

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :: 18.12.2019
Orders Pronounced on:: 03.02.2020

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No. 150 of 2013

C.Devendhiran

..Petitioner

Vs

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

2.The Additional Director General of Police,
(Law & Order)
Chennai.

..Respondents

Prayer Writ 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 them in RO No. 52/2010, C.No. B2/PR1/10 dated 15.02.2010 and RC.No.047950/AP1(2)/2010 dated 03.07.2010 (served on 27.12.2012) and quash the same.

For Petitioner : Mr.K.Venkataramani (SC)
for Mr.M.Muthapan

For Respondents : Mr.P.H.Aravind Pandiyan, AAG
Assisted by Mr.J.Ramesh, AGP

सत्यमेव जयते
O R D E R

The prayer sought for in the writ petition is to call for the records of the respondents in connection with the impugned orders passed by them in RO No. 52/2010, C.No. B2/PR1/10 dated 15.02.2010 and RC.No.047950/AP1(2)/2010 dated 03.07.2010 (served on 27.12.2012) and quash the same.

2. Heard, the learned Senior Counsel appearing for the petitioner and the learned Additional Advocate General appearing for the respondents and perused the materials available on record.

3. The learned Senior Counsel appearing for the petitioner submitted that the petitioner has entered into service as a directly recruited Sub Inspector of Police through a selection conducted by TNUSRB in the year 1998 and appointed to service on 22.05.2010. The petitioner became due for promotion as Inspector of Police by including his name in the C List for the year 2011-12, but due to the pendency of the charge memo, his claim was deferred when the panel was published on 04.07.2012.

4. The learned senior counsel further submitted that the petitioner was placed under suspension and proceeded departmentally under Rule 3(b) of TNPSS (D&A) Rules by the DIG of Police, Villupuram Range in P.R.No. 67/2009 in view of the allegations that he forged the signature of the complainant in a criminal case registered in Crime No. 21 of 2018 under Section 174 Cr.P.C and he was placed under suspension with effect from 26.07.2009. The learned senior counsel further submitted that the enquiry officer without considering the materials, has given finding, holding that all the three charges levelled against the petitioner are proved. As against the order of the enquiry officer, the petitioner has submitted a representation dated 11.02.2010 before the the 1st respondent/disciplinary authority. The disciplinary authority agreed with the findings of the enquiry officer's report in respect of all the charges and without a discussion with reference to the points raised by the petitioner in his further representation, concurred with the findings of the enquiry officer's report and for the proven charges, imposed a punishment of postponement of increment for two years with cumulative effect by order dated 15.02.2010. The petitioner has preferred appeal before the appellate authority on 15.03.2010 to cancel the punishment imposed on him by the disciplinary authority. The said appeal was rejected by the appellate authority by order in RC.No. 047950/AP1(2)/2010 dated 03.07.2010, confirming the order passed by the disciplinary authority. According to the learned senior counsel appearing for the petitioner, the said order of the disciplinary authority as well as the appellate authority are in contravention of Rule 6 of TNPSS (D&A) Rules and therefore, the same are liable to be quashed.

5. Per contra, the learned Additional Advocate General appearing for the respondents on the other hand submitted that earlier the petitioner was placed under suspension for his involvement of forgery in a criminal case in Cr.No.21/2008 u/r 174 Cr.PC. During the Departmental Enquiry, the enquiry officer/Deputy Superintendent of Police, Thittakudi has conducted oral enquiry and examined 9 witnesses for prosecution and filed 19 documents. After completion of enquiry, he was furnished with a copy of the enquiry officer's report through a memo by the first respondent dated 04.02.2010. The petitioner has also

submitted his further representation dated 11.02.2010 denying the charges, the said representation was also considered by the 1st respondent and the 1st respondent passed orders dated 15.02.2010 agreeing with the findings of the enquiry officer. The said order contained a detailed discussion of the evidence and materials available in this PR against the petitioner. Subsequently, the petitioner's appeal dated 15.03.2010 before the appellate authority was considered properly by the appellate authority and rejected by order dated 03.07.2010. Therefore, the contention of the appellant that the appellate authority has violated the Rule 6(1) of TNPSS (D&A) Rules while considering his appeal is not correct and therefore, the writ petition is liable to be dismissed.

6. On a perusal of records, it is seen that the petitioner was placed under suspension and proceeded departmentally under Rule 3(b) of TNPSS (D&A) Rules by the DIG of Police, Villupuram Range in P.R.No. 67/2009 in view of the allegations that he forged the signature of the complainant in a criminal case registered in Crime No. 21 of 2018 under Section 174 Cr.P.C . After completion of enquiry he was furnished with a copy of the enquiry officer's report through a memo by the first respondent dated 04.02.2010 . The petitioner has also submitted his further representation dated 11.02.2010 denying the charges, the said representation was also considered by the 1st respondent and the 1st respondent passed orders dated 15.02.2010 agreeing with the findings of the enquiry officer. Subsequently, the petitioner has preferred appeal dated 15.03.2010 before the appellate authority against the order of the 1st respondent and the same was considered by the appellate authority and came to be rejected by order dated 03.07.2010.

7. According to the petitioner, the said order of the Appellate Authority/2nd respondent herein is a non-speaking order in view of Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules and the same is liable to be set aside.

8. The learned Additional Advocate General appearing for the respondents submitted that the Appellate Authority has considered all the materials and evidence properly and rejected the appeal by order dated 03.07.2010, confirming the order passed by the Original Authority.

9. In such circumstances, it is relevant to extract the Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, which reads as follows;

Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules is extracted below;

"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 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 proposed on the basis of the evidence adduced during such enquiry, make such order as it may deem fit.

(b) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties, specified in clause (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 for 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."

10. On a perusal of Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, it is clearly mentioned that while deciding the appeals, the appellate authority shall consider whether the penalty is excessive, adequate or inadequate and only after such consideration, shall pass orders. Therefore, as per the said Rules, the respondent ought to have considered the grounds raised by the petitioner while confirming the order passed by the appellate authority.

11. Now, the sole question that falls for consideration is, whether the appellate authority/2nd respondent herein has passed the said order dated 03.07.2010 in accordance with Rule 6(1) of TNPPS Rules or not.

12. The relevant portion of the order dated 03.07.2010 passed by Second respondent/ appellate authority, is extracted hereunder:

"..If the appellant Sub-Inspector of Police had been sincere in his duty, he himself should have directed the section of law into 306 IPC & S4 of DP Act and remanded the accused to judicial custody. He but miserably failed in his duty. This clearly brings home the delinquency committed by the appellant vide count no.3 i.e he kept Xavier and Pushparaj in illegal custody for two days and allowed them to go later scot free even though they had committed a grave offence. This delinquency automatically brings home the guilt of the appellant in the first two counts as well. In a departmental enquiry, it is not necessary to send the documents to prove whether the appellant has changed the documents and forged the signature of Stella Mary. The circumstantial evidence, DSR of Cuddalore District for the delay and the oral statements amply bring home the guilt of the appellant. His behaviour as the Sub-Inspector of Police of Srimushnam Police Station leaves much to be desired.

The prosecution has convincingly brought home the delinquencies against the appellant on all the three counts of the charge. The punishing authority has punished him with postponement of increment for two years with cumulative effect. As the appellant has caused miscarriage of justice in a pathetic case. I decline to interfere with the award of punishment."

13. The Learned Senior Counsel for the Writ Petitioner has relied upon the decision reported in 1989 writ law reporter 274 considered rule 6(1) of TNPSS (D&A) Rules and it has been held as follows at para 3 and 4 of the said judgment.

"The rule enjoins the concerned authority to consider the three aspects set out therein specifically. Unless the appellate authority considers them it cannot be said that it has carried out its duties properly. The Supreme Court had occasion to discuss a similar question under R.27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Dealing with the word 'consider' used in the said rule, the Supreme Court observed that the word 'consider' implies due application of mind-vide R.P.Bhatt v. Union of India. The following paragraph in the above judgment of the Supreme court can be usefully referred to with advantage-

"The word 'consider' in R.27(2) implies 'due application of mind'. It is clear upon the terms of R.27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) Whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) Whether the penalty imposed is adequate and thereafter pass orders confirming, enhancing etc, the penalty, or may remit back the case to the authority which imposed the same. R27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were unwarranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (2) of R.27(2) viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of R.27(2) of the Rules the impugned order passed by the Director General is liable to be set aside."

14. In another judgment of this Court in the case of K.Kandasamy Vs. Deputy I.G. of police, reported in 2006 (4) MLJ 1382 in para 7, this Court 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."

15. It is also pertinent to refer the Judgment of the Hon'ble Supreme Court in Narinder Mohan Arya Vs. United India Insurance Company Ltd, reported in 2006(4) SCC 713, wherein the Hon'ble Supreme Court has held that even when an Appellate Authority agrees with the findings of the Disciplinary Authority in a departmental enquiry, it should give reasons so as to enable the Writ Court to ascertain there was an application of the mind as required by the relevant rules. The relevant portion is extracted hereunder;

"33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules."

16. In view of the decisions cited supra and Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, it is clear that the appellate authority is the final fact finding authority and 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 as to how the appellate authority has satisfied himself with the reasons given by the disciplinary authority. When Rule 6 (1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules 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 came to the conclusion that the punishment awarded by the 1st respondent is not an excessive and rejected the same.

17. Considering the facts and circumstances of the case and also the decisions rendered by the Hon'ble Supreme Court and this Court cited supra, this Court with no hesitation, has come to the conclusion that the second respondent/ appellate authority has passed a cryptic order/non-speaking order without considering the issues that were raised by the petitioner in his Appeal. As rightly pointed out by the learned senior counsel for the petitioner, the order of the appellate authority/ 2nd respondent is not in conformity with the rule 6(1) of TNPSS (D&A) Rules.

18. In fine, the impugned order in RC. No.047950/AP1(2)/2000, dated 03.07.2010 passed by the second respondent in respect of P.R. No. 67/ 2009 is quashed and the matter is remitted to second respondent to consider afresh and to pass orders thereon, on merits and in accordance with law, within a period of twelve (12) weeks from the date of receipt of the copy of this order.

19. With the above observations and directions, this writ petition is disposed of. No costs.

20. Before parting with the case, now several writ petitions are being filed challenging the rejection order of the appellate authority and the same are being quashed on the ground that the said orders are cryptic in nature and passed without assigning any reason/finding/discussion and without following the relevant procedures and Rules. Therefore, the Chief Secretary to Government of Tamil Nadu is directed to issue necessary circular to the appellate authority, who deal with the statutory appeals, to strictly follow the procedure and Rules, while deciding the appeals in future, without fail. The Chief Secretary to Government shall also send circular to the Appellate Authorities of other departments concerned with regard to the same and file a compliance report before this Court, within a period of four (4) weeks from the date of receipt of a copy of this Order.

21. Registry is directed to mark a copy of this order to the Chief Secretary to Government of Tamil Nadu, Secretariat, Chennai.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Additional Director General of Police,
(Law & Order)
Chennai.

3.The chief Secretary to Government of Tamil Nadu,
Secretariat, Chennai.

+1 cc to M/s.M.Muthappan, Advocate Sr.No. 8374

+1 cc to The Government Pleader, Sr.No. 8574

W.P.No. 150 of 2013

VBA (CO)
RMP (01/10/2020)

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