

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2015

CORAM

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

W.P. No.15571 of 2014

and

M.P.No.1 of 2015

R.Murali

... Petitioner

Vs

1. Director General of Police,
Chennai - 4.
 2. Superintendent of Police,
District Police Office,
Thiruvarur.
 3. Deputy Superintendent of Police,
Thiruvarur Sub-Division (In-charge Thiruthuraipoondi),
Thiruvarur District.
- ... Respondents

Prayer:-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records relating to the impugned order of punishment passed by the second respondent herein in his proceedings Na.Ka.No.K2/Tha.Pa.13/2010 u/r 3(a), dated 23.04.2010, imposing the punishment of Stoppage of increment for one year without cumulative effect and quash the same or issue any other appropriate Writ Order, Direction in the nature of a Writ or another appropriate relief.

For Petitioner : Mrs.Daisy for
Mr.G.Bala and Daisy

For Respondents : Mr.R.Vijayakumar
AGP for RR1 to 3

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O R D E R

Heard the learned counsels appearing on either side and perused the materials placed on record. By consent of the learned counsels on either side, the writ petition is taken up for final disposal.

2. The petitioner, who is working as Sub-Inspector of Police, has filed this Writ Petition challenging an order dated 23.04.2010, passed by the second respondent imposing a punishment of stoppage of increment for one year without cumulative effect. The petitioner was issued a show cause notice, dated 04.03.2010, under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1958, (Rules), alleging that he has gone on leave on 12.12.2009, without prior approval from the higher officer and fully knowing well that there is an agitation planned by the Communist party. The petitioner submitted his explanation stating that he had been admitted as inpatient on 12.12.2009 and 13.12.2009 and therefore, he availed the medical leave from 14.12.2009 to 28.12.2009. After receipt of the explanation, the third respondent has drawn up a minute holding that the allegation against the petitioner stands proved. This minute drawn up by the third respondent has been accepted by the second respondent and the impugned order of punishment has been passed.

3. The petitioner has challenged the impugned proceedings on the ground that he was not afforded any opportunity and the findings rendered by the third respondent based on which the impugned order was passed is an exparte findings and the petitioner was not even communicated with the copy of the minute as recorded by the third respondent. Further, it is submitted that the petitioner has availed medical leave and there is no plausible reason to disbelieve the said record, if it is so opportunity ought to have been given to the petitioner.

4. On a perusal of the impugned order, it is seen that the petitioner was not furnished a copy of the minutes recorded by the third respondent rendering a finding that the explanation given by the petitioner is not satisfactory. Though the relevant Rule namely Rule 3(a) of the Rules does not contemplate for an enquiry being conducted and the procedure being a summary procedure, yet when there is some adverse report drawn against the interest of a delinquent, he should be afforded an opportunity to putforth his plea as against such report. When the third respondent submitted a report to the second respondent/disciplinary authority holding that the petitioner

is the guilty of the charge, the second respondent ought to have afforded an opportunity to the petitioner to defend himself. If there are good grounds to disbelieve the stand taken by the petitioner that the medical leave obtained by him is not genuine, then for recording such finding, there should be some record and if it is in the nature of any oral or documentary evidence, then the petitioner should have been afforded an opportunity to putforth his plea. Further, from the minute drawn by the third respondent, it is seen that the four documents have been relied on in support of the charge. The counter affidavit does not state that the petitioner was furnished the copies of the same nor afforded an opportunity to peruse the same. In such circumstances, the impugned order is held to be illegal for serious violation of principles of natural justice.

Accordingly, the Writ Petition is allowed and the impugned order is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

pbn

To

1. Director General of Police,
Chennai - 4.
2. Superintendent of Police,
District Police Office,
Thiruvavarur.
3. Deputy Superintendent of Police,
Thiruvavarur Sub-Division (In-charge Thiruthuraipoondi),
Thiruvavarur District.

+1cc to M/s.G.Bala & Daisy, Advocate, S.R.No.36990

W.P. No.15571 of 2014
and M.P.No.1 of 2015

RSI (CO)
CA(10/08/2015)