

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.06.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13766 of 2015

and

W.M.P.No.2 of 2015

M.Baskar,
Constable/Ac-LOCO/AJJ,
Railway Protection Force,
Arakonam,
Chennai Division. ..Petitioner

vs

1. The Senior Divisional Security Commissioner,
Office of the Divisional Security Commissioner,
Moor Market Complex,
Southern Railway , Chennai-3.
2. The Assistant Security Commissioner,
Office of the Railway Production Force,
Moor Market Complex,
Southern Railway, Chennai-3. ..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 impugned show cause notice of dated 05.03.2015 having reference No.M/XP/227/AJJ/3/13 issued by the 1st respondent and quash the same.

For Petitioner : M/s.Kavitha Deenadayalan
For Respondents : Mr.P.T.Ramkumar

O R D E R

The show cause notice issued by the first respondent in proceedings dated 05.03.2015 is under challenge in this writ petition.

2. The writ petitioner was appointed as Constable in Railway Protection Force. On account of an allegation of demand and acceptance of bribe, disciplinary proceedings were initiated against the writ petitioner. An enquiry was conducted and punishment of reduction in Grade Pay ie., from Rs.2,800/- to Rs.2,400/- in the scale of Rs.5200-20200 for a period of two

years without cumulative effect has been imposed. The period of suspension from 06.07.2013 to 16.08.2013 is also treated as suspension. The said punishment imposed by the disciplinary authorities was taken up for suo motu review by the higher authority, namely Senior Divisional Security Commissioner (RPF), Chennai. The show cause notice was issued to the writ petitioner along with the speaking order stating the reasons for review of the original punishment imposed on the writ petitioner by the disciplinary authority. The Appellate Authority has stated that he called the entire file for review and gone through the files carefully. The Appellate Authority found that for corruption allegation, the minor penalty imposed on the writ petitioner is inadequate and not in proportionate with the gravity of the proved allegations against the writ petitioner before the enquiry. The Rule also provides power for the Appellate Authority to review the orders of the original authority suo motu. Thus, there is no impediment for the Appellate Authority to exercise the powers for suo motu review under the provisions of the Service Rules.

3. The learned counsel for the writ petitioner strenuously contended that adequate opportunity has not been given to the writ petitioner. The records sought for by the writ petitioner in entirety have not been furnished to the petitioner. This apart, the writ petitioner had already suffered punishment and therefore, there cannot be any other punishment by the Appellate Authority by initiating suo motu review on the original penalty. The learned counsel further contended that the Appellate Authority had not even called for the files and committed irregularity. Thus, the impugned show cause notice is liable to be scrapped.

4. The learned counsel appearing on behalf of the respondents opposed the contention by stating that the show cause notice was sent to the writ petitioner along with the speaking order. In this speaking order, the Appellate Authority in clear terms, expressed the reasons for suo motu review and the grounds substantiated for initiation of suo motu review. This apart, the available documents on files were already furnished to the writ petitioner in proceedings dated 08.04.2015 itself. Thus, it is left open to the writ petitioner to submit his explanations and thereafter, the Appellate Authority would be in a position to consider the materials available on records, take a decision and pass final orders on the suo motu review initiated under the provisions of the Rules.

5. Undoubtedly, the allegations against the writ petitioner is in relation to corruption activity. The allegation is demand and acceptance of bribe. The writ petitioner is in Railway Protection Force. Thus, the allegation of corruption has to be viewed very seriously and there cannot be any leniency or

otherwise in respect of such allegations. The allegation of corruption has to be dealt with iron hand and iron heart. The competent officials can never show any leniency or misplaced sympathy in respect of such allegation of corruption, more specifically, in uniformed services. The personnel in uniformed services are vested with powers at large and has got a power to arrest. If such powers are exercised in an arbitrary manner or on extraneous considerations by demanding and accepting bribe, then it would be dangerous for the society to maintain the public order.

6. This being the opinion of this Court, the suo motu review initiated by the Appellate Authority is in accordance with the Rules in force and there is no infirmity as such is established in this writ petition.

7. No writ petition can be entertained against the show cause notice in a routine manner. Judicial review against the show cause notice is certainly limited. The Constitutional courts are to be cautious while entertaining the writ petition filed against the show cause notice or charge memo. Only in exceptional circumstances, such writ proceedings are to be entertained. If the show cause notice has been issued by an incompetent authority having no jurisdiction or an allegation of malafides are raised or if the notice is in violation of the statutory rules in force, then alone, the writ proceedings can be entertained. In the absence of anyone of these legal grounds, no writ petition can be entertained and such writ proceedings are liable to be dismissed in limine.

8. In the present case on hand, the writ petitioner was charged with the allegation of corruption. Based on the enquiry report, the disciplinary authority imposed the minor penalty. The Appellate Authority found that for the proved allegation of corruption, minor penalty imposed by the disciplinary authority is inadequate and not in proportionate with the gravity of the proved charges. Thus, initiated the suo motu proceedings and issued the show cause notice for the purpose of providing an opportunity to the writ petitioner. The writ petitioner also had already submitted his explanations. The documents sought for and available with the respondents had been served to the writ petitioner. Thus, the writ petitioner if at all wants to submit any further explanations or documents, it is left open for him to submit the same immediately.

9. Thus, the writ petitioner is at liberty to submit any additional grounds or documents, if any, within a period of two weeks from the date of receipt of a copy of this Order. In the event of submitting any such explanations within the period stipulated, then the authority competent shall consider the same and pass orders on merits and in accordance with law.

10. Thus, the show cause notice dated 05.03.2015 issued to the writ petitioner is in accordance with law and there is no infirmity as such. In this view of the matter, the writ petition is devoid of merits and stands dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Senior Divisional Security Commissioner,
Office of the Divisional Security Commissioner,
Moor Market Complex,
Southern Railway , Chennai-3.
2. The Assistant Security Commissioner,
Office of the Railway Production Force,
Moor Market Complex,
Southern Railway, Chennai-3.

+1cc to Mr.P.T.Ramkumar, Advocate sr.no.39187

W.P.No.13766 of 2015

nr 05/07/2018

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