



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2020

CORAM:

THE HONOURABLE **MR. JUSTICE M.S.RAMESH**

W.P. (MD) No.4189 of 2019

and

W.M.P (MD) No.3318 of 2019

M.Shagadevan

... Petitioner

/vs./

1.The Director General of Police,
Police Directorate,
Kamarajar Salai, Mylopore,
Chennai-600 004.

2.The Inspector General of Police,
Armed Police,
Trichy.

3.The Commandant,
Tamil Nadu Special Police Battalion-I,
Trichy-12.

... Respondents

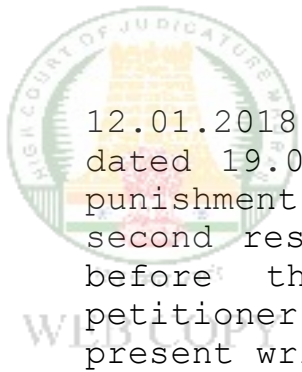
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus, to direct the respondents call for the records passed in (1) the proceedings of the third respondent in Tha.Pa.No.38/2017 dated 26.12.2017 (2) the proceedings of the second respondent in C.No.A2/Appeal-06/2018, dated 19.03.2018; and (3) the proceedings of the First Respondent in Rc.No.105399/AP.3(1)/2018 dated 02.11.2018 and quash the same and to issue consequential directions to the respondents herein to reinstate the petitioner in service with continuity of service from 26.12.2017 with all other service.

For Petitioner : Mr.Sulaiha Farveen Abbas
For Respondents : Mr.R.Sethuraman
Special Government Pleader

ORDER

The petitioner herein was imposed with the punishment of removal from service by the third respondent herein on 26.12.2017 pursuant to the enquiry conducted. As against the order of the

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12.01.2018 before the second respondent and by an impugned order dated 19.03.2018, the second respondent herein had confirmed the punishment imposed by the third respondent. The order of the second respondent was also challenged by way of mercy petition before the first respondent herein who had rejected the petitioner's request. The said orders are under challenge in the present writ petition.

2.The third respondent herein had imposed the punishment of removal from service of the petitioner herein through his order dated 26.12.2017. As against the same, the petitioner had preferred an appeal before the second respondent herein on 12.01.2018. On consideration of the appeal, the second respondent had extracted the charges and punishment imposed by the third respondent herein and thereafter had rejected the appeal by observing as follows:-

4.I have carefully perused the appeal petition, PR file and other connected records. The delinquent in his appeal petition has stated that he was absent for duty due to his ill health. Serving in a disciplinary force, he should have been aware of the rules to avail leave. But without doing show, he had absented for duty and declared as a deserter, which could not be tolerated in a disciplined force. Previously he had been imposed with several punishments for absenting from duty and had not mended himself. Any further opportunities given to him will end in vain. Hence I decline to interfere with the orders already passed by the punishing authority and the appeal is rejected.

3.Without going into merits of the grounds raised by the petitioner in the present writ petition, this Court is of the view that the matter requires to be remanded back to the second respondent, since there is no discussion as to how the second respondent had independently come to a conclusion that the enquiry was duly conducted and that the punishment of removal from service was proportionately awarded to the petitioner.

4.Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules stipulates the procedure to be followed by the Appellate Authority while imposing the punishment of removal from service. The said rule reads as follows:-

..Rule.6(1)In the case of an appeal against an order imposing any penalty specified in rule2, 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 (b) of rule 3 has not already been held in the case, the appellant 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 proposal on the basis of the evidence adduced during such enquiry, make such order as it may deem it.

(b) if the enhanced penalty which the appellate authority proposes 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 (b) of rule 3 has already been held in the case, the appellate authority shall, after giving the appellant reasonable opportunity of 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) or rule 3 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority



considers, for reasons to be recorded in writing, that the error of defect was not material and has neither caused injustice to the person concerned nor affected the decision of the case."

5.The rule is self explanatory to the effect that the appellate authority is required to ascertain and consider the facts, on which, the punishment was established; whether the facts established afford sufficient ground for taking action; the proportionateness of the punishment vi-a-viz the charges, etc. When the rule itself stipulates the guidelines for consideration of the appeal, the second respondent herein was not justified in simply confirming the punishment without following these guidelines. As such, it could be said that the order itself is in violation of the rules and a non-speaking order.

6.In view of the aforesaid observations, this Court is of the view that the order passed by the second respondent, is in violation of procedure contemplated under Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules and therefore, requires to be set aside and remanded back for fresh consideration.

7.In the light of the above observations, the impugned order dated 19.03.2018 passed by the second respondent herein is set aside and the matter is remanded back to the second respondent for fresh consideration by following the guidelines provided under Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. The second respondent shall also pass a speaking order. It is made clear that this Court has not expressed any of its view with regard to the original punishment imposed by the third respondent and that the second respondent is at liberty to come an independent conclusion based on the merits of the appeal. The second respondent shall also endeavour to pass final orders atleast within a period of three months from the date of receipt of the copy of this order after giving due opportunity to the petitioner herein. This Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

1.The Director General of Police,
Police Directorate,
Kamarajar Salai, Mylopore,
Chennai-600 004.

2.The Inspector General of Police,
Armed Police,
Trichy.

3.The Commandant,
Tamil Nadu Special Police Battalion-I,
Trichy-12.

+1 CC to M/s.SPL.GP (SR-955[F] dated 09/01/2020)

+1 CC to M/s.K.P.KRISHNADOSS, Advocate (SR-1378[F] dated
10/01/2020)

Order made in
W.P. (MD) No.4189 of 2019
08.01.2020

kg (CO)
TR(12.02.2020) 5P 6C