

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.9751 of 2010

P.Thangaraj

... Petitioner

Vs.

1. The Secretary of Government,
Government of Tamil Nadu,
Home Department, Secretariat, Chennai.

2. The Principal Secretary to Government,
Government of Tamil Nadu,
Home Department, Secretariat, Chennai. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorari, calling for the records of the Government of Tamil Nadu in G.O.(3D)No.94, Home (Pol-VI) Department dated 29.12.2008 of the 2nd Respondent as confirmed in G.O.(2D)No.390, Home (Pol-VI) Department 11.09.2009 of the first respondent and quash the same.

For Petitioner : Mr.I.C.Vasudevan

For Respondents: Mr.A.Zakir Hussain,
Govt. Advocate

ORDER

The instant writ petition challenges the order dated 29.12.2008 as confirmed in G.O.(2D)No.390, Home (Pol-VI) Department 11.09.2009 of the first respondent.

2. Shorn of details the facts are:-

a) the petitioner was appointed as Grade-II Police Constable in the year 1974 and was promoted as Grade I Police constable in 1993 and 1998. Subsequently, he was promoted as Head Constable and in 2004 the petitioner was promoted as Sub Inspector of Police.

b) The petitioner has received a charge memo dated 09.02.2007 issued by the Deputy Inspector General of Police under Rule 3(b) of the Tamil Nadu Subordinate Service

(Discipline and Appeal) Rules 1955, on the ground that while he was working as Head Constable in Vellode Police Station, one Mani was illegally detained by him on 21.02.2001 at Vellode Police Station. It is stated that the said Mani passed away on 03.03.2001, while he was in Sub-Jail Erode.

c) It is stated in the charge memo that a case was registered against Mani as if he was arrested during an excise raid. A FIR was registered on 22.02.2001, but Mani was detained on 21.02.2001 itself. The allegation was that Mani was illegally detained in the Police Station.

d) The Additional Superintendent of Police, Prohibition Enforcement Wing, Erode District, was appointed as Enquiry Officer. The petitioner stated that he gave a detailed explanation. The Enquiry Officer after examining the witnesses came to the conclusion that the charges are not proved. The Deputy Inspector General of Police after considering the enquiry report and the explanation of the petitioner came to the conclusion that the charges are not proved by an order dated 28.09.2007.

e) On 29.12.2008 by invoking Rule 15-A of the Tamil Nadu Subordinate Service (Discipline and Appeal) Rules 1955, the Government issued a suo moto revision. By an order dated 29.12.2008 by a G.O.(3D) No.94, dated 29.12.2008, the Government rejected the contentions of the petitioner and imposed the punishment of stoppage of increment for a period of two years with cumulative effect. It is this order which is sought to be challenged in the instant writ petition.

3. The learned counsel for the petitioner states that the order of the Government is completely unreasoned. In order to appreciate the contention of the petitioner it is necessary to extract the entire Government order, which reads as under:-

"ORDER:

In the reference first read above, Thiru P.Thangaraj, Sub-Inspector of Police, Erode District (formerly Head Constable 941 in Vellode Police Station) was dealt with on a charge u/r 3(b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955 in PR No.8/2007 for the following delinquency:

"Gross neglect of duty in having illegally detained one Thiru Mani, S/o. Kaliappa Nadar, Murugantholuvu, Chennimalai (since deceased) on the night of 21.02.2001 at Vellode Police Station and having registered an FIR and recorded the arrest of the said Mani as if he was arrested in a prohibition raid conducted along with HC 1621, Lingappan and Gr-I PC 1154, Dhanapal of Vellode Police Station on 22.02.2001 at 08.30 hours".

2. The Additional Superintendent of Police, Prohibition Enforcement Wing, Erode District was appointed as Inquiry Officer and he has held the charge as "Not Proved". Disagreeing with the "Not Proved" minute drawn by the inquiry officer, show cause notice was issued to the Delinquent Officer. Agreeing with the explanations offered by the Delinquent Officer, the Deputy Inspector General of Police, Coimbatore Range dropped further action in his proceedings * No.Dl/PR.8/07 Dated; 16.9.2007 and send the Punishment Roll to Government (Public Department) for Review.

3. The Government have decided to take suo-motu revision under Rule 15 (A) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, in the disciplinary proceedings instituted against Thiru P.Thangaraj, Sub-Inspector of Police, Erode District (formerly Head Constable 941 in Vellode Police Station. Reason for deviation from the findings of the Inquiry Officer

The reasons given before the enquiry officer by the delinquent police personnel and the 'NOT PROVED' minutes drawn by the enquiry officer in this case are not acceptable and that a review may be necessitated in as much as illegal custody is concerned.

Accordingly, a show cause notice was issued under rule 13(A) (1) of Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules to Thiru P.Thangaraj, Sub-Inspector of Police, Erode District (formerly Head Constable 941 in Vellode Police Station), in the reference fourth read above.

Further representation of the Delinquent Officer on the show cause letter

Thiru P.Thangaraj, Sub-Inspector of Police, Erode District (formerly Head Constable 941 in Vellode Police Station) in his further representation fifth read above, has stated that he had submitted his detailed explanation with facts and figures to the Oral Enquiry Officer who held the charge against him as NOT PROVED by considering his explanation. Agreeing with the explanation offered by the Delinquent Officer the Deputy Inspector General of Police, Coimbatore Range has dropped further action. In his further representation he has refuted the charges against him in detail and he has also stated that he had not committed any delinquency as alleged. The deceased Mani was arrested during the Prohibition raid conducted along with Head Constable

1621 Lingappan and Grade I Police Constable 1154 Dhanapal of Vellode Police Station. He has also stated that he had completed more than 34 years of service and earned 189 rewards without any punishment. By considering his 34 years of service without punishment with 189 rewards and above explanation further action in the matter may be dropped.

4. The Government have examined the above request of Thiru. P. Thangaraj, Sub-Inspector of Police, Erode District (formerly Head Constable 941 in Vellode Police Station) carefully and independently with the relevant records. The Government have decided to impose a punishment of "Stoppage of increment for a period of two years with cumulative effect" on Thiru P. Thangaraj, Sub-Inspector of Police, Erode District (former:- Head Constable 941 in Vellode Police Station).

5. Accordingly, the Government direct that a punishment of "Stoppage of increment for a period of two years with cumulative effect" be imposed on Thiru. P. Thangaraj, Sub-Inspector of Police, Erode District (formerly Head Constable 941 in Vellode Police Station). This punishment will be inclusive of any period spent on leave and it will affect his pension."

4. A perusal of the above order would show that it is completely devoid of any reason as to why it is disagreeing with the findings of the enquiry officer and the Disciplinary Authority. It is well settled law that any order which has got civil consequences has to be a reasoned order. Reason is the link between the thought of the decision maker and the conclusion arrived at in the decision. An order without reasons cannot be said to be a valid order before the eyes of law.

5. In *Roop Singh Negi v. Punjab National Bank and Ors.*, reported in 2009 (2) SCC 570, the Supreme Court, at Paragraphs 14 and 23, held that,

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties.

.....

23. Furthermore, the order of the disciplinary authority as also the appellate

authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible."

6. The Hon'ble Supreme Court in R.P.Bhatt v. Union of India reported in AIR 1986 SC 1040, at Paragraphs 4 and 5, observed that,

"The word 'consider' in R.27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) Whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) Whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) Whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc, the penalty, or may remit back the case to the authority which imposed the same. R.27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any findings on the crucial question as to whether the findings of the disciplinary authority were unwarranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (2) of R.27(2), viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of R.27(2) of the Rules, the impugned order

passed by the Director General is liable to be set aside."

7. In view of the facts that the impugned order is completely devoid of any reasons. The order is set aside and the matter is remanded back to the first respondent to consider the explanation of the petitioner and pass a reasoned order clearly bringing out as to why it is disagreeing with the findings of the enquiry officer as affirmed by the disciplinary authority. The writ petition is allowed. Since the petitioner has already retired, the Government is directed to consider the representation and pass orders within the period of eight weeks from the date of receipt of a copy of this order. No Costs.

Sd/-

Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

Pkn.

To

1. The Secretary of Government,
Government of Tamil Nadu,
Home Department, Secretariat, Chennai.

2. The Principal Secretary to Government,
Government of Tamil Nadu,
Home Department, Secretariat, Chennai.

+1cc to the Government Pleader SR.83205

W.P.No.9751 of 2010

BR(CO)
CB(27/11/2019)

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