

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No. 4189 of 2015

S.Kamalakannan,

... Petitioner

Vs.

1. Secretary to Government,
Home Department (Police IV A),
Fort St. George,
Chennai 600 009.
2. Director General of Police,
Law and Order,
Chennai 600 004.
3. Additional Director General of Police,
Law and Order,
Chennai 600 004.
4. Deputy Inspector General of Police,
Villupuram Range,
Villupuram.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned orders passed by the first respondent herein in G.O.(2D) No.547 Home (Police IV) Department dated 18.09.2008, the order of second respondent herein in his proceedings Rc.No.155094/AP I(2)/2006 dated 12.11.2006, the order of the third respondent herein in his proceedings R.C.No.140984/API(2)/05 dated 11.10.2005 and the order of the 4th respondent herein in R.O.No.157/2005 in C.No.B2/PR.07/2005 dated 13/04/2005 and quash the same.

For Petitioner : Mr.G.Bala
For M/s.G.Bala & Daisy

For Respondents : Mr.M.Perumal
Government Advocate

O R D E R

The present writ petition has been filed challenging the appellate orders dated 11.10.2005, 12.11.2006 and 18.09.2008 of punishment of postponement of increment for two years without cumulative effect.

2. The writ petitioner was now holding the post of Inspector of Police and on account of certain irregularities disciplinary proceedings were initiated against the writ petitioner. Domestic enquiry was conducted and accepting the findings in the domestic enquiry, the disciplinary authority imposed the punishment of postponement of increment for two years without cumulative effect, in proceedings dated 13th April 2005.

3. The learned counsel appearing for the writ petitioner contended that the amount of punishment was already deducted and the appeal filed by the petitioner was not considered in accordance with rules. The sole contention raised by the writ petitioner is that his appeal was not adjudicated on merits. A routine and mechanical order was passed rejecting his appeal and therefore, he was deprived of his opportunity to express and adjudicate his right of defence in the appeal proceedings.

4. On perusal of the order passed in the first appeal, this Court is able to find that there is less application of mind while dealing with the merits of the case and the factual aspect raised in the grounds of appeal by the writ petitioner was not adjudicated. In further appeal also, the same paragraphs are quoted and the appeal was rejected. Thus, this Court is of the view that there was no proper adjudication of the case of the petitioner on merits and in accordance with rules, in the appeals.

5. The learned counsel relied on a judgment in the case of K.Kandasamy Versus Deputy Inspector-General of Police and another reported in (2006) 4 MLJ 1382, Para 8 of the order is extracted hereunder:

"8. A similar question came up for consideration before this Court in Arokiadoss v. The Deputy Commissioner of Police, Law and Order (South), Madras-8 and another 1989 Writ L.R. 274. In the said case also, an identical order similar to the one involved in the present case was passed by the Appellate Authority. Therefore, after considering the scope of the powers conferred upon the Appellate Authority, this Court held as follows in paragraph-3:

Rule 6(1) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 reads as follows:

In the case of an appeal against an order imposing any penalty specified in Rule 2, the appellate authority shall consider--

- (a) Whether the facts on which the order was based have been established;
- (b) Whether the facts established afford sufficient ground for taking action, and
- (c) Whether the penalty is excessive, adequate or inadequate, and after such consideration shall pass orders as it thinks proper.

The rule enjoins the concerned authority to consider the three aspects set out therein specifically. Unless the appellate authority considers them it cannot be said that it has carried out its duties properly. The Supreme Court had occasion to discuss a similar question under Rule 27 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Dealing with the word 'consider' used in the said rule, the Supreme Court observed that the word 'consider' implies due application of mind- vide R.P.Bhatt v. Union of India. The following paragraph in the above judgment of the Supreme Court can be usefully referred to with advantage--

The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) Whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) Whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc, the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in Clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to

whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were unwarranted by the evidence on record. It seems that he only applied his mind to the requirement of Clause (2) of Rule 27 (2) viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside.

6. On perusal of the first appellate order dated 11th October 2005, it is stated by the appellate authority that "I have gone through the petition and connected records carefully. The contention of the petitioner is not accepted. No new points have been furnished. Hence, this appeal petition is considered and rejected."

7. The second Appellate Authority viz., the Director General of Police also rejected the appeal on 12th November 2006 extracting the same findings of the first appellate authority and has stated that the appeal against the punishment was rejected. Finally, the Government also rejected the appeal in G.O.(2D) No.547, Home (Police IV) Department, dated 18.09.2008 in which also there was no adjudication of facts and circumstances of the case on merits and in accordance with rules.

8. Thus, the opportunity as contemplated under Rules to the writ petitioner has not been provided. In this view of the matter this writ petition deserves consideration. Accordingly, the appellate order passed by the third respondent in proceedings R.C.No.140984/AP1/05 dated 11.10.2005, the appellate order of the second respondent in R.C.No.155094/AP I (2)/2006 dated 12.11.2006 as well as the final appellate order passed by the Government in G.O.(2D) No.547, Home (Police IV) Department, dated 18.09.2008 are quashed.

9. However, the matter is remitted back to the third respondent for fresh disposal on merits and in accordance with law and the said exercise shall be completed by the third respondent within a period of three(3) months from the date of receipt of a copy of this order.

10. Accordingly, this writ petition is partly allowed.
However, there is no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

may

To

1. The Secretary to Government,
Home Department (Police IV A),
Fort St. George,
Chennai 600 009.
2. The Director General of Police,
Law and Order,
Chennai 600 004.
3. The Additional Director General of Police,
Law and Order,
Chennai 600 004.
4. The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.

+1cc to M/s.G.Bala & Daisy, Advocate, S.R.No.56028
+1cc to the Government Pleader, S.R.No.56563

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SK(CO)
CA(01/09/2017)

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