

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2009

CORAM:

THE HONOURABLE Mr.JUSTICE R. SUDHAKAR

W.P.No.20351 of 2006

Angappan

... Petitioner

Vs.

1.The Superintendent of Police,
Erode District, Erode.

2. The Additional Superintendent
of Police,
Crime Record Bureau,
Erode.

... Respondents

Petition filed before the Tamil Nadu Administrative Tribunal, to call for the records pertaining to the impugned order of the first respondent passed in Rc.No.J1/PR/72/98 D.O.215/99, dated 13.3.99 and set aside the same and consequently directing the respondents to reinstate the applicant in service as Head Constable with backwages, monetary benefits and all other attendant benefits with cost, has been transferred and re-numbered as W.P.No.20351 of 2006.

For Petitioner : Mr. V. Kathiravan

For Respondents : Mrs. C.K. Vishnupriaya
Addl. Govt. Pleader

O R D E R

Originally, the petitioner filed O.A.4126 of 1999 before the Tamil Nadu State Administrative Tribunal, which has been re-numbered as writ petition and has come up for final disposal on merits.

2. The petitioner, while working as head constable in Vellaikoil Police Station committed grave delinquency, which are as follows:-

(a) The petitioner/Head Constable Angappan was involved in a wordy quarrel with one Varonika, Woman Head Constable at about 2.00 a.m. mid night in public and assaulted the said Varonika with hands.

(b) At that time, one Ammadurai, Probationary Sub Inspector of Police was on night rounds and when the said lady head constable informed the Officer about the ill-treatment done to her by the petitioner, the Probationary Sub Inspector advised the petitioner not to cause nuisance in public, go home and resolve the matter in the morning. The writ petitioner retorted the Probationary Sub Inspector and told him that it is his family affairs. He further abused the said officer by using filthy and un-parliamentary words. It is also stated that the petitioner was in drunken mood.

(c) Not leaving the matter to rest there, the petitioner further proceeded to the house of the Probationary Sub Inspector on the same night and banks the door of his house at D.No. 94-A Anna Nagar second street, Bhavani and threatened his wife, who was alone, with dire consequences using abusive language.

3. Based on the above said incident, the petitioner was suspended and departmental action was taken. A charge memo was issued on 7.8.1998. The petitioner did not submit his explanation to the charge memo. The Deputy Superintendent of Police, Erode Town was appointed as enquiry officer in proceedings dated 15.8.1998 and the same was acknowledged by the petitioner on 23.9.1998. Thereafter for one reason or the other, the enquiry officer was changed, on due intimation to the petitioner and the petitioner was given an opportunity to peruse the document, which was not availed. On 23.9.1998, the petitioner was served with a memo calling upon him to appear in the oral enquiry to be held on 29.9.1998, which he failed to attend. Therefore, the prosecution witnesses were examined exparte on 29.9.1998. There was a change of enquiry Officer, in proceedings dated 12.10.1998, which was also intimated to the petitioner. Petitioner was called upon to cross-examine the witnesses. The intimation was acknowledged on 1.12.1998. The oral enquiry was adjourned to various dates viz., 12.1.99, 21.1.99 and 28.1.99 for the purpose of cross-examination of the prosecution witnesses, but the petitioner did not avail the opportunity given. The oral enquiry was again fixed on 7.2.1999 and the petitioner was called upon to produce the defence witnesses, which he failed to do. Further time was given to the petitioner, to file his written statement of defence, by memo in RC No. PR.72/98, dated 7.2.99, which was acknowledged by the petitioner on 12.2.99. However, no explanation was submitted and the enquiry officer drew the minutes of the proceedings exparte on 16.2.99 and sent the files to the Superintendent of Police, the disciplinary authority for passing appropriate orders. The petitioner was supplied with a copy of the enquiry report on 23.2.99 to submit his further representation within 15 days. The petitioner failed to give his explanation inspite of acknowledgement.

4. Based on the charge memo, oral enquiry proceedings, the report of enquiry officer, the prosecution exhibits, deposition of the witnesses and the finding of the enquiry officer, the disciplinary authority came to the conclusion that all the charges were proved and the petitioner was awarded the punishment of removal from service in proceedings No. J1/PR.72/98, D.O.215/99, dated 13.3.99 (impugned order). Such order was acknowledged by the petitioner on 14.3.99. However, the petitioner failed to file further appeal as provided under law and proceeded to file O.A. before the Tribunal, which has now been re-numbered as writ petition and listed before this Court for disposal. The above facts which lead to the dismissal order, are culled out from the reply affidavit filed by the respondents before the Tribunal. The said facts are not disputed by the petitioner.

5. The only plea of the learned counsel for the petitioner is that the entire proceedings is an exparte proceedings and no opportunity was given to the petitioner to refute the charge memo and participate in the proceedings and therefore, entire proceedings is vitiated for violation of Principles of Natural Justice.

6. This Court, having gone through the records and the reply affidavit filed by the respondents, is unable to agree with the stand of the petitioner that the proceedings of the respondents-department are in violation of Principles of Natural Justice. As has already been extracted above, the petitioner has been given ample opportunities right from the issuance of the charge memo to appear and participate in the proceedings. He was served with a memo/intimation as the case may be, from time to time. The dates of acknowledgement of the intimation, which has been referred to in the reply filed by the authorities, is not disputed. A mere plea of violation of Principle of Natural Justice, cannot invite this Court to interfere with the proceedings of the respondents. Except a bald statement in the affidavit and in the grounds raised in the writ petition, there is no material to accept the stand of the petitioner, particularly, when the respondents have clearly set out the various dates on which, intimation was given and acknowledged by the petitioner. Having not endeavoured to participate in the enquiry proceedings, the petitioner cannot question the same and take the plea of violation of Principle of Natural Justice. The said plea therefore stands rejected.

7. The impugned proceedings passed by the disciplinary authority/ Superintendent of Police is based on oral and documentary evidence available on record, deposition of the witnesses and prosecution exhibits. More so, the evidence of P.W.1 Ammadurai, Probationary Sub Inspector of Police will be a relevant factor to prove that the alleged incident happened at the wee hours on

24.7.1998 and both the petitioner and other delinquent Varonika were involved in a wordy quarrel in public. The lady constable has also been proceeded by way of departmental enquiry and punishment has been imposed on her and modified by the Tribunal. The order of the Tribunal was upheld by the Division Bench of this Court. Therefore, the factum of delinquency by the petitioner cannot be disputed.

8. In such view of the matter, based on the nature of the charge, the finding of the enquiry officer and the failure on the part of the writ petitioner/delinquent to participate in the enquiry to refute the charge, the finding of guilt as held by the disciplinary authority is not interfered by this Court. While considering the petitioner's case under Article 226 of the Constitution of India, this Court is not inclined to go into various factual aspects of the delinquency charged. The petitioner has failed to avail the opportunity given to explain his stand and produce his defence and therefore not entitled to any indulgence by this Court. Finding no merits, this writ petition is dismissed. No costs.

Sd/-

Asst. Registrar

//true copy//

Sub Asst.Registrar

ra

To

1. The Superintendent of Police,
Erode District, Erode.
2. The Additional Superintendent
of Police,
Crime Record Bureau,
Erode.

1 cc to Government Pleader, Sr.No.64990

1 cc to Mr.Veera Kathiravan, Advocate, Sr.No.64917

WP No. 20351 of 2006

KM {CO}
TP/30.12.2009.