

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.4754 of 2017

M.Selvakumar

...Petitioner

vs.

1.The Superintendent of Police
Dharmapuri District.

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

3.The Director General of Police
Dr.Radhakrishnan Salai
Mylapore, Chennai-4.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to call for the records of the 1st respondent in connection with the impugned order passed by him in PR No.149/H2/09 dated 13.11.2009, confirmed by the 2nd respondent in R.C.No.B2/19145/2009 dated 15.03.2010 and by the 3rd respondent in Rc.No.132398/AP.2[2]/2015 dated 09.01.2016 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani
Senior Counsel
for Mr.M.Muthappan

For Respondent : Mr.D.Suriyanarayanan
Additional Government Pleader

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O R D E R

The petitioner is aggrieved against the order of punishment, removing him from service.

2. The following are the short facts and circumstances, which compelled the petitioner to approach this Court and file the present writ petition.

The petitioner was serving as a Head Constable in the

Perumbalai Outpost Police Station, Dharmapuri District. He was issued with a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955 for the two counts of charges as follows:

"1. Reprehensible conduct in having released a notorious prohibition offender concerned in Perumbalai O.P. prohibition case namely Swamiappan @ Venkatesan of Sembalai Kadu handed over to you on 6.12.2008 at 9.30 a.m. by the Sub Division Special Party without getting any instructions from your superior officers.

2. Reprehensible conduct in having entered into an altercation with the S.I. of Police, Perumbalai O.P. and attempted to assault him with a poker placed on the table of the S.I. resulted in a case in Perumbalai O.P.Cr.No.807/2008 u/s. 341, 204(b) and 501 part (ii) IPC while you were on G.D. in charge on 08.12.2008 at 10.00 hrs."

Pursuant to the issuance of the charge memo, an enquiry was conducted. However, the petitioner did not participate in the enquiry. The reason stated before this Court for not participating in the enquiry is that the charges framed in the departmental proceedings as well as the criminal proceedings are one and the same. Pursuant to an enquiry report submitted by the Enquiry Officer, where both charges were found proved, the Disciplinary Authority agreed with the findings of the Enquiry Officer and imposed punishment of removal from service by proceedings dated 13.11.2009. The petitioner preferred a statutory appeal before the second respondent on 16.12.2009. The appeal was dismissed by a non-speaking order dated 15.03.2010. The petitioner filed a mercy petition before the Director General of Police, Chennai, who also rejected the same on 09.01.2016. Hence, the present writ petition is filed challenging the orders passed by the Disciplinary Authority, the Appellate Authority and the third respondent in rejecting the mercy petition.

3. A counter affidavit is filed by the first respondent, wherein, the findings rendered by the Enquiry Officer and the Disciplinary Authority were reiterated.

4. Mr.K.Venkataramani, learned Senior Counsel appearing for the petitioner, after raising very many contentions on merits of the orders passed by the three authorities, has further submitted that the Appellate Authority viz., the second respondent herein is not justified in rejecting the appeal by a non-speaking order and therefore, the very order passed by the

Appellate Authority exposes his non-application of mind to the facts and circumstances as well as the grounds raised by the petitioner in the appeal.

5. On the other hand, the learned Additional Government Pleader appearing for the respondents submitted that all the authorities have carefully considered the facts and circumstances and that the impugned punishment was rightly imposed on the petitioner in view of the seriousness of the charges levelled against him, which were found proved.

6. Heard both sides.

7. The petitioner suffered an order of punishment, removing him from service, pursuant to framing of two charges as referred supra and after conducting the domestic enquiry. The petitioner challenged the said order of the Disciplinary Authority before the second respondent, being the Appellate Authority. Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955 deals with the manner, in which the appeal has to be considered and decided by the Appellate Authority, which reads as follows:

"Rule 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 with 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), (3), (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 proposal 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), (3), (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 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) of rule 3 of making representation against such enhanced penalty.

(G.O.Ms.No.2348 Home (Police-III) dt. 26.8.77 w.e.f. 24.1.77).

(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 the injustice to the person concerned nor affected the decision of the case."

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8. Perusal of the above said Rule would show that the Appellate Authority being a fact finding authority as well, is bound to consider whether the facts on which the order was based, have been established; whether the facts established afford sufficient ground for taking action and whether the penalty is excessive, adequate or inadequate. Exercising these three considerations are mandatory and necessary for the Appellate Authority while disposing the appeal. Needless to say that the order of the Appellate Authority should exhibit the exercise of those considerations on the face of it. If the order does not show evidently any such exercise, it has to be construed that the Appellate Authority has not followed the Rule

6 of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955, while disposing the appeal.

9. A statutory appellate remedy is not an empty formality. The Appellate Authority is undoubtedly a fact finding authority as well, which means that he is bound to go into entire facts and circumstances and evidence and re-appreciate the same by applying his independent mind to find out as to whether the conclusion arrived by the Disciplinary Authority is well founded or not. Therefore, when a person aggrieved against the order of the Disciplinary Authority, files such statutory appeal, the Appellate Authority is expected to consider all the facts and circumstances and arrive at his own conclusion based on the independent findings derived out of the materials placed before him. Simply by confirming the order of the Disciplinary Authority, without expressing any view or findings on the merits of the matter, is not a proper course of disposing the appeal, as required under Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955. In other words, it is to be held that such kind of disposal would mean that there is a failure on the part of the Appellate Authority in discharging his statutory obligation. With the above statutory position in mind, if I peruse the order of the Appellate Authority in this case, it is apparent that the Appellate Authority has failed to adhere to the said Rule, while disposing the appeal. After extracting the charges and the punishment imposed, the Appellate Authority has expressed his view only in one paragraph, which reads as follows:

"3. I have gone through the PR and appeal petition. The appellant's explanation is not acceptable. The punishment imposed on him is not excessive and therefore, his appeal is rejected."

10. Perusal of the above said order of the second respondent, undoubtedly, indicate that he has not applied his mind to the facts and circumstances of the case and the objections raised by the petitioner. On the other hand, he has mechanically dismissed the appeal by simply stating that the explanation submitted by the appellant is not acceptable and that the punishment imposed on him is not excessive. This general statement cannot be a proof of his application of mind to the particular facts and circumstances of the case. At this juncture, a decision made by the Division Bench of this Court in WA.No.2436 of 2013 dated 03.06.2014 in the matter of R.Sasikumar .Vs. State of Tamil Nadu and others, is relevant to be quoted, wherein, the very same issue was considered by referring to Rule 6 of the said Rules. At Paragraph No.8 therein it has been observed as follows:

"From the perusal of the above order, we could see that the Appellate Authority has not disposed of the appeal in terms of Rule 6(1),

extracted above. As per the said rule, the Appellate Authority shall give a finding while considering the appeal as to whether the facts on which the order is based have been established, among other things. No such finding is given by the Appellate Authority, except by stating that "he has gone through the appeal petition and all other connected records and find no reasons to interfere into the orders passed by the Commandant, TSP III Bn., the competent authority". Hence, we are unable to confirm the order of the Appellate Authority as it is not a speaking order passed in terms of Section 6(1) of TNPSS (D&A) Rules, 1955.

11. Therefore, I am fully convinced that the order of the Appellate Authority cannot be sustained only on the reason that the same was passed as a non-speaking one and not by following the Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955. Therefore, this Court is inclined to set aside the order of the Appellate Authority and remit the matter back to the second respondent for reconsidering the appeal once again afresh on merits and in accordance with law. Since this Court is inclined to send the matter back to the second respondent, the order subsequently passed by the third respondent in the mercy petition also cannot be sustained, as the statutory appeal in this case has not been disposed in accordance with law.

12. Accordingly, this writ petition is allowed in part and the impugned orders of the second and third respondent dated 15.03.2010 and 09.01.2016 alone are set aside. Consequently, the matter is remitted back to the second respondent for reconsidering the appeal filed by the petitioner dated 16.12.2009 and pass a speaking order on merits and in accordance with law. The second respondent shall pass such order within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any view on the merits of the charges levelled against the petitioner or the findings rendered by the Disciplinary Authority, as this Court is only remitting the matter back to the Appellate Authority for fresh consideration. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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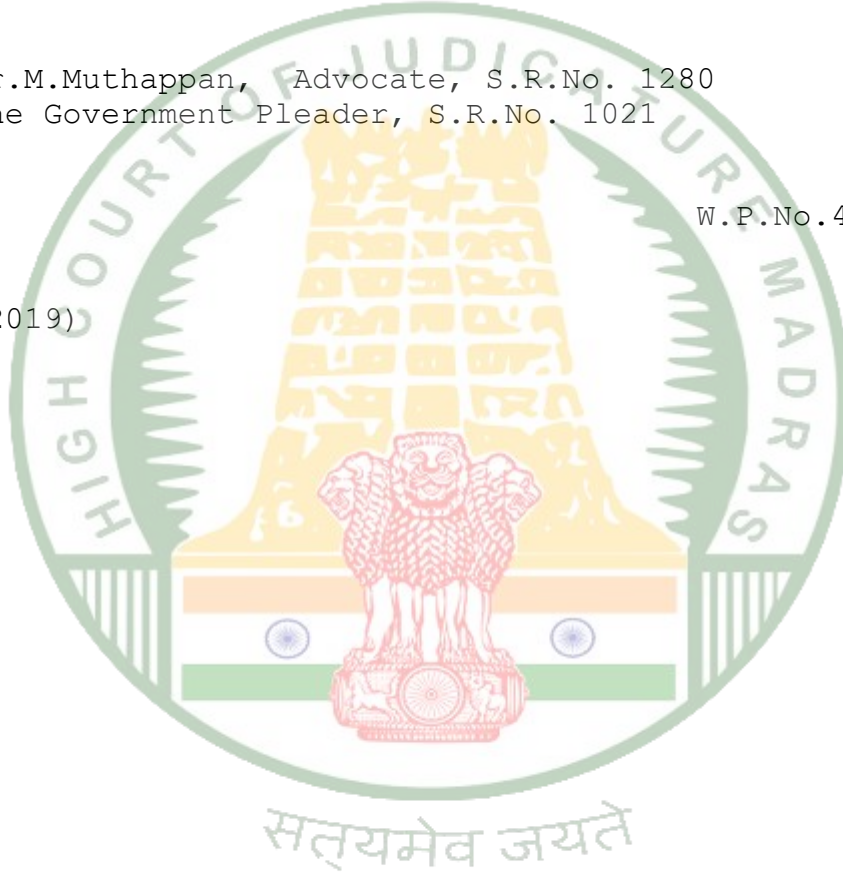
To

- 1.The Superintendent of Police
Dharmapuri District.
- 2.The Deputy Inspector General of Police
Salem Range, Salem.
- 3.The Director General of Police
Dr.Radhakrishnan Salai
Mylapore, Chennai-4.

+1cc to Mr.M.Muthappan, Advocate, S.R.No. 1280
+1cc to the Government Pleader, S.R.No. 1021

W.P.No.4754 of 2017

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