

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 28.08.2018

CORAM
THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI
W.P.No.7392 of 2014

R.Jeevanandan

....Petitioner

Vs

1. The Superintendent of Police,
Nagapattinam District

2. The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur

3. The Director General of Police,
Mylapore, Chennai-4

....Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the respondents in connection with the impugned order passed by the first respondent in PR No.21/2010 dated 11.02.2011 and the second respondent in C.No.B2/5478/2011 dated 20.07.2011 and quash the same.

For Petitioner : Mr.K.Venkatramani,
Senior Counsel
for Mr.M.Muthappan

For Respondents : Mrs.Thangavadhana Balakrishnan
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the order of the second respondent in proceeding C.No.B2/5478/2011 dated 20.07.2011 enhancing the punishment of the writ petitioner imposed in a disciplinary proceeding by the first respondent in proceeding No.21/2010 dated 11.02.2011, in exercise of its power of suo moto revision available to it under the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955, hereinafter referred to as the Rules, inter alia on the ground that the same is illegal and arbitrary being contrary to the facts and law.

2. It appears that the writ petitioner along with another namely, Thiru.Mariappan, Head Constable 1071, while on duty to

escort a prisoner to the jail after being remanded by the concerned court, he escaped from their custody and as such two independent disciplinary proceedings were initiated against them under the aforesaid Rules for the delinquency of dereliction of duty resulting in escapement of prisoner from custody. The petitioner faced the enquiry before the enquiry officer appointed so also his co-delinquent in the independent disciplinary proceeding and on conclusion of enquiry, the enquiry officer reported the charge to have been proved. The petitioner thereafter being provided with finding seeking his response did not give any explanation. The disciplinary authority that is respondent No.1 on consideration of the materials before the Enquiry Officer and its report so also the representation in details held the charge against the petitioner to have been proved, imposed the punishment of postponement of increment for one year without cumulative effect by its order dated 11.02.2011. The petitioner did not challenge the same in the statutory appeal remedy available to him. However, the second respondent exercising its power of review under the Rules, issued notice of show cause to review the punishment imposed as according to the second respondent the punishment imposed was lenient one considering the gravity of the delinquency and as such the same needs modification by a punishment commensurate to the delinquency. The petitioner filed a show cause in response to the same. The second respondent considering his explanation especially the fact that the petitioner had in the explanation indicated that the prisoner was in the habit of escape and as such escaped, held the petitioner to have not bestowed the required vigil while on duty and the delinquency being a serious one enhanced the punishment for postponement of increment for two years with cumulative effect. The memorial submitted by the petitioner to the third respondent against the same having evoked no response, he came to file this writ petition challenging such decision of the second respondent enhancing the punishment imposed by the first respondent inter alia on the grounds that such order is illegal and arbitrary being contrary to facts and law inasmuch as without any justifiable reasons punishment imposed on him has been reviewed and enhanced which is also not commensurate to the delinquency, as such suffers from disproportionality. Furthermore, the same has also been assailed on the ground that the same is discriminatory inasmuch for same delinquency, a co-delinquent who was imposed with similar punishment by the first respondent has not been visited with enhanced punishment by the second respondent in the appeal. Hence he has filed this writ petition with the prayer to quash the same.

3. Counter affidavit has been filed indicating the fact that the petitioner's delinquency being serious one inasmuch as he knowing well the fact that the escaped prisoner being

habituated to escape from custody, did not bestow the required vigil while escorting him and for his callous and lackadaisical attitude in discharge of his duty the prisoner escaped from custody. Considering the same and also appreciating the materials on record when the second respondent who is the Appellate Authority decided to give a relook to the punishment imposed on the ground that there was no proportionality in imposition of the punishment inasmuch as the petitioner was allowed to be let off with a lenient punishment and enhanced the punishment was passed, giving a due chance of hearing to the petitioner before imposition of such enhance punishment, the same cannot be questioned in this forum in a petition under Article 226 of the Constitution of India inasmuch as this Court does not exercise the jurisdiction of the Appellate Authority over the decision of the second respondent especially when there was no jurisdictional error in imposition of such punishment and nor such decision can be said to be perverse. So far as the imposition of the punishment to the co-delinquent is concerned, he having filed an appeal wherein the same was not interfered with, the petitioner therefore cannot question the power of suo moto review of the second respondent with regard to the enhance punishment imposed on the ground that he was discriminated in imposition of such punishment in disregard to the Article 14 of the Constitution of India that is equality before law. Hence, the writ petition is liable to be dismissed.

4. During the course of hearing, learned counsel appearing for the writ petitioner, submits that he is conscious of the limitation of this Court with regard to the power of judicial review under Article 226 of the Constitution of India against the decision of the second respondent impugned here in this writ petition. According to him, this Court while exercising such power against the impugned order passed in a disciplinary proceeding not exercising the jurisdiction of the appellate Authority and as such cannot substitute the finding recorded on appreciation of the fact by the disciplinary authority, but the power of the judicial review is meant to ensure that a delinquent who is facing a charge of misconduct must receives a fair treatment in such disciplinary proceedings. When this Court finds that in the disciplinary proceeding the authority has proceeded against the delinquent officer without any materials on record and the decision suffers from perversity, there is no impediment on the part of the court to review such order of the disciplinary authority in exercise of the writ jurisdiction under the Article 226 of the Constitution of India. In this case, the second respondent had exercised its power of review under the aforesaid rules without any materials indicating the fact that the petitioner deliberately allowed the prisoner to escape from custody and as such the punishment imposed on him was not commensurate to the delinquency. There

was also no material indicating the fact that the second respondent had any material before it that the petitioner being aware of the fact that the prisoner was habituated to escape from custody and knowing the same he had not bestowed the required care and taken a lackadaisical approach while escorting the petitioner along with another and as such the punishment imposed was a lenient one and liable for enhancement. Therefore he could not have review the punishment and on receipt of explanation of the writ petitioner on the show cause asked for, made the same foundation to review the punishment and visited the petitioner with an enhanced punishment. Furthermore in this case, for the same delinquency, in another disciplinary proceeding, Head Constable Thiru.Mariappan being imposed with same punishment as the petitioner by the first first respondent, preferred appeal against the punishment imposed which was not enhanced by the second respondent. The second respondent thereafter could not have exercising the power of review for the same proven delinquency, imposed an enhanced punishment to the petitioner. The same being discriminatory inasmuch as no equal treatment was meted to the petitioner before the law and as such the enhanced punishment being violation of Article 14 of the Constitution of India, liable to be quashed. Reliance in this regard has been placed in the case of State of U.P. Vs. Rajpal Singh reported in 2010 (5) SCC page 783, wherein the Apex Court has held that when the charges are the same and identical in relation to the same incident, dealing the delinquency differently in awarding punishment would be discriminatory and as such cannot be sustained. In such premises, it is strenuously urged by the learned counsel for the petitioner to quash the impugned order.

5. Per contra, counsel appearing for the respondent controverting the submissions made submitted that when the second respondent exercising its statutory power of suo moto review from the very beginning held the punishment imposed by the first respondent considering the proven delinquency to be too meagre and lenient one and as such there was no proportionality of the punishment, issued the notice of show cause, thereafter taking into consideration of show cause as well as the nature of proven delinquency enhanced the punishment as according to it the punishment imposed by the disciplinary authority was not commensurate, the same needs no interference inasmuch as the power of the second respondent has arrived in such decision on appreciation of the materials on record, which cannot be reviewed in exercise of the writ jurisdiction. The same also needs no interference inasmuch as the power of the Court in a writ jurisdiction in examining the proportionality of the sentence is also very limited one and it is only in the circumstances when the punishment imposed appears to be shockingly disproportionate to the nature of proven delinquency,

this Court can interfere with the same and directs the disciplinary authority to revisit the same. The case in hand being not one of that nature, this Court should not interfere with the impugned order of the second respondent. So far discriminatory treatment is concerned the case of Rajpal Singh (supra) has no application inasmuch as the petitioner and Rajpal were not facing the disciplinary in the same proceeding and also there is no material indicating the fact that Rajpal had the knowledge that the prisoner was a habitual escapist from the custody. Hence, it is submitted by the counsel for the respondent that the writ petition is devoid of merit and liable to be dismissed.

6. Before the contention of the counsel for the parties, it would be apposite to mention here that there is no reproach to the submissions made that judicial review is not an appeal from a decision, but a review of the manner in which a decision is made. However, the power of judicial review is to ensure that individual receives fair treatment and not to ensure that the conclusion which the Authority reaches is necessarily correct in the eye of the court. The High Court being not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant cannot examine the correctness of the decision taken on charges of misconduct by the public servant on the ground of adequacy of evidence and reliability of the evidence. However, the court in exercise of such jurisdiction of judicial review in respect of a finding recorded against a delinquent public servant can very well examine whether the enquiry was held by the competent officer or following the mandate of the Rules and also the principle of natural justice and whether such finding and conclusion are based on some evidence. It is only when the disciplinary proceeding is conducted by an incompetent authority and also even if the authority is competent one but the same was conducted in utter disregard to the statutory rules and / or in utter disregard to the principle of natural justice in exercise of the power of judicial review under Article 226, the court can interfere with the findings of the disciplinary authority recorded against the delinquent servant, so also in exercise of such jurisdiction when there is no proportionality in the punishment imposed, the court can also exercise the writ jurisdiction to interfere with such punishment and direct the disciplinary authority to revisit with the punishment.

7. Keeping in mind the aforesaid, when the contention advanced with regard to the sustainability of the decision impugned is examined there is no manner of doubt that the second respondent being competent to exercise suo moto review jurisdiction exercise its such power by appreciating the materials on record with regard to the proportionality of the

punishment imposed and accordingly following the principle of natural justice which is embedded in the statutory rules passed the impugned order. But virtually there being no material before the second respondent justifying the ground that there was not proportionality in the punishment imposed, the power of review though available to the second respondent have been exercised without any reasons much less any justifiable reasons. Otherwise also the co-delinquent though faced an independent proceeding being imposed with the same punishment when his punishment was not enhanced in the appeal filed, there was no reason for the second respondent to exercise the suo moto power of review to enhance the punishment and impose enhance punishment different than Thiru.Mariappan. The same therefore, has no sanction of law as it amounts to discrimination in the eye of law to the petitioner. In the case of Rajpal Singh cited surpa, the aforesaid being the view of the Apex Court, the impugned order passed against the writ petitioner by the second respondent and as such cannot be sustained.

8. I would therefore allow the writ petition consequently, quash the impugned order of the second respondent and restore the order of the first respondent recorded in the disciplinary proceeding against the writ petitioner. However, in the circumstances, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintendent of Police,
Nagapattinam District
2. The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur
3. The Director General of Police,
Mylapore, Chennai-4

+1cc to Mr.M.Muthappan, Advocate, SR.No.59120

W.P.No.7392 of 2014

RSY(CO)
rrs(16/10/2018)