

(2009) 08 MAD CK 0327

In the Madras High Court

Case No : Writ Petition No. 49451 of 2006 and O.A. No. 674 of 2001

P. Mokkaraj

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 05-08-2009

Acts Referred:

Tamil Nadu Police Subordinate Services Rules, 1953 — Rule 3

Citation : (2009) 08 MAD CK 0327

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : R.S. Anandan, for Anand and Surya, for the Appellant; V. Arun, Additional Government Pleader, for the Respondent

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

2. The petitioner had joined the police service as a Sub Inspector of Police, Armed Reserve Unit, in the year 1971. Thereafter, he was promoted, as an Inspector of Police, Armed Reserve, in the year 1987. Later, while he was working at Thallakulam Police Station, Madurai City, he was served with a charge memo, under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules, in P.R. No. 124/95, containing two charges, which are as follows:

1) Highly reprehensible conduct in having utilised his subordinates to collect illegal gratification from the lorry cleaners TNK 6757, KLV 9052 & TN-72 2925, on 8.5.1992, at about 20.30 hrs and 20.45 hrs at Melapalayam road junction in Tirunelveli Nagercoil High Road.

2) Highly reprehensible conduct in not having inspected the lorries TNK 6757, KLV 9052, on 8.5.1992, at about 20.30 hrs at Melapalayam Road Junction in Tirunelveli Nagercoil High Road and allowed the lorries to proceed further after collection of illegal gratification.

3. The charges had been framed based on the statements of one Mariyaiah,

District Inspection Cell Officer, Tirunelveli District, who had neither seized the cash claimed to have been collected by the petitioner from two lorry cleaners, nor had he booked a criminal case against the petitioner and the others, under the Prevention of Corruption Act. The alleged incident is said to have occurred, on 8.5.1992, whereas, the disciplinary action had been initiated in the year 1995, after a lapse of three years. The charges are vague and ambiguous. The delay in framing the charges had not been explained. The P.R. No. under which the charges had been issued had been subsequently changed as P.R. No. 33/98 and then as P.R. No. 216/98.

4. The petitioner has further stated that the enquiry officer appointed to conduct the enquiry had held that both the charges alleged against the petitioner had been proved. The enquiry officer had rejected the objections raised by the petitioner, with regard to the addition of witnesses and documents, without any notice to the petitioner. No reason had been given for the rejection of the objection. The documents had not been furnished to the petitioner before they were relied upon by the enquiry officer.

5. The main contentions raised on behalf of the petitioner are that in spite of the fact that the charge memo had mentioned only four witnesses and six documents, more witnesses had been added by the prosecution and additional documents had been placed for consideration during the enquiry, without issuing notice to the petitioner. During the enquiry, statements were read over by the Deputy Superintendent of Police, Vigilance and Anti Corruption and they were recorded by P.W.2. Eventhough the objections raised by the petitioner were recorded in the minute copy, they have not been considered by the enquiry officer before he had come to the conclusion that the charges levelled against the petitioner had been proved. Eventhough two defence witnesses, examined during the enquiry, had stated that the petitioner was not at the place of occurrence, the enquiry officer had not given proper weightage to the evidence of the said witnesses.

6. The learned Counsel had further submitted that the witnesses examined on behalf of the prosecution had stated that they had seen the incident from a distance of 300 metres, and therefore, it lacks credibility. No action had been taken in respect of the vehicle, which was involved in the incident. The subordinate officers, who were alleged to have been involved in the incident, at the behest of the petitioner, had not been examined. The explanation submitted by the petitioner at the time of the enquiry had not been considered by the enquiry officer. Based on the enquiry report of the disciplinary authority, the third respondent herein, had passed an order, dated 15.3.1999, imposing on the petitioner, the punishment of reduction in time scale of pay, by three stages, for a period of three years, with cumulative effect. Challenging the said order, the petitioner had preferred a detailed appeal before the appellate authority, the second respondent herein, raising various grounds. However, the second respondent had passed an order, dated 18.11.1999, dismissing the appeal

stating as follows:

2. I have carefully gone through the appeal, along with all the connected records. Both the counts of charge have been held as proved on sufficient and credible evidence by the disciplinary authority. Indisciplinary conduct in a disciplined force is a very grave offence, which has been rightly held against the delinquent. The punishment awarded by the disciplinary authority is not at all excessive. Moreover, he has not raised any new points to consider.

3. The appeal is rejected.

The learned Counsel for the petitioner had submitted that the second respondent had passed the impugned order, dated 18.11.1999, rejecting the appeal, without considering the various grounds raised by the petitioner in his appeal, dated 7.4.1999.

7. No reply affidavit has been filed on behalf of the respondents.

8. In view of the submissions made by the learned Counsel appearing on behalf of the petitioner, and on a perusal of the records available, even though this Court is of the considered view that the contentions raised on behalf of the petitioner, with regard to the enquiry conducted by the enquiry officer, in respect of the charges levelled against the petitioner and the consequential order passed by the disciplinary authority, the third respondent herein, on 15.3.1999, imposing the punishment of reduction in time scale of pay, by three stages, for a period of three years, with cumulative effect, on the petitioner, are not convincing, it is clear that the appellate authority, the second respondent herein, while passing the impugned order, dated 18.11.1999, had not considered any of the grounds raised by the petitioner in his appeal, dated 7.4.1999. Therefore, this Court finds it appropriate to set aside the order of the second respondent, dated 18.11.1999, and to remit the matter back to the second respondent to pass appropriate orders, on the appeal of the petitioner, dated 7.4.1999, on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. However, it is made clear that this Court, by this order, has not expressed any opinion on the merits of the matter. The writ petition is ordered accordingly. No costs.