

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.02.2019
CORAM :
THE HONOURABLE MR. JUSTICE M.S. RAMESH
WP. No.20762 of 2005

V.S.Subbaiyan

..Petitioner

Vs

1.The Dy. Commissioner of Police
Flower Bazaar District,
Chennai.

2.The Joint Commissioner of Police
(North), Chennai City Police,
Chennai.

..Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the respondents in connection with the impugned orders passed by the respondents 1 and 2 in P.R.No.140/P.R.II(2)/03 dated 16.10.2004 and Rc.No.410/105244/PR.II(2)/04 dated 15.02.2005 respectively and quash the same.

For Petitioner : Mr.Alagu Goutham

For Respondents: Mr.K.Rajendra Prasad
Additional Government Pleader

ORDER

This Writ Petition is filed to call for the records in connection with the impugned orders passed by the respondents 1 and 2 in P.R.No.140/P.R.II(2)/03 dated 16.10.2004 and Rc.No.410/105244/PR.II(2)/04, dated 15.02.2005 respectively and quash the same

2. The charge against the petitioner is that he had indulged in the gross misconduct of subletting the Nariyankadu Police Quarters No.G/13 allotted to him and he was not actually staying with his family members, thereby, violating the terms and conditions of the allotment.

3. According to the respondents, when they had conducted enquiry, they had found some thirds persons were occupying the quarters, which according to the petitioner is his family members. The enquiry officer had found that the charges against the petitioner were proved. As against the original order, an appeal came to be preferred by the petitioner before the second

respondent, wherein, the petitioner herein had raised several grounds to substantiate that he had not let out his house to any third party. Apart from the same, he had also raised specific ground stating that the disciplinary authority had come to wrong conclusion that the delinquency has been proved without any material evidence. However, the second respondent herein had rejected the appeal, by an order, dated 05.02.2005, in which, he had stated that the delinquent has not raised any new grounds and that the punishment imposed is just and adequate. Apart from the above observations, there is no other findings with regard to the correctness to the order passed by the disciplinary authority.

4. The order of the second respondent / appellate authority is apparently non speaking order and opposed to Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline and Appeal Rules) 1955, which reads as follows:

"6.(1) In the case of an appeal against an order imposing any penalty specified in rule 2, the appellate authority shall consider--

- (a) Whether the facts on which the order was based have been established;
- (b) Whether the facts established afford sufficient ground for taking action; and
- (c) Whether the penalty is excessive, adequate or inadequate and after such consideration, shall pass orders--
 - (i) confirming, enhancing, reducing, or setting aside the penalty; or
 - (ii) remitting the case to the authority which imposed the penalty or to any other authority which such direction, as it may deem fit in the circumstances of the case:

Provided that--

(a) if the enhanced penalty which the appellate authority proposed to impose is one of the penalties specified in clauses (d), (e), (g), (h), (i) and (j) of rule 2 and an enquiry under sub-rule (b) of rule 3 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of rule 3, itself hold such enquiry or direct that such enquiry be held in accordance with the provisions of sub-rule (b) of rule 3 and thereafter on consideration of the proceedings of such enquiry and after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during such enquiry, make such order as it may deem it;

(b) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (d), (e), (g), (h), (i) and (j) of

rule 2 and an enquiry under sub-rule (b) of rule 3 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity of making representation against the penalty proposed to be imposed on the basis of the evidence adduced during the enquiry, make such order as it may deem fit; and

(c) no order imposing an enhanced penalty shall be passed in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (b) or rule 3 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that the error or defect was not material and has neither caused injustice to the person concerned nor affected the decision of the case."

5. The above Rule is self explanatory. As per the aforesaid Rule, it is the bounden duty of the Appellate Authority to consider as to whether the facts on which the original order passed, had been established and whether such established facts afford sufficient grounds for taking action as to the proportionality of the punishment.

6. In the instant case, the second respondent had chosen to reject the petitioner's appeal in single line, which is apparently opposed to the said Rule 6. Hence, it would be appropriate for the second respondent to take the matter for fresh consideration.

7. Since the matter is remitted back to the second respondent, this Court is consciously refraining from making any observations with regard to the orders passed by the Original Authority, since the issue is to be re-considered by the Appellate Authority.

8. In the light of the above observations, the order passed by the Appellate Authority, viz., the Joint Commissioner of Police (Noth), Chennai City Police, Chennai in RC.No.410/105244/PR.II(2)/04, dated 15.02.2005 is set aside. Consequently, the matter is remanded back to the Joint Commissioner of Police (Noth), Chennai City Police, Chennai / second respondent to consider the matter afresh. The petitioner is also been given liberty to raise fresh grounds before the second respondent. On receipt of such grounds, the second respondent shall consider the same after giving due opportunity

to the petitioner and pass appropriate orders as expeditiously as possible, in any event, atleast within a period of three months from the date of receipt of such grounds.

9. With the above observations and directions, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pvs

To

1.The Deputy Commissioner of Police
Flower Bazaar District,
Chennai.

2.The Joint Commissioner of Police
(North), Chennai City Police,
Chennai.

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nr 26/03/2019



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