
(2011) 07 MAD CK 0252
In the Madras High Court
Case No : Writ Petition No. 2089 of 200

A. Etturaj

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Citation : (2011) 07 MAD CK 0252

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : T. Lajapathi Roy, for the Appellant; S. Bharathi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Petitioner has invoked the writ jurisdiction of this Court, praying for issuance of a Writ in the nature of Certiorari, to quash the order of punishment passed by the Revisional Authority, vide which the reduction in time scale of pay by two stages for two years with cumulative effect has been imposed.

2. The Petitioner is posted as Grade II Constable in the Pathiamputoor Police Station at Tuticorin District. Earlier to this, the Petitioner was working in Armed Reserve III in Tuticorin.

3. The Petitioner was served with a Charge Memo vide P.R. No. 50 of 2000 under Rule 3(b) of the Tamil Nadu Police Subordinate and Service (Discipline and Appeal) Rules, on the allegation of reprehensible conduct in being absented from duty, while he was deputed at Sangu Godown Guard duty.

4. The allegation against the Petitioner, was that he was absent from the Guard duty from 13.01.2000 at 21.00 hrs till 16.01.2000 at 06.00 hrs. The Petitioner had not sought leave or previous permission prior to being absent from duty.

5. The other allegation against the Petitioner was making false entries in the

sentry duty book of Sangu Godown, so as to falsely show that the Petitioner had performed the duty.

6. The Petitioner denied the allegations. Finding that the explanation being not satisfactory, the Departmental enquiry was ordered. The Deputy Superintendent of Police was appointed as Enquiry Officer.

7. In support of the allegations, the prosecution examined three witnesses, whereas the Petitioner did not lead any evidence in defence, though opportunity was provided to him.

8. The Enquiry Officer, on appreciation of evidence led by the Prosecution, held the Petitioner guilty of all the charges.

9. The competent authority, by tentatively accepting the findings of the Enquiry Officer, issued a show cause notice, along with a copy of the Enquiry Report. The Petitioner was also given opportunity of hearing. In view of the serious nature of the charges, the major punishment, of reduction in time scale of pay by three stages for three years, having effect on his pension, was passed.

10. In Appeal, the Appellate Authority reduced the punishment to reduction in time scale of pay by two stages for two years with cumulative effect.

11. The Petitioner, thereafter, instead of approaching the Reviewing Authority under the Rules, filed a Review before the Home Secretary, Government of Tamil Nadu, who also upheld the order of punishment.

12. Learned Counsel for the Petitioner, challenged the impugned order of punishment, on the ground that the findings of the Enquiry Officer are perverse, being outcome of misreading of statements of prosecution witnesses.

13. In support of the contention, the learned Counsel for the Petitioner referred to the Statement of P.W.3 recorded by the Enquiry Officer, wherein he had stated, that on 12.02.2000 at 00.30 hrs, the Petitioner came to the guard duty. It was also deposed by him, that the Petitioner concealed an incident, which had taken place in the bus.

14. Learned Counsel for the Petitioner contends that the Statement of P.W.3, disproved the charge of absence from 13.01.2000 to 16.01.2000.

15. The contentions of the learned Counsel for the Petitioner cannot be accepted. The evidence led before the Enquiry Officer proved, the Petitioner's absence from duty, for the charged period. One stray word in the Statement of witness, cannot be read to disregard the total evidence of the prosecution. The Enquiry Officer was to assess the evidence in totality. Otherwise also the second charge against the Petitioner was with regard to tampering with duty register, which itself showed that Petitioner had come to the place of duty, but there is No. evidence of his performing duty.

16. If the evidence shows that the finding recorded by the Enquiry Officer cannot

be said to be perverse or can not be arrived at, which could entitle, this Court to interfere with the finding in exercise of extra ordinary writ jurisdiction.

17. It may be noticed here that P.W.3 positively stated, that the Petitioner was absent from duty from 13.01.2000 to 16.01.2000. The contention of the learned Counsel for the Petitioner that the Statement of P.W.2, was also to the similar effect is misconceived as No. such deposition can be read, in the Statement of P.W.2.

18. Mere appearance of the Petitioner at place of duty cannot lead to the conclusion, that the Petitioner was present to perform the duty as guard. It is not open to this Court, to substitute its opinion for the findings recorded by the Enquiry Officer unless the findings are perverse or based on No. evidence.

19. It was next contended by the learned Counsel for the Petitioner that the punishment imposed is excessive. This contention of the Petitioner also cannot be accepted. The Petitioner, being a Member of disciplined force, cannot be absent from duty. The allegation of misconduct were serious in nature. The Petitioner has already been dealt with leniently by the Authorities. The punishment awarded cannot be said to be excessive or harsh to call for any interference by this Court.

20. No merit, dismissed.

No costs.