

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 18.07.2017****CORAM :****THE HONOURABLE MR.JUSTICE T.RAJA****W.P(MD)No.13175 of 2017**

A.Rajan

... Petitioner

vs.

1. The State represented by
The Secretary, Home Department,
Fort St. George, Chennai-9.
2. The Director General of Police,
Tamil Nadu, Mylapore, Chennai-4.
3. The Inspector General of Police,
Law and Order, Tamil Nadu,
Mylapore, Chennai-4.
4. The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.
5. The Commissioner of Police,
Tirunelveli City, Tirunelveli.
6. The Deputy Commissioner of Police,
Law and Order, Tirunelveli City,
Tirunelveli.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records of the fourth respondent proceedings made in C.No.P.R.50/98 dated 22.05.1999 as confirmed by the third respondent pursuant to his proceedings made in R.C.No.45956/AP.2(1)/2000 dated 12.03.2000 further confirmed by the first respondent proceedings made in G.O.(2D) No.91 Home (Pol. VI) Department dated 13.2.2007 and vide G.O.(2D) No.264 Home (Police VI) Department dated 07.08.2015 and quash the same and consequently confirm the proceedings of the sixth respondent imposing the punishment of reduction in the time scale for one year without cumulative effect vide P.R.No.50/98 dated 21.12.1998 and direct the respondents to grant the all monetary benefits at par with his immediate juniors from 01.04.2001 and pay all arrears of amount and also grant all consequential pensionary benefits within a stipulated period of time.



For Petitioner

: Mr.P.Velmurugan

For Respondents

: Mr.Raja Karthikeyan,
Additional Government Pleader

WEB COPY

O R D E R

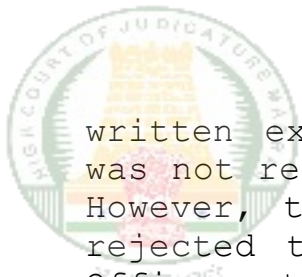
By consent of both sides, this writ petition itself is taken up for final disposal.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader, who takes notice for the respondents.

3. The present writ petition is directed against the impugned proceedings passed in C.No.P.R.50/98 dated 22.05.1999 imposing a punishment of reduction in time scale of pay by one stage for one year without cumulative effect and another order dated 12.03.2000 passed in Rc.No.45956/AP.2(1)/2000, which was also further confirmed by the first respondent in his proceedings made in G.O. (2D) No.91 Home (Pol.VI) Department dated 13.02.2007 and G.O.(2D) No.264 Home (Police VI) Department dated 07.08.2015. Seeking to quash the same on the ground that imposing punishment has not only affected the salary of the petitioner, but also affected his future increments and also pension, the petitioner is before this Court with the present writ petition.

4. The learned counsel appearing for the petitioner would submit when the petitioner was working along with Naiks 854, 796, 945, 911 and 839 in the Palayamkottai Government Hospital Prisoner Cell, in the year 1998, after completing his duty on 26.05.1998, at 9 p.m., when he was taking rest in the waiting room belonging to Prisoner Cell, during the earlier hours between 0.00 hours and 03.00 am, on 27.05.1998, the prisoners switched off the light of the room and escaped through the window. Therefore, the petitioner was suspended along with other duty Naiks and a charge memo was issued vide P.R.No.50/98 on 22.05.1999, alleging that due to negligence on the part of the petitioner, the prisoners escaped from the Cell. Thereafter, proceedings under Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955, have been initiated against the petitioner alleging that due to their failure to take necessary action immediately, the prisoners could not be traced out. The petitioner has given his explanation to the said charge memo. Finding that the explanations offered by the petitioner were not satisfactory, an Enquiry Officer was appointed.

5. After completion of enquiry, a copy of the report of the Enquiry Officer was submitted calling upon the petitioner for



written explanation. Again, the petitioner took a stand that he was not responsible for the escape of the prisoners from the Cell. However, the Deputy Commissioner of Police/Disciplinary Authority rejected the explanation and accepted the report of the Enquiry Officer, thereby, imposed the punishment of reduction in scale of pay by one stage for one year without cumulative effect.

6. Subsequently, the petitioner was served with a show cause notice by the fourth respondent/the Deputy Inspector General of Police, Tirunelveli Range stating that why *suo motu* review as per Rule 15 (A) (1)(i) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules 1955, should not be initiated against him and to submit his reply within 15 days for enhancement of punishment. Since the notice dated 21.04.1999 has not mentioned the enhanced punishment, the petitioner submitted his explanation on 06.05.1999. Ignoring the legal stand taken by the petitioner, the 4th respondent has passed an order against the petitioner dated 22.05.1999 vide P.R.No.50/98 Under Rule 3(b), enhancing the punishment of reduction in the time scale by one stage for one year with cumulative effect. As against the same, the petitioner preferred an appeal before the third respondent to set aside the order passed by the fourth respondent. However, the third respondent rejected the appeal and thereby confirmed the order passed by the 4th respondent.

7. Being aggrieved by the same, the petitioner filed a Mercy Petition on 26.04.2003 before the first respondent for cancelling the enhanced punishment. But, unfortunately, the first respondent also dismissed the Mercy Petition confirming the enhancement in G.O.(2D) No.91 Home (Pol. VI) Department, dated 13.02.2007. Once again, the petitioner submitted another mercy petition with elaborate narration of facts to the first respondent and the same was also dismissed vide G.O.(2D) No.264 Home (Police VI) Department, dated 07.08.2015. Aggrieved by the same, the present writ petition has been filed.

8. The learned counsel for the petitioner would submit that, no doubt, the petitioner has suffered the punishment of reduction in time scale of pay by one stage for one year without cumulative effect on 22.05.1999, at the hands of the Deputy Commissioner of Police, Law and Order, Tirunelveli/ the sixth respondent herein. When the petitioner has not even preferred an appeal, *Suo Moto* review was taken as per Rule 15 (A) (1)(i) of Tamil Nadu police Subordinate Service (D & A) Rules 1955, calling upon the petitioner to submit his explanation as to why enhancement of punishment has been initiated, without even mentioning the enhanced punishment, likely to be imposed against him.

<https://hcservices.courts.gov.in/hcservices/> 9. Reading of the proviso to Rule 15(A) (1)(i) of the above said Rules, clearly shows that if it is found that the punishment



meted out against the petitioner is insufficient and is not commensurate with the proven charges, no doubt, exercising the power under Rule 15 (A) (1)(i) of Tamil Nadu police Subordinate Service (D & A) Rules 1955 (hereinafter referred to as 'the Rules'), the Reviewing Authority is entitled to issue notice for enhancement of punishment calling upon the petitioner to submit his written explanation thereon. Therefore, the contention that as a pre condition, a *suo motu* notice should specifically mention the enhanced punishment, which has not been indicated, therefore, the punishment imposed against the petitioner in exercise of power under Rule 15(A)(1)(i) of the Rules is liable to be set aside is far from acceptance. The reason is that when the petitioner is unable to prove the charges levelled against him and another police constable that on 26.05.1998, due to their negligence, the prisoner escaped from the cell, the 5th respondent, after giving a reasonable opportunity and following the principles of natural justice, appointing an Enquiry Officer and after receiving the report from the Enquiry Officer, imposed a punishment of reduction in time scale by one stage for one year without cumulative effect. The fourth respondent, taking note of the punishment, found that the said punishment was not commensurate with the delinquency committed. Issued a notice on 24.01.1999 calling for explanation and explanation was also submitted on 06.05.1999 by the petitioner. After receipt of the said explanation, the Deputy Inspector General of Police, Tirunelveli Range has come to the conclusion taking a lenient view and awarded the punishment of reduction in the time scale of pay by one stage for one year with cumulative effect and the effect of punishment of pension was also ordered.

10. Therefore, the stand taken by the petitioner to challenge the order of punishment imposed on 22.05.1999 by the Deputy General Inspector General of Police, Tirunelveli Range, at the time of issuing the *Suo Motu* notice has miserably failed to indicate the enhanced punishment is far from acceptance. When the punishment of reduction in time scale of pay by one stage for one year without cumulative effect has been modified as one to that of the punishment of reduction in time scale of pay by one stage for one year with cumulative effect, the petitioner cannot contend before this Court that the Revisional Authority / first respondent has miserably failed to take into account that the reviewing Authority has committed grave error in not mentioning the enhanced punishment. Moreover, all the parties, namely, Original, Appellate and reviewing authority including the first respondent having found the punishment imposed against the petitioner is reasonable, this Court, sitting under Article 226 of Constitution of India, is not inclined to interfere with the finding on facts arrived at by all the Authorities.



11. In view of the above, writ petition fails and the same is, accordingly, dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Home Department,
Fort St. George, Chennai-9.
2. The Director General of Police,
Tamil Nadu, Mylapore,
Chennai-4.
3. The Inspector General of Police,
Law and Order, Tamil Nadu,
Mylapore, Chennai-4.
4. The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.
5. The Commissioner of Police,
Tirunelveli City, Tirunelveli.
6. The Deputy Commissioner of Police,
Law and Order,
Tirunelveli City,
Tirunelveli.

+1cc to Mr.P.Velmurugan, Advocate Sr.No.66000

+1cc to Spl.Government Pleader Sr.No.66404

MRN/RR

VB/GT/SAR3/15/09/2017/5P/9C

W.P (MD) No.13175 of 2017

18.07.2017