



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.12.2019

DELIVERED ON : 17.02.2020

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No. 9590 of 2014

M.C.Pandi

... Petitioner

Vs.

1.The Government of Tamil Nadu,
rep. by its Principal Secretary,
Home (SC) Department,
Fort St. George,
Chennai - 600 009.

2.The Director General of Police,
Tamil Nadu, Chennai.

3.The Commissioner of Police,
Madurai City,
Madurai.

4.The Deputy Commissioner of Labour,
(Traffic),
Madurai City,
Madurai.

5.Fathima Beevi

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the third respondent in Na.Ka.No.D1(3)/Tha.Pa.No.103/2009, dated 15.09.2011 and in Na.Ka.No.D1(3)/Tha.Pa.No.103/2009, Police Office Order No.1901/2011, dated 21.11.2011 and the proceedings of the 2nd respondent in RC.No.116981/AP.2(3)/2012, dated 14.04.2014 and quash the same and direct the respondents 2 and 3 to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mr.V.Balasubramanian

For respondents : Mr.S.Dhayalan,
Government Advocate

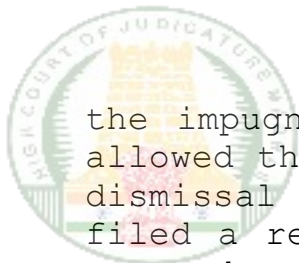


ORDER

This writ petition has been filed by the petitioner challenging the impugned orders imposing punishment of reduction in pay by one stage for two years with cumulative effect, enhancing the punishment to dismissal from service in *suo motu* review and reducing the same to compulsory retirement in further review.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as Police Constable Grade - II on 19.11.1988. While serving as Head Constable on 24.06.2009, a charge memo was issued against the petitioner alleging that on 25.03.2005 he, along with one Paulraj (since deceased), who was working as Superintendent in the Office of the 3rd respondent, caused leakage of question paper for the Police Constable Recruitment Examination to one M.Suresh by obtaining Rs.10,000/-. Though the petitioner requested to furnish copies of prosecution document referred to in Annexure - III and Section 164 statement of the said Suresh before the Judicial Magistrate Court No.V, Madurai, the first respondent did not furnish the same and thereby, the petitioner was denied reasonable opportunity. Without any basic documents, the petitioner has given his reply denying the charges. Learned counsel would further submit that during the enquiry, PW1, who was stated to be given Section 164 statement before the Magistrate, has denied the whole incident before the Enquiry Officer and also stated that he had never seen the petitioner prior to the disciplinary proceedings and only on compulsion, he gave Section 164 Statement before the Magistrate as directed by the investigating officer. However, the 5th respondent / Enquiry Officer has submitted the Enquiry Report as if charges are proved. A copy of the Enquiry Officer's report furnished to the petitioner. Accepting the findings of the Enquiry Officer, the 4th respondent imposed punishment of reduction in pay by one stage for two years with cumulative effect.

3. Learned counsel for the petitioner would further submit that as the charge memo has been issued by the Principal Secretary, the initiation of disciplinary proceedings by the authorities subordinate to him is not legally sustainable. Hence, questioning the impugned order of punishment, the petitioner has filed an appeal before the 3rd respondent. But, the 3rd respondent issued a show cause notice dated 15.09.2011 calling upon the petitioner to show cause as to why the punishment given by the Disciplinary Authority should not be enhanced. The petitioner gave a reply stating that the third respondent has no jurisdiction to invoke Rule 3B, when the appeal is pending and that as per Rule 15-A(2)(ii) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, no proceedings for review shall be commenced until after the disposal of the appeal. But, the 3rd respondent by



the impugned order dated 21.11.2011 has dismissed the appeal and allowed the *suo motu* review and thereby enhanced the punishment to dismissal from service. Aggrieved by the same, the petitioner has filed a review petition before the 2nd respondent and the second respondent has disposed of the review petition on 14.04.2014 by modifying the punishment as compulsory retirement. Challenging all these orders, the petitioner has filed the present writ petition.

4. Learned counsel for the petitioner further submitted that initially the C.B.I filed FIR and subsequently, CBI filed charge sheet arraying 61 persons as accused persons for leakage of question paper. But, the name of the petitioner was neither included in the FIR nor in the charge sheet. Though the said accused persons awarded a punishment of postponement of increment for two year without cumulative effect, the petitioner was awarded punishment of compulsory retirement and thereby, the petitioner alone has been discriminated. He would further submit that all the impugned orders are liable to be quashed not only on the ground of discrimination but also on the ground of non supply of documents. No reason has been assigned by the 3rd respondent while issuing show cause notice for enhancement of punishment. The statement given during the preliminary enquiry before the Magistrate cannot be taken as evidence, that too without any corroboration. For one and the same charges and reasons, the respondents have given punishment and modified the punishment at different stages. Thus, he prayed to set aside all the impugned orders and to reinstate him in service with all service and monetary benefits.

5. The learned Government Advocate appearing for the respondents submitted that one Suresh - PW1 has given statement under Section 164 before the learned Judicial Magistrate No.V, Madurai, stating that the petitioner along with one S.Paulraj, Personal Assistant to Superintendent of Police, District Police Office, Ramanathapuram, has supplied the question paper after receiving amount. The disciplinary proceedings has been initiated against the petitioner based on the report of the CBI and the said 164 Statement. Though the petitioner was involved in a serious misconduct, the disciplinary authority has imposed only lesser punishment and therefore, the 3rd respondent has issued a show cause notice as to why the punishment should not be enhanced and then, enhanced the punishment to dismissal from service. However, considering the past service of the petitioner, the 2nd respondent has modified the same as compulsory retirement. He would further submit that though the charges were framed by the first respondent, as the co-delinquent subsequently expired, the further course of action was remitted back to the 2nd respondent and therefore, the question of applying Rule 4-A of the Tamil Nadu



Police Subordinate Service (Discipline and Appeal) Rules, does not arise. After considering totality of the circumstances, the 2nd respondent has rightly modified the punishment into compulsory retirement and the same need not be interfered with. Thus, he prayed to dismiss this writ petition.

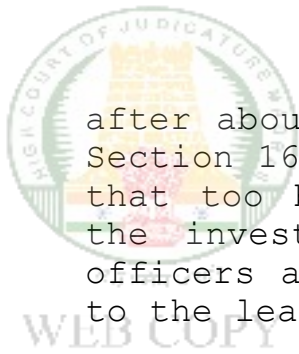
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6. Heard the learned counsel for both sides and perused the records carefully.

7. It is seen that based on a report of CBI and Section 164 statement given by one Suresh (PW1) on 04.04.2006, the Director General of Police, Chennai - second respondent herein has instructed the Commissioner of Police, Madurai City - 3rd respondent herein to prepare a charge memo against the petitioner and the said Paulraj for leakage of question paper for Police Constables Selection and accordingly, the 3rd respondent prepared the charge memo and sent for approval on 20.05.2009. The charge memo was duly approved by the first respondent and it was served to the petitioner on 03.07.2009. But, due to the death of co-delinquent by name Paulraj, the disciplinary proceedings against the petitioner was remitted to the 2nd respondent herein.

8. According to the petitioner, he has not been served with the documents in Annexure-III relied upon by the respondents for issuance of charge memo, even after his repeated request and therefore, he has not been given reasonable opportunity to defend his case. But, in this case, it is seen that on 22.01.2010 the Enquiry Officer had directed the petitioner to approach the Office, to receive Xerox copy of the documents and to submit his reply. Thereafter, the petitioner had submitted his written statement to the Enquiry Officer. As the petitioner was permitted to receive the documents before enquiry and after receipt of the documents only, he submitted his written statement, this Court is of the view that the petitioner has been given opportunity to defend his case at any rate. Therefore, the entire prosecution cannot be brushed aside on the sole ground of non furnishing of documents.

9. The Disciplinary Authority has imposed punishment of reduction in pay by one stage for two years with cumulative effect only based on the statement given by PW1 - Suresh before the learned Magistrate, though PW1 has turned hostile during the examination before the Enquiry Officer. According to the petitioner, the statement recorded under Section 164 Cr.P.C. during the preliminary enquiry cannot be relied upon and it is not a substantive evidence. According to the respondents, though PW1 - Suresh has stated that only as per the instruction of the Police official, he has given 164 statement before the learned Magistrate and he turned hostile before the Enquiry Officer, which was held

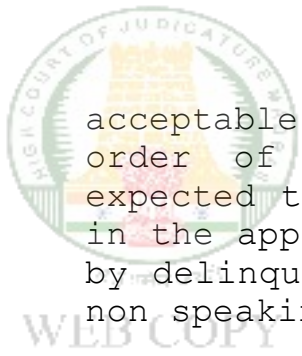


after about four years, the fact remains that the statement under Section 164 Cr.P.C. was recorded immediately after the occurrence, that too before the learned Magistrate, without the presence of the investigating officers and compulsion of the investigating officers and if there was any compulsion, PW1 could have informed to the learned Magistrate, but he has not done so.

10. For a domestic enquiry, the concept of preponderance of probability is sufficient and guilt of the delinquent official need not be proved beyond reasonable doubt, as required in a criminal case. In order to initiate departmental enquiry, some *prima facie* material to establish the charge would be sufficient. Under Section 164 Cr.P.C. a statement or confession made in the course of an investigation may be recorded by a Magistrate, subject to the safeguards imposed by the Section itself and can be relied upon at the trial. In this case, it is a disciplinary proceedings, which requires only preponderance of probability. Considering the fact that except the 164 statement of PW1, there is no concrete material, the disciplinary authority has imposed punishment of reduction in pay by one stage for two years with cumulative effect. More over, it is seen that the persons against whom disciplinary proceedings have been initiated for similar misconduct, the respondents have imposed only postponement of increment for one year or two years without cumulative effect, according to their counts. In view of the above and as no criminal case has been registered against the petitioner, this Court is of the view that such punishment imposed by the disciplinary authority can be reasonably accepted.

11. Though the petitioner has filed one appeal against the punishment imposed by the disciplinary authority, it is seen that the 3rd respondent has dismissed the same twice. In the show cause notice dated 15.09.2011, the 3rd respondent has stated that the appeal filed by the petitioner is rejected on the basis that there is no material. By the impugned order dated 21.11.2011 also, the 3rd respondent has dismissed the appeal without assigning any reason and allowed the *suo motu* review holding that it is a serious misconduct and thereby, dismissed the petitioner from service. The second respondent has modified the punishment imposed by the 3rd respondent as compulsory retirement considering his length of service.

12. It is seen that the statement of rejection of the appeal in the show cause notice dated 15.09.2011 would clearly show the predetermination of mind on the part of the 3rd respondent even before dealing with the appeal. Neither in the show cause notice nor in the order dated 21.11.2011, the 3rd respondent has considered/discussed the grounds raised by the petitioner and the 3rd respondent has simply rejected the appeal as it is not



acceptable. When an appeal has been preferred questioning the order of the original authority, the appellate authority is expected to pass a speaking order dealing with the grounds raised in the appeal. An order passed without dealing with grounds raised by delinquent before an appellate authority can be termed to be a non speaking order and hence, it is liable to be set aside.

13. Apart from that, in the show cause notice for enhancement of punishment, no reason has been stated by the 3rd respondent. In similar circumstances, a Division Bench of this Court in the case of the Chairman cum Appellate Authority, Bharathiar Palkalai Koodam, Puducher and another Vs. M.Hariharan, in W.A.No.1047 of 2011 dated 06.07.2017 has held in paragraph Nos.13 to 15 as follows:

"13. The very purpose of drawing a show cause notice is to convey in clear terms what was sought to be undertaken by the Appellate Authority. If the Appellate Authority tersely communicates its decision to enhance the punishment without spelling out the grounds or reasons for such likely enhancement of the punishment, the employee concerned would be left to grope in the dark as he would not be knowing the reasons that weighed heavily on the mind of the Appellate Authority before he firms up his opinion as to whether the case calls for enhancement of punishment.

14.If the reasons are not spelt out, the employee concerned will not be able to furnish an effective reply. The show cause notice is not intended to be an empty formality. It is squarely intended to convey to the man concerned the reasons for which the proposed action is either taken or initiated. When show cause notice spells out the reasons, the employee concerned will have an effective opportunity to neutarlize those reasons that weighed with the authority which has drawn the show cause notice. Therefore, a bald, laconic or non reasoned show cause notice reduces itself to a mere empty formality and in substance, they will not be providing a meaningful or truthful opportunity for the person concerned to set forth his objections in respect thereof. When no such opportunity is thrown to the employee, the very exercise of drawing a show cause notice reduces its utility and effectiveness. It becomes an unproductive exercise for lack of substance and meaning.

15.For sheer lack of reasons in the show cause notice, the final appellate order passed on



14.10.2010 cannot be sustained because when the substratum collapses, the superstructure has to necessarily come down. We have, therefore, no hesitation to hold that the show cause notice drawn in the instant case on 14.06.2010 by the appellate authority is not sustainable."

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14. The above decision is squarely applicable to this case as in this case also there is no reason assigned in the show cause notice and thereby, the petitioner has been deprived of reasonable opportunity. More over, for the very same reason stated by the disciplinary authority, the 3rd respondent/appellate authority has enhanced the major punishment of dismissal from service. Though the petitioner stated to have been committed serious misconduct by the appellate authorities, the fact remains that he has not been arrayed as accused in the criminal case, that too after recording of 164 statement as early as on 04.04.2006. The disciplinary proceedings has been initiated only in the year 2009. As stated earlier, the similarly placed persons have been imposed only minor punishment, whereas the appellate authority has imposed major punishment without any concrete material, that too belatedly. Hence, this Court is inclined to interfere with the order passed by the appellate authorities.

15. In view of the above, the impugned orders of the respondents 2 and 3 are set aside and the order passed by the 4th respondent is confirmed. The respondents are directed to reinstate the petitioner to service with all service and monetary benefits within a period of four weeks from the date of receipt of a copy of this order.

16. In the result, this Writ Petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

gcb

To

1.The Principal Secretary,
Home (SC) Department,
Fort St. George,

<https://hcservices.hcscourtsgov.in/hcservices> 009.



2.The Director General of Police,
Tamil Nadu, Chennai.

3.The Commissioner of Police,
Madurai City,
Madurai.

4.The Deputy Commissioner of Labour,
(Traffic),
Madurai City,
Madurai.

+1 CC to MR.V.BALASUBRAMANIAN, Advocate (SR-6749[F] dated
18/02/2020)

+1 CC to SPL.GP (SR-6777[F] dated 18/02/2020)

order made in
W.P(MD)No.9590 of 2014
17.02.2020

KM/(20.02.2020) 8P 7C