

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.6837 of 2017
and
W.M.P.No.7399 of 2017

K.Mohamed Meeran

... Petitioner

Vs.

1.The Deputy Commissioner of Police (AR)
Coimbatore City, Coimbatore.

2.The Commissioner of Police,
Coimbatore City, Coimbatore.

3.The Director General of Police,
Tamil Nadu
Dr.Radhakrishnan Salai
Mylapore, Chennai - 600 004.

... Respondents

Writ petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in connection with the impugned order passed by him in Na.Ka.No.F4/PR27/2016 dated 22.12.2016 and confirmed by the 2nd respondent in his C.No.F3/AP02/2017 dated 08.02.2017 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 M/s.M.Muthappan

For Respondents : Mr.I.Sathish,
Additional Government Pleader
for R1 to R3

O R D E R

The petitioner is aggrieved against the order of the 1st respondent dated 22.12.2016 confirmed by the order of the 2nd respondent dated 08.02.2017. Consequently, the petitioner seeks for a direction to the respondents to reinstate him into services.

2. The petitioner is a Grade-1 Police Constable. He was issued with a charge memo on 28.06.2016 under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Disciplinary and Appeal) Rules. The charge memo contained two charges. The petitioner gave explanation to the charges. Thereafter, an enquiry was conducted. The Enquiry Officer submitted a report on 14.11.2016. The petitioner made further representation dated 02.12.2016 to the Disciplinary Authority. Pursuant to the report submitted by the Enquiry Officer, the 1st respondent passed the impugned order of punishment on 22.12.2016, wherein and whereby, the petitioner was removed from service. Challenging the said order, the petitioner filed an appeal before the Appellate Authority viz., the 2nd respondent. The said appeal was dismissed on 08.02.2017. Hence, the present writ petition is filed before this Court.

3. The learned Senior Counsel Mr.K.Venkataramani, appearing for the petitioner, mainly contended that, apart from the merits of the matter, the order passed by the Appellate Authority cannot be sustained simply on the reason that the same was not passed by following the procedure contemplated under Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules. He further submitted that if the Appellate Authority has passed an order without following the procedures contemplated under Rule 6, the said order cannot be sustained as has been held by this Court in a recent decision made in W.P.No.4754 of 2017 dated 03.01.2019.

4. The learned Additional Government Pleader, on the other hand, contended that the Disciplinary Authority as well as the Appellate Authority has considered the merits of the charges and thereafter, passed the impugned orders and therefore, the same need not be interfered with.

5. Heard both sides.

6. Perusal of the order passed by the Appellate Authority would clearly show that it was made without application of mind simply by confirming the order of the Disciplinary Authority, without there being any independent reasoning and finding. After extracting the charges levelled against the petitioner and the punishment imposed on him, the Appellate Authority simply rejected the appeal only by observing that the Appellant/petitioner herein has not come out with any fresh points for consideration and that by considering the gravity of delinquencies committed by the appellant, the punishing authority has rightly ordered, removal from service. After observing so, the appellate authority has rejected the appeal.

7. Perusal of the above observation made by the Appellate Authority would show that it is not by considering the grounds of the appeal raised by the petitioner and by following the procedure contemplated under Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules. Recently, this Court has considered the scope of Rule 6 in similarly situated case made in W.P.No.4754/2017 dated 03.01.2019, wherein at Paragraph Nos.7 to 9, it has been observed as follows:

"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."

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. 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.

8. Considering the above stated facts and circumstances, this Court is fully convinced that the order passed by the Appellate Authority cannot be sustained solely on the reason that same came to be passed without following the procedure contemplated under Rule 6 and with total non-application of mind. However, this Court is not expressing any view on the merits of the charges levelled against the petitioner and the findings rendered by the Disciplinary Authority, as it is for the Appellate Authority to consider and decide and pass fresh appropriate orders on merits and in accordance with law.

9. Accordingly, this Writ Petition is allowed in part and the order of the Appellate Authority viz., 2nd respondent dated 08.02.2017 is set aside. Consequently, the matter is remitted back to the Appellate Authority to consider the appeal and pass fresh orders on merits and in accordance with law by following the procedure laid down under Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules. Such exercise shall be done by the 2nd respondent viz., Appellate Authority, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner of Police (AR)
Coimbatore City, Coimbatore.

2.The Commissioner of Police,
Coimbatore City, Coimbatore.

3.The Director General of Police,
Tamil Nadu
Dr.Radhakrishnan Salai
Mylapore, Chennai - 600 004.

+1cc to Mr.M.Muthappan, Advocate Sr.3466
+1cc to the Government Pleader Sr.3963

W.P.No.6837 of 2017

nm[co]
srg 11/02/2019