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Court : Chennai

Decided On : Jan-02-2012

Judge : Vinod K.Sharma, J.

Appeal No. : W.P.No.40512 of 2006

Appellant : K.Aruldoss

Respondent : The Deputy Inspector General of Police and anr.

Advocate for Def. : Mr.R.Ravichandran, Adv.

Advocate for Pet/Ap. : Mr.S.Kamadevan, Adv.

Judgement :

1 The petitioner while working as Grade I Police Constable at S.P.Pattinam Police station, Ramanathapuram, was placed under suspension on the allegation that on 07.08.2000 at about 23.30 hours, the petitioner assaulted sentry Police Constable Ramakrishnan in drunken state. The petitioner was issued a charge memo on 12.09.2000 alleging misconduct, and was asked to submit his explanation.

2 An enquiry officer was appointed to conduct domestic enquiry which was held on 16.10.2000 and 23.10.2000. In support of the allegation, the prosecution has examined five witnesses who were cross examined by the petitioner.

3 It is the case of the petitioner that the deposition of the witnesses did not support the prosecution case and request was made to enquiry officer to drop the proceedings. The enquiry officer instead of holding the petitioner not guilty, held the charges proved against the petitioner. He submitted the enquiry report to the appointing authority, viz., the Superintendent of Police, Ramanathapuram District.

4 The appointing authority agreed with the findings of the enquiry officer and issued show cause notice to the petitioner. The petitioner submitted his reply to the show cause notice, pointing out the material contradictions in the enquiry report.

5 The case of the petitioner is that the appointing authority without taking into consideration the submission made by the petitioner, accepted the enquiry report and imposed punishment of compulsory retirement. The appeal filed by the petitioner against the order of punishment was also dismissed.

6 The order of punishment is challenged by the petitioner on the ground that the Police Constable Thiru Ramakrishnan had reported the matter to the Inspector of Police, Thondi Police station, who forwarded the complaint to the Deputy Superintendent of Police, who after initial enquiry forwarded it with recommendation for disciplinary action to the second respondent, i.e. Appointing authority.

7 The second respondent directed the Deputy Superintendent of Police to frame charge which was done and sent to the second respondent, who after approval appointed the Deputy Superintendent of Police, as enquiry officer to enquire into the charges.

8 The contention of the learned counsel for the petitioner is that proper procedure was not followed, as the Deputy Superintendent of Police was the person who framed the charges and therefore, could not be appointed as enquiry officer on the ground that nobody can be judge of his own cause. This contention of the learned counsel for the petitioner cannot not be accepted. The Deputy Superintendent of Police was performing the ministerial act of forwarding the complaint to the competent authority and only assisted the competent authority in framing of

charges which was subsequently approved by the competent authority. Therefore, there is nothing wrong in appointing the Deputy Superintendent of Police as enquiry officer as he held superior rank to the petitioner. The principle of law that nobody can be judge of his own cause has no application.

9 The learned counsel for the petitioner also challenged the impugned orders on the ground that the enquiry against the petitioner was held in violation of principle of natural justice. The petitioner was not served with the report of the enquiry officer or the statement recorded in the preliminary enquiry inspite of specific request in this regard.

10 The submission of the petitioner is that an order was passed rejecting the request for supply of preliminary enquiry report on the statement on the ground that it was not relevant. The contention of the learned counsel for the petitioner was that non supply of statement of the witnesses recorded during preliminary enquiry has caused prejudice to the petitioner as he was not able to effectively cross examine the witnesses.

11 This contention of the learned counsel for the petitioner deserves to be accepted, as the enquiry officer relied upon the statement made by the witnesses during preliminary enquiry which was at the back of the petitioner and those statements were neither supplied nor put to the petitioner. This certainly has caused prejudice to the petitioner and therefore, it can be safely said that the enquiry held was in violation of the principle of natural justice.

12 This view finds support from the judgment of the Hon'ble Division Bench of Punjab and Haryana High Court in the case of Haryana Vidyut Parsaran Nigam Ltd. vs. Rajnish Garg, 2002 (3) SCT 817, wherein by placing reliance on the judgment of the Hon'ble Supreme Court in the case of State of UP vs Shatrughan Lal and another, 1998 (4) SCT 162 (SC), Tirlok Nath vs. Union of India, 1967 SLR 759, it was held as under: “where a preliminary enquiry is held, and the delinquent demands for the document and evidence recorded and collected in preliminary enquiry, he must be supplied the same so as to enable him to file an effective reply to the charge sheet. Non supply of such documents / evidence amounts to denial of reasonable opportunity to defend and causes great prejudice to the

defense of the delinquent and vitiates the action taken.”

13 This view is also taken by the Hon'ble Gauhati High Court in the case of Adhir Chandra Dhir vs. State of Tripura and others, 2005 (5) SLR 37 and the Hon'ble Punjab and Haryana High Court in the case of Dhian Singh vs. State of Punjab and others, laying down therein that non supply of preliminary report and enquiry report, which is used against the delinquent, causes serious prejudice to his case.

14 It is also well settled that enquiry officer cannot base his findings on the material which was not supplied to the delinquent specially when the right of the delinquent to effectively cross examine the witnesses stood defeated. Once the enquiry report is vitiated being in violation of principle of natural justice, the impugned order based on said finding also cannot be sustained in law.

15 Consequently, this writ petition is allowed. The impugned order is set aside and the petitioner is directed to be reinstated in service with all consequential benefits. No costs.

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