
(2009) 09 MAD CK 0314

In the Madras High Court

Case No : Writ Petition No. 40953 of 2006 (O.A. No. 3862 of 1998)

S. Raja

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 30-09-2009

Acts Referred:

Constitution of India, 1950 — Article 320(3)

Citation : (2009) 09 MAD CK 0314

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Jasmine, for L. Chandra Kumar, for the Appellant; R. Neelakantan, G.A., for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. This writ petition arises out of O.A. No. 3862 of 1998 filed before the Tamilnadu Administrative Tribunal. The said OA was filed by the petitioner seeking to quash the orders of the first respondent made in G.O.2(D) 206 and G.O.2(D) 246 dated 13.8.1996 and 27.10.1997.

3. The petitioner was working as a Divisional Fire Officer under the control of the second respondent. By the impugned order in G.O.2(D) 206 Home Department dated 13.08.1996, the petitioner was imposed with the penalty of stoppage of increment for a period of two years with cumulative effect. The said penalty came to be issued after examining the report of the Commissioner of Disciplinary Proceedings, Madurai Region, dated 13.09.1995 issued in D.E. No. 161/88.

4. The petitioner was accused of collecting rice and money as donation from the rice mills in and around Kottar and Nagercoil contravening the Government Servants Conduct Rules. He was also accused of purchasing a house site at Sivakasi in the year 1974 without obtaining prior permission from the appropriate authority. While he was working as a Divisional Fire Officer at

Palayamkottai from 24.06.1982 to 05.01.1984 and while holding full additional charge in the Ramanathapuram Fire Division from 05.06.1983 to 01.08.1983, he favoured many of his subordinates by granting transfers and promotion and he demanded bribe from them. A further charge relating to having connection with one Selvi Jeyanthi at Palayamkottai, a woman of ill repute and also misused the office jeep for transporting her on few occasions at Kovilpatti and at Ambasamudram.

5. The Commissioner for disciplinary proceedings after conducting an enquiry granted benefit of doubt in respect of charge No. 1. But however, he held charge-2, 3(i) and Charge 4 as proved. A copy of the Enquiry Officer report was also furnished. The petitioner gave further representation dated 13.11.1995 to the Government. The said representation was considered by the Government along with the Enquiry Report and held that they are in full agreement with those findings and therefore, the penalty was imposed.

6. The petitioner filed a review petition dated 13.09.1996 before the first respondent. The first respondent referred the matter for the opinion of the Tamilnadu Public Service Commission. The TNPSC gave its advice dated 30.09.1997 stating that though charge No.1 and part of charge No.3 are not fully proved, the petitioner cannot be held to be innocent, but the punishment can be reduced. The Government after examining the case carefully and independently held that the Commission's review is not correct and the punishment imposed on the petitioner was proportionate to the gravity of the charges.

7. In the reply affidavit dated 31.08.1998, it was stated that the charges were proved on the basis of recorded evidence and therefore, the question of interference with the penalty may not arise.

8. In the Original Application, heavy reliance was placed upon the report of the TNPSC and therefore, it was argued that the Government should have bound itself by the said recommendation. It was also stated that the charges came to be framed on the basis of anonymous petition and such petitions ought not to have been entertained.

9. By the time the petitioner came to challenge the final order in the review, the petitioner had already retired from service. It must be stated that though the charge might have been framed on the basis of some anonymous complaint, the matter was referred to enquiry wherein, witnesses were examined and documents were marked. It has been held by the Supreme Court in more than one decision that consultation with the TNPSC is not mandatory under Article 320(3) of the Constitution. Even the advice tendered by the Commission is not binding on the Government. In this context, it is necessary to refer to the decision of the Supreme Court in Ram Gopal Chaturvedi Vs. State of Madhya Pradesh, . Therefore, the objections raised by the petitioner has no substance.

10. The writ petition is misconceived. Accordingly, the same stand dismissed. However, there will be no order as to costs.