

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2016

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.22024 of 2016
and
W.M.P.No.18817 of 2016

M. Thiruselvam

... Petitioner

Versus

1. The Director General,
Railway Protection Force,
Rail Bhavan, New Delhi.
2. The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Moore Market Complex, 6th Floor,
Chennai - 3.
3. The Deputy Inspector General,
Additional Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Moore Market Complex, 6th Floor,
Chennai - 3.
4. The Divisional Security Commissioner,
Railway Protection Force,
Trichy - 4.
5. The Chief Security Commissioner,
Railway Protection Force,
ICF, Perambur,
Chennai - 38

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, to call for the records of the respondents in connection with the impugned orders issued by the third respondent dated 17.06.2016 and the order of the fifth respondent in No.P/X/D&AR/R.153/08/2016 dated 21.06.2016 and to quash the same.

For Petitioner : Mr.M.Muthappan

For Respondents: Mr.Ramkumar

ORDER

By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

2. The writ petition has been filed seeking for the issuance of a writ of certiorari, to call for the records of the respondents in connection with the impugned orders issued by the third respondent dated 17.06.2016 and the order of the fifth respondent in No.P/X/D&AR/R.153/08/2016 dated 21.06.2016 and to quash the same.

3. The petitioner entered into service as Sub-Inspector of Police (RPF) in the respondents-Railways on 01.06.1987. After undergoing the requisite training, the service of the petitioner was regularized with effect from 01.06.1988. Thereafter, the petitioner was promoted to the post of Inspector of Police, Railway Protection Force (in short RPF), in the month of September 1996 and he served as Inspector of Police, RPF in the Chennai Central Railway Station till February 2012. According to the petitioner, he was to be promoted as Assistant Security Commissioner along with four others. However, the Chief Security commissioner/RPF Southern Railway, has issued promotion order only in respect of four persons who are similarly placed like him but did not promote him without assigning any reason. While so, when he was working as Inspector of Police at Trichy and anticipating for promotion, he was issued with a charge memo dated 11.05.2012 alleging that he has not effectively discharged his supervisory duties and did not take action against one A.Gurusamy, Head Constable, who demanded bribe from a freight forwarding agent at Chennai Central Station. The petitioner submitted his detailed explanation dated 16.05.2012 denying the charges interalia stating that the investigating agency has recorded his statement with regard to the trap laid against the Head Constable and he has truly disclosed everything within his knowledge. However, notwithstanding his explanation, by an order dated 19.06.2012, the petitioner was awarded with punishment of withholding of his annual increment for a period of six months. Thereafter, by another proceedings dated 22.06.2012, the promotion given to the petitioner in the rank of Assistant Security commissioner was cancelled. Thereafter, the 3rd respondent, by proceedings dated 02.08.2012, cancelled the minor penalty imposed on the petitioner and directed the 4th respondent to impose major penalty against him for the proved misconduct.

4. Aggrieved by the order dated 02.08.2012, the petitioner filed WP No. 27850 of 2012 and this Court granted interim stay. According to the petitioner, inspite of the interim order granted by this Court, the fourth respondent passed an order dated 29.10.2012 for imposition of major penalties by framing four charges purportedly as per the recommendations made by the Central Bureau of Investigation (in short CBI) through the second respondent.

5. In the meantime, the petitioner filed another WP No. 29721 of 2012 challenging the order dated 22.06.2012 and the consequential orders dated 17.07.2012 of the respondents and sought for promotion to the post of Assistant Security Commissioner from the date on which his junior was given such promotion on 04.05.2012. By order dated 22.04.2016, this Court quashed the orders impugned therein and directed the respondents to give promotion to the petitioner on par with his junior within four weeks.

6. As regards WP No. 27850 of 2012 filed by the petitioner challenging the charge memo, this Court directed the petitioner to submit his reply to the show cause notice dated 02.08.2012 within four weeks and further directed to conclude the disciplinary proceedings within a period of three months thereafter.

7. As per the direction of this Court, the petitioner submitted a detailed reply on 06.06.2016 for the show cause notice dated 02.08.2012 and requested to cancel the proposal to impose major punishment. On receipt of the explanation, on 17.06.2016, the third respondent issued another show cause notice rejecting the request of the petitioner to drop the charges and proposed to take action against him to impose major punishment.

8. While the facts are so as stated above, the impugned charge memo dated 21.06.2016 was issued to the petitioner containing 8 charges. By the same order, the Assistant Security Commissioner, Integral Coach Factory was appointed as an enquiry officer to conduct enquiry by fixing a date for enquiry as 23.06.2016. Challenging the same, the petitioner is before this Court.

9. The only grievance of the petitioner is that pursuant to the earlier order of this Court in W.P.Nos.29721 and 27850 of 2012 dated 22.04.2016, he submitted a reply dated 06.06.2016 to the show cause notice dated 02.08.2012 and requested the respondents to cancel the proposal to proceed against him for having allegedly committed a grave offence. After receiving the reply of the petitioner, the 3rd respondent herein has issued

another show cause notice dated 17.06.2016 rejecting the request of the petitioner and proposed to take action against him for imposing major punishment. Subsequently, the 5th respondent passed the impugned order dated 21.06.2016 framing eight charges against him and appointed an Enquiry Officer by fixing the date of enquiry on 23.06.2016, without giving an opportunity to give a reply to the said charges. Therefore, according to the petitioner, the show cause notice dated 17.06.2016 and the impugned order dated 21.06.2016 are illegal and are in violation of principles of natural justice.

10. The learned counsel for the petitioner submitted that the charge memo was issued relating to the occurrence took place in the year 2012 which consisted four charges. Ultimately, the petitioner was imposed with minor punishment of withholding of annual increment for six months. While so, in the present charge memo relating to imposition of major punishment, the respondent has framed eight charges. Once the respondent proposed to impose major punishment against the petitioner, the respondent ought to have given an opportunity to him to submit his explanation. In the absence of the same, the impugned order is vitiated.

11. The learned counsel appearing for the respondents would contend that before passing the impugned order, the respondent has taken note of the order passed by this Court. In the order passed by this Court, this Court has recorded an undertaking given by the petitioner that he will co-operate for the conduct of enquiry and he will participate in the enquiry. While so, the present writ petition filed by the petitioner is legally not sustainable. The impugned order does not call for any interference by this Court.

12. I heard the counsel for both sides. A perusal of the impugned order would indicate that the 3rd respondent has issued a show cause notice dated 17.06.2016 containing eight charges and also appointed an enquiry officer to conduct an enquiry. This would indicate that even before the petitioner could submit his explanation to the charges, an enquiry officer was appointed to conduct an enquiry which is in violation of principles of natural justice. Therefore, I am of the view that the impugned order is vitiated in so far as it relates to appointment of Enquiry Officer alone. In such view of the matter, this Court is of the view that the impugned order shall be treated as a show cause notice and the petitioner shall submit his explanation to the charge memo dated 21.06.2016 within a period of fifteen days from the date of receipt of a copy of this order. After receiving the explanation from the petitioner, the respondents consider the explanation and pass appropriate orders thereon. However, it is made clear that if after receipt of the explanation from the petitioner, the

disciplinary authority is of the view that an enquiry has to be conducted, the respondent shall do so and complete it within a period of two months from the date of receipt of the reply given by the petitioner. It is also further made clear that the petitioner is directed to co-operate with the enquiry as per the undertaking given by him at the time of disposal of the earlier writ petition before this Court,

13. The learned counsel for the petitioner submitted that this Court, by order dated 22.04.2016, directed the respondents to give promotion to the petitioner on par with his juniors. It is needless to mention that the petitioner is entitled for promotion and such promotion is subject to the further orders to be passed in the departmental proceedings initiated against him.

14. In the result, the impugned order in so far as it relates to appointment of enquiry officer alone is set aside. The writ petition is partly allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

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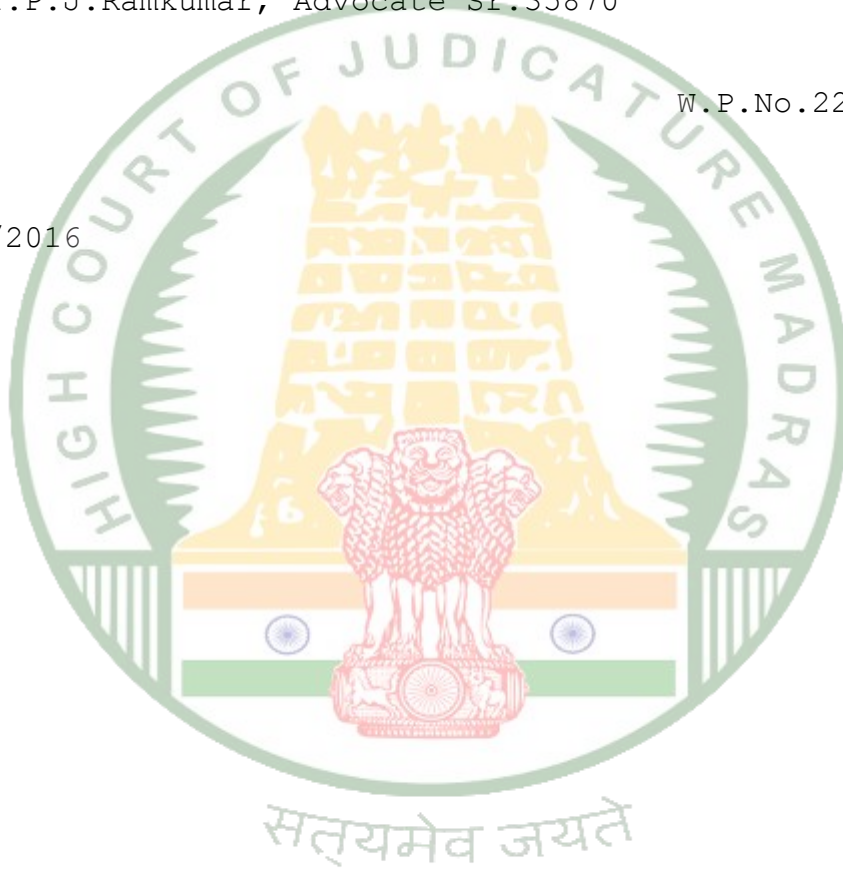
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5. The Chief Security Commissioner,
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ICF, Perambur, Chennai - 38.

+1cc to Mr.Muthappan, Advocate Sr.36106
+1cc to Mr.P.J.Ramkumar, Advocate Sr.35870

W.P.No.22024 of 2016

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srg 29/06/2016



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