
(2009) 09 MAD CK 0286

In the Madras High Court

Case No : Writ Petition No's. 32863, 37945 and 35684 of 2006 (O.A. No's. 2546, 2447 and 2448 of 1998)

M. Ayyanar

APPELLANT

Vs

The State of Tamilnadu and Others

RESPONDENT

Date of Decision : 30-09-2009

Acts Referred:

Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 — Rule 3

Citation : (2009) 09 MAD CK 0286

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Venkatramani, SC for M. Muthappan, for the Appellant; R. Neelakandan, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. These writ petitions arose out of O.A. Nos. 2546, 2447 and 2448 of 1998 filed by the petitioner before the Tamil Nadu Administrative Tribunal. In view of the abolition of the Tribunal, they were transferred to this Court and were renumbered as W.P. Nos. 32863, 37945 and 35684 of 2006.

3. The petitioner in W.P. No. 32863 of 2006 sought for the issue of a writ of mandamus to direct the respondents herein to consider the claim of the applicant for inclusion of his name in the "C" list of Sub Inspectors of Police fit for promotion as Inspector of Police for the year 1996-97 and to promote him as Inspector of Police at par with his juniors with all consequential service and monetary benefits.

4. In W.P. No. 37945 of 2006, he sought for the issue of a writ of certiorari to call for the records on the file of the first respondent herein in connection with the order passed by him in P.R.5/B1/96, dated 10.4.1997 and to quash the same and in W.P. No. 35684 of 2006, the petitioner sought for the issue of a writ of

certiorari to call for the records on the file of the respondents 1 to 3 in connection with the order passed by them in P.R.241/C2/96 dated 11.2.1997, C. No. B1/Appeal 37/97, dated 5.6.1997 and Rc. No. Ap III(2)/41/5443/98 dated 12.3.98 respectively and to quash the same.

5. In O.A. No. 2447 of 1998, the petitioner, who is the Sub Inspector of Police challenged the order of punishment, dated 10.4.97 issued by the Dig of Police, Tiruchirappalli Range. By the said order, the petitioner was imposed with the punishment of reduction in pay by three stages for three years with cumulative effect. It was also stated that the said punishment will affect his pensionary benefits also. The charge against the petitioner was regarding his reprehensible conduct of bringing two women to the Tiruchirappalli Fort Police station in the night of 30.5.93 and detaining them throughout the night and also torturing them by beating with lathies, as a result of which one woman had sustained severe injuries. The defence taken by the petitioner was that he had filed case against those women and the said case ended in conviction. In the meanwhile, one of the women gave a private complaint against the petitioner in the court of JM-1. The JM-1, Tiruchirappalli convicted the petitioner in C.C. No. 983/94 by judgment dated 27.2.95. But however he was released on probation.

6. On the strength of the said conviction, a show cause notice dated 21.7.95 was issued. But, the show cause notice was stayed by the Tribunal in OA No. 4762 of 1995. The Tribunal by a final order dated 18.9.96 allowed the OA, since by then the Sessions Court Tiruchirappalli set aside the conviction in CA No. 89/95. Therefore, the proposed compulsory retirement of the petitioner was dropped. The petitioner was proceeded departmentally by framing a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Disciplinary and appeal) Rules. Pursuant to the charge memo, an enquiry was held by the DIG of Police. In that enquiry, six witnesses were examined on the side of the department and six witnesses were examined on the side of the petitioner and each had filed six documents. It was stated that P.W.3 and P.W.4 had turned hostile. Whereas the evidence of P.Ws.1 and 2 were sought to be impeached on the ground that they were women of ill-repute, but those two women witnesses had stuck to the same version, which they had deposed before the RDO, Tiruchirappalli. The defence witnesses except D.W.6 were considered to be subordinate to the petitioner and hence they were not believed.

7. It is in these circumstance the punishment came to be imposed against the petitioner. Though the petitioner filed an appeal to the second respondent by appeal memo dated 22.6.97, without waiting for its outcome, he filed the OA. The Tribunal by its interim order dated 2.4.98 granted an interim stay on the ground that the criminal case had ended in an acquittal. Though an application in MA No. 8397/99 was filed, the tribunal did not take up the vacate stay application for reasons best known to it.

8. The respondents have filed a reply affidavit, justifying the punishment given to the petitioner. The stand taken by the respondents was that the acquittal by the

criminal court has no connection with the enquiry conducted by the respondents.

9. The Supreme Court in more than one judgment had taken a view that the aim and purpose of the departmental action is entirely different from the criminal action initiated by the State. Further, the standard of proof required in both proceedings was also different. The following two decisions and the relevant paragraphs extracted therein will justify the said conclusion.

10. The Supreme Court in *Nelson Motis Vs. Union of India* and another, observed as follows:

5. So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case.

11. The Supreme Court in *Suresh Pathrella Vs. Oriental Bank of Commerce*, observed as follows:

11. In our view, the findings recorded by the learned Single Judge are fallacious. This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well-settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities.

Therefore, there is no substance in the arguments advanced by the learned Senior Counsel.

12. In O.A. No. 2448 of 1998 (W.P. No. 35684 of 2006), the petitioner challenged the punishment of postponement of increment by one year without cumulative effect. The charge against the petitioner was made under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules. The allegation against the petitioner was that the conduct of the petitioner was reprehensible inasmuch as he has interfered with the civil dispute and brought one Muthukumar and three other employees of the said Muthukumar to the Woraiyur Police station on 19.6.96 and beat them up in the station. The Deputy Superintendent of Police, Tiruchirappalli who conducted the enquiry found the petitioner guilty and the same was accepted by the first respondent who imposed the punishment. The petitioner filed an appeal to the second respondent which was rejected and his further review before the third respondent was also rejected. Neither in the review nor in the appeal, the petitioner raised a ground

that he was not given the copy of the enquiry report before the same was accepted by the disciplinary authority, that is in effect that he never showed any prejudice caused to him. The petitioner knowing fully well placed reliance upon the alleged circular issued by the Director General of Police, dated 27.7.90 which mandated the furnishing of enquiry report before the same was accepted by the disciplinary authority. This ground was raised in spite of the fact that by a subsequent circular dated 25.10.90, the earlier circular was cancelled. Notwithstanding the facts, the tribunal granted an interim stay of punishment on the ground that the enquiry report was not furnished before its acceptance.

13. A detailed reply affidavit, dated 18.1.98 was filed by the first respondent justifying the penalty. Considering the fact that the petitioner was only imposed with a minor penalty on a proved misconduct, this Court is not inclined to interfere with the said punishment. Further, the Supreme Court in *Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja*, has held that the non furnishing of the enquiry report unless prejudice is established, it will not result in vitiating the final punishment. The following passage found in paragraph 21 of the said judgment may be usefully extracted below:

21. From the ratio laid down in *B. Karunakar* it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.

Therefore, this writ petition also must fail.

14. In O.A. No. 2546 of 1998, the petitioner claimed inclusion of his name in the "C" list of Sub Inspectors fit for promotion to the post of Inspector of Police drawn for the year 1996-97. But, it must be stated that when the panel was prepared the petitioner had two punishments in PR No. 512/94 and PR.241/96. Therefore, his name was omitted to be included in the said panel. When the petitioner had faced with serious charges which also resulted in a final punishment, the petitioner cannot claim to get promoted to the next higher post. Therefore, this writ petition must also fail.

15. In the result, all the three writ petitions stand dismissed. However, there will be no order as to costs.