

(i) N.V.Bulani v. Union of India and others [(2006) 5 SCC 88];

(ii) Tamil Nadu Housing Board and others v. R.Chakrapani and others [(2012) 6 JCTC 69; and



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(ii) K.B.Natarajan v. Government of Tamil Nadu and another in

W.P.No.21188/2013 dated 27.11.2020.

5. The learned Special Government Pleader appearing for the respondents would fairly submit that though counter affidavit filed by the respondents, it is bereft of details. However, he contended that though the occurrence was of the year 1996, during the relevant point of time, if charge memo and criminal case are of similar set of facts, for the similar set of facts, no charge memo should be issued. However, in the year 2006, as per the circular dated 30.03.2006, based on the direction of the Apex Court, there is no need for dropping action in the departmental proceedings, if a criminal case is ended in acquittal. Subsequently, the Government passed G.O.Rt.No.197 dated 14.02.2007 for taking action against the petitioner and erring officials, who are responsible for the death of Anantha Ganesan and the Government ordered for taking appropriate departmental action against the petitioner as well as one Muthaiyan, who worked as an Office Assistant in the bank. Thereafter, the petitioner was placed under suspension and charge memo was issued, enquiry conducted and on the basis of the enquiry



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report, punishment was imposed on the petitioner and hence, the same need not be interfered with.

6. He would further submit that though it is the claim of the petitioner that he was not at all available at the time of occurrence, it was not supported by any evidence, even the bank officials categorically admitted that Anantha Ganesan suffered burn injuries. However, he was taken to the hospital only by his uncle and his father. However, neither the bank officials nor the police took steps to save the victim by admitting him in the hospital and due to the lethargic attitude of the bank officials and the petitioner and the other police personnel, one life is lost and further the punishment is also meagre compared to the grave mistake committed by the petitioner and it is not stated to be disproportionate to the charges. Accordingly, he prays for dismissal of the writ petition.

7. This Court gave its anxious consideration to the rival submissions and also perused the materials available on record.

8. The sequence of events relating to disciplinary proceedings



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initiated against the petitioner, the conduct of the enquiry and the aftermath of the enquiry culminating into the imposition of punishment and, thereafter, the appeal and revision, which were ultimately rejected are not disputed. Though challenge has been mounted on the disciplinary enquiry, the main grievance of the petitioner is with regard to the punishment imposed.

9. In the case on hand, it is not in dispute that the petitioner was working in the disciplined force and at the time of occurrence, his version was that he was not in the place as projected by the officials of the bank. It is their version that on 03.07.1996, at about 3.30 p.m., in the first floor of the campus, Anantha Ganesan suffered burn injuries and they rushed and attempted to save Anantha Ganesan by using the fire extinguisher. However, the fire extinguisher was not working. Perusal of the entire evidence reveals that the victim was admitted in the hospital only by his relatives, viz., his father and uncle and the fact remains that the police constables, who are working in the bank and other bank officials have not taken any steps to save the life of the victim, though they admittedly in the



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same campus. However, the departmental action was initiated against the petitioner only in the year 2007. It is true that delay in issuing the charge memo vitiates the entire departmental proceedings and decision was also rendered in a catena of decisions and this Court also uphold the said decision. However, the facts of the present case are entirely different, wherein a life was lost. Since because the victim complained about the petitioner and one Muthaiyan for their wrongful act and hence, there was a tussle between the petitioner, Muthian on one side and the deceased on the other side. In order to prove the same, no document was exhibited by the Enquiry Officer. However, the enquiry officer arrived at a prima facie conclusion based on the report of the Revenue Divisional Officer and further the petitioner claimed before the Judicial Magistrate in the 164 Cr.P.C. statement that the deceased himself categorically deposed before the Magistrate that he committed suicide on his own by pouring kerosene, whereas the very same deceased made a statement before the Revenue Divisional Officer that someone lit fire on his back thereby he suffered burn injuries and based on which, the enquiry officer drawn a proven minute and submitted a report before the disciplinary authority. However, the fact



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remains that the petitioner served as an armed guard, whereas, the deceased was supplying tea to the staff of the bank. Though the petitioner claims that at the relevant point of time, he was not available on duty, to substantiate the same before the enquiry officer or before this Court, no materials have been placed.

10. It is also an admitted fact that the dismissal of the criminal case pursuant to the G.O., is dropped for want of evidence. However, dropping of the criminal case is not a bar for the disciplinary authority to initiate action. The question arises in the writ petition is as to whether the delay in issuing the charge memo will vitiate the entire proceedings. This Court perused the circular dated 30.03.2006, wherein, it is clarified by the respondents that there is no need to drop disciplinary proceedings even when the criminal case was ended in acquittal and based on the said report, the present charge memo came to be issued. Hence, the delay in issuing the charge memo is properly explained in the present case.

11. In view of the above, the decision relied upon by the learned



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counsel for the petitioner is not applicable to the present case on hand and further though the allegations made against the petitioner is grave in nature, considering lack of evidence with regard to the involvement of the petitioner for the death of Anantha Ganesan, the disciplinary authority arrived at a fair conclusion and imposed the punishment of stoppage of increment for three years with cumulative effect, which is found to be a reasonable one. Similarly, the punishment cannot be said to be disproportionate or shocking the conscience of this Court and, therefore, this Court cannot sit in appeal over the punishment imposed by the disciplinary authority as confirmed by the appellate and revisional authorities by substituting its view and, therefore, no interference is warranted with the punishment imposed.

12. For all these reasons, the prayer sought for by the petitioner cannot be granted and the writ petition is dismissed. No costs.

02.01.2023

NCC : Yes/No
Index : Yes/No
RR



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M.DHANDAPANI, J.

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