

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No. 8782 of 2013

A.Rajendran

...Petitioner

Vs

1. The Deputy Commissioner of Police (Armed Reserve)
Chennai City Polie,
Egmore, Chennai-8.

2.The Joint Commissioner of Police,
Head Quarters,
Chennai City Police, Chennai. ...Respondents

Prayer Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned order passed by the 1st respondent in PR. No. 188/P.R 2(1)/2009 dated 27.10.2010 and impugned order passed by the 2nd respondent in Appeal No. 3/PR IV(2)/2013 dated 07.03.2013 and quash the same and direct the respondents to treat the period of suspension from 18.07.2003 to 29.04.2009 as duty for all purposes and further direct the respondents to draw and disburse the wages within a reasonable time.

For Petitioners : Mr.K.Venkataramani (SC)
for Mr.M.Muthapan

For Respondents :Mr.P.H.Aravind Pandiyan, AAG
Assisted by Mr.J.Ramesh, AGP

WEB COPY ORDER

The prayer sought for in the writ petition is to call for the records of the respondents in connection with the impugned order passed by the 1st respondent in PR. No. 188/P.R 2(1)/2009 dated 27.10.2010 and impugned order passed by the 2nd respondent in Appeal No. 3/PR IV(2)/2013 dated 07.03.2013 and quash the same and direct the respondents to treat the period of

suspension from 18.07.2003 to 29.04.2009 as duty for all purposes and further direct the respondents to draw and disburse the wages within a reasonable time.

2. Heard, the learned Senior Counsel appearing for the petitioner and the learned Additional Advocate General appearing for the respondents and perused the materials available on record.

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 Chennai City Police, Armed Reserve on 01.08.1984. He was upgraded as Grade-I PC in the year 1996 and further upgraded as Head Constable in the year 1997. During the year 2002, the petitioner was placed under suspension alleging involvement in a criminal case registered in Crime No. 789/2002 U/s. 120(b) and 420 IPC by the Central Crime Branch, Greater Chennai Police. After filing of charge sheet, the said criminal case was ended in acquittal. In the meantime, the petitioner made representation to the respondent not to proceed with the departmental enquiry, in view of pendency of a case in P.R No. 204 /2002 on the same set of allegation. But the respondent had conducted departmental proceedings and the enquiry officer has held that the charges are proved. In view of the findings of the enquiry officer, the petitioner was imposed punishment of reduction in time scale of pay by one stage for year by an order dated 27.10.2010. Against the said order of punishment, the writ petitioner has preferred an appeal before the 2nd respondent and the 2nd respondent by order dated 07.03.2013 has set aside the punishment and also ordered to treat the period of suspension from 29.10.2002 to 17.07.2003 as duty for all purposes.

4. The learned senior counsel further submitted that while the petitioner was under suspension, he has been falsely implicated in another criminal case in Crime No.674/2003 alleging forgery in availing bank loan. The said case was also ended in acquittal and the petitioner was reinstated into service by the 1st respondent vide Proceedings in CPO.No903/2009 dated 08.04.2009 without prejudice to the departmental action pending against him in P.R. No. 204/PR 2(1)/2002 dated 12.11.2002. After reinstated into service, the petitioner has made representation dated 15.06.2009 to drop further action in the charge memo. The said representation was rejected by the respondent on 21.10.2009 by stating reason that the grounds raised in the departmental proceedings and the criminal case are not similar. The petitioner has filed writ petition before this Court in W.P. No. 17002/2009 requesting not to proceed with the oral enquiry and to consider his representation dated 15.06.2009 submitted for the charge memo. This Court by order dated

21.09.2009 directed the respondent to consider the petitioner's representation dated 15.06.2009 within a period of 12 weeks. The said request was also rejected by the respondent on 21.10.2009 and directed the petitioner to attend the enquiry. On 27.10.2010, the 1st respondent passed an order, imposing punishment of reduction in time scale of pay for two stages by two years without cumulative effect.

5. Being aggrieved by the said punishment, the writ petitioner herein preferred an appeal before the 2nd respondent on 03.12.2010 and the 2nd respondent by a common order dated 07.03.2013, has rejected the appeal and also issued an order treating the period of suspension from 18.01.2003 to 29.04.2003 as eligible leave including EOL to the extent necessary. In the same order dated 07.03.2013, the period of suspension from 29.10.2002 to 17.07.2003 till 18.07.2003, the date on which the petitioner was implicated in Cr.No.674/2003 was treated as duty. In view of the above facts, It is argued by the learned counsel for the petitioner that since, no separate orders were issued suspending the petitioner from service in connection with Cr.No.674/2003, the entire period has to be treated as duty for all purposes. Further, when there is no evidence to prove the allegation against the petitioner, the entire punishment awarded by the appellate authority cannot be sustained, which is a non-speaking order in view of Rule 6(1) of TNPSS (D&A) Rules and the same is liable to be set aside.

6. Per contra, the learned Additional Advocate General appearing for the respondents on the other hand submitted that earlier the petitioner was placed under suspension for his involvement in a criminal case in Cr.No.789/2002 u/r 120(b) and 420 IPC. He was arrested and remanded on 24.10.2002 for which he was dealt in PR.No. 204/2002. During the period of suspension, he involved in another criminal case in Cr.No.674/2003 u/r 419,420, 468 IPC for which he was dealt in PR. No.188/2009.

7. The learned Additional Advocate General further submitted that both the criminal cases were ended in acquittal. In PR.No.204/2002, only one count of the criminal was shown, there by the suspension period from 29.10.2002 to 17.07.2003 (till the date of 18.07.2003 on which he involved in another criminal case) was treated as duty period for all purpose by the 2nd respondent on the appeal dated 26.06.2011 preferred by the petitioner. In PR.No. 188/2009, the petitioner was awarded with punishment in two separate counts apart from the criminal case. While disposing the petitioner's appeal petition dated 03.12.2010, the period of suspension was settled as eligible leave including EOL to extent necessary since the petitioner was awarded with the punishment in two different counts. Therefore,

it is the argument of the respondent that while disposing the appeal preferred by the petitioner, the appellate authority has gone through the connected records of the P.R and recorded that the punishment awarded to the petitioner is warranted and reasonable one, which is not an excessive punishment, thereby the appellate authority has not violated the Rule 6(1) of TNPSS (D&A) Rules.

8. On a perusal of records, it is seen that two criminal cases were registered against the petitioner in Cr.No.789/2002 under Section 120(b) and 420 IPC and in Cr.No.674/2003 under sections 419,420, 468 IPC and departmental enquiry was also initiated against him. Subsequently, he was acquitted from the charges in both the criminal cases. Since the respondent has taken the view that the grounds raised in the criminal case and the departmental enquiry are not similar, the petitioner was directed to attend the departmental enquiry. Further, on the basis of the report submitted by the enquiry officer, the 1st respondent by order dated 27.10.2010 passed the impugned proceedings, imposing punishment of reduction in time scale of pay for two stages by two years without cumulative effect in PR.No. 188/2009. The Appellate authority/2nd respondent herein by common order dated 07.03.2013, set aside the punishment awarded by the 1st respondent in PR.No.204 of 2002 and the confirmed the punishment awarded in PR. No. 188/2009 as the same is not an excessive.

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 clearly mentioned 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 been 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 07.03.2013 in accordance with Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules or not.

14. The relevant portion of the order dated 07.03.2013 passed by Second respondent/ appellate authority, is extracted hereunder:

"Though the criminal case registered in Cr.No.674/03 u/s. 419,420,468 IPC ended in acquittal, two separate counts have been shown in the departmental action initiated in P.R.No.188/09 and the punishment of "Reduction in time scale of pay by two stages for two years and the period of reduction shall not operate to postpone future increment" was awarded. On perusal of evidence and other connected records the punishment awarded to him in this P.R is warranted and apt one, which is not an excessive punishment. Therefore the appeal petition dated 03.12.2010 is considered and rejected. As punishment was awarded on two separate counts in P.R. No. 188/09, the suspension period from 18.07.2003 to 29.04.2009 (reported for duty on 30.04.2009 F.N) is treated as eligible leave including EOL to the extent necessary"

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, 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 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 07.03.2013 passed by the second respondent in respect of P.R. No. 188/P.R2(1) of 2009 in Appeal No. 3/PR IV(2)/2013 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.

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

22. 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, deal with the statutory appeal, 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.

23. 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 IV)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commissioner of Police (Armed Reserve)
Chennai City Police,
Egmore, Chennai-8.

2.The Joint Commissioner of Police,
Head Quarters,
Chennai City Police, Chennai.

3.The Chief Secretary to the Government,
Government of Tamil Nadu,
Fort St. George,
Chennai-9.

+1cc to the Government Pleader Sr.8576

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