

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :: 28.01.2020
Orders Pronounced on :: 28.02.2020

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
W.P.No. 8517 of 2013

Rachel Mallika

..Petitioner

Vs

1. The Secretary to Government
Home Department,
Fort St.George.
Chennai -600009.

2.The Inspector General of Police (L&O)
Mylapore, Chennai - 600004.

3.The Deputy Inspector General of Police,
Dindigul Range, Dindigul.

4.The Superintendent of Police,
Dindigul District,
Dindigul.

...Respondents

Prayer Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records relating to the impugned order passed by
the 1st respondent in G.O (3D) No.130 Home (Pol.V) Department
dated 9.12.2005 confirming the punishment orders passed earlier
by the 2nd and 3rd respondents and quash the same.

For Petitioner : Mr. T.Ranganathan
For Respondents : Mr. S.Thangavel, Spl.GP

O R D E R

The prayer sought for in the writ petition is to call for
the records relating to the impugned order passed by the 1st
respondent in G.O (3D) No.130 Home (Pol.V) Department dated
9.12.2005 confirming the punishment orders passed earlier by the
2nd and 3rd respondents and quash the same.

2. Brief facts of the case:

The writ petitioner was appointed as Junior Assistant
in the office of the Superintendent of Police, Trichy on

compassionate ground and her service was regularised in the year 1982. Subsequently, she was transferred to the office of the Superintendent of Police, Dindigul District and promoted in the year 1992. Due to sudden demise of her husband and huge debts she suffered from mental depression and she was unable to account for the incidents happened thereon, which were beyond her control. Therefore she could not attend office and she remained absent for duty. The Deputy Superintendent of Police, Dindigul has initiated disciplinary action and framed charges, without serving charge memo, concluded the disciplinary proceedings and passed exp-arty. The said enquiry report was accepted by the Inspector General of Police (L&O), Tamil Nadu, Chennai. Aggrieved against the said order, the petitioner preferred a Revision Petition and the same was rejected and again filed a representation to the first respondent/Government, the said representation was also rejected. Challenging the same, the present writ petition is filed.

3. Heard, the learned Counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

4. The learned counsel for the petitioner submitted that due to sudden demise of petitioner's husband, who left her with huge debts which the petitioner was not aware of till she was posted as Assistant in the office of the Superintendent of Police, Dindigul. Due to threatening from the debtors, the petitioner suffered from mental depression and she was unable to account for the incidents happened thereon, which beyond her control.

5. The learned counsel further submitted that during the said period, the Deputy Superintendent of Police, Dindigul has initiated disciplinary action in P.R No. 18/H1/1998 dated 13.11.1998 under Rule 3(b) of Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955 even though she did not belong to the Tamil Nadu Police Subordinate Service. The learned counsel further submitted that the Superintendent of Police, Dindigul /4th respondent has framed charge vide his Proceeding in Ka.Pa.18/97 under Rule 17(b). But the said charge memo was not served on the petitioner. Without defence statement of the petitioner, the 4th respondent conducted ex-party enquiry and gave a report holding charge proved and awarded punishment of 'removed from service', which according to the petitioner is a 'Non-speaking order'. The Appeal dated 03.12.1998 preferred by the petitioner before the the 3rd respondent/The Deputy Inspector General of Police, Dindigul was also came to be rejected vide Proceedings in C.No.A5/Apl/55/98, dated 08.03.1999, without considering the same on merits, simply stating that the petitioner was absent for duty without leave or permission from 02.05.1994 for nearly 4 years. Aggrieved by the

said order, the petitioner has also submitted the Revision Petition to Inspector General of Police (L&O), Chennai/2nd respondent, the said revision petition was also rejected by his Proceedings No. 279416/APII(3)/2000 dated 15.11.2000. The petitioner again filed a representation to the 1st respondent, the Secretary to Government, The said representation was also rejected on the ground that the TNPSC opined there there is no need to interfere with the orders of the disciplinary authority.

6. Hence it is the contention of the petitioner that the punishment order passed by the Superintendent of Police, Dindigul was not self explanatory and there was no proper reason to over rule the explanation submitted by the petitioner on medical grounds. The Medical Officer, who is the competent authority to decide the illness, was also not examined before imposing major punishment of 'removal from service' on the petitioner who was appointed on compassionate grounds. Further the 1st respondent has not examined the merits of the case, but simply accepted the view of the TNPSC and thereby, there was no independent examination by the 1st respondent and therefore, the same is liable to be quashed.

7. On the other hand, the learned Special Government Pleader appearing for the respondents submitted that if the petitioner was really threatened by the money lenders, she should have made a complaint to the police authorities to redress her grievance. Moreover, if she had any health problem, she should have applied for leave on medical grounds. Therefore, the statement of the petitioner is purely an afterthought to escape from the charge.

8. The learned Special Government Pleader further submitted that for the petitioner's unauthorised absence for duty from 02.05.1994, the disciplinary action is P.R.18/1997 under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules was taken against the petitioner and the charge memo was issued in PR.18/1997 u/r 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Since the petitioner was not available in her residential address, the charge memo was pasted in front of her residential door in the presence of Village Administrative Officer, Kottapatti Village, Senkulam, Trichy. The petitioner had not turned up for enquiry, subsequently, based on the directions of the Investigation Office, the petitioner submitted her explanation on 29.10.1998, requesting to forgive her for her absence and to take her duty again with minor punishment. After considering all the relevant records, the punishment of 'removal from service' was ordered on 24.11.1998. The subsequent appeal and revision filed by the petitioner were also rejected by the authorities concerned, confirming the order passed by the Disciplinary Authority, as there are no merits in the petitions filed by the petitioner.

With regard to the petition dated 20.12.1999 submitted by the petitioner to the 1st respondent against the said punishment, the Government has sent the entire records along with punishment roll file related to the petitioner to the Tamil Nadu Public Service Commission, seeking view of the Commission. After consideration, the Commission advises the Government to reject the petition as devoid of merits. Accordingly, the Government have rejected the petition by its communication dated 09.12.2005, which is impugned in this writ petition.

9. This Court has carefully considered the contentions of the learned counsel on either side and perused the materials on record.

10. Admittedly, there is no dispute that the petitioner was on unauthorised absence from duty since 02.05.1994. The Disciplinary Authority/3rd respondent conducted an enquiry and passed order of 'removal from service' holding that charges were proved against the petitioner. Subsequent Appeals and Petitions submitted by the petitioner to the authorities concerned, were also rejected, confirming the order passed by the Appellate Authority/3rd respondent.

11. It is contended by the learned counsel for the petitioner that order passed by the disciplinary authority is a 'Non-speaking order' and the appellate and revision authorities have simply rejected the petitions, confirming the order passed by the disciplinary authority, without applying their mind.

12. The learned Special Government Pleader appearing for the respondents submitted that having regard to the serious allegation of unauthorised absence for ten years from 02.05.1994, which stood proved before the Disciplinary Authority and on careful examination of the opinion offered by the Tamil Nadu Public Service Commission, the Government has passed the order rejecting the mercy petition. According to the learned Special Government Pleader appearing for the respondents, the impugned order is perfectly in order and therefore prayed for dismissal of writ petition.

13. As this Court has been called upon to decide only the question as to whether the appellate authority has disposed of the statutory appeal with reference to Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, it is necessary to extract the rule dealing with the power of the appellate authority, as follows;

23. (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, 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 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 --

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v)*, (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of rule 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of rule 17 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v)(c), (vi) (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has already been held in the case, the appellate authority shall make such orders as it may deem fit; and

(iii) no other imposing an enhanced penalty shall be made 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 17 of making representation against such enhanced penalty;

14. On a perusal of aforesaid Rule 23(1) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules, it is clear that while deciding the appeals, the appellate authority shall consider as to whether the penalty is excessive, adequate or inadequate and only after such consideration, he shall pass orders. Therefore, as per the said Rule, the respondents ought to have considered the grounds raised by the petitioner while confirming the order passed by the appellate authority.

15. To conclude the said issue, it is relevant to extract the orders passed by the authorities concerned on the

appeal/petition preferred by the the petitioner against the order of the disciplinary authority.

15.1 The order dated 08.03.1999 passed by third respondent/appellate authority, is extracted hereunder:

- "1. Continuously absent for duty without leave or permission from 02.05.94
- 2.The appeal is in time
- 3.She has not putforth any fresh points for consideration.
- 4.Hence the appeal is rejected.

15.2. Proceedings dated 25.03.1999 of the 2nd respondent/Inspector General of Police, rejecting the Review Petition submitted by the petitioner.

"Her appeal petition to the DIG, Dindigul Range was rejected by him in his proceedings No. A5/appeal-55/98 dt. 09.03.99. Therafter, she has now preferred this review petition to me. It is with in time limit. I have gone through the review petition with all connected records. She has not put-forth any valid points warranting interference. Hence this review petition is rejected"

15.3. Impugned Order in G.O (3D) No.130, Home (Pol.V) Dept, Dated. 9.12.2005 passed by the Government /1st respondent on the mercy petition submitted to the Government:

" The Government have carefully examined the petition of the individual with relevant records along with the views of the Tamil Nadu Public Service Commission and decided to accept the view of the Tamil Nadu Public Service Commission to reject the petition as devoid of merits."

16. From the above orders passed by the authorities, it is clear that the orders do not reflect active application of the mind of the appellate authority and without following Rule 23(1) (a) (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules.

17. It is useful to extract the decision of this Court in a similar case in W.P. No. 27639 of 2006 in the case of N.Sivakumaran Vs. The State of Tamil Nadu, Secretary to Government, Revenue Department, Chennai and 3 Others. The relevant portion is extracted below;

33. When the appellate authority fails to exercise his statutory duty, which affects the fundamental right of

a person and if such authority disposes of an appeal, disregard to the manner circumscribed under the rules and fails to assign brief reasons, indicating his mind, it amounts to denial of justice. Prejudice is per se evident and therefore, even if the employee has not raised the question of non-consideration of his appeal in accordance with the statutory rules in the Writ Petition. Considering the deprivation of his right to livelihood, guaranteed under Article 21 of the Constitution of India, scuttling his right of his appeal being considered in the manner as provided in the statutory rules would be contrary to the spirit of the Constitutional Guarantee, viz., the right to life with dignity, which can be achieved through the income derived from his employment, the fundamental source. One should not forget that judiciary is the last resort of an aggrieved person and it is not enough that justice should be done and it must also be seen to be done. Useful reference can be made to a decision of the Supreme Court in State of W.B v. Anwar Ali Sarkar reported in AIR 1952 SC 75, and relevant portion in the judgment is extracted hereunder: "It may be that justice would be fully done by following the new procedure. It may even be that it would be more truly done. But it would not be satisfactorily done, satisfactory that is to say, not from the point of view that the governments who prosecute, but satisfactory in the view of the ordinary reasonable man, the man in the street. It is not enough that justice should be done. Justice must also be seen to be done and a sense of satisfaction and confidence in it engendered."

34. Scrutiny of the appellate authority's order reveals that after extracting the summary of facts, at Paragraph 8 of the order, the appellate authority has merely stated that "the opinion of the Tamil Nadu Public Service Commission has been independently and carefully considered. The punishment of removal awarded by the Principal Commissioner and Commissioner for Revenue Administration is not excessive and therefore, the Government had decided to reject the appeal and accordingly, rejected the same." Thus it is manifestly clear that the appellate authority has passed a cryptic order and that there is a failure to consider the parameters set out in rule 23(1) of the said Rules. contention raised by the delinquent officer. In the interest of justice, the delinquent officer is entitled to know atleast the mind of the appellate authority in dismissing his appeal. No doubt, detailed reasons are not required to be given, but some brief reasons should

be indicated in the order affirming the views of the disciplinary authority. As observed in *Alexander Machinery (Dudley) Ltd., v. Crabtree* [1974 ICR 120 (NIRC)], reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx, it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision.

35. The subjective satisfaction of the appellate authority is conspicuously absent regarding rule 23(1) (a) (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The order does not reflect active application of the mind of the appellate authority and to put it in the words of the Apex Court, it is 'lifeless', except examining the quantum of penalty.

36. In view of the above, the impugned order of punishment is set aside and the Writ Petition is partly allowed. The matter is remitted back to the appellate authority to consider all the parameters in Rule 23 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules and to pass an order on merits, within a period of four weeks from the date of receipt of a copy of this order. No costs.

18. 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 as to whether 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."

19. Examining the scope of the appeal, this Court in W.P.Nos. 8661 of 2013, 8782 of 2013 and 150 of 2013 held that right of appeal is a substantive right and the appellate

authority is the final fact finding authority and he is expected to assess the evidence 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. The appellate authority has to review the evidence subject to the statutory limitations in Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. In the aforesaid cases, this Court also issued directions to the Chief Secretary to Government of Tamil Nadu to issue necessary circular to the appellate authority dealing with the statutory appeal to strictly follow the procedures and Rules, while deciding the appeals in future, without fail.

20. In view of the decisions of this Court and the Hon'ble Supreme Court cited supra and Rule 23(1) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, it is clear that the appellate authority should 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 the said Rule 23 of the Tamil Nadu Civil Service (Discipline and 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 and other authorities, except simply saying that she has not put forth any fresh points for consideration and came to the conclusion that the punishment awarded by the 4th respondent/disciplinary authority is not an excessive and rejected the same.

21. 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 comes to the conclusion that the 3rd respondent/ appellate authority has passed a cryptic order/non-speaking order without considering the issues that were raised by the petitioner in her Appeal and the same is contrary to Rule 23(1) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules.

21. In the instant case, the impugned order, which the petitioner is seeking to quash, was passed by the 1st respondent/Government is not an appellate authority. The petitioner's appeal was rejected by the appellate authority/3rd respondent and her subsequent Revision was also rejected by the 2nd respondent and that the petitioner has finally sent a mercy petition to the Government/1st respondent, which was also rejected.

22. In the result , the impugned order dated 09.12.2005 passed by the first respondent, confirming the punishment orders passed earlier by the 2nd and 3rd respondent, is set aside. Consequently, the punishment orders passed by the 2nd and 3rd respondents are also set aside. The matter is remitted to the third respondent to consider the appeal preferred by the petitioner 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. Accordingly, the Writ Petition is partly allowed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Home Department,
Fort St.George.
Chennai -600009.

2.The Inspector General of Police (L&O)
Mylapore, Chennai - 600004.

3.The Deputy Inspector General of Police,
Dindigul Range, Dindigul.

4.The Superintendent of Police,
Dindigul District,
Dindigul.

+1cc to Mr.T.Ranganathan, Advocate, S.R.No.18191

+1cc to Government Pleader,High Court, Madras,S.R.No.18265

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Pre-Delivery order in
W.P.No. 8517 of 2013

MP (CO)
KKV/28/07/2020