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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.21717 of 2005

G.Sundaramurthy

... Petitioner

Vs.

The Deputy Commissioner of Police,
Flower Bazaar District,
Chennai.

... Respondent

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a writ of certiorari to call for the records of the respondent in connection with the impugned order passed by the respondent in P.R.No.49/P.R.N(2)/2003 and quash the same.

For Petitioner : Mr.K.Venkataramani
Senior Counsel for Mr.M.Muthappan

For Respondent : Mr.P.Chinnadurai
Additional Government Pleader

O R D E R

The petitioner, while he was working as a Sub-Inspector of Police, Muthialpet Police station, Chennai, conducted inspection at Hotel Razula, Mannady. There was a complaint by Manager of the Hotel that the petitioner entered the hotel in a drunken mood and demanded bribe of Rs.300/-. Thereafter barged into the rooms of the lodge, slapped the occupants and taken away the beer bottles, cash etc., from them and failed to make entires in the General Diary. Therefore, a charge memo came to be issued in P.R.No.49/P.R.N(2)/2003 dated January 2003 on two counts. The 1st charge for indulging in entering the hotel demanding bribe, assaulting the occupants of the room in drunken mood and the 2nd charge for conducting raid on his own accord without information to superiors and failure to enter the same in the General Dairy as Sub-Inspector of Police.



2. An enquiry was conducted and Charge No.1 was held not proved, whereas Charge No.2 was held proved. On the basis of Enquiry report, the Disciplinary Authority issued the punishment of postponement of next increment for two years without cumulative effect. Aggrieved over the same, the petitioner is before this Court.

3. The respondent filed a detailed counter and the learned Government Advocate rested his argument on the basis of the same. The preliminary objection being that the petitioner without availing the statutory remedies of appeal and review has approached this Court directly. Insofar as the 2nd charge is concerned, it is borne out by records that the petitioner had conducted the checking on his own accord without making entries in the General Diary. In that event, the punishment imposed on him is very minor and is sustainable for the proven charges. Therefore, he seeks dismissal of the writ petition.

4. I heard the rival submissions.

5. The material produced before the Court shows that the owner of the hotel appeared as a witness on behalf of the petitioner and would state that the Manager had given a false complaint. No documentary evidence was produced on the side of the prosecution to probalize the incident. In the absence of materials the Enquiry Officer had held that Charge No.1, that the petitioner conducted raid in a drunken mood, demanded bribe and that he barged into rooms, highhandedly seized liquor and money, was not proved. While so, the second charge that he did not make entries in the General Diary for conducting raid on his own admission without making entries in General Diary was held proved. But a further reading reveals that the petitioner went on medical leave and did not go to police station. As seen above issue of not making entries is directly attributable to his medical leave. However the charge was held proved on the ground that he went on medical leave without sanction from his superiors and absented himself and failed to make in the General Diary. Taking medical leave without information or sanction of the superior officers was not at a charge framed in the charge memo, nor an enquiry was conducted on this aspect putting the petitioner on notice. Therefore, the finding of the Enquiry Officer on irrelevant and extraneous materials is beyond the scope of enquiry and thereby illegal. The punishment imposed considering the delinquency of an unframed charge is also illegal.

6. However, the conduct of raid by the petitioner without information to an extent is admitted by the petitioner. It can be inferred from the sequence of events, that the imputation and contents of first charge is very much probable, but was not proved in the manner known to law. This Court exercising power under Article 226 of Constitution of India shall not venture into re-appreciation of evidence.



However, insofar as admission of the petitioner with respect to part of the second charge, requires some the petitioner with respect to part of the second charge, requires some punishment. While holding the punishment order passed on the basis of irrelevant materials, this Court in the interest of justice does not want to set aside the punishment in its entirety. Therefore the order of punishment postponing the increment for two years without cumulative effect is modified as that of postponement of increment for one year without cumulative effect for the admitted misconduct.

In fine the writ petition is partly allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

bri

To

The Deputy Commissioner of Police,
Flower Bazaar District,
Chennai.

+1cc to Mr.M.Muthappan, Advocate SR.No.11127

+1cc to Government Pleader for the Respondent SR.No.11374

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RLD(CO)
GMY(13/07/2020)