



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.15107 OF 2009
AND MP No.1 OF 2009

Muthu Krishanan

... Petitioner

Vs.

1.The Director General of Police
Chennai-4

2.The Deputy Inspector General of Police
Tirunelveli Range
Tirunelveli

3.The Superintendent of Police
Thoothukudi district
Thoothukudi.

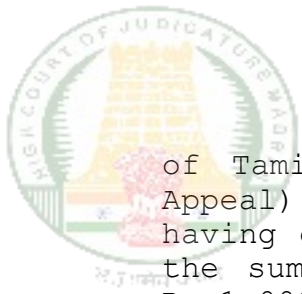
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in P.R.95/08 dt 12.2.2009 on the file of the 3rd respondent the proceedings of the 2nd respondent in C.No. C4/AP.46/2009 dt 31.3.2009 and the proceedings of the 1st respondent in RC.No.82982/AP.2(1)/09 dt 12.6.2009 and quash the same and direct the respondents to grant him further promotions with all consequential benefits.

For Petitioner : Mr.M.S.Soundararajan
For Respondents : Mr.P.Chinnadurai
Addl.Govt.Pleader

O R D E R

Petitioner is appointed as Grade-II Police Constable on 25.05.1998, promoted as Grade-I Police Constable in the year 1999 and as Head Constable in the year 2004 and have earned 106 rewards. While he was due to next promotion to the post of Sub Inspector and while serving at Vilathikulam Police station, a show cause notice was issued by the Deputy Superintendent of Police, Thiruchendur in C.No.P.R.95/08 dated 31.10.2008 u/r 3(a)



of Tamil Nadu Police Subordinate Service Rules (Discipline & Appeal) rules for an allegation of reprehensible conduct in having contacted the accused and demanded money, for not serving the summons on the witnesses to his benefits, to the tune of Rs.1,000/-. The petitioner had submitted his explanation. He had also set out the previous animosity between him and the Sub Inspector of Police, who had sent a false report against the petitioner. The Deputy Superintendent of Police, Tiruchendur conducted enquiry and held the charge proved. The Third respondent imposed a punishment of postponement of increment for a period of two years without cumulative effect and it was confirmed in appeal and review by first and second respondents. Aggrieved over the same, the petitioner is before this Court.

2. Learned counsel for petitioner would submit that the entire proceedings stand vitiated for non adherence of principles of natural justice and for malafide. He would rely on the judgment of this Court reported in 2009 (5) MLJ 1121 and 2008 (7) MLJ 1275 to stay the proceedings. The further contention is that the enquiry officer even though received statements from the witnesses he did not examine them and also refused permission to the petitioner for cross examination. When the enquiry is conducted by an independent officer, it is mandatory to serve enquiry report on the delinquent non furnishing the copy of enquiry report by itself is violation of principles of natural justice. Therefore, the punishment order should be set aside.

3. On the contra, the learned Government Advocate appearing for the respondents will place his argument on the basis of the counter affidavit and contended that there is no violation of principles of natural justice. The petitioner was given ample opportunity by the enquiry officer and since it is only a minor punishment u/r 3(a) of Tamil Nadu Police Subordinate Service Rules (Discipline & Appeal) Rules, and the explanation submitted by the petitioner is enough to arrive at a finding, hence the witnesses were not examined. Further, he submitted his report to the authority and minor punishment was awarded. Therefore when there is no major punishment imposed on the petitioner, he cannot complain of violation of principles of natural justice. Further, the Sub Inspector of Police has sent a report of what had happened. No malafide can be attributed against him for sending a adverse report. In fact the allegations that the complaints were made at the instance of Sub Inspector of Police is without any evidence and therefore, the contention of the petitioner is without basis and therefore, the punishment given by the respondents need not be interfered.

4. I heard the rival submissions, perused the materials produced before this Court.



5. At the outset, the allegations against the petitioner is that he demanded bribe from one of the accused for delaying the service of summons on the witnesses to depose against them. This complaint was made by the said accused viz., Nainar to the Sub Inspector of Police. When there were factual disputes over the allegation and when the petitioner is denying the allegations stoutly, it is but fair to verify the same from records.

6. This Court in the case of G.K.G.Nathan vs. Assistant Commandant, Central Industrial Security Force, CISF Unit, CPCL, Manali, Chennai and another, 2009 (5) MLJ 1121 has observed as under:

“ RATIONES DECIDENDI

i. Even in case where the rules do not make a provision for enquiry in cases where minor penalties are imposed, nevertheless, the compliance of the principles of natural justice may be required and the non compliance may vitiate the order. Then again, it depends upon the facts of each case. In the event the charges are very minor and the order imposing minor penalty merely refers to the charge without adversely imputing anything about the delinquent employee, the failure to conduct an enquiry will not vitiate the order. However, the same cannot be the general rule. In case if the charges are serious in nature and nevertheless the employer proceeds to follow Rule 37 and the order of punishment contains certain adverse imputation, remarks or even comments on the delinquent employee which may be considered as a stigma or which may likely to affect his reputation in the eye of public, certainly the failure to conduct enquiry by giving an opportunity to such delinquent employee would vitiate the order for non compliance of the principles of natural justice. This principle also applies to the case where charges are minor, nevertheless some imputations/observations are made against the delinquent. The test to decide whether an enquiry is required or not is not the mere fact of minor penalty is imposed, but the nature of charges, the nature of observations or findings of the disciplinary authority while passing final orders of penalty.”

7. In yet another judgment of this Court in Nawabkhan vs. Superintendent of Police, Chengai MGR , (2009) 5 MLJ 1124 has held as under:



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" RATIONES DECIDENDI

I. Holding an employee liable for the charges levelled against him on the basis of his explanation and documentary evidence, without conducting any enquiry, would result in injustice to him and is not justified.

ii. "when the enquiry officer is not the disciplinary authority, the delinquent employee has got a right to have a copy of the report of the enquiry officer before the disciplinary authority arrives at a conclusion with regard to the guilt or innocence of the delinquent in respect of the charges levelled against him. Denial of right to the employee to have the copy of the enquiry report would definitely amount to denial of reasonable opportunity and violation of the principles of natural justice."

8. In that view of the matter, the findings of the enquiry officer was based on extraneous materials obtained behind the delinquent and without verifying the materials placed before him. Non consideration of relevant materials and relying on irrelevant materials will amount to violation of principles of natural justice and will render the findings thereby perverse. From all angles, the enquiry proceedings were not properly conducted and the punishment imposed on the petitioner by passing the due procedure is illegal and not sustainable in the eye of law.

9. Apart from the finding of illegality in the conduct of enquiry proceedings, yet another violation of settled procedure and violation of principles of natural justice by passing non-speaking orders by the respondents. All the three respondents have observed that " I have gone through the appeal/review petition, PR file and connected records carefully. The charge against the appellant/applicant stands amply proved. He has not put forth any fresh points for consideration" and thereafter rejected the appeal/review by the petitioner.

10. Irony of fact is that the appeal and review filed by the petitioner raised several grounds pointing out the discrepancies in the enquiry as well as order of punishment. The authorities right from the original authority to the appellate authorities have failed to apply their mind and passed orders mechanically, copying and pasting the order with minor modification. Such a type of discharge of duties as appellate and review authority shall be deprecated. The orders passed by the first and second respondents spell out the whims and fancies and arbitrariness in passing order in such a deprecatory fashion. Absolutely no reasons were recorded to reject the appeal. They have not even



bothered to consider the many grounds raised by the petitioner, but give an impression to this Court that they have mechanically signed the orders put up before them by some semi literate subordinates without application of mind. Any order, which does not disclose reasons is violative of principles of natural justice.

11. In view of the above discussions, I have no hesitation to set aside the above impugned order. Accordingly, the impugned order in P.R.95/08 dated 12.2.2009 on the file of the 3rd respondent the proceedings of the 2nd respondent in C.No. C4/AP.46/2009 dated 31.3.2009 and the proceedings of the 1st respondent in RC.No.82982/AP.2(1)/09 dated 12.6.2009 are set aside. The petitioner is deprived of his status and further promotions in view of the punishment imposed on him on 13.02.2009. Other than this punishment it is submitted that the petitioner has not visited any other punishment, but only earned many rewards. If that be so, it is just to direct the respondents to consider the petitioner for all his carrier prospects on notional basis and also to give him all monetary and attendant benefits. The respondents are directed to complete the exercise within a period of four weeks from the date of receipt of a copy of this order.

With the above observations, this writ petition is allowed. No costs. Connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CO-MDU)

True Copy

Sub-Assistant Registrar

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To

1.The Director General of Police
Chennai-4

2.The Deputy Inspector General of Police
Tirunelveli Range
Tirunelveli

3.The Superintendent of Police
Thoothukudi district
Thoothukudi.

+1cc to M/s.M.S.SoundaraRajan, Advocate, SR. No. 4597

W.P.NO.15107 OF 2009

KS (CO)
RMP (13/07/2020)