



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.MD).No.12074 of 2011

and

M.P.(MD)No.1 of 2011

WEB COPY

Rajakuthalingam

.. Petitioner

Vs.

1.The Director General of Police,
Tamilnadu, Chennai.

2.The Deputy Inspector General of Police,
Tirunelveli District.

3.The Superintendent of Police
Tirunelveli District .

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned orders passed by the 3rd respondent in his proceedings in C.No.P3/9875/2010, dated 05.08.2011 and the consequential punishment order in D.O.No.1321/2011, C.No.P3/9875/2010, dated 01.10.2011 and quash the same.

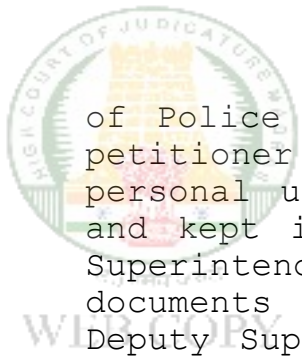
For Petitioner : Mr.M.Veilkani Raja

For Respondents : Mr.D.Muruganandam
Additional Government Pleader

ORDER

This Writ petition is filed for issuing a Writ of Certiorari, to quash the order of third respondent in his proceedings in C.No.P3/9875/2010, dated 05.08.2011 and the consequential punishment order in D.O.No.1321/2011, C.No.P3/9875/2010, dated 01.10.2011

2. The petitioner while working as Head Constable (S.P.C.I.D) in Kadaiyanallur Police Station, was under the direct control of Superintendent of Police and that it was his duty to inform the Superintendent of Police about any malpractices. While he was working in Kadaiyanallur Police Station, a charge memo was issued to the petitioner for using the river sand, which was seized by the police official and kept in the police station, for his personal purpose. A detailed explanation was sent by the petitioner. The charges itself was framed under Rule 3(a) of Tamil Nadu Police Subordinate Service (D & A) Rules, 1954. The Deputy Superintendent



of Police submitted a report holding that the charge against the petitioner for transporting and using the river sand for his personal use [which was seized from the illegal sand transporters and kept in Kadaiyanallur police station] is proved. The Deputy Superintendent of Police, drew his minute relying upon the documents and materials produced. Agreeing with the findings of Deputy Superintendent of Police, Sankarankovil who was the Minute Drawing Officer a punishment of postponement of increment for three years without cumulative effect was passed by the disciplinary authority on 04.05.2009. The petitioner preferred an appeal before the Deputy Inspector of General of Police, Tirunelveli Range, viz., the second respondent herein, who modified the punishment into one of postponement of increment for one year without cumulative effect by order dated 20.01.2009. Subsequently, the petitioner submitted a review petition and the first respondent considered the review petition and once again modified the punishment as 'black mark', dated 04.12.2009. Aggrieved by the order of respondents 1 to 3 in the first ground, the petitioner filed W.P.(MD)No.2233 of 2010. This Court allowed the writ petition and set aside the order of punishment on the ground that the respondents had not given sufficient reasons to justify the punishment. In other words, this Court observed that there was no consideration by giving reasons. Thereafter, this Court remanded the matter back to the third respondent, to pass order afresh by giving reasons. Thereafter, the disciplinary authority viz., third respondent went through the charge memo, explanation and the minutes drawn by the officer, regarding the charges against the petitioner. After recording reasons, once again punishment of postponement of increment for three years without cumulative effect was imposed. The petitioner was informed by further proceedings dated 01.10.2011 that his next increment due on 01.01.2012 is postponed for a period of three years without cumulative effect.

3. The learned counsel for the petitioner submitted that despite the order passed by this Court holding that the earlier order of punishment without considering the objection and without assigning reasons was bad, the third respondent has once again passed an order without an application mind and without assigning reasons. Sum and substance, it is contended that the impugned order is liable to be quashed for the same reason why this Court earlier has set aside the order of punishment imposed on the petitioner. It is contended that the impugned order of the third respondent is a non-speaking order and therefore, the impugned order is not supported by any evidence or material to show that the petitioner had removed the sand from the police station. The learned counsel for petitioner further contended that the first respondent earlier modified the punishment to one of 'black mark', and hence the third respondent after remand cannot impose a punishment which is more severe than the one, which was imposed by the first respondent earlier.



4. The learned Additional Government Pleader, on the other hand submitted that the petitioner, who is expected to be more honest is guilty of removing the sand from the police station for his personal use. The incident was proved by getting statements from other police personnels employed in the same station. The petitioner could have proved his case by getting statements from officials working in the police station from when the sand was transported. The finding of the disciplinary authority is based preponderance of probability. This Court is unable to find any infirmity in the order, especially with regard to the decision making process. For the alleged delinquency, the punishment is appropriate and this Court is unable to interfere with the punishment which was passed after applying mind. No motive or malafides alleged against the officer who drew the adverse report or against the respondents. Once the earlier order of punishment was set aside for want of reasons, the contention that the punishment cannot be anything severe than black mark is not sustainable.

5.As a result, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (writs)

// True Copy //

Sub Assistant Registrar(CS)

Ls

To

1.The Director General of Police,
Tamilnadu, Chennai.

2.The Deputy Inspector General of Police,
Tirunelveli District.

3.The Superintendent of Police
Tirunelveli District.

+1 CC to SPL GP (SR-98416[F] dated 14/11/2019)

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