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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.14381 OF 2009
AND M.P.NOS. 1 AND 2 OF 2009
AND M.P.NO.1 OF 2010

P.Shanmugam

...Petitioner

Vs

1. The Commissioner of Police,
Sub Urban Comissionerate,
St. Thomas Mount,
Chennai - 600 016.

2. The Deputy Commissioner of Police,
i/c of Armed Reserve,
Chennai Suburban Police,
Chennai - 600 016.

... Respondents

PRAYER:

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the order of the 2nd respondent in proceedings PR.No.71/PR 3(1)/2008 u/r 3(b) dated 30.09.2008 as confirmed by the order of the 1st respondent in R.C.No.13/H2/2008 Appeal No.21/H2/2009 dated 26.03.2009 and quash the same and consequently direct the respondents to disburse the pensionary benefits to the petitioner.

For Petitioner : Dr.S.S.Swaminathan
For Respondents : Mr.S.John J.Raja Singh
Government Advocate

O R D E R

The petitioner challenges order of imposition of punishment dated 30.09.2008, as confirmed by an order of the first appellate authority dated 26.03.2009.



2. The petitioner joined the police service as Grade II Police Constable on 11.04.1973, was promoted through the ranks and as Sub-Inspector of Police, Armed Reserve on 02.06.1998. While working in Motor Transport, St. Thomas Mount, an inspection was conducted on 27.11.2007 of the records in his unit. The inspection threw up various discrepancies in the maintenance of records, specifically the IN and OUT Register, recording of information that appeared to be incorrect, in the general diary, non-mention of off-load vehicles in the register and false entries in regard to the fuel filled in off-road vehicles.

3. Charges were thus formulated and a charge memo issued to the petitioner. The petitioner filed an explanation on 07.04.2008, based upon which an enquiry report was issued. The petitioner furnished a response to the enquiry report and upon consideration of the same, the impugned order dated 30.09.2008 came to be passed by the Deputy Commissioner of Police in charge of Armed Reserve imposing punishment of reduction in pay by three stages for three years with cumulative effect.

4. Aggrieved by the aforesaid order, an appeal was filed before the Commissioner of Police, who rejected the same by order dated 26.03.2009. The appeal order is very clearly a non-speaking order, as the appellate authority merely states that he has perused the appeal petition along with PR file and other relevant records, finds that no valid fresh grounds have been raised and thus rejects the appeal as devoid of merits.

5. As an appellate authority, it was incumbent upon him to have not only considered the charges laid as against, and the explanations furnished by the petitioner but also set out his reasons on the basis of which he rejects the grounds raised. The appeal filed by the petitioner sets out various grounds on the basis of which he assails the impugned order of punishment and the grounds raised ought to have been met, by way of a reasoned, speaking order. The order dated 26.03.2009 is vitiated by reason of being a non-speaking order, indicating non-application of mind, and is thus set aside.

6. That apart, the appellate authority has initially rejected the appeal as time barred, but corrects this by way of an erratum dated 21.04.2009 issued subsequently stating that the appeal was indeed within time. This further supports my conclusion at paragraph 5 above to the effect that the impugned order is vitiated by non-application of mind and cursory approach to the procedure to be followed in disposing the appeal.



7. The petitioner has approached the Director General of Police by way of a mercy petition dated 13.04.2009. Though there is no acknowledgment for having filed the same, the counter filed by the respondents does not deny its receipt. Hence, it would suffice that the Director General of Police dispose the mercy petition taking into account the charges levelled and the explanations offered by the petitioner as well as the appeal grounds. I adopt this course of action in preference to setting aside the order and remanding the appeal to the appellate authority, to be re-done de novo.

8. At this juncture, Mr. Singh would draw my attention to the fact that the petitioner has, in fact, suffered earlier punishments by way of two black marks, one for not reporting an accident involving a police vehicle in the year 1980 and the second for rash and negligent driving of a police vehicle leading to an accident with an Autorickshaw in the year 1985. These facts have not only been suppressed by the petitioner, but he has stated at paragraph 2 of the affidavit filed in support of the Writ Petition, that he has had an unblemished record with no adverse remarks, charges or punishment during his career.

9. Let the aforesaid two charges also be taken into account by the Director General of Police and the petitioner heard in regard to the same while disposing the mercy petition. Since the Director General of Police is not arrayed as a party to this Writ Petition, this order shall be communicated to him by the learned Government Advocate and a copy issued to his office as well.

10. The petitioner had, in fact, filed W.P.No.23053 of 2009 seeking a direction to the respondents therein to disburse all the terminal benefits including pension to him. This Writ Petition came to be disposed by order dated 22.09.2010 directing the respondents to payover the terminal benefits, excepting to the extent of Rs.80,000/- (approx) representing the amount withheld on account of the charges at issue in this Writ Petition. This order is stated to have been complied with.

11. Seeing as the charges relate to the period 2008 and the petitioner has superannuated on 31.05.2009, let the exercise as indicated in paragraph 9 above be completed within a period of six (6) weeks from today. The payment of the amount withheld shall be subject to the order passed by the Director General of Police as aforesaid.



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12. This Writ Petition is disposed in the aforesaid terms.
No costs. Connected Miscellaenous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sl/vs

To

1. The Commissioner of Police,
Sub Urban Comissionerate,
St. Thomas Mount,
Chennai - 600 016.
2. The Deputy Commissioner of Police,
i/c of Armed Reserve,
Chennai Suburban Police,
Chennai - 600 016.

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.47699

+1cc to the Government Pleader, S.R.No.48232

W.P.No.14381 of 2009
and M.P.Nos. 1 and 2 of 2009
and M.P.No.1 of 2010

PL(CO)
PM/06/10/2021