

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15488 of 2015

S.Sekar

.. Petitioner

-vs-

1. The Assistant Commissioner of Police
Tiruppur North, Tiruppur
2. The Deputy Commissioner of Police
Law & Order
Tiruppur City, Tiruppur
3. The Commissioner of Police
Tiruppur City, Tiruppur .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records of the second respondent in connection with the impugned order passed in C.No.F2/PR.144/2014 dated 20.1.2015 and confirmed by the third respondent in C.No.F3/Appeal.07/2015 dated 13.3.2015 and quash the same.

For Petitioner :: Mr.D.Selvam for
Ms.Lesi Saravanan

For Respondents :: Mr.K.S.Sivakumar
Government Advocate

ORDER

The petitioner was a directly recruited Sub Inspector of Police and entered the service on 1.3.96. After a long period of service, giving his satisfactory performance, he was promoted to the post of Inspector of Police in the month of June, 2007. It is also stated that he was rewarded with 100 awards. With this background, while serving as Inspector of Police at Tiruppur North Police Station (Crime), since the back pain suffered by him got aggravated during 2013-14, as he had to travel in a motorcycle to various places, he was taking treatment at Erode, Coimbatore and Chennai. In view of his continuous and strenuous

duty, he developed acute backpain, therefore, he requested for a jeep for the performance of his duties. In this connection, he has also addressed a letter to the third respondent on 21.4.2014. In the meanwhile, he also detected various crimes and recovered properties worth more than Rs.15 lakhs and to continue the said investigations, he was compelled to travel long distance. In view of the aforementioned arduous job, he was unable to continue his treatment. Therefore, the petitioner was advised by his doctor to take rest at least for a month on 29.4.2014. Pursuant to the same, he has given a letter on 29.4.2014 to the Commissioner of Police, Tiruppur City through the Assistant Commissioner of Police, Tiruppur North requesting him to grant one month medical leave. The learned counsel for the petitioner submitted that the said letter dated 29.4.2014 was also acknowledged on the very same day. Therefore the respondents were well aware of the medical problem faced by the petitioner. Even after submitting the said application seeking medical leave on 29.4.2014, he was admitted in the hospital for further treatment on the same day. The discharge summary issued by Revathi Medical Center Tiruppur (I) Pvt.Limited, Tiruppur clearly shows that the petitioner was admitted for treatment of his low backache right sciatica, L4-L5 B/L facetar arthrosis and the discharge summary also clearly indicates that he was taking treatment as an in-patient and only on 1.5.2014 he was discharged at 1.30 P.M. The further certificate issued by the very same Revathi Medical Center, Tiruppur also confirms the treatment taken by the petitioner for the aforementioned complaints.

2. Continuing his arguments, the learned counsel submitted that when the petitioner had taken treatment for his back pain, he was issued with a charge memo on 12.11.2014 under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955 as though he remained unauthorisedly absent without prior permission. On receipt of the said charge memo, the petitioner submitted his detailed explanation on 14.12.2014 giving reasons and explaining as to how he suffered back pain and the treatment for L4-L5 B/L facetar arthrosis. Along with the explanation, the petitioner also submitted all other medical documents viz., discharge summary, prescriptions given by the doctor evidencing the course of treatment for the aforementioned ailment. In spite of the above explanation supported with the documents showing that the petitioner was taking treatment from 29.4.2014 till 1.5.2014 and also the acknowledgment issued by the office of the first respondent showing that the petitioner had gone on medical leave only after submitting his explanation on 29.4.2014, the respondents, without holding any further enquiry, rejecting the explanation offered by the petitioner and dismissing all the acceptable and valid medical documents issued by the hospital including the medical certificate issued by the Chief Civil Surgeon, Government Headquarters Hospital, Tiruppur

for availing leave for a period of 14 days from 1.5.2014 to 14.5.2014, wrongly imposed the punishment of postponement of increment for a period of three years without cumulative effect vide proceedings dated 20.1.2015 in C.No.F2/PR 144/2014 under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955. Aggrieved by the same, the petitioner preferred an appeal before the Commissioner of Police, Tiruppur City in Appeal No.7 of 2015 and the appellate authority, without assigning any reason whatsoever, modified the punishment into postponement of increment for a period of one year without cumulative effect. A mere reading of the impugned order passed by the Commissioner of Police, Tiruppur City dated 13.3.2015 does not show that the appellate authority has considered the relevant documents or the explanation submitted by the petitioner to drop the charge levelled against the petitioner under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules. Hence, when the petitioner's explanation supported with all the medical documents have not been answered either by the disciplinary authority or by the appellate authority, the impugned orders are liable to be set aside, as they are not supported with reasons whatsoever, he pleaded.

3. A detailed counter affidavit has been filed by the respondents. The learned Government Advocate for the respondents, reiterating the stand taken in the counter affidavit, submitted that when the petitioner was nominated for important Parliamentary election bandobust duty, he has entered on medical leave without getting permission from the superior officers only to evade from such a responsible duty. Therefore he was issued with a charge memo under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955. When the petitioner's explanation was not satisfactory, he was imposed the punishment of postponement of increment for a period of three years without cumulative effect by the second respondent. As against that, the petitioner preferred an appeal. The third respondent, who is the appellate authority, having considered the appeal, taking a lenient view, modified the punishment to postponement of increment for a period of one year without cumulative effect. Therefore, when a charge memo was issued under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, it is a well settled legal position that no enquiry is required to be held, as it has to be summarily dealt with. Accordingly, as per the Rules in vogue, the petitioner, having been issued with the charge memo under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, was rightly found guilty and thereupon he was imposed with the punishment by the disciplinary authority, which was also modified subsequently on his appeal, as aforementioned, by the appellate authority. Hence the

impugned orders cannot be interfered with, he pleaded.

4. But this Court hardly finds any merit in the submissions made by the learned Government Advocate for the respondents. Equally the counter affidavit filed by the respondents also does not throw any light as to how they have rejected the leave application submitted by the petitioner on 29.4.2014. When the petitioner submitted his application seeking one month medical leave on 29.4.2014, the said application was also forwarded by the office of the first respondent as per the endorsement made therein. Therefore it is clear that the petitioner has not proceeded on medical leave without submitting his application. Secondly, on the very same day, the petitioner got himself admitted in Revathi Medical Center Tirupur (I) Pvt.Limited. The discharge summary issued by the said hospital also shows that he was admitted as an in-patient bearing No.A26690 on 29.4.2014 at about 4.20 P.M. A perusal of the final diagnosis recorded in the discharge summary shows the problems encountered by the petitioner, namely, L3-L4, L4-L5 disc prolapse with degeneration, canal stenosis, facetar arthrosis with acute exacerbation of right sciatica and after systemic examination and treatment, he was discharged from the hospital on 1.5.2014 at 1.30 P.M. Again the medical certificate issued by Revathi Medical Center also shows that he was taking continuous treatment from 29.4.2014 to 1.5.2014 for lumbar disc prolapse with lumbar canal stenosis, exacerbation of right sciatica and he was also further advised to take bed rest till 14.5.2014. One another medical certificate issued by the Chief Civil Surgeon, Government Headquarters Hospital, Tiruppur on 1.5.2014 also shows that the petitioner was suffering from sciatica with back pain and on the basis of investigation, he has opined that the petitioner should avail leave for 14 days from 1.5.2014 to 14.5.2014 for restoration of his health. Therefore, when the documents issued by Revathi Medical Center, Tiruppur and the Chief Civil Surgeon, Government Headquarters Hospital, Tiruppur clearly show that the petitioner was suffering from the aforementioned ailment, for which he has submitted his leave application, the disciplinary authority, having prosecuted the petitioner under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, without considering the medical documents, mechanically imposed the punishment of postponement of increment for a period of three years without cumulative effect. Subsequently, when the appeal was filed before the Commissioner of Police, Tiruppur City, by a cryptic order, without any reason whatsoever, has modified the punishment. It is a well settled legal position that the appellate authority, while entertaining the appeal, without recording any reason, cannot modify the punishment imposed by the lower authority. However, taking a lenient view on the petitioner, the appellate authority has modified the punishment

into one of postponement of increment for a period of one year without cumulative effect.

5. In view of the above, this Court is of the considered opinion that when the petitioner was prosecuted under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955, the disciplinary authority should have assigned sufficient reasons for rejecting his explanation, more particularly, when his explanation was supported with sufficient medical documents. Even the appellate authority has committed the same mistake.

6. In that view of the matter, this Court is unable to support the impugned orders. Accordingly, for the aforementioned reasons, the impugned orders are set aside and the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Assistant Commissioner of Police
Tiruppur North, Tiruppur
2. The Deputy Commissioner of Police
Law & Order
Tiruppur City, Tiruppur
3. The Commissioner of Police
Tiruppur City, Tiruppur

+1cc to Ms.Lesi Saravanan, Advocate, S.R.No.53945
+1cc to the Government Pleader, S.R.No.54887

W.P.No.15488 of 2015

MN(CO)
CS/17/08/17