

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.04.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

WP.No.3762/2012

G.Janarthanan

.. Petitioner

Versus

1. Secretary to Government,
Home Department,
Chennai - 9
2. The Director General of Police
Chennai 600 004.
3. Superintendent of Police,
District Police Office, Villupuram .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records relating to the impugned order of punishment of passed by the 3rd respondent herein in his proceedings PR.49/2005 u/r 3(a) dated 21.12.2005 and confirmed by the second respondent herein in his proceedings Rc.No.34047/AP.1(2) 2010 dated 21.10.2010 and quash the same.

For Petitioner : Mr.G.Bala

For Respondents : Mr.K.Dhananjayan, Spl.GP

ORDER

By consent, the writ petition is taken up for final disposal.

2 The petitioner challenging the impugned order of censure passed by the 3rd respondent, as confirmed by the 2nd respondent, by dismissing the mercy petition, has filed this writ petition.

3 The petitioner has joined the service in Tamil Nadu Police as directly recruited Sub Inspector of Police on 01.03.1996 and would claim that he has received 10 rewards for his efficient service. The Petitioner would further aver that he was issued with a charge memo dated 17.06.2015 by the Deputy

Superintendent of Police, Kallakurichi Sub-Division, Villupuram District, wherein the following charges are framed:-

" Gross neglect of duty in having failed to take cognizance immediately on both the complaints of the petitioner S.Munian S/o.Sadayandi, Karanai Village which was initially registered as CSR.89/2004 dated 01.04.2004 and the counter petitioner Vanathaian S/o.D.Haruman, Karanai Village which was initially registered as CST.88/2004 dated 01.04.2004 and simply registered unsuitable case upon those CSRs belatedly on 02.04.2004 vide Kandachipuram P.S.Cr.No.88/04 u/s 160 IPC which ended in futher co-incidents"

4 The petitioner in response to the said charge memo in PR 49/2005 issued under Rule 3(a) of the Tamilnadu Police subordinate Service (Discipline & Appeal) Rules 1955, submitted his explanation stating among other things, with regard to the alleged incidents, he acted on the Community Social Service Register on the date of receipt of complaint on 02.04.2004 itself and registered FIR in Crime No.88/04 for the offence u/s.160 of IPC and his successor dropped the action in pursuant to the investigation in the said case and as such, he was not found guilty of delinquency pointed out in the said charge memo.

5 The 3rd respondent/Disciplinary Authority, after taking into consideration the explanation and after going through the same, has awarded the petitioner with punishment of "Censure" vide order dated 21.12.2005. The petitioner did not prefer any appeal and after waiting for some time, he has filed a mercy petition by invoking provisions under Rule 15(1)(a) (i) of the Tamilnadu Police Subordinate Service rules (D&A) Rules 1955. The 1st respondent after going through the contents of the mercy petition and the punishment imposed under rule 5 and other connected records, found that the charge is quite serious as it involves a serious law and order problem and the registration of the case at the earliest point of time would have avoided the unpleasant things in the community which led to more serious incidents and thereafter found that the punishment of censure passed against the petitioner is a fit and proper one and therefore rejected the same vide impugned order dated 21.10.2005. The petitioner challenging the legality of the order of punishment passed by the 3rd respondent as confirmed by the 2nd respondent, has filed this writ petition.

6 The learned counsel for the petitioner would submit that in response to the charge memo dated 17.06.2005, the petitioner has submitted his detailed explanation to the 3rd respondent /Disciplianry Authority and without adverting to the contents of the same, has eschewed the fact that there was no loss of time while registering the FIR, has awarded the

punishment of censure and the petitioner was under impression that since it was a minor penalty, it may not affect his service carrier and however, he was by-passed and overlooked for further promotion and therefore, by invoking the jurisdiction of the 1st respondent under Section 15(1) (a) (i) of Tamil Nadu Police Subordinate Service (D&A) Rules 1955, has filed in Mercy Petition. The 1st respondent without giving proper application of mind to the contents of the explanation/mercy petition, rejected the same and therefore prays for interference.

7 The learned counsel appearing for the petitioner, in support of the submission, placed reliance upon the judgment rendered by the Hon'ble Apex Court reported in 1996 [3] SCC 364 [STATE BANK OF PATIALA AND OTHERS Vs. S.K.SHARMA], wherein the Hon'ble Apex Court has laid down the proposition that the disciplinary authority ought to have furnished the enquiry report and calling upon the concerned delinquent to offer his explanation and thereafter pass orders and the non furnishing of the enquiry report is in violation of principles of natural justice.

8 Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit filed by the respondents and would submit that admittedly the charges framed against the petitioner involves only a minor penalty and as such the petitioner is not entitled to get a copy of the enquiry report and even otherwise he did not raise objection at the earliest point of time and only in this writ petition he has raised the said points and therefore prays for dismissal of this writ petition.

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

10 The petitioner, in response to the Charge memo has submitted his explanation, wherein, he took a specific stand that on the basis of the complaint in Community Social Service Register, it was enquired and the case was registered on the very date itself, ie., on 02.04.2004 in Crime No.88/04 u/s 160 of IPC and later on his successor after completion of the investigation, has dropped the further action.

11 The 3rd respondent viz., the Disciplinary Authority, in the impugned order of punishment has recorded the fact that after going through the Minutes and other connected records carefully, had awarded a minor punishment of censure. Admittedly, the petitioner did not prefer any appeal. He was bypassed and overlooked for further promotion to the next post and submitted the said mercy petition to the 1st respondent by invoking the rules under Section 15(1) (a) (i) of Tamil Nadu

Police Subordinate Service (D&A) Rules 1955. The 2nd respondent taking into consideration of the fact that if action on the complaint entered in the Service register is taken on time, the law and order problem would have been avoided and thought it fit to confirm the order of punishment passed by the 3rd respondent/ Disciplinary Authority. In the light of the stand taken by the petitioner that he has registered FIR without any loss of time on 02.04.2004 and on perusal of the impugned order of punishment passed by the 3rd respondent, would disclose that after going through the copy of the enquiry report and other connected records, the said official had reached the conclusion to impose the punishment of "censure" and the petitioner was not furnished with a copy of the Enquiry Report. If the same was furnished, the petitioner would have got an opportunity to reject the findings recorded by the Enquiry Officer ; but the facts remains that the copy of the enquiry report has not been furnished.

12 No doubt, the petitioner did not prefer any appeal and even in the mercy petition filed before the 2nd respondent he did not raise any objection. However, the facts remains that the order of imposition of punishment of censure caused grave consequences in the form of denial of promotion to the next post and in the absence of any violation of the provisions of principles of natural justice, this Court is of the considered view that a copy of the Enquiry report ought to have been furnished to the petitioner, so as to enable him to offer his explanation and thereafter, the 3rd respondent could have taken a decision either to impose the punishment or exonerate him from the charges.

13 The Judgment relied upon by the learned counsel appearing for the petitioner reputedly 1996 [3] SCC 364 [cited supra], has also laid down the principles that the punishment cannot be imposed without furnishing copy of the enquiry report and give an opportunity to submit the explanation of the delinquent at an early date ; but the said procedure has not been complied with and therefore the impugned order warrants interference.

14 In the result, the writ petition is partly allowed and the impugned order of punishment of 'censure' imposed by the 3rd respondent / Disciplinary Authority dated 21.12.2005, as confirmed by the 2nd respondent dated 21.10.2010 is set aside and the matter is once again remanded to the 3rd respondent for fresh consideration. The 3rd respondent is directed to furnish a copy of the Enquiry report submitted by the Inspector of Police, Kallakurichi to the petitioner within a period of four weeks from the date of receipt of copy of this order and upon receipt of the same, the petitioner is at liberty to offer his explanation to the 3rd respondent within a further period of two

weeks and thereafter, the 3rd respondent is directed to consider the same and pass orders with regard to Disciplinary Proceedings initiated against the petitioner in accordance with law within a further period of six weeks thereafter and also communicate the decision taken, to the petitioner. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

RKA/AK

To

1. The Secretary to Government,
Home Department, Secretariat,
Chennai - 9
2. The Director General of Police
Chennai 600 004.
3. The Superintendent of Police,
District Police Office, Villupuram.

+1cc to the Government Pleader, Sr. 26433,425885

+1cc to M/S.G.Bala & Daisy, Advocate, Sr. 24938

WP.No.3762/2012

NR(CO)
VR(15/5/2017)

सत्यमेव जयते

WEB COPY