

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 24.01.2019

Order pronounced on : 15.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 22602 of 2014

J.Sivakumar

... Petitioner

Vs

1. The Deputy Inspector General of Police,
Kancheepuram Range,
Kancheepuram.

2. The Additional Director General of Police,
Law and Order,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondents in connection with the impugned orders passed by the 1st respondent in Range R.O.No.13/12 in PR No.77/2012 dated 05.07.2012 and confirmed by the 2nd respondent in RC No.121783/Con.I (1) 2010 dated 03.07.2014 and quash the same.

For Petitioner : Mr.R.Singaravelan,
Senior Advocate for
Mr.M.Muthappan

For Respondents : Mr.R.Govindasamy,
Special Government Pleader

O R D E R

The Writ Petition has been filed challenging the order passed by the 1st respondent imposing the punishment of withholding the increment for three stages with cumulative

effect, which has been confirmed by the 2nd respondent/Appellate Authority.

2. The case of the petitioner in brief is as follows :-

The petitioner was originally appointed as Sub-Inspector of Police on 28.09.1987, and he was subsequently promoted as Inspector of Police in the year 1999. While the petitioner was working as Inspector of Police in Selaiyur Police Station, at Chennai, based on a complaint given by an accused in Crime No.374 of 2018, in the above police station, alleging that the petitioner received the illegal gratification, a detailed enquiry was conducted by Vigilance and Anti-Corruption department. After enquiry, the allegations levelled against the petitioner was dropped as the allegations was not substantiated. Thereafter, a disciplinary proceedings has been initiated against the petitioner and a charge memo has been issued under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, (hereinafter called as 'Rules') levelling as many as five charges. Thereafter, a departmental enquiry was conducted by the Deputy Superintendent of Police, Madhavaram. After enquiry, the enquiry officer found that charges Nos.1,3,4 and 5 are proved, and charge No.2 was partly proved. Thereafter, the second show cause notice was issued to the petitioner by the 1st respondent/disciplinary authority, and he has submitted a detailed representation. But, without considering the points raised by the petitioner, the disciplinary authority simply accepted the enquiry officer's report, and imposed the penalty of stoppage of increment for the period of 3 years with cumulative effect by an order dated 05.07.2012. Challenging the same, the petitioner has filed an appeal before the 1st respondent under Rule 6 of the Rules, and the appellate authority dismissed Appeal in a cryptic and non-speaking order without considering the points raised by the petitioner. Now, challenging the above orders, the present Writ Petition has been filed.

3. According to the petitioner, the 1st respondent disciplinary authority had imposed the punishment in a cryptic and non-speaking order without giving any reason whatsoever, likewise, the appellate authority has also dismissed the appeal without giving any reasons and simply accepted the order passed by the disciplinary authority. Both the authorities have failed to consider that findings of the enquiry officer based on no evidence, and the entire findings are perverse, and the evidences available before the enquiry officer has no nexus with the charges levelled against the petitioner.

4. The respondents have filed a counter affidavit inter alia stating that, while the petitioner was working as Inspector of Police, at Selaiyur Police Station, a disciplinary proceedings has been initiated against him for various irregularities committed by the petitioner, under Rule 3(b) of the Rules, levelling five charges. The Deputy Commissioner of Police, Madhavaram was appointed as enquiry officer, and 33 witnesses were examined, and 41 documents were marked on behalf of the department side, and the petitioner has cross-examined all the witnesses. The petitioner has also examined his witnesses and marked documents. Considering the evidences adduced by both sides, the enquiry officer has held that the charge Nos.1,3,4 and 5 are proved and charge No.2 has been partly proved. Thereafter, the 1st respondent disciplinary authority issued a show cause notice, the copy of the enquiry report was also communicated to him, and the petitioner has also submitted his further representation. After careful consideration of the entire records, the disciplinary authority has accepted the findings of the enquiry officer, and awarded punishment of stoppage of increment for the period of 3 years with cumulative effect. The appeal filed by the petitioner before the 2nd respondent appellate authority, was also dismissed after considering the entire materials available on record.

5. Earlier, based on the complaint received against the petitioner, the department of Vigilance and Anti-corruption conducted an enquiry, and held that the allegations are substantiated. Based on the recommendation of Vigilance and Anti-Corruption authorities, the Government had passed an order in G.O.2(D) No.204, Home (Police-IV) Department dated 20.04.2010, framing the charges against the petitioner, and an enquiry was conducted by following the procedures correctly. Based on the evidences collected during the departmental enquiry, the enquiry officer has come to a conclusion that most of the charges are proved and one of the charges was partly proved. Thereafter, after issuing second show cause notice and considering his further representation, the disciplinary authority imposed the punishment, and it was also confirmed by the appellate authority with due application of mind and there is no error in the order passed by the authorities.

6. Mr.R.Singaravelan, learned senior counsel appearing for the petitioner would vehemently contend that, the enquiry was not properly conducted by the enquiry officer, and the enquiry officer without considering the evidences available on record in proper perspective, erroneously come to a conclusion that the charges were proved, and the findings given by the appellate authority is totally perverse, and it has no nexus with the charges levelled against the petitioner. The learned senior counsel has elaborately argued based on the evidences available on record. That apart, the learned senior counsel also contended

that the 1st respondent disciplinary authority imposed the punishment without giving any valid reasons, and mechanically accepted the findings of the enquiry officer. Apart from that, the appellate authority has also dismissed the appeal without assigning any reason whatsoever, and also without considering none of the points raised by the petitioner in the appeal and in total non-application of mind, on the ground also, the impugned orders are liable to be set aside.

7. Per contra, the learned Government Pleader would contend that, based on a complaint received against the petitioner, the department of Vigilance and Anti-Corruption has conducted the detailed preliminary enquiry and submitted its report. Based on the report, a disciplinary proceedings has been initiated against the petitioner and during enquiry, proper opportunity was given to the petitioner, and as many as 33 witnesses were examined on the side of the department to establish the charges levelled against the petitioner and number of documents were also marked, the petitioner was also given sufficient opportunity to cross-examine all those witnesses. That apart, the petitioner also let in evidence and marked documents. Considering the entire evidences elaborately, the enquiry officer come to a conclusion that most of the charges are proved. Thereafter, a second show cause notice was also issued to the petitioner, along with the enquiry report. The petitioner also submitted further representation, and the disciplinary authority after considering the entire materials concurred with the findings of the enquiry officer's report and only imposed a lesser punishment with the stoppage of increment for the period of 3 years with cumulative effect. While conducting the enquiry, proper opportunity was given to the petitioner to satisfy the principles of natural justice, and the procedures were strictly followed. The appellate authority considering all the materials available on record, and on due application of mind, come to a conclusion that there is no merit in the appeal, and ultimately dismissed the appeal. Hence, there is no irregularity and illegality in the order passed by the authorities.

8. I have considered the rival submissions and perused the materials available on record carefully.

9. The charges levelled against the petitioner reads as follows:-

"i) The delinquent officer connived with some private persons voluntarily interfered in land disputes on the pretext of petition enquiry and received bribe from both the parties, though the disputes are civil in nature.

ii) The delinquent officer has manipulated entries in the Community Service Register for CSR No.490/07 and filed FIR in Cr.No.1664/07 u/s 147, 148, 506(ii) r/w 379 IPC before the court as if registered subsequent to the outcome of the enquiry conducted on the complaint as petition enquiry in CSR No.490/07 to favour Thiru Baskar and Thiru.Raja in respect of a land in dispute and with vested interest. The FIR index entries show the section of law as 41(i) of the Criminal Procedure Code for the same Cr.No.1664/2007.

iii) The delinquent officer has failed to make entries in the General Diary in respect of CSR Nos.490/07, 491/07, 44/08, 63/08, 67/08, 89/08 and 94/08 enquired by him.

iv) The delinquent officer has failed to hand over the Community Service Register receipt duplicate copy book containing duplicate copy of receipts for CSR Nos.490/07, 491/07, 44/08, 63/08, 67/08, 89/08, and 94/08 and files in respect of CSR No.63/08, 485/07 & 490/07 to his relieve subsequent to his transfer.

v) The delinquent officer has failed to take up first investigation subsequent to registration of the FIR in Cr.No.1664/07 u/s 147, 148, 506(ii) r/w 379 IPC on 14.12.2007 till his transfer on 02.08.2008."

To substantiate the above charges, the department has examined as many as 33 witnesses and marked 41 documents and the petitioner was also permitted to cross-examine all the witnesses. Apart from that, he has also examined one Pushpa on his side and also marked documents on his side, and on considering the entire evidences available on record, the enquiry officer has come to a conclusion that out of five charges, four charges have been proved and one charge has been partly proved. Subsequently, a second show cause notice was also issued against the petitioner, and he has also submitted his detailed representation. Thereafter, the 1st respondent disciplinary authority passed an order imposing the punishment of stoppage of increment for the period of 3 years with cumulative effect. A perusal of the order passed by the 1st respondent dated 05.07.2012, it could be seen that, the objections raised by the petitioner were not considered, and simply accepted the findings of the enquiry officer and imposed the punishment. Challenging the above order, the petitioner has filed an appeal under Rule 6 of the Rules, raising various grounds, and the appellate authority also without considering none of the points raised by the petitioner and without assigning any reason, dismissed the appeal.

10. It is triate law that the departmental proceedings is a quasi judicial proceedings, and the enquiry officer performing his duty as a quasi judicial authority. The enquiry officer has a duty to take into consideration of all the materials brought on record by the parties, has to file his report before the disciplinary authority. On receipt of the enquiry report, the disciplinary authority is expected to issue a further show cause notice seeking for objection for the report filed by the enquiry officer and wherever a further objection has been submitted by the delinquent officer, the disciplinary authority is duty bound to consider the objections, and pass a reasoned order either to accept the findings of the enquiry officer or differing from the same. In the instant case, the disciplinary authority has issued a notice to the petitioner on the proposed punishment, and a detailed explanation was also submitted by the petitioner, and the disciplinary authority accepted the findings of the enquiry officer and imposed the punishment. Challenging the order of punishment, an appeal has been filed by the petitioner, and the appellate authority without giving any reasons whatsoever dismissed the Appeal.

11. Rule 6 of the Rules deals with the power of the appellate authority for considering the appeal, 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 affect sufficient ground for taking action; and

(c)"

Rule 6 (1) of the Rules, mandate the appellate authority to consider whether the facts on which, the order so passed has been established, and the established fact provide sufficient ground for taking action. On perusal of the order passed by the appellate authority, it does not indicate that the appellate authority has applied his mind and considered relevant materials before coming to a conclusion that the charges were proved. The operative part of order of the appellate authority reads as follows :-

"5) I have carefully gone through the PR file and appeal petition.

Regarding count No.1 Exhibits of PW.7 and PW.9 clearly establish the charge and I hold it as proved.

Regarding count No.2, Statement of PW.23, PW.26 Prosecution Exhibits 16, 17, 35, 38, 20, 39 and 41 establish the charge.

Regarding count No.3, Prosecution Exhibits 13, 15, 20 & 36, 21, 22, 23, 24 proves that the appellant has not entered the details in GD and proves the charge.

Regarding count No.4 perusal of Prosecution Exhibits 13, 15, 20, 21, 22, 23, 24 and the statement of PW.26 proves the charge.

Regarding count No.5, statement of PWs. 32, 31, 28 and Prosecution Exhibits 41, 34, 35, 36, 37, 38, 40 & 41 clearly proves the charge.

6) Considering the delinquency, the punishment imposed is not excessive and the appeal petition is rejected."

In a similar circumstances, this Court, in Arokiadoss Vs. The Deputy Commissioner of Police, reported in 1989 Writ L.R. 274, while dealing with the powers of the appellate authority under Rule 6(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, in paragraph 4, held as follows :-

"the order of the appellate authority does not indicate, whether the appellate authority considered the materials on record in the light of Rule 6(1) of the Rules. He should have discussed the relevant evidence and found whether the facts on which the order of the disciplinary authority was based have been established. He should have also considered whether the facts afford sufficient ground for taking disciplinary action and whether the penalty is excessive, adequate or inadequate. As the order of the appellate authority does not show that he has considered the relevant matters prescribed under R.6 (1) of the Rules, the order is vitiated."

In another judgment of this Court in K.Kandasamy Vs. Deputy I.G. of police, reported in 2006 (4) MLJ in para 7, has held as follows :-

"It is seen from the aforesaid portion of the impugned order that the Appellate Authority did not deal with any of the grounds of appeal raised by the petitioner. A departmental appeal is a continuation of the original proceedings. It is needless to point out that the last opportunity available for a delinquent, to canvass his case on merits, is at the appellate stage. After the appeal, a delinquent loses his right to challenge any

disciplinary proceedings on merits, since the scope of interference on a revision or on a writ petition is very limited. Therefore, the rules themselves contemplate Appellate Authorities to go into the factual details and consider all the grounds of appeal before deciding an appeal. Unfortunately, the first respondent has chosen to dismiss the appeal by a non-speaking order and hence, the Appellate Authority's order is liable to be set aside."

The appellate authority is the final fact finding authority, he is expected to assess the evidences available on record by due application of mind and also record the reasons even though not elaborately, but indicating how the appellate authority satisfied with the reasons given by the disciplinary authority. When the Rule 6 mandates that the appellate authority should consider all those materials, in the instant case, no such finding has been given by the appellate authority except simply saying that he has perused some documents, and held that the charges are proved. In the above circumstances, the order passed by the 2nd respondent appellate authority is liable to be set aside, and the present Writ Petition has to be allowed partly.

12. In view of the above procedural violation, the impugned order passed by the 2nd respondent Appellate authority is set aside and the matter is remanded back to the 2nd respondent appellate authority to consider the appeal afresh and pass a reasoned order on merits and in accordance with law. Taking into consideration of the fact that the disciplinary proceedings is pending for more than eight years, and the petitioner is also waiting for further promotion, the 2nd respondent appellate authority is directed to pass a fresh order within a period of three months from the date of receipt of the copy of this order.

13. In the result, the present Writ Petition stands partly allowed with the above direction. No costs.

Sd/-
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Assistant Registrar(CO)

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Sub Assistant Registrar

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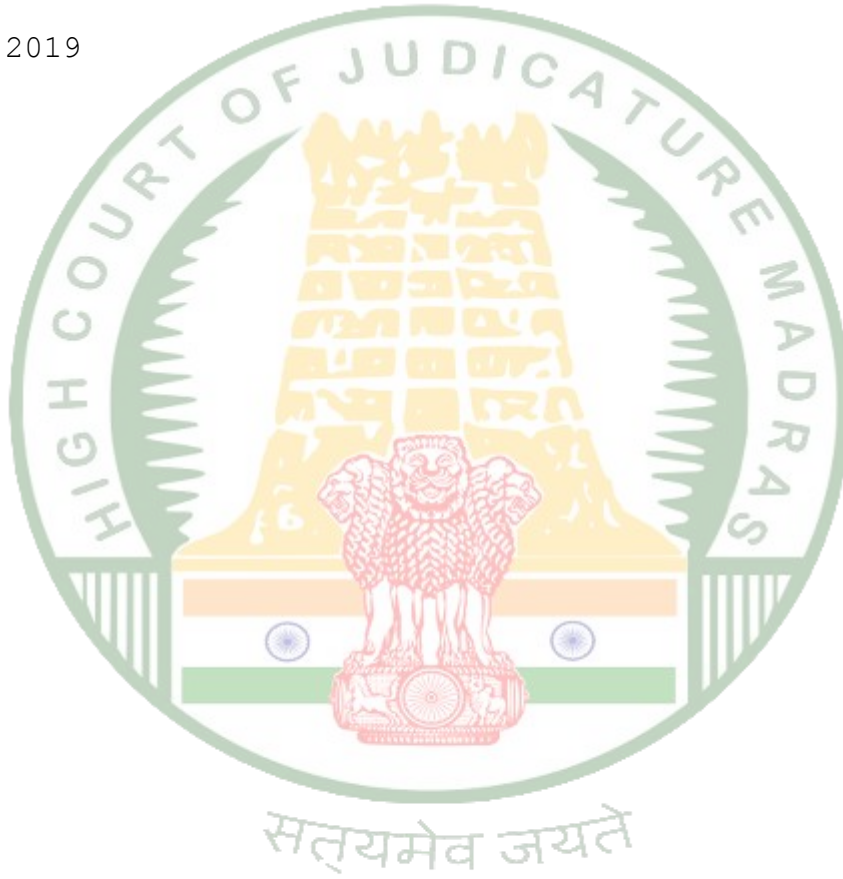
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