

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 03.08.2020

ORDERS PRONOUNCED ON : 02.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.18977 of 2010

M.Christudas

... Petitioner

.vs.

1. The Principal Secretary to Government,
Home (Pol IX) Department,
Secretariat Building,
Chennai 600 009.
2. The Director General of Police,
Santhome High Road,
Chennai 600 004.
3. The Deputy Inspector General of Police,
Armed Force, Chennai 600 010.
4. The Commandant,
T.S.P. VIII Battalion,
New Delhi - 64.

... Respondents

(Cause Title amended as per order dated 06.01.2011 in M.P.No.3 of 2010 in W.P.No.18977 of 2010)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned order of the 1st Respondent in G.O.(2D) No.206, dated 08.05.2009 and quash the impugned order of punishment of black mark imposed on the Petitioner in Punishment Roll No.12/2005 and consequently allow the name of the Petitioner to be included in the promotion panel basing on the strict service seniority for further promotion.

For Petitioner : Mr.G.Thangavel

For Respondents : Mr.K.Magesh,
Special Government Pleader

O R D E R

Petitioner has come up with this Writ Petition, challenging the punishment of black mark imposed on him in Punishment Roll No.12/2005 by the impugned order of the 1st Respondent in G.O. (2D) No.206, dated 08.05.2009, and for a consequential direction to allow him to be included in the promotion panel based on strict service seniority for further promotion.

2. According to the Petitioner, he joined the services of the Respondent/Police Department as Police Constable on 15.04.1997 and after completing his training, reported for duty on 23.10.1997 at the Tamil Nadu Special Police, New Delhi and promoted as Naik in the year 2002 and as Havildar in the year 2004, and worked upto 2006.

3. While the Petitioner was serving as Havildar 282 in Tamil Nadu Special Police VIII Battalion, New Delhi, on 21.07.2005, at 19.35 hours, one Dilbagh Singh @ Bakka, S/o.Makhan Singh, who was concerned in a case in Alippur Police Station in Crime No.229/2005 under Sections 186, 332, 353, 307 & 341 I.P.C. 121, 121(A), 122 I.P.C., Sections 3, 4, 5 of Explosives Act and 25, 54, 55 of Arms Act was brought to be confined in High Risk Ward in Central Jail No.1. The accused was searched and frisked by the Petitioner and one Saravanan, Police Constable 5577 and was taken inside by the Deputy Superintendent, viz. Mahaveer Singh and Assistant Superintendent viz. Rajsingh Kataria in High Risk Ward of Central Jail No.1. While so, when the accused was about to be lodged in Ward No.6 of High Risk Ward at 19.50 hours, he was once again thoroughly searched by Police Constable Suresh 5349 in the presence of the Deputy Superintendent, and in the search, opium weighing 62.600 grams wrapped in a transparent polythene paper from the right shoe of the accused was recovered and handed over to the Jail authorities through C.Memo 03/07/High Risk Ward No.6/2005, dated 21.07.2005 and the matter was reported to Harinagar Police Station. Thereafter, the local Police took further action against the accused under Narcotic Prevention and Sales Act.

4. For the slackness and dereliction of duty in failing to seize a prohibited item such as 'Opium' from the right shoe of the accused at the time of initial search made by the Petitioner and Saravanan, Police Constable 5575, disciplinary action was taken against them under Section 3(a) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 (hereinafter referred to 'Rules'). Accordingly, a Show Cause Notice was issued to the Petitioner under Rule 3(a) of the Rules in A3/PR-12/2005, dated 29.08.2005 of Tamil Nadu Special Police VIII Battalion and the Police Constable Saravanan 5577, who was also on duty with the Petitioner was issued with a Show Cause Notice in C.No. A3/PR-13/2005.

5. The Petitioner submitted his explanation to the Show Cause Notice on 28.09.2005, stating that, there are so many ways

in which the contraband could have been handed over to the inmate, such as by the D.J. Staff. He has further stated that, one Bansarilal, Assistant Superintendent, CJ No.1 asked him not to come along with him and he himself took the Under Trial Prisoner viz. Dilbagh Singh to High Risk Ward and that, the Assistant Superintendent, instead of taking the prisoner straight to the High Risk Ward took him to 'Chakkar' and after a lapse of 15 minutes only, the prisoner was taken to the High Risk Ward by Kattaria, Assistant Superintendent by 19.50 hours. Thus, according to the Petitioner, only because of the conspiracy on the part of the Jail staff, opium must have been trafficked through the Under Trial Prisoner and that, there is no negligence on his part.

6. Not being satisfied with the Petitioner's explanation, he was imposed with the punishment of "Black Mark deferred for a period of six months" by the Commandant, Tamil Nadu Special Police VIII Battalion, New Delhi on 14.10.2005 in A3/PR12/2005, under Rule 3(a) of the Rules. Thereafter, finding that the punishment imposed on the Petitioner is too lenient, the Deputy Inspector General of Police, Armed Police, Chennai issued another Show Cause Notice to the Petitioner vide Rc.No.C1/8886/2005, dated 24.11.2005 and the Petitioner submitted his explanation to the same on 07.12.2005. However, the punishment of "Deferred Black Mark for a period of six months" imposed on him was enhanced to that of "Black Mark" by the 3rd Respondent herein, vide proceedings in Rc.No.C1/28886/2005, dated 20.01.2006.

7. The Petitioner submitted a Mercy Petition to the 2nd Respondent/Director General of Police, Chennai, seeking to set aside the punishment of "Black Mark" imposed on him. But, the 2nd Respondent rejected his Petition stating that, the enhanced punishment of 'Black Mark' is not excessive. Whereas, the Mercy Petition submitted by his co-delinquent, Saravanan, Police Constable 5577 to the 2nd Respondent herein was considered and the 2nd Respondent in his proceedings in Rc.No.K.Dis.No.AP 3(1)/229042/2006, dated 11.06.2007 modified the punishment of "Black Mark" into that of "Black Mark deferred for a period of six months".

8. Aggrieved by the said order of the 2nd Respondent, the Petitioner filed an Appeal before the 1st Respondent on 04.10.2008. However, his Appeal was rejected in G.O.(2D) No.206 vide impugned order dated 08.05.2009. Challenging the same, the Petitioner is before this Court.

9. In the counter filed on behalf of the Respondents, it is stated that, the Petitioner is a senior service man and he is a Havildar in rank, having more responsibility than his co-delinquent, who is only a Police Constable having lesser responsibility than the Petitioner. Hence, the Petitioner could not claim and force his superiors to modify the punishment to be imposed as per his desire and the question of modifying the

punishment could not be considered.

10. Learned counsel for the Petitioner submitted that, suo motu, the higher Authority has imposed the punishment of 'Black Mark' not only on the Petitioner, who is a Havildar but also on the co-delinquent Saravanan, Head Constable. However, the Mercy Petition submitted by the Petitioner's co-delinquent Saravanan was considered and the punishment imposed on him was modified into that of 'Black mark deferred for six months', whereas, the Mercy Petition submitted by the Petitioner to the 2nd Respondent was rejected. According to the learned counsel, it amounts to discrimination and it is completely in violation of Article 14 of the Constitution of India.

11. In reply, learned Special Government Pleader appearing for the Respondents submitted that, the question of discrimination does not arise at all and that, punishment is imposed on a delinquent, depending upon the post he holds and the responsibility he carries. He went on to state that, it is for the Authorities either to impose the very same punishment or impose a different punishment. In this case, Authorities have modified the punishment imposed on the Petitioner's co-delinquent Saravanan, who is a Head Constable, into a lesser one and rejected the Petitioner's Mercy Petition as also his Appeal, only taking into account his post and the responsibility attached to it. He also submitted that, a detailed enquiry was conducted and one or two witnesses which may appear to be contradictory, cannot be a ground to interfere with the punishment imposed on the Petitioner. Thus, according to him, the punishment imposed on the Petitioner need not be interfered with.

12. Heard the learned counsel on either side and perused the material documents available on record.

13. It is no doubt true that, the Under Trial Prisoner carried contraband in his right shoe and was frisked by the Petitioner, Havildar and one Saravanan, Police Constable 5577 and was taken inside by the Deputy Superintendent, viz. Mahaveer Singh and Assistant Superintendent viz. Rajsingh Kataria in High Risk Ward of Central Jail No.1. According to the Petitioner, there is discrimination with regard to the punishment imposed on him, as his co-delinquent Saravanan, Head Constable has been imposed with a lesser punishment, which amounts to violation under Article 14 of the Constitution of India.

14. As rightly pointed out, the Petitioner and his co-delinquent Saravanan are holding different posts. It is open to the Authorities either to impose the same punishment or a different punishment on the delinquents, depending upon their posts that carry different/higher responsibility. The Petitioner being a Havildar ought to have been very careful and one or two witnesses in his favour, cannot hold him to come out of the punishment of "Black Mark" imposed on him.

15. Law is very clear that the principle applied to criminal trial is completely different from the one in department enquiry and that, the same yardstick cannot be applied. In this case, after detailed enquiry, the punishment imposed on the Petitioner has been enhanced into that of "Blackmark" and hence, this Court is of the view that, it does not call for any interference.

In view of the foregoing, this Writ Petition is dismissed as devoid of merits. No costs. Consequently, connected M.P.No.2 of 2010 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The Principal Secretary to Government,
Home (Pol IX) Department,
Secretariat Building, Chennai 600 009.
2. The Director General of Police,
Santhome High Road, Chennai 600 004.
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Armed Force, Chennai 600 010.
4. The Commandant,
T.S.P. VIII Battalion, New Delhi - 64.

+1cc to Mr.G.Thangavel, Advocate, Sr.No.28688

+1cc to the Government Pleader, Sr.No.28834

Pre-delivery order in
W.P.No.18977 of 2010

mr(co)
rr ii (15/10/2020)

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