

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18215 of 2014

And

M.P.No.1 of 2014

P.K.Balu

... Petitioner

Vs.

1.The Director General of Police,
Mylapore,
Chennai – 600 004.

2.The Commissioner of Police,
Greater Chennai Police,
Vepery,
Chennai – 600 007.

3.The Additional Commissioner of Police,
'Traffic', Chennai – 600 010.

4.The Joint Commissioner of Police,
'Traffic', Chennai – 600 010.

5.Deputy Commission of Police,
'Traffic', Arumbakkam,
K-10, Koyambedu Traffic Police Station,
Koyambedu Circle,
Chennai – 600 107.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to

issue a Writ of Certiorarified Mandamus calling for the records of the respondents, especially the fifth respondent relating to his proceedings made in P.R.No.186/94 dated 27.05.2004 awarding punishment "pay reduction by two stages for two years without cumulative effect" and further confirmed by the fourth respondent pursuant to his proceedings made in Na.Ka.No.Po.Tha.Pi(va)/299/13315/04 dated 15.12.2004 rejecting the appeal and further confirmed by the first respondent pursuant to his proceedings made in D.Dis.AP.3 (3)/167066/2005, dated 22.10.2005 and quash the same as null and void, illegal and invalid, and consequently directing the third respondent to cancel the punishment in the light of his own proceedings made in RC.No.101/4824/Tr.PR/2013, dated 09.07.2013 after considering the petitioner's 'Grievance Petition' dated 09.02.2013 and the proceedings of the second respondent made in P.R.No.36/16394/PR.III (1)/2013 dated 03.09.2013 ordering for re-consideration of not only the cancellation of punishment but promotions, as 'Head-Constable' with effect from 22.07.2002 and 'Special Sub-Inspector of Police' with effect from 13.01.2011 with all service and monetary benefits, apart from disbursing the monetary benefits in the cadre of Grade-I Police Constable from 01.11.1997 to 22.07.2002.

For Petitioner : Mr.A.Amal Raj
For Respondents : Mr.A.N.Thambi Durai
Special Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records of the respondents, especially the fifth respondent relating to his proceedings made in P.R.No.186/94 dated 27.05.2004 awarding punishment "pay reduction by two stages for two years without cumulative effect" and further confirmed by the fourth respondent pursuant to his proceedings made in Na.Ka.No.Po.Thi.Pi(va)/299/13315/04 dated 15.12.2004 rejecting the appeal and further confirmed by the first respondent pursuant to his proceedings made in D.Dis.AP.3 (3)/167066/2005, dated 22.10.2005 and to quash the same as null and void, illegal and invalid, and to consequently direct the third respondent to cancel the punishment in the light of his own proceedings made in RC.No.101/4824/Tr.PR/2013, dated 09.07.2013 after considering the petitioner's 'Grievance Petition' dated 09.02.2013 and the proceedings of the second respondent made in P.R.No.36/16394/PR.III (1)/2013 dated 03.09.2013 ordering for re-consideration of not only the cancellation of punishment but promotions, as 'Head-Constable' with

effect from 22.07.2002 and 'Special Sub-Inspector of Police' with effect from 13.01.2011 with all service and monetary benefits, apart from disbursing the monetary benefits in the cadre of Grade-I Police Constable from 01.11.1997 to 22.07.2002.

2.The case of the petitioner is that the petitioner entered service on 26.12.1985 as Grade – II Police Constable and was posted at TSP-II Battalion, Avadi, Chennai. The petitioner was deputed as Member of the Special Investigation Team, CBI, charging with the responsibility of investigating the assassination of Late.Rajiv Gandhi, former Prime Minister of India. The petitioner was transferred to A.R. Pudupet, Egmore during the year 1994, where he continued his service as Grade II Police Constable.

3.It is the further case of the petitioner that he was allotted 'escort duty' along with one M.Chirstudhas attached to A-7, Velacherry Traffic Police on 01.10.1994 to take two prisoners namely, Sunil Panda and Kannan from Central Jail, Chennai to Government General Hospital, Central for treatment. Out of the two prisoners, Sunil Panda was a TADA accused, a hardcore criminal involved in an offence of acid

throwing and another accused was a local offender. Accordingly they took the two prisoners to Government General Hospital and after treatment to Central Prison, however, the Guard Officer was not available in his seat to receive the prisoners. Thereafter, about 60 to 70 D.K. Members were brought to prison and in the melee, taking advantage of the over crowd, the prisoners attempted to escape, however Sunil Panda was caught hold and Kannan managed to escape.

4.It is the further case of the petitioner that due to the above incident, the petitioner and the said Chirstudhas were arrested on 02.10.1994 and were released on bail on 05.10.1994 and a criminal case was also registered in Cr.No.1561 of 1994. The petitioner was also placed under suspension after filing charge sheet. Challenging the same, the petitioner approached the TAT along with the said Chirstudhas seeking to quash the suspension order and vide order dated 24.04.1995, the suspension order was quashed.

5.It is the further case of the petitioner that a charge memo dated 13.12.1994 was issued to him. Challenging the same, the petitioner filed O.A.No.816 of 1995 before TAT and TAT vide order

dated 30.10.1995 disposed of the said O.A. and ordered to defer the departmental proceedings in view of the same set of facts raised both in the departmental disciplinary proceedings and in the criminal proceedings. The criminal case registered against the petitioner and the co-escort party was dismissed by the learned XIV Metropolitan Magistrate vide judgment dated 27.01.1999 in C.C.No.4420 of 1995 and they were freed from all the charges.

6.It is the further case of the petitioner that when such being the position, the fourth respondent re-opened the charge memo dated 13.12.1994 and passed final order dated 27.05.2004 awarding the punishment of pay reduction by two stages for two years without cumulative effect. Aggrieved by the same, the petitioner preferred appeal dated 25.06.2004 before the third respondent. The third respondent vide order dated 15.12.2004 rejected the said appeal. Thereafter, the petitioner preferred mercy petition dated 05.08.2005 before the first respondent and the said mercy petition was also rejected.

7.It is the further case of the petitioner that thereafter, the petitioner made grievance petition dated 09.02.2013 before the third

respondent requesting to cancel his punishment and reminding the denial of his service benefits on par with his juniors. The third respondent forwarded the same to the second respondent and the said respondent vide order dated 03.09.2013 instructed the third respondent to consider the petitioner's request for promotion, if he is otherwise eligible, however, no order was issued. Hence, this writ petition.

8.The learned counsel appearing for the petitioner would submit that the petitioner was allotted 'escort duty' along with one M.Chirstudhas attached to A-7, Velacherry Traffic Police on 01.10.1994 to take two prisoners namely, Sunil Panda and Kannan from Central Jail, Chennai to Government General Hospital, Central for treatment. Accordingly they took the two prisoners to Government General Hospital and after treatment to Central Prison, however, the Guard Officer was not available in his seat to receive the prisoners. Thereafter, about 60 to 70 D.K. Members were brought to prison and in the melee, taking advantage of the over crowd, the prisoners attempted to escape, however Sunil Panda was caught hold and Kannan managed to escape. Hence, fixing the responsibility against the petitioner is not sustainable. He would further submit that the

Police officials who were with the petitioner at the time of the occurrence were granted promotions and would further submit that if this Court set aside the order of punishment, then the petitioner would be entitled for promotion. Hence, this Court may issue appropriate orders.

9.The learned Special Government Pleader would submit that investigation in the criminal case revealed that the escort P.Cs. Have connived with the prisoner Kannan, went to various places after giving treatment at Government General Hospital, Chennai, and allowed the prisoner from the lawful custody. He would further submit that the petitioner has given a grievance petition to the Commissioner of Police requesting to cancel the punishment, for which, the petitioner was given an endorsement dated 03.09.2013 informing that as the petitioner had already exhausted his rights of appeal and mercy opportunities, the petitioner could not be entertained as per TNPSS (D&A) Rule, 1955. He would further submit that the petitioner was also informed that since he has the punishment in his credit, he should wait for his further promotion until the period of punishment is over as per the existing Government Orders.

10. Heard the arguments advanced on either side and perused the materials available on record.

11. It has been the consistent view of the Courts that it is always within the domain of the Appointing Authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the Courts interfere in the same, in exercise of powers under Article 226 of the Constitution of India. The Hon'ble Supreme Court in its decision reported in **2015 (16) SCC 415 (Prem Nath Bali – Vs - High Court of Delhi)**, has held as under:-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and

then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

12.In the present case, the petitioner was allotted 'escort duty' along with one M.Chirstudhas attached to A-7, Velacherry Traffic Police on 01.10.1994 to take two prisoners namely, Sunil Panda and Kannan from Central Jail, Chennai to Government General Hospital, Central for treatment. Accordingly, they took the two prisoners to Government General Hospital and after treatment to Central Prison, however, prisoner Kannan managed to escape. Thereafter, the petitioner and the said Chirstudhas were arrested on 02.10.1994 and were released on bail on 05.10.1994 and a criminal case was also registered in Cr.No.1561 of 1994. Thereafter, the said criminal case ended in acquittal. Thereafter, the fourth respondent re-opened the charge memo dated 13.12.1994 issued to the petitioner and passed final order dated 27.05.2004 awarding the punishment of pay reduction by two stages for two years without cumulative effect to the petitioner.

13.Admittedly, the petitioner was careless in his duty and allowed the prisoner to escape from his hands. Though the criminal case ended in acquittal, it is not a bar for proceeding with the departmental proceedings. Since the criminal case was pending, departmental proceedings were not proceeded. After completion of the criminal proceedings, departmental proceedings were proceeded

and punishment, which, in the opinion of this Court, is not disproportionate to his act, was imposed on the petitioner. Hence, this Court is not inclined to interfere with the impugned order.

14.However, once currency of the punishment is over, the petitioner is entitled for promotion. Hence, this Court permits the petitioner to make representation, along with the copy of the Memo of Commissioner of Police dated 03.09.2013 to the Additional Commissioner of Police, after currency of the punishment is over. If any such representation is made by the petitioner, the concerned Authority shall consider the same, on merits and in accordance with law and shall pass appropriate orders, within a period of twelve weeks from the date of receipt of the representation.

15.The writ petition is accordingly disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

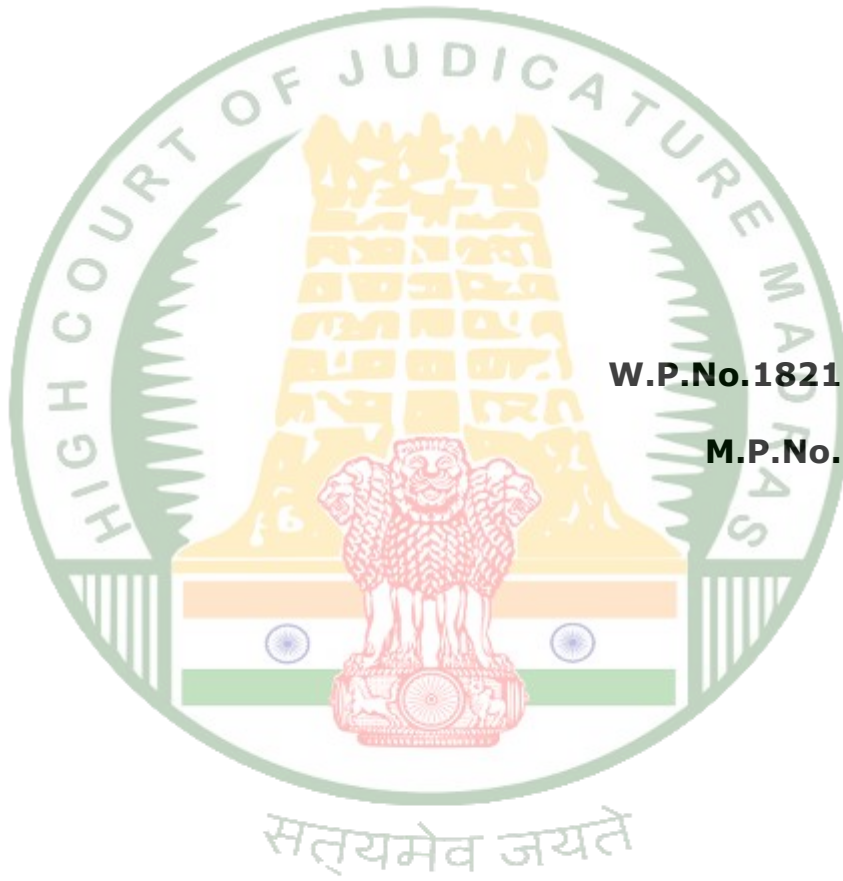
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