

V.Thirumavalavan. Vs. the Deputy Inspector General of Police.

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Court : Chennai

Decided On : Jun-18-2012

Judge : Vinod K.Sharma, J.

Acts : Tamil Nadu Government Service Conduct Rules ; Tamil Nadu Civil Service (Disciplinary And Appeal) Rules - Rule 17(b); Fundamental Rules. - Rule 18(3) ; Administrative Tribunal Act 1985 - Section 19

Appeal No. : Writ Petition No.8329 of 2007 O.A.No.2141 of 2002

Appellant : V.Thirumavalavan

Respondent : The Deputy Inspector General of Police.

Advocate for Def. : Mr.S.Navaneethan, Adv.

Advocate for Pet/Ap. : Ms.G.Bala.S.Daisy, Adv

Judgement :

Original Application filed u/s 19 of the Administrative Tribunal Act 1985, on the file of the Tamil Nadu Administrative Tribunal, Chennai Bench, to quash the impugned order of Compulsory Retirement from service passed by the second Respondent in his proceedings D.O.2074/2001, Rc.No.K1/PR.61/2001 dated 9.12.2001 and consequently direct the Respondent to reinstate the petitioner into service with all consequential monetary and service benefits, has been transferred to this Court on the abolition of Tribunal and renumbered as W.P.No.8329 of 2007.

ORDER

1. The petitioner joined the Government service as Junior Assistant on 21.9.1987. It is the pleaded case of the petitioner that on 11.9.2000 the petitioner fell ill and went to the hospital for treatment. The petitioner applied for one week Medical Leave, but due to his continuing ill-health, he was not able to produce the Medical Certificate. The petitioner did not recover from the illness, therefore went to his native place for treatment, where he remained under treatment till 28.11.2001.
2. The petitioner has obtained a Medical and Fitness Certificate and produced it before the authorities concerned. The petitioner was not taken back in service as the Respondent had initiated disciplinary proceedings against the petitioner, on the charge of misconduct, being absent from duty.
3. It is the submission of the petitioner, that absence from duty is not misconduct, under the Tamil Nadu Government Service Conduct Rules, but only under Fundamental Rules. The authorities therefore could have taken action against petitioner for absence from duty under Fundamental Rules in case of absence beyond one year and not otherwise.
4. It is submitted that instead of moving under Fundamental Rules, the petitioner was issued charge memo under Rule 17(b) of Tamil Nadu Civil Service (Disciplinary & Appeal) Rules, which according to the petitioner, was in violation of Rule 18(3) of the Fundamental Rules.
5. It is not disputed, that enquiry was held to prove the misconduct of the petitioner, in which, the petitioner participated, but did not lead any evidence to prove his illness.
6. The petitioner only requested for time to file medical certificate, later. It is also not disputed that the petitioner did not submit any medical certificate to justify his absence from duty.
7. In view of the enquiry report, holding the petitioner guilty of misconduct, punishment of compulsory retirement from service has been imposed on the petitioner.

8. The impugned order of punishment is challenged by the petitioner on the ground that the action for absence from duty could be taken only under Rule 18(3) of Fundamental Rules and not under Rule 17(b) of Tamil Nadu Civil Service (Disciplinary & Appeal) Rules.

9. The learned counsel for the petitioner vehemently contended, that mere absence from duty could not be a ground to punish the petitioner and furthermore, in any case, the punishment awarded is disproportionate to the proved misconduct.

10. It is also the contention of the learned counsel for the petitioner that the petitioner was suffering from mental illness, therefore, his absence from duty is not intentional, to be termed as misconduct.

11. On consideration, I find no force in this writ. It is not disputed that the petitioner was absent from duty for more than a year. It is also not disputed that the petitioner was given full opportunity to defend himself in the enquiry proceedings. In spite of opportunity, the petitioner failed to produce any medical certificate to justify his absence on medical ground.

12. This Court cannot be sit in appeal to re-appreciate the evidence, or take into consideration any new fact which was not placed before the enquiry officer and the competent authority at the time of imposing punishment.

13. The petitioner have been leniently dealt with, even though the absence from duty is a serious misconduct still petitioner was imposed punishment of compulsory retirement keeping in view the length of service.

14. The contention of the learned counsel for the petitioner that action could be taken only under Rule 18(3) of Fundamental Rules and not under Service Rules, is totally misconceived. Once the absence from duty is misconduct, the employer could proceed under Rule 17(b) of the Tamil Nadu Civil Service (Disciplinary & Appeal) Rules to prove the misconduct. Even Fundamental Rule 18(3) stipulates holding of departmental enquiry under the service rules.

No merit. 'Dismissed'.

No costs.

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