



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.06.2017

Pronounced on : 28.06.2017

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE S. S. SUNDAR

W.P (MD) No.19277 of 2015

and

M.P (MD) .Nos.1 and 2 of 2015

P.Michael Raj

.. Petitioner

Vs

1.The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli,
Tirunelveli District.

2.The Superintendent of Police,
Thoothukudi 628 101,
Thoothukudi District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the first respondent Deputy Inspector General of Police, Tirunelveli District in Na.Ka.No.C4/Me.Mu.57/2015 dated 19.08.2015 and the consequential proceedings issued by the second respondent Superintendent of Police in D.O.No.1114/2015/C.No.F3/A.P.29/2015 dated 31.03.2015 quash the same and further direct the respondents herein to re-instate the petitioner forthwith into service as Special Sub-Inspector of Police with all attendant benefits including arrears of salary and allowances, continuity of service and seniority etc.

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel
for Mr.T.Cibi Chakaraborthy
For Respondents : Mr.N.S.Karthikeyan
Additional Government Pleader

O R D E R

The above Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the Deputy Inspector General of Police, Tirunelveli District, dated 19.08.2015 and the consequential order passed by the second respondent Superintendent of Police, dated 31.08.2015 and further to direct the respondent to reinstate the petitioner forthwith into



service as Special Sub Inspector of Police with all attendant benefits.

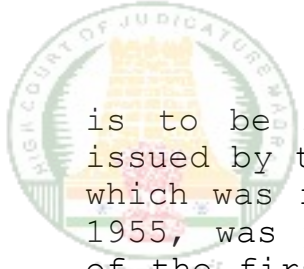
2.The brief facts that on necessary for the disposal of the above Writ Petition are as follows:-

WEB COPY

The petitioner while he was working as Special Sub-Inspector, Serankulam Police Station, Thoothukudi District, was given a charge memo dated 21.11.2004 on four counts under Rule 3 (b) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955 (hereinafter referred to as "TNPSS(D&A) Rules 1955"). The charges against the petitioner was, on the basis of a complaint given by a Woman Constable, who was also working in the same station. The complaint given by the Woman Constable was dated 6.10.2014. Since the allegations against the petitioner were serious, the petitioner was suspended from service by proceeding, dated 16.10.2014, pending disciplinary proceedings.

3.The petitioner submitted his explanation together with a request and leave to file a detailed explanation, after a preliminary enquiry. The Assistant Superintendent of Police, Kovilpatti Sub-division was appointed as the Enquiry Officer to conduct the enquiry and the petitioner denied the charges against him. The Enquiry Officer conducted enquiry and submitted his report on 18.04.2015 finding that the charges against the petitioner are proved. Thereafter, the second respondent supplied the copy of the enquiry report and asked the petitioner to submit his further explanation, if any, within 15 days by proceeding dated 26.04.2015. The petitioner submitted his further explanation in time and requested the second respondent to discharge him from the charges. However, the second respondent after finding that all the charges against the petitioner are proved, took a lenient view and imposed punishment of postponement of increment for two years with cumulative effect under Rule 3(b) of TNPSS(D&A) Rules 1955. On the same day, the second respondent also revoked the order of suspension and directed to reinstate the petitioner in service with effect from 13.05.2015 and thereafter, the petitioner joined duty on 22.05.2015.

4.Aggrieved by the order of punishment, the petitioner filed an appeal to the first respondent viz., Deputy Inspector General of Police, Tirunelveli Range, on 04.06.2015, under Rule 5 of TNPSS(D&A) Rules, 1955. When the appeal was pending, the first respondent issued a show cause notice, dated 09.07.2015 calling for explanation from the petitioner as to why the punishment imposed on him should not be enhanced. The petitioner submitted his explanation by a representation, dated 27.07.2015. In the notice, that was issued by the first respondent on 09.07.2015, specifically indicated that the first respondent proceeded to review the order of the second respondent in exercise of power vested on him under Rule 15A (1) of TNPSS(D&A) Rules, 1955. Thereafter, by impugned order of the first respondent, dated 19.08.2015, the first respondent enhanced the punishment by compulsorily retiring the petitioner from service. It



is to be noted that when the order of compulsory retirement was issued by the first respondent as per the impugned order, the appeal which was filed by the petitioner under Rule 5 of TNPSS(D&A) Rules, 1955, was pending before the first respondent. Following the order of the first respondent, the second respondent passed consequential order on 31.08.2015 modifying the earlier punishment into one of compulsory retirement from service with effect from 28.08.2015. The petitioner was relieved from service on the same day. The petitioner has challenged the order of the first respondent, dated 19.08.2015 and the consequential order passed by the second respondent, dated 31.08.2015, in the Writ Petition.

5. Though the learned counsel raised several grounds challenging the enquiry report and the acceptance of the report by the respondents 1 and 2 and about the validity and veracity of charges, the learned Senior Counsel appearing for the petitioner restricted his argument only regarding the jurisdiction and authority of the first respondent to initiate the proceeding for Suo-moto review, when the appeal is pending. The learned Senior Counsel referring to Rule 15A of TNPSS(D&A) Rules, 1955, submitted that no proceedings for review can commence until the appeal filed by the petitioner is disposed of. Rule 15A of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955, is extracted for convenience and the same read as follows:-

"Rule 15A.(1) Notwithstanding anything contained in these rules:

(i) the State Government or
(ii) the Head of the Department directly under the State Government, in the case of Government servant serving in a department or office under the control of such Head of Department; or

(iii) the appellate authority, within six months of the date of the order proposed to be reviewed; or

(iv) any other authority specified in this behalf by the State Government by general or special order, and within such time as may be prescribed in such general or special order; may at any time, either on their or its own motion or otherwise call for the records of any inquiry and review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission where such consultation is necessary and may.

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority, directing such authority to make such further enquiry, as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit.

Provided that no order imposing or enhancing any penalty



shall be made by any reviewing authority unless the Government servant concerned has been given a responsible opportunity of making representation against the penalty proposed. Where it is proposed to impose any of the penalties specified in clauses (d), (e) (f) (h), (I) and (j) of rule 2 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in sub rule (b) of rule (3) and after giving a reasonable opportunity to the Government servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary.

Provided further that no power of review shall be exercised by the Head of Department, unless :

- (i) the authority which made the order in appeal or
- (ii) the authority to which an appeal would lie where no appeal has been preferred, is subordinate to him.

(2) No proceeding for review shall be commenced until after.

- (I) the expiry of the period of limitation for an appeal, or

- (ii) the disposal of the appeal, where any such appeal has been preferred.

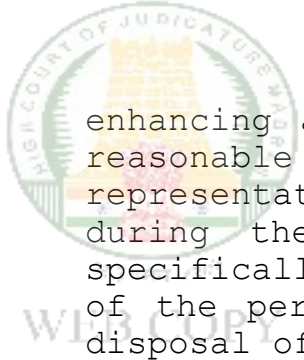
(3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules.

(4) No application for review shall be preferred more than once in respect of the same order.

Provided that members of the constabulary (Police Constables and Head Constables) shall be eligible to make one representation to the Government against the orders of dismissal or removal from service after exhausting the right of appeal.

Provided further that no application for review shall be entertained if it has not been made within a period of six months from the date of receipt of the order on which such application for review is preferred."

Rule 15A of TNPSS(D&A) Rules 1955, of course specifically confers the power of the State Government or Appellate Authority or the Head of the Department or any other authority specified in this behalf by the State Government to either on their or its own motion or otherwise review any order made under these Rules. However, the limitation for review is only six months to the Appellate Authority. While reviewing the order, the authorities can either confirm or modify or set aside the order or confirm or reduce or enhance or set aside the penalty imposed by the order. The authority also can remit the case to the authority, who passed the order or to any other authority to make such further enquiry, as it may consider proper in the circumstances of the case. Before passing an order, imposing or



enhancing any penalty, the review authority is required to give a reasonable opportunity to the Government Servant concerned to make representation against the penalty proposed on the evidence adduced during the enquiry. Rule 15A (2) of TNPSS(D&A) Rules 1955, specifically prohibits the commencement of review before the expiry of the period of limitation prescribed for appeal or before the disposal of the appeal, where an appeal had already been preferred.

6. In the present case, it is admitted by the respondents that an appeal, which had already been preferred by the petitioner, is pending. In the show cause notice that was issued by the first respondent to the petitioner on 09.07.2015, it has been specifically observed in paragraph No.2 as follows:-

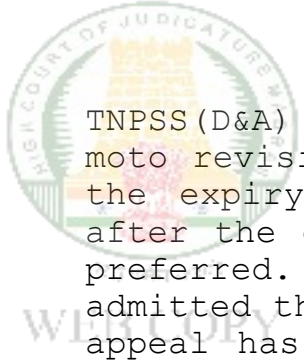
"(2) In this P.R the punishing authority viz., the Superintendent of Police, Thoothukudi District has awarded the punishment of "Postponement of next increment for a period of two years which shall operate to postpone his future increments" on 13.05.2015. The appellant receive the order on 20.05.2015 and submitted his appeal petition on 04.06.2015. The appeal is within the time."

In the show cause notice, it is also stated that the first respondent has taken up the review on the order of the Superintendent of Police, dated 13.05.2015 in exercise of the power vested with him under Rule 15A (1) of TNPSS(D&A) Rules 1955. However, the petitioner did not raise any issue regarding the jurisdiction or authority of the first respondent to exercise his power of review, even before disposing the appeal, which was preferred by him before the first respondent. The petitioner has submitted his explanation promptly by submitting himself to the review jurisdiction of the first respondent.

7. The learned Senior Counsel for the petitioner relied upon the judgment of the learned Single Judge of this Court in the case of **P.J.Kennedy v. Superintendent of Police** reported in **2010 SCC OnLine Mad 423**. After referring to Rule 15A and Rule 9 of TNPSS(D & A) Rules, 1955, the learned Single Judge has held that the Appellate Authority has no jurisdiction to invoke power under Rule 15A of TNPSS(D&A) Rules 1955 before expiry of the period of appeal as provided under Rule 9 TNPSS(D&A) Rules 1955. Similarly, in another judgment of the learned Single Judge of this Court in the case of **J.Tamilmani v. Commissioner of Police City** reported in **2014 SCC OnLine Mad 7616**, the learned Single Judge of this Court had occasion to deal with Rule 15A (1) of TNPSS(D&A) Rules 1955 and observed that the Suo-moto revision as per Rule 15A (1) of TNPSS(D&A) Rules 1955, cannot be initiated without disposing of appeal in a proper manner. That is a case, where the appeal preferred was wrongly rejected. Since, it was held that the appellate order is invalid, review order has been set aside holding that the appeal preferred within time is pending and that therefore, the Appellate Authority cannot exercise the power of Suo-moto review.

<https://hcservices.ecourts.gov.in/hcservices/>

8. Having regard to the specific provision under Rule 15(A) of



TNPSS(D&A) Rules 1955, this Court is also convinced that the Suo-moto revision cannot be initiated by the Appellate Authority, until the expiry of the period of limitation prescribed for appeal or after the disposal of the appeal, where an appeal had already been preferred. As pointed out earlier, the first respondent himself has admitted the pendency of the appeal preferred by the petitioner. The appeal has to be preferred before the first respondent within one month from the date on which the order in the disciplinary proceedings is communicated to the appellant. In this case, the first respondent categorically admitted that the appeal has been filed in time. Rule 6 of TNPSS(D&A) Rules, 1955 specifically confers on the power of the Appellate Authority to deal with the appeal elaborately. Rule 6 of TNPSS(D&A) Rules, 1955 is also extracted for convenience:

Rule 6. (1) 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.

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction, as it may deem, fit in the circumstances of the case:

Provided that

(a) if the enhanced penalty which the appellate authority proposed to impose is one of the penalties specified in clauses (d), (e) (3), (h) (I) and (j) of rule 2 and an enquiry under sub rule (b) of rule 3 has not already been held in the case, the appellate authority shall, subject to the provisions, of sub rule (c) of rule 3, itself hold such enquiry or direct that such enquiry be held in accordance with the provisions of sub rule (b) of rule 3 and thereafter on consideration of the proceedings of such enquiry and after giving the appellant a reasonable opportunity of making representation against the penalty proposal on the basis of the evidence adduced during such enquiry, make such order as it may deem it.

(b) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties, specified in clauses (d) (e) (3), (h), (I) and (j) of rule 2 and an enquiry under sub rule (b) of rule 3 has already been held in the case, the appellate authority shall, after giving the appellant reasonable opportunity of making representation against the penalty proposed to be imposed on the basis of the evidence adduced during the

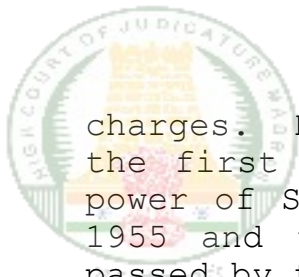


enquiry, make such order as it may deem fit; and

(c) no order imposing an enhanced penalty shall be passed in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub rule (b) of rule 3 of making representation against such enhanced penalty.

9. The Appellate Authority also has power to confirm, enhance, reduce or set aside the penalty. If the enhanced penalty which the Appellate Authority proposed to impose is one of the penalties, specified in clauses (d) (e) (f) (h) (i) and (j) of Rule 2, the Appellate Authority himself can hold an enquiry or to direct an enquiry to be held in accordance with the provisions of Sub-rule (b) of Rule 3 and after giving the appellant a reasonable opportunity of making representation against the penalty proposed. Thus, the Appellate Authority has got power to enhance the penalty only in the manner provided under Rule 6 TNPSS(D&A) Rules 1955. However, instead of exercising the power in terms of Rule 6 TNPSS(D&A) Rules 1955, the Appellate Authority has exercised his power of Suo-moto review as contemplated under Rule 15A of TNPSS(D&A) Rules 1955. The scope of enquiry and responsibility of the Appellate Authority under Rule 6, is entirely different from the scope and the power of Appellate Authority to review the order in terms of Rule 15(A) of TNPSS(D&A) Rules 1955. While the power of review is only on the basis of finding that is already arrived at by the Disciplinary Authority, the power of Appellate Authority is wide and comprehensive. In such circumstances, the first respondent ought to have exercised his power in terms of Rule 6 TNPSS(D&A) Rules 1955, rather than exercising Suo-moto review in terms of Rule 15A TNPSS(D&A) Rules, 1955. It is only because wide power has been given to the Appellate Authority to deal with the facts more elaborately, a specific restriction is given under Rule 15A of TNPSS(D&A) Rules 1955, not to exercise the power of review, till the appeal is decided on merits.

10. The learned counsel appearing for the respondents relied upon the counter affidavit of the second respondent and submitted that the impugned order is only an order, which is passed by the first respondent as an Appellate Authority in exercise of his power under Rule 6 of the Rules. The submission of the learned counsel for the respondents cannot be accepted. Having regard to the terms of the show cause notice issued to the petitioner and the nature of order passed by the first respondent it can not be construed as an order of appellate authority in exercise of his power under Rule 6. It is open to the petitioner to canvass the veracity, validity and the regularity of the enquiry report before the Appellate Authority. Since the petitioner has raised several grounds, the first respondent is required to pass a detailed order in terms of Rule 6 of the Rules. It is also open to the first respondent to go on further enquiry, after giving adequate opportunity to the petitioner, in case, if the authority is of the opinion that the evidence is not sufficient to prove that the petitioner is guilty of



charges. Hence, in the present case, this Court is of the view that the first respondent has passed the order only in exercise of his power of Suo-moto review in terms of Rule 15A of TNPSS(D&A) Rules 1955 and the impugned order of the first respondent is not one passed by the first respondent, as an Appellate Authority.

WEB COPY

11.The learned Senior Counsel further relying upon the counter affidavit submitted that the second respondent has categorically stated in the counter affidavit that the impugned order has been passed by the first respondent taking into account of the past records of the petitioner. Since the first respondent has not referred to any bad antecedents against the petitioner, it was submitted by the learned Senior Counsel that the respondent cannot supplement by giving further reason, which is not referred to in the impugned order. The legal position is well settled. However, it has to be noticed that, no significance can be given to the statement of the second respondent so as to nullify the order of the first respondent on the ground that the same is bad for undisclosed reasons or by referring to the judgment of the Hon'ble Supreme Court in the case of **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others** reported in **AIR 1978 SC 851**.

12.The learned counsel for the respondents submitted that the petitioner is found guilty of serious charges. Therefore, no lesser punishment can be given to the petitioner. He further submitted that the Enquiry Officer has conducted an elaborate enquiry and the findings of the Enquiry Officer cannot be assailed as the findings are based on evidence. Having regard to the findings recorded, this Court is not in a position to appreciate the nature of punishment given by the second respondent. After rendering a finding that all the charges against the petitioner are proved by accepting the findings of the Enquiry Officer, the disciplinary authority failed to impose appropriate punishment.

13. It is in public interest to maintain standard and discipline in the Uniform Service. Hence, this Court suggest that Disciplinary Authorities in Police Department should always pass orders taking into consideration the Public Interest and Trust involved before considering the grievance and hardship of the individual concerned.

14.Having regard to the discussions and observations made above, this Court has no other option except to set aside the impugned order of the first respondent viz., The Deputy Inspector General of Police, Tirunelveli District in Na.Ka.No.C4/Me.Mu.57/2015 dated 19.08.2015 and the consequential proceedings issued by the second respondent viz., the Superintendent of Police in D.O.No.1114/2015/C.No.F3/A.P.29/2015 dated 31.03.2015. The matter is remitted to the first respondent for fresh disposal. Since, the petitioner is found guilty of grave charges, the status quo as on date shall continue till final order is passed by the first respondent.



15. This Court has noticed that Suo-moto review can be exercised by the Appellate Authority only within a period of six months from the date of the order proposed to be reviewed. This Court is of the view that it is desirable for the Appellate Authority to decide the appeal on merits and in accordance with law. The first respondent as an Appellate Authority has wide power and taking into consideration the other grounds raised by the appellant, the Appellate Authority also can order further enquiry, so that, the petitioner, who has been found guilty of serious charges, can be dealt with properly. The first respondent is further directed to dispose of the appeal that was filed by the petitioner before the first respondent, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli,
Tirunelveli District.
2. The Superintendent of Police,
Thoothukudi 628 101,
Thoothukudi District.

+ 1 CC TO Mr.T.CIBI CHAKRABORTHY, ADVOCATE IN SR No. 62556
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 62681

NS/IS

TE/MR-KKR/SAR-III : 10/07/2017 : 9P/5C

order made in
W.P(MD)No.19277 of 2015 and
M.P(MD).Nos.1 and 2 of 2015
28.06.2017