

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-02-2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.22505 of 2014

B.Balasubramanian

... Petitioner

Vs

1.The Principal Secretary to Government
Home (Pol.1A) Department
Secretariat, Chennai- 600 009.

2.The Deputy Secretary to Government
Home (Pol.1A) Department
Secretariat, Chennai 600 009.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified mandamus to call for the records pertaining to the letter of the second respondent herein passed in Letter No.66714A/Pol.1A/2012-4 dated 22-08-2013 and quash the same and consequently, direct the first respondent herein to drop all further action in PR.No.342/PRIV(3)/10 dated 31-12-2010 against the petitioner with all consequential benefits and pass orders.

For Petitioner : Mr. Ravi Shanmugam

For Respondents : Mr. K. Dhananjayan,
Special Government Pleader

ORDER

The petitioner joined the services of Tamil Nadu Police as a direct recruit Sub-Inspector of Police on 28-09-1987 and promoted as Inspector of Police on 19-01-2000 and he is due for consideration for promotion to the post of Deputy Superintendent of Police for the year 2010 and claims to have received very many rewards for his efficient work.

2. The petitioner has further stated that he was issued with a charge memo under Rule 3(b) of Tamil Nadu Police Subordinate Service (D&A) Rules, 1955 by the Commissioner of Police, Chennai City with an allegation that he received a sum

of Rs.30,000/- (Rupees Thirty thousand only) per month as mamool (bribe) from one Prasad @ Kannada Prasad for the period from July 2006 to October 2006, while he was serving in Anti-Vice Squad, Chennai City for allowing him to indulge in flesh trade in Chennai City. Similarly, Tvl.D. Wesely Ebenezer, formerly Deputy Superintendent of Police, Anti Trafficking Cell, CBCID, Chennai, S. Arumugasamy, formerly Assistant Commissioner of Police, R. Mathiyarasu, formerly Inspector of Police and Ranganathan, formerly Head Constable 10150, Anti-Vice Squad, Chennai City Police were also dealt with on the said allegations.

3. According to the petitioner, during the oral enquiry in respect of the charge framed against him, the most crucial witness Prasad @ Kannada Prasad has not been examined and as a consequence, he was denied opportunity to cross-examine the crucial witness Prasad @ Kannada Prasad and rest of the witnesses were official witnesses.

4. A finding is also given to the effect in page Nos.10, 11 and 13 by the Enquiry Officer that the petitioner has received bribe or mamool from Prasad alias Kannada Prasad conniving him to carry on his illegal activities and also that he is not able to hold this part of the charge that there was payment and receipt of mamool, as proved. That apart, against three other Officers also, the said finding was given.

5. The petitioner was issued with the impugned notice by the second respondent on 22-08-2013 calling upon to offer his further representation within a period of 15 days. The second respondent being the Deputy Secretary to Government to Home (Pol.1A) Department, has no jurisdiction to issue such notice and only the Principal Secretary to Government has the jurisdiction to call for further representation and therefore, prays for quashment of the impugned notice dated 22-08-2013.

6. Mr. Ravi Shanmugam, learned counsel for the petitioner has invited the attention of this Court to Rule 4-A of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 ('Rules' in short). In terms of the said Rule where more than one member of the service are involved, the authority competent to institute disciplinary proceedings and impose any of the penalties specified in Rule 2 shall be the authority who holds the highest post and the disciplinary proceedings against all of them shall be taken together and as per the proviso to the said Rule, where a member of the Service and a member of other Service are jointly involved or whose cases are inter-connected, the Government shall be the authority competent to initiate disciplinary proceedings against the member of the Service and impose any of the penalties specified in Rule 2 and

admittedly, proceedings were initiated against the above said Officials on the similar set of allegations and as such, the Deputy Secretary to the Government of the Home (Pol.1A) Department, is not at all competent to issue notice calling upon the petitioner to offer his explanation on the enquiry report.

6.1 The learned counsel for the petitioner has invited attention of this Court to inner Page Nos.11 and 13 of the enquiry report to show that the Enquiry Officer has disinclined to hold the part of the charge that the delinquent officer has received monthly mamool from Prasad alias Kannada Prasad for his patronage and connivance.

6.2 He has also submitted that having held that the given charge as not proved, the Enquiry Officer in a discriminatory manner exonerated Tr. Wesley Ebenezer, Deputy Superintendent of Police and S. Arumugasamy, Assistant Commissioner of Police vide G.O.Ms.No.83 Home (Pol.1A) Department, dated 18-01-2012 and G.O.Ms.No.605 Home (Pol.1A) Department, dated 21-08-2013, respectively and has ultimately given a finding that the charge is proved against the petitioner, which is improper when the charge was identical against all the officials, the petitioner should also have been exonerated and therefore, prays for application of the principle of parity towards the petitioner and prays for quashment of all further proceedings, pursuant to the impugned notice.

7. Per contra, Mr. Dhananjayan, learned Special Government Pleader has invited the attention of this Court to the counter affidavit filed by the respondents and would contend that the said Prasad alias Kannada Prasad has involved in very many anti-social activities and despite his nefarious activities, the Chennai City Police did not take any action against him, but had allowed him to run his business and based on the materials collected, charge was framed against the petitioner and since the petitioner did not offer any plausible explanation and that the Department had also proved the charge to the hilt, the impugned notice was issued to the petitioner calling upon him to offer his further explanation and also contends that the writ petition is premature and even after the further explanation of the petitioner to the enquiry report, the petitioner may be exonerated and therefore, prays for dismissal of the writ petition.

8. This Court paid its anxious consideration and best attention to the rival submissions made on behalf of both the parties and have also perused the materials placed before it.

8.1 It is relevant to extract Rule 4-A of the Rules:

"In any case, where more than one member of the service are involved, the authority competent to

institute disciplinary proceedings and impose any of the penalties specified in Rule 2 shall be the authority who holds the highest post and the disciplinary proceedings against all of them shall be taken together.

Provided that in the case where a member of the Service and a member of other Service are jointly involved or whose cases are inter-connected, the Government shall be the authority competent to initiate disciplinary proceedings against the member of the Service and impose any of the penalties specified in Rule 2 and in such case the administrative department of Secretariat in respect of the member who holds the highest post will initiate such disciplinary proceedings and issue final orders after complying with the entire procedure laid down in these rules".

In the light of the above said Rule, where more than one member of the Service are involved, the authority competent to institute disciplinary proceedings and impose any of the penalties specified in Rule 2 shall be the authority in respect of the member who holds the highest post and the disciplinary proceedings against all of them shall be taken together. Therefore, by virtue of the above said Rule, the authority competent to initiate proceedings is the Government. But in the case on hand, it was initiated by the Commissioner of Police, Egmore, Chennai and to that apart, the Principal Secretary to Government, Home (Pol.1-A) Department, Chennai is alone to issue notice calling upon him to give his explanation to the enquiry report. However, it was the Deputy Secretary to Government, (Home-Pol.1-A) Department, Chennai, who has issued the impugned notice.

8.2 It is also to be pointed out, at this juncture, that in the enquiry report, the Enquiry Officer has reached the conclusion, in inner page Nos.11 and 13, that he is unable to hold the part of the charge that there was payment and receipt of mamool on the part of the petitioner and further, reached the conclusion that the delinquent official patronized and connived with the trafficker Kannada Prasad. In the considered opinion of this Court, the said findings are per se unsustainable. Admittedly, apart from the petitioner, Tr. Wesley Ebenezer, Deputy Superintendent of Police and S. Arumugasamy, Assistant Commissioner of Police, who are superior in rank were also dealt with the similar kind of allegation and further proceedings have been dropped vide G.O.Ms.No.83 Home (Pol.1A) Department, dated 18-01-2012 and G.O.Ms.No.605 Home (Pol.1A) Department, dated 21-08-2013, respectively.

9. In the light of the above circumstances and the reasons assigned, this Court is of the view that the impugned notice issued by the Deputy Secretary to the Government Home -Pol.1-A, Department is perse unsustainable.

9.1 Though the normal course is to remand the matter once again for denovo fresh adjudication, taking note of the charge memo that has been issued which is not in consonance with Rule 4A of the Rules and also the Enquiry Officer has held in two places that the payment and receipt of mamool has not been proved and moreover, the same set of allegations and further proceedings against two other Senior Officials having been dropped vide G.O.Ms.No.83 Home (Pol.1A) Department, dated 18-01-2012 and G.O.Ms.No.605 Home (Pol.1A) Department, dated 21-08-2013, respectively, this Court find that there is no necessity to remand the matter once again. The petitioner is also about 57 years and on account of the pendency of disciplinary proceedings, his name was not considered for the post of Deputy Superintendent of Police or Assistant Commissioner of Police.

10. In the result, the writ petition is allowed and the impugned proceedings dated 22-08-2013 is quashed. The petitioner's claim for consideration to the promotional post of Deputy Superintendent of Police or Assistant Commissioner of Police shall be considered as expeditiously as possible, not later than twelve weeks from the date of receipt of a copy of this order, if the record/confidential report of the petitioner, is otherwise in order and the decision taken shall be communicated to the petitioner.

11. The connected miscellaneous petition, M.P.No.1 of 2014 is closed. However, there will be no order as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

glp

To

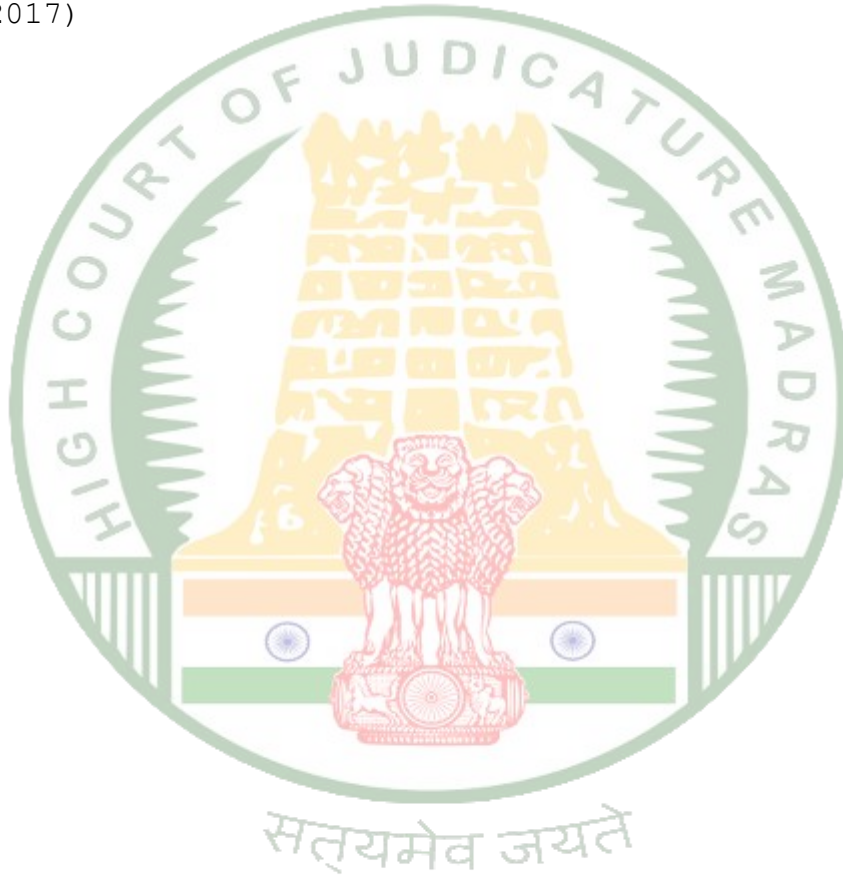
1. The Principal Secretary to Government
Home (Pol.1A) Department
Secretariat, Chennai- 600 009.

2. The Deputy Secretary to Government
Home (Pol.1A) Department
Secretariat, Chennai 600 009.

+1cc to Mr.Ravi Shanmugam, Advocate, S.R.No.9150
+1cc to the Government Pleader, S.R.No.9694

W.P.No.22505 of 2014

NM(CO)
CA(28/02/2017)



WEB COPY