

Orders Reserved on :: 18.12.2019
Orders Pronounced on :: 03.02.2020

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

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..Petitioner
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.. Respondents

ORDER

3. The learned Senior Counsel appearing for the petitioner submitted that the petitioner has entered into

service as a directly recruited Grade-II Police Constable in the District Armed Reserve, Coimbatore District on 25.05.1988. He was promoted as Grade-I PC in the year 1998. While in service, the petitioner was falsely implicated in a criminal case registered in Crime No.227/98 on the file of Karamadai Police Station alleging robbery of sum of Rs.1,31,000/- in police uniform from one Venkatachalam. The petitioner was proceeded departmentally u/r 3(b) of TNPSS (D&A) Rules in P.R. No 59 of 1999 and the disciplinary authority awarded a punishment of dismissal from service w.e.f. 15.11.1999. In the meantime, the petitioner was falsely implicated in another criminal case registered in Crime No. 210 of 1998 on the file of Vadavalli Police Station u/s. 384 IPC. On completion of criminal proceedings, the petitioner was acquitted from the charges in the both the criminal cases. Challenging the aforesaid order of dismissal in P.R. No. 59/99, the petitioner has approached this Court in W.P. No. 35575 of 2006 and this Court vide order dated 23.11.2011 quashed the punishment of dismissal. Accordingly, the petitioner was reinstated into service and granted all consequential benefits. He was also given promotion as Grade-I PC retrospectively from 25.5.1998. Even though the petitioner is entitled to be upgraded as Head Constable in the year 2003, he was not upgraded.

4. The learned Senior Counsel further submitted that thought the petitioner was acquitted on merit in Crime No.210/99, he was issued with a charge memo by the respondent in Na.Ka.No.J1/PR3/2012 dated 02.01.2012 u/r 3(h) of TNPSS (D&A) Rules and arrested and remanded to judicial custody, later released on bail. He was proceeded with departmental enquiry in P.R. 03/2012 u/r 3(b). The 1st respondent appointed the Deputy Superintendent of Police, AR Coimbatore Rural District as enquiry officer to conduct oral enquiry. After completion of oral enquiry, as directed, the petitioner submitted his written statement on 01.06.2012. The enquiry officer without taking into consideration the representation, held that the charges are proved by report dated 22.06.2012. Aggrieved by the same, the petitioner has submitted his further representation to the 1st respondent, but the 1st respondent without considering the same, agreed with the findings of the enquiry officer and imposed a punishment of reduction in pay by 3 stages for 3 years. The petitioner preferred an appeal to the 2nd respondent on 13.09.2012 and the 2nd respondent who is the appellate authority to decide the merits of the charges, refused to consider any of the points raised by the petitioner and by an order dated 31.12.2012, rejected the same. According to the learned senior counsel appearing for the petitioner, the said order of the disciplinary authority as well as the appellate authority are in contravention of Rule 6 of TNPSS (D&A) Rules and therefore, the same are liable to be quashed.

5. Per contra, the learned Additional Advocate General appearing for the respondents on the other hand submitted that the petitioner was dismissed from service on 15.11.1999 after conducting departmental enquiry as per rules in force, for having involved in Vadavalli PS Crime No. 210/98 u/s. 384 IPC @ 450, 395 IPC. The said criminal case was taken on file in S.C. No.349 of 2006 by the III Additional Sessions Judge, Coimbatore and ended in acquittal on 05.02.2007 due to benefit of doubt u/w. 235(i) CrPC. It is further submitted that with regard to the disciplinary proceedings, the oral enquiry has been conducted as per disciplinary rules and by giving all reasonable chances to the petitioner, minutes was drawn by the enquiry officer. The further representation submitted by the petitioner was carefully considered by the punishing authority i.e., the Superintendent of Police, Coimbatore District with all relevance statements and evidence and awarded punishment of Pay reduction by three stages for three years with cumulative effect by order dated 13.08.2012. All the above events are in accordance with the disciplinary rules now in force. The appeal preferred by the petitioner was also rejected by the appellate authority after adopting all the procedures laid down in the disciplinary rules and applying mind. Therefore, the grounds raised by the petitioner in this writ petition are not valid and liable to be dismissed.

8. On a perusal of records, it is seen that two criminal cases were registered against the petitioner in Cr.No.227/1998 and in Cr.No.210/1998 under section 384 of IPC. Subsequently, he was acquitted from the charges in both the criminal cases. In Cri.No.227 of 1998, he was proceeded departmentally u/r 3 (b) of TNPSS (D&A) Rules in PR.No. 59/99 and awarded punishment of dismissal from service and subsequently came to be reinstated as per orders obtained from this Court dated 23.11.2011. In another Crime No. 210/199, he was issued with charge memo in Na.Ka. No. J1/PR3/2012 dated 02.01.2012 and was proceeded departmentally in PR 3 /2012 u/r 3(b). The said disciplinary proceedings ended in punishment of punishment of Pay reduction by three stages for three years with cumulative effect by order dated 13.08.2012. The petitioner has preferred appeal before the appellate authority/2nd respondent. The appellate authority has rejected the appeal by order dated 31.12.2012, confirming the order passed by the disciplinary authority/1st respondent.

9. According to the petitioner, the said order of the Appellate Authority/2nd respondent herein is a non-speaking order in view of Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules and the same is liable to the set aside.

10. The learned Additional Advocate General appearing for the respondents submitted that the Appellate Authority

confirmed the order passed by the Original Authority.

11. In such circumstances, it is relevant to extract the Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, which reads as follows;

Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules is extracted below;

"In the case of an appeal against an order imposing any penalty specified in Rule 2, 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 after such consideration, shall 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 -

(a) if the enhanced penalty which the appellate authority proposed to impose is one of the penalties specified in clauses (d), (e) (3), (h) (i) and (j) of Rule 2 and an enquiry under sub-rule of Rule 3 has not already been held in the case, the appellate authority shall, subject to the provisions, of sub-rule(c) of Rule 3, itself hold such enquiry or direct that such enquiry be held in accordance with the provisions of sub-rule(b) of Rule 3 and thereafter on consideration of the proceedings of such enquiry and after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during such enquiry, make such order as it may deem fit.

(b) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties, specified in clause (d), (e) (3), (h), (i) and (j) of Rule 2 and an enquiry under sub-rule (b) of Rule 3 has already been held in the case, the appellate authority shall, after giving the appellant reasonable opportunity for making representation against the penalty proposed to be imposed on the basis of the evidence adduced during the enquiry, make such order as it may deem fit; and

(c) no order imposing an enhanced penalty shall be passed 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 3 of making representation against such enhanced penalty."

12. On a perusal of Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, it is clear that while deciding the appeals, the appellate authority shall consider whether the penalty is excessive, adequate or inadequate and only after such consideration, shall pass orders. Therefore, as per the said Rules, the respondent ought to have considered the grounds raised by the petitioner while confirming the order passed by the appellate authority.

13. Now, the sole question that falls for consideration is, whether the appellate authority/2nd respondent herein has passed the said order dated 31.12.2012 in accordance with Rule 6(1) of TNPPS (D&A) Rules or not.

14. The relevant portion of the order dated 31.12.2012 passed by Second respondent/ appellate authority, is extracted hereunder:

" I have gone through the appeal petition along with PR file and other connected records carefully and dispassionately. Perusal of PR files shows that the appellant was awarded with the punishment of "pay reduction by three stages for three years which shall operate to postpone his future increments" for the delinquency of committing grave offence of looting Rs.17,500/- threatening one Kamaraj and his wife and involved in Vadavalli PS Cr.No. 210 /98 u/s 210/98 u/s 384 IPC and thereby tarnishing the image of the police force. Such tainted officers should be punished stringently so that it should be brought a lesson to the followers and others who are having similar thoughts should be deeped into mind. Hence no sympathy or leniency can be shown on such a barbarian act. The delinquency is clearly proved from the prosecution witnesses and exhibits. Therefore, I reject the appeal petition."

15. The Learned Counsel for the Writ Petitioner has relied upon the decision reported in 1989 writ law reporter 274 considered Rule 6(1) of TNPSS (D&A) Rules and it has been held as follows at para 3 and 4 of the said judgment.

"The rule enjoins the concerned authority to consider the three aspects set out therein

specifically. Unless the appellate authority considers them it cannot be said that it has carried out its duties properly. The Supreme Court had occasion to discuss a similar question under R.27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Dealing with the word 'consider' used in the said rule, the Supreme Court observed that the word 'consider' implies due application of mind-vide R.P.Bhatt v. Union of India. The following paragraph in the above judgment of the Supreme court can be usefully referred to with advantage-

"The word 'consider' in R.27(2) implies 'due application of mind'. It is clear upon the terms of R.27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) Whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) Whether the penalty imposed is adequate and thereafter pass orders confirming, enhancing etc, the penalty, or may remit back the case to the authority which imposed the same. R27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were unwarranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (2) of R.27(2) viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of R.27(2) of the Rules the impugned order passed by the Director General is liable to be set aside."

16. In another judgment of this Court in the case of K.Kandasamy Vs. Deputy I.G. of police, reported in 2006 (4) MLJ 1382 in para 7, this Court has held as follows :-

"It is seen from the aforesaid portion of the impugned order that the Appellate Authority did not deal with any of the grounds of appeal raised by the petitioner. A departmental appeal is a continuation of the original proceedings. It is needless to point out that the last opportunity available for a delinquent, to canvass his case on merits, is at the appellate stage. After the appeal, a delinquent loses his right to challenge any disciplinary proceedings on merits, since the scope of interference on a revision or on a writ petition is very limited. Therefore, the rules themselves contemplate Appellate Authorities to go into the factual details and consider all the grounds of appeal before deciding an appeal. Unfortunately, the first respondent has chosen to dismiss the appeal by a non-speaking order and hence, the Appellate Authority's order is liable to be set aside."

17. 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 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."

18. In view of the decisions cited supra and Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, it is clear that the appellate authority is the final fact finding authority and he is expected to 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 Rule 6 (1) of Tamil Nadu Police Subordinate Service (Discipline & 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 except simply saying that he has perused some documents and came to the conclusion that the punishment awarded by the 1st respondent is not an excessive and rejected

the same.

19. 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, has come to the conclusion that the second respondent/ appellate authority has passed a cryptic order/non-speaking order without considering the issues that were raised by the petitioner in his Appeal. As rightly pointed out by the learned Counsel for the petitioner, the order passed by the appellate authority/ 2nd respondent is not in conformity with the Rule 6(1) of TNPSS (D&A) Rules.

20. In fine, the impugned order dated 31.12.2012 passed by the second respondent in respect of P.R. No. 3 of 2012 in RC. No. D2/AP-32/2012, dated 31.12.2012 is quashed and the matter is remitted to second respondent to consider 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.

20. With the above observations and directions, this writ petition is disposed of. No costs.

21. Before parting with the case, now several writ petitions are being filed challenging the rejection order of the appellate authority and the same are being quashed on the ground that the said orders are cryptic in nature and passed without assigning any reason/finding/discussion and without following the relevant procedures and Rules. Therefore, the Chief Secretary to Government of Tamil Nadu is directed to issue necessary circular to the appellate authority, who deal with the statutory appeals, to strictly follow the procedure and Rules, while deciding the appeals in future, without fail. The Chief Secretary to Government shall also send circular to the Appellate Authorities of other departments concerned with regard to the same and file a compliance report before this Court, within a period of four (4) weeks from the date of receipt of a copy of this Order.

22. Registry is directed to mark a copy of this order to the Chief Secretary to Government of Tamil Nadu, Secretariat, Chennai.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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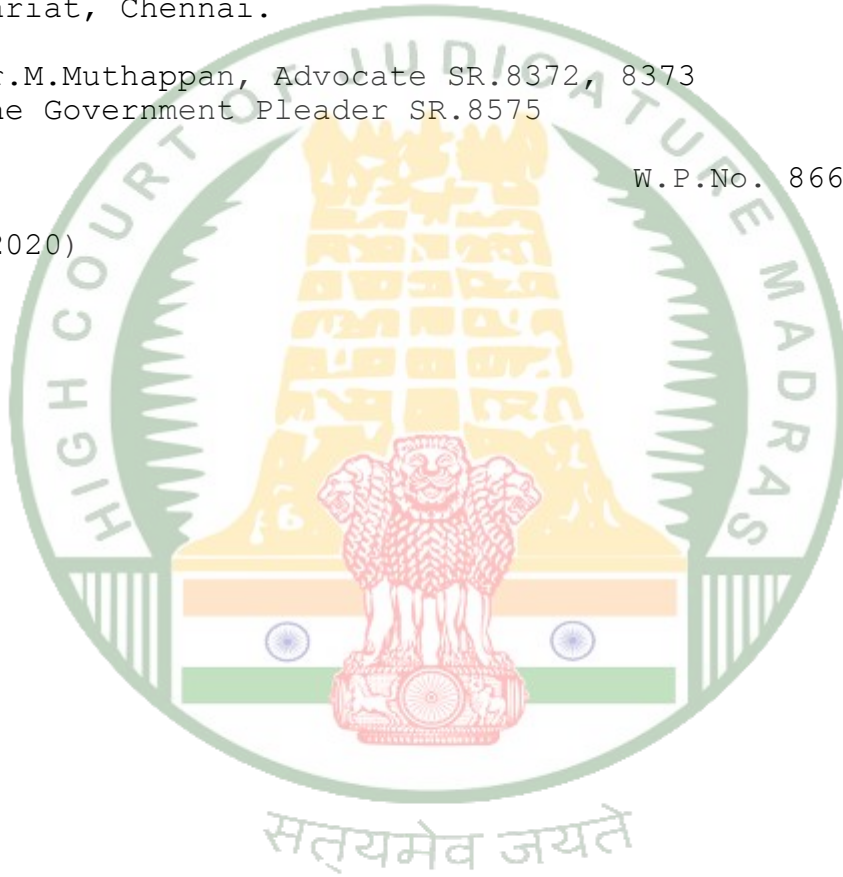
To

- 1.The Superintendent of Police,
Coimbatore Rural District,
Coimbatore.
- 2.The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore.
- 3.The Chief Secretary to Government of Tamilnadu,
Secretariat, Chennai.

+2cc to Mr.M.Muthappan, Advocate SR.8372, 8373
+1cc to the Government Pleader SR.8575

W.P.No. 8661 of 2013

VBA (CO)
CB(28/10/2020)



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