

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.04.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

WP.No.4836/2013

K.Marimuthu

.. Petitioner

Versus

1. The Deputy Superintendent of Police,
Tirunelveli District
 2. The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.
 3. The Director General of Police,
Tamil Nadu, Chennai - 4
 4. The Secretary to Government,
Home (Police IV) Department,
Fort St. George, Chennai -9
- .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the respondents 1-4 in connection with the impugned order passed in PR.No.259/2008 dated 01.03.2009, C.No.C4/AP 136/2009 dated 27.10.2009, Rc.No.204522/AP2(1)/09 dated 08.01.10 and G.O. (2D) No.305 Home (Pol.IV) Department dated 26.08.2011 and quash the same.

For Petitioner : Mr.L.Chandrakumar

For RR 1 to 4 : Mr.K.Dhananjayan, Spl.GP

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ORDER

The Petitioner challenging the order of punishment of Censure passed by the 2nd respondent, as confirmed by the 3rd and 4th respondents has filed this writ petition.

2 The facts and circumstances leading to the filing of this writ petition, briefly narrated, are as follows :-

[a] The petitioner has entered in the service of Tamil Police Subordinate Service as directly recruited Sub-Inspector of Police and was appointed on 03.08.1987 and he got his promotion as Inspector of Police on 14.11.1997. According to the petitioner, he has received 86 rewards including 8 meritorious service entries and he has not come to adverse notice so far.

[b] The Petitioner was posted to serve as Circle Inspector in Nanguneri Police Station vide order of the 3rd respondent and he worked in that capacity in the said Police Station between 13.10.2007 and 30.04.2008. It is a specific case of the petitioner that after he took charge as Circle Inspector of Nanguneri Police Station, he made a request to his predecessor to hand over the case diary in respect of Cr.No.278/2007 under sections 465, 468, 471 r/w 120 IPC for the purpose of continuing further investigation of the case and very many requests over phone as well as in person were made to hand over the case diary. But, in spite of the said effort, he was not handed over with the Case Diary.

[c] In the interregnum, the petitioner was transferred to another police station from Nanguneri Police station on 30.04.2008 and handed over the charges to his successor, viz., Thiru Nalla Kannu. However, to the shock and surprise of the petitioner, nearly after 6 months from the date of his transfer on 30.04.2008, he was visited with disciplinary proceedings and a charge memo u/r 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rule, 1955, for which the petitioner submitted his response stating among other things that when he took over the charge the case diary in Crime No.278 of 2007 contained only the FIR and no initial investigation has been done by his predecessor, viz., Mr.Muthuraj, and despite very many requests made, he has not handed over the said record. Admittedly, he was transferred from said police station on 30.04.2008 and was succeeded by Mr.Nalla Kannu. Nearly after one month the relevant records have been handed over to Mr.Nalla Kannu by Mr.Muthuraj and as such he cannot be held responsible for the alleged lapses.

[d] The Superintendent of Police, Thirunelveli District vide impugned order dated 01.03.2009 has imposed the punishment of Censure and along with the said punishment he had enclosed a copy of the enquiry report submitted by the 1st respondent/Enquiry Officer.

[e] The petitioner aggrieved by the order of punishment of censure, filed a statutory appeal before the Disciplinary Authority, viz., the Superintendent of Police, Thirunelveli District and it was dismissed on 27.10.2009 holding that the punishment awarded to the petitioner is just and appropriate and he has not put forth any fresh and valuable points for consideration.

[f] The Petitioner filed a review before the 3rd respondent and vide order dated 08.01.2010, has cited some decisions and held that the charge against the petitioner has been amply proved and the punishment awarded is commensurate with the delinquency and he has not been put forth any fresh point for consideration. The Petitioner aggrieved by the order of rejection of the 3rd respondent, filed a petition before the 1st respondent seeking time for setting aside of order of punishment dated 26.08.2011 in G.O.(2D) No.305 and the 4th respondent has also rejected the said petition as he has failed to take follow up action on the case during his tenure and he has not put forth any fresh grounds for considering his petition.

[g] The Petitioner challenging the legality of the order passed by the Disciplinary Authority as confirmed by the reviewing authority and the Government, has filed this writ petition.

3 Mr.L.Chandrakumar, learned counsel appearing for the petitioner has invited the attention of this Court to the typed set of documents and would submit that the petitioner took charge as Circle Inspector of Police in Nanguneri Police Station on 13.10.2007 and while perusing the records, he found that a case was registered in Crime No.278 of 2007 and except FIR, the Case Diary did not contain any documents relating to the initial investigation done by his predecessor Thiru Muthuraj. The petitioner also contacted his predecessor over telephone as well as in person repeatedly requesting him to hand over the case diary relating to the said case. The said fact was also brought to the knowledge of the Superintendent of Police during the Crime Meeting conducted monthly. But, however the relevant records have not been furnished. The petitioner was transferred to another police station on 30.04.2008 and admittedly, he was succeeded by Mr.Nallu Kannu and nearly one month thereafter, Thiru Muthuraj has furnished the relevant records to Thiru Nalla Kannu and as such, the petitioner cannot be held with alleged lapses on his part with regard to the non-receipt of the relevant records from the said case.

4 It is further submitted by the learned counsel appearing for the petitioner that admittedly no Disciplinary

action has been taken against Thiru Muthuraj as he has belatedly handed over the records to the successor of the petitioner Mr.Nalla Kannu and that apart, though the Enquiry Officer has found that the charges against the petitioner has been proved, the petitioner has not furnished copy of the enquiry report and only upon receipt of the order of punishment passed by the Superintendent of Police, Thirunelveli District, he has been furnished with the copy of the enquiry report and the said procedure is totally against in violation of the principles of natural justice.

5 It is contended by the learned counsel appearing for the petitioner that the Appellate Authority is the final authority of facts and though the petitioner in his appeal memorandum has raised the various points, the Appellate Authority did not consider the same and the 3rd respondent, by a non speaking order has rejected the appeal petition and so also the Reviewing Authority as the Government. Lastly, it is submitted by the petitioner that but for the disciplinary action, the petitioner is having an excellent tract records and though he should have been given promotion in the year 2008, on account of punishment of censure he has been belatedly given promotion and prays for interference.

6 Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents has invited the attention of the Court to the Counter Affidavit filed by the 4th respondent and contended that admittedly, the Disciplinary Authority has imposed only a minor penalty and as such, the petitioner as a matter of right, is not entitled to get a copy of the Enquiry Officers report and that he took charge as Circle Inspector of Police, Nanguneri Police Station on 13.10.2007, and within one month he did not take any steps to get the relevant records relating to the said case and though it is contented by the petitioner that over telephone and in person he made a request to his predecessor Thiru.Muthuraja to furnish the documents, no records have been made available to the Enquiry Officer as well as before the Disciplinary and Appellate Authority and as such, it is not open to the petitioner to make a complaint with regard to the proceedings.

7 It is further submitted by the learned Special Government Pleader that the punishment imposed on the petitioner is fit and proper and this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, may not interfere with the findings recorded by the Disciplinary Authority as confirmed by the Appellate and Reviewing Authority as well as by the Government and prays for dismissal of the writ petition.

8 This Court paid its best attention to the rival submissions and also perused the materials placed before it.

9 Let this Court first consider the issue raised by the learned counsel appearing for the petitioner with regard to the non- furnishing of the Enquiry report before the imposing the order of punishment.

10 In response to the charge memo dated 26.11.2008 issued by the 1st respondent, the petitioner has submitted a detailed representation on 19.01.2009. The Enquiry Officer has concluded that the charges framed against the petitioner proved and forwarded the same to Disciplinary Authority, viz., the Superintendent of Police, Thirunelveli District and the said officer, taking into consideration the contents of the enquiry report, has imposed the punishment of censure upon the petitioner vide order dated 01.03.2009 and along with the said order, he has enclosed the copy the enquiry report.

11 In the considered opinion of the Court, the said procedure adopted by the Disciplinary Authority, is per se in violation of the principle of natural justice, for the reason that in the event of enquiry report being furnished to the petitioner, it is open to him to offer his explanation to the Disciplinary Authority before imposing the punishment.

12 It is also to be pointed out at this juncture, the order of punishment whether it is a major or minor, under the facts and circumstances, will visit the delinquent with grave consequences and therefore, in the instant case, a copy of enquiry report ought to have been furnished by the Enquiry officer before imposing order of punishment. Unfortunately, it has not been done so and therefore, the petitioner has been put to prejudice. Now, going to the merits of the case, the petitioner took charge as Inspector of Police of Nanguneri Police station on 13.10.2007 and it is the specific case that immediately after assuming charge, he was given the Case Diary in respect of Crime No.278 of 2007 registered by his predecessor namely Thiru.Muthuraja and except a copy of the FIR, no other documents was available and Thiru Muthuraja communicated about the preliminary/ initial investigation done over phone as well as personally. It has also been brought to the knowledge of the predecessor to furnish the relevant records. It is the stand of the petitioner that in the Monthly Crime Meeting held by the Superintendent of Police, Thirunelveli District, this facts also brought to their knowledge ; but of no avail.

13 The petitioner was transferred from Nanguneri Police station on 30.04.2008 and nearly one month thereafter, Thiru Muthuraj, his predecessor, handed over the relevant

records belatedly to Thiru Nallakannu, the successor of the petitioner. Admittedly, no disciplinary action has been taken against Thiru Muthuraja who has belatedly handed over the record to Thiru Nallakannu.

14 The Petitioner even in his appeal petition has raised the said grounds. Unfortunately, the Appellate Authority who is the final Authority on fact, did not appreciate the points raised in the appeal and merely agreed with the conclusion reached by the Disciplinary Authority.

15 The review petition as well as the further representation submitted to the 3rd and 4th respondents, also met with the same fate and the impugned orders would also exhibit the non-application of mind on the part of the concerned respondent/ Authorities as to the points urged and taken by the petitioner. Therefore, the impugned orders warrants interference.

16 This Court under normal circumstances, ought to have remanded the matter to the Disciplinary Authority for fresh adjudication ; but the facts and circumstances pointed out would clearly reveal that Thiru Muthuraja did not hand over the relevant records pertaining to the Case in Crime No.278 of 2007 and nearly one month after the transfer of petitioner from Nanguneri Police station on 30.04.2008, he has furnished the records to the petitioner's successor Nallakannu. Admittedly, no Disciplinary proceedings whatsoever, has been taken against Thiru Muthuraja and the counter also did not disclose as to the action taken against Thiru.Muthuraja so far. It is also not in dispute that the petitioner has received 86 rewards including 8 meritorious service entries but for the charge memo dated 26.11.2008, he has not come to the adverse notice of the concerned authorities.

17 In the result, the writ petition is allowed and the impugned order passed in PR.No.259/2008 dated 01.03.2009, C.No.C4/AP 136/2009 dated 27.10.2009, Rc.No.204522/AP2(1)/09 dated 08.01.10 and G.O.(2D) No.305 Home (Pol.IV) Department dated 26.08.2011 are set aside and as a consequence, the 3rd and 4th respondents are directed to confer consequential and other benefits to the petitioner, if his record is otherwise in order and such an exercise be completed within a period of twelve weeks from the date of receipt of copy of this order and communicate the decision taken, to the petitioner. No costs.

-s/d-

Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

AK/RKA

To

1. The Deputy Superintendent of Police,
Tirunelveli District
2. The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.
3. The Director General of Police,
Tamil Nadu, Chennai - 4
4. The Secretary to Government,
Home (Police IV) Department,
Fort St. George, Chennai -9

+1 cc to Mr.L.Chandrakumar Advocate sr 25137
+1 cc to Government Pleader sr 26435, 25887

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