

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.17486 of 2010

R.Umasankar

... Petitioner

vs.

1. The Director General of Police,
Tamil Nadu, Chennai - 4.

2. The Commissioner of Police,
Trichirappalli City,
(i/c) Deputy Inspector General of Police,
Trichirappalli Range, Trichirappalli.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus calling for the records pertaining to the order of the second respondent herein passed in C.No.B2/PR.63/99 dated 20.01.2000 imposing a punishment of reduction in time scale of pay by three stages for three years with cumulative effect and the consequential order passed by the first respondent herein in his Rc.no.172383/AP2(1)/09 dated 10.12.2009 rejecting the petitioner's review petition and quash the same and consequently direct the respondents herein to pay the petitioner all the consequential monetary and service benefits withheld due to the above punishment.

For Petitioner : Mr.Ravi Shanmugam

For Respondents: Mr.Akhil Akbar Ali

Govt. Advocate for R1&R2

WEB COPY
O R D E R

The petitioner was recruited as Sub Inspector of Police in 1970. He was promoted as Inspector. While he was serving as Inspector of Police, in Kollancode Circle in Kanyakumari district, a charge memo in PR.No.48/95 dated 13.11.1996, under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, was issued to him. The charges framed against the petitioner reads as under:-

"1. Highly reprehensible conduct by not handling the L&O problem properly and tactfully that occurred between the villages of Thoothoor and Chinnathurai on 05.02.94 in which 4 fishermen were murdered.

2. Gross neglect of duty by not writing CDs and not charging the cases in Kolengode P.S. Cr.Nos. 12/S7 q/s 174 Cr. P.C. @ 302 I PC, Cr.No. 599/91 u/s 341, 323 & 302 1PC Cr. No. 50/92 u/s Suspicious death @ 302 IPC., Cr Nos. 64/92 u/s Girl missing 376 and 302 IPC, Cr. Nos. 131/92 u/s 332, 307 IPC, Cr. No. 192/92 u/s 147, 341 and 506 (ii) IPC, Cr. No. 53/93 u/s 304(A) IIFC and Cr.No. 98/93 u/s 302 IPC, Cr. No. 204/93 u/s 307 IPC and 28 Indian Arms Act Cr.No. 221/93 u/s 307 IPC, Cr.No. 243/93 u/s 307 IPC , Cr.No. 255/93 u/s 454 and 380 IPC Nithiravilai P.S. Cr. No. 177/91 u/s 302 IPC for the period 19.06.93 to 23.04.94.

3. Gross neglect of duty by not enforcing prohibition Act in Kollencoile Circle vigorously resulting in the detection of 4 prohibition cases and seizure of 274 litres of l.D. arrack by Deputy Superintendent of Police, Colachel on 18.04.94 vide Nilhiravilai P.S. Cr No, 132 to 135/94 xx/e 4(1) (a) TNF Act.

4. Gross neglect of duty by not attending personally to the Hindu Munnani procession and meeting at Kanjampuram on 2.1.94 A.N though instructed by the Deputy Superintendent of Police, Colachel.

5. Highly reprehensible conduct by making false records and claiming false T.A. for 2.1.94

6. Gross neglect of duty by not taking interest in maintaining law and order in Kollencode area on 23.12.93."

2. Enquiry Officer was appointed. The petitioner did not appear before the enquiry proceedings. The Enquiry Officer after going in to the material on record came to the conclusion that the charges framed against the petitioner are proved. The Disciplinary Authority accepted the findings of the Enquiry Officer and awarded the punishment of reduction of time scale pay by three stages for three years with cumulative effect.

3. The petitioner did not file an appeal. Instead he filed a Review Petition before the Director General of Police, Tamil Nadu. The Director General of Police by an order dated 26.01.2001, did not interfere with the punishment granted to him. A writ petition has been filed in this Court in WP.No.11853 dated 15.09.2003. This Court by an order dated 15.09.2009, observes as under:-

"If one reads Rule 15-A(3) read with Rule 6 of the Rules it is clear that the second respondent ought to have considered the adequacy of punishment. Unfortunately,, the second respondent, has failed to address the aspect of adequacy of punishment in the impugned order dated 26.07.2001, confirming the order dated 20.01.2000 of the first respondent. The question as to the adequacy of punishment was raised in the review petition and the same is extracted here-under:

"In fine, I submit to the benign Director General of Police, Chennai that I have completed thirty years of service having been appointed during 1970 and my batch mates were promoted as Deputy Superintendent of Police five years back and my seniority was pushed back even though the periods of suspension and out of employment were treated as one of duty as per the Orders or the- Apex Court and I am put in great loss and left with humility and mental agony. I pray this August Office to consider my submission in the right perspective and reverse the orders and render justice."

The relevant portion of the order of the second respondent., in ,this regard, is extracted here-under:

"3) I have carefully gone through his review petition, P.R. file and all other connected records pertaining to this P.R. file. The review petitioner's main contention is that due to multifarious official duties he could not attend' the Oral Enquiry which resulted in drawing exparte minute and the Enquiry Officer did not provide copies of depositions of P.Ws. to him and thus he was deprived of his rights entitled to him. The P.R. proceedings are on the prescribed lines of rules and there is no any miscarriage of justice. The Review petitioner has been afforded with adequate opportunity to defend himself. He has not attended the Oral Enquiry despite of post of Oral Enquiry for several dates. He should have appealed before the Enquiry Officer and take copies of the documents and copies of the Deposition of P.Ws. He has failed to do so. In his review petition he has not put forth any new or convincing grounds to reconsider the decision on the orders of the Disciplinary authority. I therefore, decline to interfere with the punishment already awarded. The review petition is therefore rejected."

This shows that the contentions raised by the petitioner in the revision petition as to the excessiveness of the punishment, were not dealt with by the second respondent.

11. In these circumstances, the order of the second respondent dated 26.07.2001, confirming the order of the first respondent dated 20.01.2000, is set aside and the matter is remanded back to the second respondent for the limited purpose of considering the adequacy of punishment under Rules 15-A(3) read with Rule 6-1 (c), taking into account the long service of 36 years, rendered by the petitioner and also the effect of the punishment on his pension etc., and to pass appropriate orders on merits and in accordance with law. The second respondent is directed to complete the said exercise within a period of four months from the date of receipt of- a copy of this order"

4. The scope of remand was therefore limited for the Reviewing Authority to consider the adequacy of punishment under Rule 15(9)(3) r/w Rule 6-1(c) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. On remand, the Reviewing Authority after enumerating the charges was disposed of the Review Petition. The relevant paragraphs of the order reads as under:-

"5. He has filed a WP.No.11853/2007 (T) (OA No.1108/02) challenging the orders of the Director General of Police. The Hon'ble High Court, Madras have given following direction in the reference fourth cited.

"The contention raised by the petitioner, in the revision petition as to the excessiveness of the punishment, were not dealt with by the second respondent viz., the Director General of Police.

In these circumstances, the order of the second respondent dt.26.07.2001, confirming the order of the first respondent dt.20.01.2000, is set aside and the matter is remanded back to the second respondent for the limited purpose of considering the adequacy of punishment under Rules 15-A(3) read with Rule 6-1(c), taking into account the long service of 36 years, rendered by the petitioner and also the effect of the punishment on his pension etc., and to pass appropriate orders on merits and in accordance with law".

6. As per the Court direction, his review petition dt.23.02.01 was reviewed again under rule 15-A(3) read with Rule 6-1(c). Though the delinquent has served in the Police Department for 36 years, he is having 25 punishments. The punishment awarded in this P.R is commensurate with the delinquency. Hence, I decline to interfere with the punishment already awarded and reject the review petition."

5. A perusal of the order of the Reviewing Authority shows that he has not considered as to whether the punishment is commensurate to the misconduct which it was the scope of remand. It is for the Reviewing Authority to consider as to

whether the punishment is adequate or not, keeping in mind, the nature gravity charges which has been proved. The Director General of Police has only considered the post conduct while affirming the punishment and has not given the order in accordance with Rule 15-A(3) read with Rule 6-1(c), dated 15.09.2009, in WP.No.11583 of 2007. The order of the Reviewing Authority is therefore is not in accordance with the mandate of this Court for the purpose for which the matter was remanded.

6. The order dated 20.012000, passed by the Commissioner of Police, Trichirappalli City, is therefore set aside and the Commissioner of Police, Trichirappalli City, is directed to reconsider the case in light of the order of remand dated 15.09.2009 passed by this Court in WP.No.11853 of 2007.

7. The said exercise will be completed within a period of six weeks from the date of receipt of a copy of this order. The writ petition is allowed. No Costs.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Director General of Police,
Tamil Nadu, Chennai - 4.
2. The Commissioner of Police,
Trichirappalli City,
(i/c) Deputy Inspector General of Police,
Trichirappalli Range, Trichirappalli.

+lcc to Mr.Ravi Shanmugam, Advocate, S.R.No.48891

+lcc to the Government Pleader, S.R.No.49131

W.P.No.17486 of 2010

VG II(CO)

RRS(17/07/2019)

WEB COPY