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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.09.2020

Delivered on : 18.09.2020

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THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.3198 of 2020
& WMP No.3711 of 2020

P.Jawahar

... Petitioner

versus

1. The Additional Chief Secretary to Government,
Home (Police iv) Department,
Fort St George,
Chennai-600 009.

2. The Director General of Police,
Police Head Quarters,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004

3. The Commissioner of Police,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Periyamet, Chennai,
Tamil Nadu-600 007

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari to call for the records in G.O.(2D) No.241 dated 02.08.2019 passed by the first respondent and quash the same.

For Petitioner : Mr.S.Prabakaran, SC for
Mr.R.Krishna Kumar

For Respondents : Mr.P.S.Sivashanmuga
Sundagam, Spl. GP



ORDER

The petitioner has approached this Court, seeking the following relief:

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"To issue Writ of Certiorari to call for the records in G.O.(2D) No.241 dated 02.08.2019 passed by the first respondent and quash the same."

2. The facts and circumstances which gave raise to the filing of the present writ petition are stated herein:

2.1 The petitioner is presently working as Inspector of Police. He was directly recruited as Sub-Inspector of Police in 1997 and subsequently, promoted as Inspector of Police. The petitioner was part of the Special Task Force, which was formed to nab Sandalwood Smuggler, Veerappan in Satyamangalam Forest and after the successful operation of the Special Task Force against Forest Brigand, several personnel attached to the Special Task Force both Uniformed and others were granted accelerated promotion for their bravery acts. The petitioner was one among them and was granted accelerated promotion as Inspector of Police for his active participation in the Special Task Force. According to the petitioner, he has been an outstanding officer of the Police Force and has been enjoying meritorious service through out his career without any instance of blemish. In the affidavit, the petitioner has stated so many instances of exemplary service rendered by him during his posting in various capacities over a period of time.

2.2 Since the petitioner had been working as Inspector of Police for 15 years without being promoted to the next higher post of Deputy Superintendent of Police, according to him, out of frustration, the petitioner's wife tweeted in the petitioner's Twitter account that the petitioner was proposing to surrender all the awards and benefits given to him by the Government as his exemplary service was not acknowledged by the authorities. The tweeting was also shared with the Press and the contents thereof became public through the Press/Media.

2.3 According to the petitioner, after realizing the mistake committed by such comments on the Twitter account, which was impulsively made, the petitioner appears to have tendered unconditional apology to the authorities. However, in regard to said comments made on the twitter account, a charge memo was issued against the petitioner on 26.04.2019. In response to the charge memo, the petitioner had submitted that his wife happened to tweet in his Twitter account that he was planning to surrender all the awards and benefits given to him by the Government without knowing the implication of the violation of the Conduct Rules. However, on coming to realize the



seriousness of the comments made in the Twitter account, the petitioner immediately removed the same and also regretted for such indiscretion. When an enquiry was held into the charge subsequently, the petitioner had taken the same stand and in fact, tendered his unconditional apology before the enquiry officer. The enquiry officer, on consideration of all the materials and explanation of the petitioner, had come to the conclusion that the charge was not proved by rendering a finding that there was no evidence to prove that the delinquent had any intention to act in causing disrepute and tarnish image of the Police Department, which was the substance of the charge, in terms of the provisions of the Conduct Rules.

2.4 After examination of the enquiry report, the disciplinary authority/the Joint Commissioner of Police, North Zone, Greater Chennai agreed with the findings of the enquiry officer and dropped further action vide his proceedings dated 13.05.2019. Thereafter, a suo-motu review was taken up by the Commissioner of Police, Greater Chennai and by his proceedings dated 11.06.2019, the Commissioner of Police had ordered 'no modification' in the order passed by the disciplinary authority".

2.5 Thereafter, the Government on a suo-motu revision, has decided not to accept the dropping of further action against the petitioner, holding that the offence was committed with full knowledge and there was enough material evidence let in, in the enquiry to substantiate the charge against the petitioner and a further opportunity was extended to the petitioner by its disagreement on 10.07.2019. In response to that, the petitioner appears to have submitted a representation on 15.07.2019 and on consideration of the same, the Government issued G.O.2(D) No.241 Home (Pol-IV) Department, dated 02.08.2019 imposing a punishment of stoppage of increment for one year with cumulative effect with a further direction that the punishment will affect his pension etc. The said Government Order is put to challenge in this Writ Petition.

3. Notice was ordered and Mr.P.S.Sivashanmugha Sundaram, learned Special Government Pleader entered appearance on behalf of the respondents and a detailed counter affidavit has also been filed.

4. In the counter affidavit, it was stated that despite material evidence was made available in the enquiry, the enquiry officer had held that the charge was not proved on a wrong premise as if the petitioner had no intention to tarnish the image of the Police Department. Such conclusion by the enquiry officer, was contrary to the material evidence let in, in the enquiry. Despite the lacunae in the finding of the enquiry



officer, both the disciplinary authority and the reviewing authority have taken decisions to drop further action against the petitioner. On a suo motu review by the Government, it was felt that the mis-conduct committed by the petitioner was supported by material evidence and the intention was clear on the part of the petitioner to cause disrepute to the Department and therefore, the review became necessary against the orders of the disciplinary authority as well as the reviewing authority and finally the impugned Government Order was passed imposing the punishment of stoppage of increment for one year with cumulative effect. According to the counter, under Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955 and Rule 15(A)(1) and (i), the Government had exercised its power and imposed impugned penalty on the petitioner. Therefore, the Government Order, which was passed in terms of the rule position, cannot be faulted with.

5. Mr.S.Prabhakaran, learned Senior counsel appearing for the petitioner would submit that the petitioner was an exemplary Police Officer, which was appreciated by the Department uniformly. Unfortunately, despite his exemplary record enjoyed by him, he was denied his due promotion to the next rank of Deputy Superintendent of Police and his wife was unable to digest that her husband was not given his due promotion by the Department, had tweeted on behalf of her husband out of frustration and there was an absolutely no intention on the part of the petitioner to tarnish the image of the Department. According to the learned Senior Counsel, in any event, the enquiry officer himself found that there was no intention on the part of the petitioner to cause disrepute or tarnish the image of the Police Department. He would submit that the Joint Commissioner of Police, who was the disciplinary authority has also rightly accepted the findings of the Enquiry Officer and dropped further action in the matter by his proceedings dated 13.05.2019.

6. The Commissioner of Police, who was the reviewing authority, suo motu concluded that 'no modification' of the decision of the Disciplinary Authority by his proceedings dated 11.06.2019. Therefore, it was strange that the Government has taken suo motu revision on a such simple issue affecting the career prospect and the morale of the exemplary Officer. The learned Senior counsel would refer to a decision of Madurai Bench of this Court, reported in MANU/TN/4073/2016 in WA (MD) No.1008 of 2016 dated 30.11.2016 (Radha Krishnan Salai Vs. E.Jayakumar), wherein, in an identical situation like the present one, a Division Bench has ruled that there cannot be a review of a review and the rules do not authorize such second



7. According to the learned Senior counsel for the petitioner, once the Commissioner of Police has exercised its review power and concurred with the disciplinary authority not to proceed further with the disciplinary action against the petitioner by his proceedings dated 11.06.2019, that was the end of the matter and the Government cannot further undertake review of the review already exercised by the Commissioner of Police. Therefore, the review proceedings dated 10.07.2019 initiated by the Government is illegal and liable to be quashed.

9. Considered the submissions of the learned Senior Counsel for the petitioner and Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader appearing for the respondents and perused the materials and the decision of the Division Bench placed on record.

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were expected to rigidly follow the Service and Conduct Rules without any slightest infraction. However, taking into account the exemplary service rendered by the petitioner during his career as admitted by the respondents themselves, a solitary act of indiscretion with no offence intended cannot result in imposition of penalty coupled with the consequence of denial of further promotion to him as Deputy Superintendent of Police. The enquiry officer who conducted the enquiry had of course concluded that the charge was not proved and in the opinion of this Court, that such conclusion cannot be found fault with. The substance of the charge against the petitioner was that tweeting about the Police Department has caused disrepute and tarnished the image of the Department which would mean that such tweeting pre-supposed deliberate motive or intent on the part of the person who tweeted as such. In the absence of spite or malice and also the fact that unconditional apology tendered by the petitioner, the matter ought to have rested there.

11. In this case, the enquiry officer after examination of the witnesses and the petitioner himself, found that there was no intention on the part of the petitioner for causing any damage or reputation to the Department. Therefore, the enquiry officer had rightly concluded that the charge was not proved. Thereafter, the disciplinary authority also concluded that no further action was required in view of the finding of the enquiry officer and dropped further action against the petitioner by his proceedings dated 13.05.2019 and ofcourse ultimately reprimanded him for tweeting in his account against the Department.

12. Thereafter, the Commissioner of Police, on a review taken up under the Rule 15(A) (1) (i) of the Tamil Nadu Police Sub-ordinate Service (Disciplinary and Appeal) Rules, 1955 by the Commissioner of Police vide his proceedings dated 12.07.2019 and after getting the explanation of the petitioner, the Commissioner of Police, Greater Chennai had agreed with the disciplinary authority's action and dropped further action against the petitioner and ordered 'no modification' by his proceedings dated 11.06.2019. This Court, does not find any infirmity in the conclusion reached by both the disciplinary authority as well as the reviewing authority and in any case, the disciplinary authority has in fact reprimanded the petitioner.

13. While so, the Government on its own, invoked the review power which was, in fact, exercised by the Commissioner of Police in the above said proceeding and imposed the penalty of stoppage of increment for a year with cumulative effect through the impugned Government Order dated 02.08.2019. When two higher officials of the Government in the Police Department, have taken



a decision in concurrence with each other and decided to drop further action against the petitioner, the Government very strangely have taken suo motu revision and over turned the decision of the two officials of the Government by imposing the impugned penalty on the petitioner.

14. The conclusion by the Government that there was enough material evidence to demonstrate that there was intention on the part of the petitioner to tarnish the image of the Department, is in fact misplaced. When the enquiry officer had concluded categorically that there was no intention on the part of the petitioner to cause disrepute to the Department, particularly going by the outstanding service record of the petitioner and that the conclusion was appreciated rightly by both the disciplinary authority as well as the reviewing authority, who happened to be the higher officials of the Government in the Police Department, a further review on the petitioner's conduct under consideration was uncalled for. This Court is of the opinion that there was no compelling necessity to take umbrage or offence to the Twitter comments, which appear to be innocuous in the abuse of manifest ill will on the part of the petitioner.

15. Moreover, the service record of the petitioner as a Police Officer is admittedly said to be outstanding and exemplary. An aberration of the present nature needed to be dealt with liberal perspective. As Abraham Lincoln said "I always found that mercy bears richer fruits than strict justice". In any event, the decision relied on by the learned Senior Counsel for the petitioner squarely clinches the case in favour of the petitioner. The learned Division Bench of this Court has held after following the earlier legal precedents on the subject matter that there cannot be a review over another review with reference to the same Rules of the Police Subordinate Service and the facts on which the law was laid down by the Division Bench was also identical as that of the present one. In order to appreciate the legal submissions of the learned Senior Counsel for the petitioner, the ruling of the Division Bench which is binding on this Court is extracted hereunder in paragraphs 4 to 9:

"4. This Court has paid its best attention and also perused the materials available on record.

5. The petitioner while working as Sub-Inspector of Police, NIB, CID, Dindigul Unit, was issued with a charge memo and enquiry officer found that charges levelled against the petitioner had been proved and the Disciplinary Authority, namely, the Joint Commissioner of Police, (South Zone), Chennai has disagreed with the findings of the



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enquiry officer and deserved to be dropped and the head of the department, namely, Commissioner of Police in the service reviewed the same on 31.03.2011 and he did not disturb the order of the Joint Commissioner of Police, (South Zone), Chennai dated 04.02.2011, wherein, he has held that the respondent herein has been exonerated from all the charges. On perusal of the counter affidavit filed by the Additional Director General of Police, Mylapore, would also disclose that in paragraph No.5 to the effect that the Commissioner of Chennai has reviewed the order in question on 31.03.2011.

6. In the judgment dated 29.09.2015 made in W.A.(MD).No.775 of 2014 (cited supra) similar issue arose for consideration. It is relevant extract paragraph Nos.14,16,17 and 18 of the judgement dated 29.09.2015.

"14. On a careful reading of the aforesaid provision, it is clear that notwithstanding any contained in the rules, the State Government or the Head of the Department directly under the State Government, in the case of Government servant serving in a department or office under the control of such Head of Department or the appellate authority, other than the State Government or any other authority specified in this behalf by the State Government by general or special order, may exercise the power of review within six months of the date of the order proposed to be reviewed.

.....

16. The power of review, as prescribed under Rule 15.A(1) of the Rules, is in respect of the date of the order proposed to be reviewed. In the case on hand, the first order passed by the D.I.G, dated 7th February, 2013 was taken under suo motu review by the Additional Director General of Police (Crime), who has confirmed the said order on 16th April, 2013. Thus, the subsequent review purported to have been taken by the D.G.P./ appellant herein cannot be a review of review.

17. In the case on hand, as the facts are not in dispute, the power of review was exercised by the Additional Director General



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of Police (Crime) under Rule 15.A(1) of the Rules, confirming the order dated 7th February, 2013 passed by the D.I.G. Thus, the subsequent review by any other authority is not permissible. It is luculent that the suo motu power of review can be exercised by either one authority, not all authorities one after another. In respect of clause (iv) of Rule 15.A(1) of the Rules, we are informed that the State Government has not issued any general or special order specifying the authority under Rule 15.A(1)(iv) of the Rules and as such, no power under Clause (iv) is available to be exercised by any other authority.

18. It is trite law that the power of review is exercisable for correction of mistake on facts as well as in law, within the limit of statute, dealing with their exercise of power. A review of review cannot lie [See : Sow Chandra Kante and another Vs. Sheikh Habibul and Kamlesh Verma Vs. Mayawati and others].

6.1. Similarly, paragraph No.10 of the judgment dated 16.09.2016 made in W.A.(MD).Nos.604 and 720 of 2016 is also relevant to the present context, which is usefully extracted below:-

"10. In view of the above order passed by this Court, if we see the present case, the power of review was exercised by the Inspector General of Police, confirming the order passed by the Deputy Inspector General of Police, CID (Intelligence) and subsequent review by any other authority is not permissible. It is well settled that the suo motu power of review can be exercised by any one authority, but not all authorities one after another. Therefore, we do not find any irregularity or irrationality in the impugned order passed by the learned single Judge, thereby warranting interference by this Court.

7. The judgment made in the above said Writ Appeals have not been put to challenge sofar.

8. It is also relevant to extract 15 A(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955:-



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'15.A.(1) Notwithstanding any contained in these rules:

- (i) the State Government or
- (ii) the Head of the Department directly under the State Government, in the case of Government servant serving in a department or office under the control of such Head of Department; or
- (iii) The appellate authority, other than the State Government, within six months of the date of the order proposed to be revised or
- (iv) any other authority specified in this behalf by the State Government by general or special order, and within such time as may be prescribed in such general or special order; may at any time either on their or its own motion or otherwise call for the records of any inquiry and review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission where such consultation is necessary and may
 - (a) confirm, modify or set aside the order; or
 - (b) confirm reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
 - (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry, as it may consider proper in the circumstances of the case; or
 - (d) pass such other orders as it may deem fit.

Provided that no order imposing or enhancing any penalty shall be made by any [revising authority] unless the Government servant concerned has been given a reasonable opportunity of making representation. Where it is proposed to impose any of the penalties specified in clauses (d), (e), (h), (i) and (j) of rule 2(i) or to enhance the penalty imposed by the order sought to be [revised] to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in sub rule (b) of rule (3) and after giving a reasonable opportunity to the Government servant concerned of showing cause on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary.



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Provided further that no power of [revision] shall be exercised by the Head of Department, unless:-

(i) the authority which made the order in appeal or

(ii) the authority to which an appeal would lie where

no appeal has been preferred, is subordinate to him.

2(a) No proceeding for revision shall be commenced

(i) where no appeal has been preferred before the expiry of the period of limitation for an appeal or

(ii) where an appeal has been preferred before the disposal of such appeal."

9. In case of Government servant serving in a department or office under the control of such Head of Department, in the considered opinion of the Court, the respondent / Writ Petitioner as Inspector of Police, NB CID was under the control of the Head of the Department, namely, Commissioner of Police, Chennai at the relevant point of time, though enquiry officer has found that the charges levelled against the petitioner have been proved, the disciplinary authority, namely, the Joint Commissioner of Police, (South Zone), Chennai has disagreed with the said findings and held that the respondent has to be exonerated from the charges and the same was reviewed by the Commissioner of Police, Chennai City, on 31.03.2011 and he has also concurred with the findings of the disciplinary authority. Once the power of review has been exercised by the reviewing authority, namely, the Commissioner of Police, Chennai city, the appellant/respondent in the Writ Petition cannot exercise the power of review once again and as rightly pointed out in the above cited judgments in paragraph No.18 of the judgment in W.A.(MD).No.775 of 2014 (cited supra) a review of review cannot lie and for that proposition relevance was also placed upon Sow Chandra Kante and another Vs. Sheikh Habib, (1975) 1 SCC 674 and Kamlesh Verma Vs Mayawati and others, (2013) 8 SCC 320 and in the considered opinion of the Court, the above cited judgments which has also reached the finality are squarely applicable to the facts of the case and therefore, the learned Judge had relied upon the order dated 12.07.2013 made in W.P(MD).No.13611 of



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2011 to quash the impugned notice without going into the merits of the matter and this Court after going through the entire materials is of the view that the show cause notice is to be quashed. In the result, the Writ Appeal is dismissed and as a consequence, the impugned show cause notice dated 25.10.2011 issued by the appellant herein is quashed and the order made in W.P(MD).No.14300 of 2011, dated 17.04.2014 is confirmed. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed."

16. The above ruling would indisputably has to be applied in this case as well. In which case, the invocation of power of review under Section 15(A)(1) of the Tamil Nadu Police Subordinate Service Rules is legally impermissible and the impugned order passed on such exercise of review power is therefore void and illegal. Further, as concluded by this Court above, even on merits, this Court finds that the suo-motu review of the Government, in the facts and circumstances of the case, is not sustainable.

17. In the above circumstances, the Writ Petition stands allowed and the impugned order passed in G.O.(2D) 241 Home (Pol-IV) Department, dated 02.08.2019 of the first respondent is hereby quashed. In view of the quashing of the impugned order, the petitioner is also entitled to all consequential benefits as admissible to him. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

Dn/suk

To

1. The Additional Chief Secretary to Government,
Home (Police iv) Department,
Fort St George,
Chennai-600 009.



2. The Director General of Police,
Police Head Quarters,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004

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3. The Commissioner of Police,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Periyamet, Chennai,
Tamil Nadu-600 007.

+1cc to Mr.R.Krishna Kumar, Advocate, S.R.No.30584

+1cc to the Government Pleader, S.R.No. 30764

Pre delivery Order in
W.P.No.3198 of 2020

GPL(CO)
HS(20/07/2021)