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W.P.(MD) No.20270 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.02.2020**

CORAM:

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

W.P. (MD) No.20270 of 2019

and

W.M.P (MD) No.16879 and 16885 of 2019

Subramanian

... Petitioner

/vs./

- 1.The Director General of Police,
Tamil Nadu,
Chennai-4.
- 2.The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.
- 3.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.
- 4.The Additional Superintendent of Police,
Prohibition Execution Wing-II,
Thoothukudi District.
- 5.The Enquiry Officer,
Deputy Superintendent of Police,
Thoothukudi City.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus, to call for the records pertaining to the order of punishment passed by the third respondent in his proceedings in F1/PR.30/18 u/r 3(b) dated 07.01.2019 confirmed in appeal by second respondent in his proceedings in C.No.C4/AP.11/2019 dated 27.05.2019 confirmed in review application by the first respondent in his proceedings in Rc.No.012112/AP.2(1)/2019, dated 21.06.2019 and quash the same as illegal and consequent direction may be issued to the respondents 2 & 3 to grant promotion to the petitioner as Special Sub Inspector of Police from 15.06.2018 within stipulated time.



For Petitioner
For Respondents

: Mr.T.A.Ebenezer
: Mr.R.Sethuraman
Special Government Pleader

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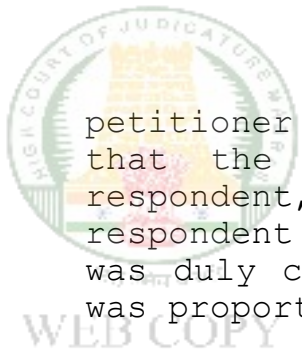
ORDER

On a set of charges under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, the petitioner herein was subjected to departmental enquiry and based on the proven charges, the third respondent herein had imposed punishment of stoppage of increment for one year without cumulative effect through an order dated 07.01.2019. As against the order of the third respondent, the petitioner herein had filed an appeal on 01.02.2019, before the second respondent and by an impugned order dated 27.05.2018, 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 stoppage of increment for one year without cumulative effect through his order dated 21.06.2019. As against the same, the petitioner had preferred an appeal before the second respondent herein on 01.02.2019. 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 gone through the P.R.file, appeal petition and other connected records carefully and thoroughly. The delinquency has two counts. The first count relates to pilfering 25 liters of diesel from police vehicle TN 69G 0500 on 08.08.2017. The second relates to making false entries in police vehicle diary altering to vehicle number TN69G 0716 on 23.04.2017 as if it was used for police duty from Thoothukudi to Tirunelveli and to Thiruchendur and again to Tirunelveli and there from returning to Thoothukudi and thereby writing in the diary as if the 20 liters diesel was utilized for the trips. Careful study of all the documents and the evidences given by PW1 to PW6 clearly makes out the delinquency which is very serious. The delinquent has produced the defence witness Thiru S.Kanagaraj who just speaks about the ignorance of the availability of diesel in the diesel tank which is not relevant. In view of the above, I reject his appeal.

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. A mere statement that the petitioner had accepted the charges and tendered his apology may not establish that the punishment was in proportion to the levelled charges. 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 27.05.2019 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 petitions are closed.

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Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

- 1.The Director General of Police,
Tamil Nadu,
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- 2.The Deputy Inspector General of Police,
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Tirunelveli.
- 3.The Superintendent of Police,
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- 4.The Additional Superintendent of Police,
Prohibition Execution Wing-II,
Thoothukudi District.
- 5.The Enquiry Officer,
Deputy Superintendent of Police,
Thoothukudi City.

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-6964[F] dated 18/02/2020)

+1 CC to M/s.SPL.GP (SR-7068[F] dated 19/02/2020)

W.P. (MD) No.20270 of 2019
18.02.2020

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