

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.531 of 2018

C.Kamaraj ...Appellant/Petitioner

-vs-

- 1.The Superintendent of Police,
Thanjavur District, Thanjavur.
- 2.The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.
- 3.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004. ... Respondents

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.13377 of 2011 dated 15.11.2017.

Prayer in WP.No.13377/2011:Writ petition filed under article 226 of the constitution of India for issuance of writ of certiorari to call for the records of the respondents in connection with the impugned order passed by the respondents 1 to 3 in PR No.98/2006 dated 09.08.2008 C.No.B2/18548/2008 dated 12.01.2009 and RC No.137042/API(1)/2009 dated 19.02.2011 respectively and quash the same.

For Appellant :: Mr.K.Venkatramani, Sr.Counsel
for Mr.M.Muthappan

For Respondents:: Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellant was appointed as Grade-II Police Constable by way of direct recruitment by the Tamil Nadu Uniformed Services Recruitment Board in the year 1994. On successful completion of training and probation, he was posted in the District Armed Reserve, Perambalur in June 1998. Thereafter, he was transferred to District Armed Reserve, Trichy District in June 2000.

Subsequently, he was posted as Grade-I Police Constable in June 2004. While so, he was implicated in a criminal case and he was shown as accused for committing offences under various sections of the Indian Penal Code. The criminal cases foisted against him ended in acquittal by the judgment made in C.C.Nos.812 and 819 of 2006 dated 09.02.2007. Thereafter, he was issued with a Departmental Charge Memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules. The charges framed were that he absented himself for duty without prior permission from the forenoon of 15.12.2005, after availing one day casual leave on 14.12.2005 and also for the act of involvement in a rioting occurred in Punnianallur Big Street in Ayyampettai Police Station limits while assaulting one Ramanathan on 14.12.2005. The Departmental enquiry was completed and the enquiry report was submitted holding the charges proved, in respect of the appellant. On receipt of the explanation from the appellant, the disciplinary authority imposed a punishment of postponement of increment for a period of two years with cumulative effect by order dated 09.08.2008. An appeal preferred by the appellant against the said order was returned without any order being passed on merits on the ground that the appeal was preferred beyond the period of limitation. The appellant preferred a petition before the third respondent, who in turn, issued a show cause notice to the appellant on 22.03.2010 stating that the appellant was involved in a quarrel by assaulting a member of the police force and therefore the punishment imposed on him by the disciplinary authority was not commensurate with the gravity of misconduct proved against him.

2. On receipt of the explanation from the appellant in respect of the show cause notice, the third respondent passed an order on 19.02.2011 enhancing the penalty of punishment to 'reduction in rank for a period of two years'.

3. The appellant filed a writ petition in W.P.No.13377 of 2011 challenging the orders passed by the respondents 1 to 3 dated 09.08.2008, 12.01.2009 and 19.02.2011. The said writ petition was dismissed as devoid of merits by order dated 15.11.2017. Challenging the same, the present appeal has been filed.

4. The learned senior counsel appearing for the appellant has submitted that as per Rule 15A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, the appellate authority other than the State Government, can review the order passed by the disciplinary authority only within a period of six months and not beyond that period. But suo motu review has been taken up after a period of about 21 months and the order has been passed enhancing the punishment. It is his further submission that even though show cause notice has been issued before passing the review order, no reasons have been assigned as to why the review has to be taken up.

5.The learned Additional Government Pleader appearing for the respondents has submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel on either side and perused the materials available on record.

7.It appears that due to certain misconduct, originally a punishment of postponement of increment for a period of two years with cumulative effect was imposed on the appellant by the disciplinary authority, by order dated 09.08.2008. Subsequently, in the review order, reduction in rank for two years to be spent on duty, has been imposed. May be the order of postponement of increment for a period of two years with cumulative effect would be a little lenient. However, we find that after a time of more than 1 ½ years, suo motu review petition has been taken up and order has been passed enhancing the punishment. Further, no proper reasons have been assigned in the show-cause notice as to why the review has to be taken up. Hence, on the ground of limitation and also on the ground of not assigning proper reasons, we are of the considered opinion that the enhancement of punishment to one of 'reduction in rank for two years to be spent on duty', is bad and not sustainable.

8.In view of the above stated circumstances, we deem it fit to restore the order dated 09.08.2008 passed by the disciplinary authority, imposing the punishment of postponement of increment for two years with cumulative effect and set aside the order dated 19.02.2011 enhancing the punishment imposed by the disciplinary authority to one of 'reduction in rank for two years to be spent on duty', and accordingly, the impugned order of the learned single Judge stands modified.

9.The writ appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KM
To

1.The Superintendent of Police,
Thanjavur District, Thanjavur.

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

3.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

+1cc to Mr.M.Muthappan, Advocate Sr.No.35743
+1cc to Government Pleader SR.no.36061

GJ(CO)
sm:26.6.2018

W.A.No.531 of 2018



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