



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.7623 of 2017

and W.M.P(MD)No.5941 of 2017

WEB COPY

Y.Suresh Kumar

... Petitioner

Vs.

1. The Director General of Police,
Chennai - 4.
2. The Additional Director General of Police,
Law and Order, Chennai - 04.
3. The Deputy Inspector General of Police,
Thiruchirapalli Range,
Thiruchirapalli.
4. The Superintendent of Police,
Perambalur District.
5. The Superintendent of Police,
Thiruchirapalli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records relating to the order of punishment passed by the Deputy Inspector General of Police, Tiruchirappalli range, Tiruchirappalli, dated 22.06.2015 in Na.Ka.No.B/T.P.5/15 along with the order on punishment Roll in PR.35/H1/2013 and the rejection order passed in the appeal by the Director General of Police, Chennai, dated 01.02.2017 in R.C.No.94971/AP.IV(1)/2016 and the consequential order of recovery, dated 10.07.2014 in Maa/order No.C1/503/2014, C1/33701/MCOP/P/2014 issued by the Superintendent of Police, Tiruchirappalli and quash them all and issue a consequential direction to the respondents to refund the amount recovered from the petitioner under the said orders and issue a consequential directions to the respondents to consider the petitioner for promotion to the post of Deputy Superintendent of Police with effect from the date on which his immediate junior was promoted with all attendant consequential and other benefits.

For Petitioner : Mr.N.Dilip Kumar
For Respondents : Mr.V.Anand,
Government Advocate.

ORDER



Inspector of Police on 13.10.2015. While so, he was issued with a charge memo, on 08.04.2013 levelling two charges, with regard to the investigation in Crime No.24 of 2002 on the file of Samayapuram Police Station relating to a road accident, which took place on 14.01.2002. Even though the Enquiry Officer, after examination of witnesses on either side and marking of exhibits, held that none of the charges were proved against the petitioner, the disciplinary authority issued a dissenting note, dated 16.04.2015 and thereafter, passed an order, dated 22.06.2015, thereby imposing punishment of postponement of next increment for one year, which shall not operate to postpone the future increments. Aggrieved over the same, the petitioner preferred an appeal before the second respondent on 22.07.2015 and the same was dismissed on 12.01.2016. Thereafter, the petitioner preferred a Review Petition before the first respondent, who in turn, rejected the same on 01.02.2017 by confirming the earlier order passed by the second respondent. Subsequently, an order of recovery dated 10.07.2014, was passed by the fifth respondent. In the meanwhile, his juniors were promoted as Deputy Superintendent of Police. Hence, the petitioner has filed the present Writ Petition, to quash the order of punishment passed by the disciplinary authority as well as the orders passed by the Appellate Authority and the Revisional Authority. Further, a consequential direction was also sought to the respondents, to refund the amount recovered from the petitioner's salary and to consider him for promotion to the post of Deputy Superintendent of Police with effect from the date on which his immediate junior was promoted.

2.Upon notice, the fifth respondent filed a detailed counter affidavit, *inter alia*, stating at paragraphs 6 and 9, as under:

"6....the petitioner is dealt with for the lapses committed as per the observation made by the Hon'ble Court of Additional District Judge (PCR) Tiruchirappalli. Hence, the views of the Enquiry Officer in drawing not proved minute is set aside and descending view was taken by 3rd respondent. It is submitted that the concerned court is also observed and opined that the petitioner then Sub Inspector of Police, did not even care to verify whether the vehicle involved in the accident is duly insured and the petitioner recklessly released the van involved in the accident without verifying the Insurance particulars. Therefore, the petitioner, who was negligent in discharging his duty, was liable to pay the sum of Rs.1,52,433/- as compensation with interest to the victims to comply with the orders of the Court. The petitioner has not appealed against the said findings of the Hon'ble Court. It is further submitted that the petitioner without setting aside the above said order, cannot challenge the recovery proceedings initiated against him."



"9....The petitioner's name was not considered for the temporary panel of Inspector of Police (Taluk) fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Category-I) for the panel year 2016-17 due to currency and continuous punishment of postponement of Increments awarded in PR Nos.18/2012, 35/2013, 41/2013, 140/14 and 78/2014 and hence, not recommended as the currency of punishment is a bar for promotion."

3.The learned counsel for the petitioner assailed the orders passed by the respondents on the following grounds:- (i)the petitioner has neither registered the case in Crime No.24/2002 with regard to an accident that occurred on 14.01.2002, nor filed any charge sheet and hence, he was not at all responsible for the lapses occurred in the investigation of the said case. (ii)the Tribunal has passed an award dated 14.02.2008 in MCOP.Nos.1848, 1849, 1850 and 1896/2002, arising out of the aforesaid accident, directing the State to pay compensation to the victims of the accident and thereafter, recover the same not from the petitioner herein, but only from the Sub Inspector of Police, Samayapuram, who was negligent and failed to discharge his duty. (iii)the initiation of the disciplinary proceedings on the basis of the preliminary enquiry report is without any material basis and the officer, who submitted such preliminary enquiry report, during his deposition, admitted that the delinquent act was attributed by the constable, who investigated the case and filed the charge sheet. However, the said constable, who is a real perpetrator, was cited as a witness, which is a serious procedural irregularity committed by the authority concerned. Hence, the order of punishment passed by the disciplinary authority and the same was confirmed by the Appellate as well as the Revisional Authorities are liable to be set aside. The learned counsel further pointed out that the impugned order of recovery passed by the fifth respondent is arbitrary, illegal and in violation of the principles of natural justice, as the same was done, without issuing any notice and providing an opportunity of personal hearing to the petitioner.

4.Reiterating the averments made in the counter affidavit filed by the fifth respondent, the learned Government Advocate appearing for the respondents submitted that as per the directions issued in the decree of the Motor Accident Claims Tribunal, the awarded amount was paid to the victims by the State and recovery is effected from the petitioner. As such, there is no infirmity either in the disciplinary proceedings initiated against the petitioner or in the recovery of the decree amount from him.

5.Heard the rival submissions and perused the documents placed before this Court.

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6.It is seen that the third respondent issued a charge memo, dated 08.04.2013 under Rule 3(B) of the Tamil Nadu Police



Subordinate Services (Discipline and Appeal) Rules, 1955, to the petitioner, levelling two charges against him, with regard to the investigation of the case in Crime No.24 of 2002 on the file of Samayapuram Police Station registered for the road accident that had occurred on 14.01.2002. The details of the charges are that (i)the petitioner failed to collect the wound certificate and did not prosecute the offender under Section 196 of the Motor Vehicles Act, since the offending vehicle was not having any insurance and also failed to file the final report in the said case till 30.09.2003; and (ii)he was responsible for the passing of the award on 14.02.2008 in four motor accident claims Tribunal petitions, thereby causing the Government to be held liable for payment of compensation to the victims of the accident.

7.It is the specific stand of the learned counsel for the petitioner that there is a serious procedural irregularity in the disciplinary proceedings initiated against the petitioner herein, taking note of the fact that the constable, who was negligent and irresponsible in conducting the investigation of the case in question, was cited as a witness therein, which resulted in the punishment of postponement of next increment for one year, which shall not operate to postpone the future increments. That apart, the fifth respondent passed an order of recovery against the petitioner, without issuing any notice and providing an opportunity of personal hearing to him.

8.Though the learned Government Advocate appearing for the respondents made his submissions supporting the orders impugned herein, this Court finds *bona fide* in the stand so taken by the learned counsel for the petitioner, as there is a procedural irregularity in the disciplinary proceedings and the recovery was made without adhering to the principles of natural justice. Hence, the orders impugned herein are liable to be set aside and the matter is remitted back to the third respondent/disciplinary authority, for reconsideration.

9.Accordingly, the impugned orders are set aside and the matter is remitted back to the third respondent. The third respondent shall consider the claim of the petitioner, on merits and in accordance with law, after affording due opportunity of hearing to the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

10.This writ petition stands allowed to the extent as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/
Assistant Registrar(CS-II)

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Sub Assistant Registrar



To

1. The Director General of Police,
Chennai - 4.
2. The Additional Director General of Police,
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(1/3)

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