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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.07.2021

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THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.Nos.19681 & 19682 of 2008
and
M.P.Nos.1 & 1 of 2008

W.P. No.19681 of 2008

A.Chandra Mohan
S/o. Annadurai

...Petitioner

vs.

- 1.The Commandant
T.N. Special Police III Battalion
Veerapuram, Chennai 55
- 2.The Deputy Inspector General of Police
Armed Police, Chennai 10
- 3.The Director General of Police
Chennai 4

... Respondents

W.P. No.19682 of 2008

P. Udaya Kumar
S/o. S.P. Pancharathinam

...Petitioner

vs.

- 1.The Commandant
T.N. Special Police III Battalion
Veerapuram, Chennai 55
- 2.The Deputy Inspector General of Police
Armed Police, Chennai 10
- 3.The Inspector General of Police
Armed Police, Trichy
- 4.The Director General of Police
Chennai 4

... Respondents

Prayer in W.P. No.19681 of 2008: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned orders passed by the respondents 1,2 & 3 in P.R.No.08/2005 dated 14.07.2005, Rc.No. C2/Appeal/39/05 dated 16.09.2005 and Rc. No.56901/83(1)/2001



dated 28.05.2008 respectively and quash the same and further direct the respondents to reinstate the petitioner into service with consequential service and monetary benefits.

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Prayer in W.P. No.19682 of 2008: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned orders passed by the respondents 1,2,3 & 4 in respondents 1,2 & 3 in P.R.No.07/2005 dated 14.07.2005, Rc.No. C2/Appeal/38/05 dated 16.09.2005 and Rc. No.C2/25720/2005 dated 03.11.2005 and Rc. No.39604/AP.3(1)/2008 dated 15.05.2008 respectively and quash the same and further direct the respondents to reinstate the petitioner into service with consequential service and monetary benefits.

For Petitioner : Mr.K.Venkatramani, Senior Counsel
(in both petitions) for Mr.M.Muthappan

For Respondents : Mr.C.Selvaraj,
(in both petitions) Government Advocate (Civil side)

COMMON ORDER

These Writ Petitions have been filed against the impugned orders of the respondents 1, 2 & 3 dated 14.07.2005, 16.09.2005 and 30.05.2008 respectively and to quash the same and to further direct the respondents to reinstate the petitioners into service with consequential service and monetary benefits.

2. The petitioners were issued with the charge memo in proceedings Tha.Pa. No.08/2005 and Tha.Pa. No.07/2005 dated 08.04.2005 respectively and they filed their defence statement on 31.05.2005. The enquiry was conducted and completed within a period of 10 days and the report was submitted on 10.06.2005. The petitioners were directed to submit their objections within a period of 15 days and the said enquiry report was served on them on 29.06.2005 granting 15 days time for submitting their objections to the enquiry report. The 15 days time limit expired on 14.07.2005. However, the petitioners have made their representation seeking extension of time for submitting their objections. But the Disciplinary Authority rejected their request for extension of time on 13.07.2005 and passed the orders on 14.07.2005, thereby removing the petitioners from service.



3. It is required to be noted that the Criminal Court, by its order dated 15.06.2006, has acquitted them from the charges in C.C. No.568 of 2005. The petitioners made an appeal to the Appellate Authority, which was rejected vide Rc. No.C2/Appeal 39/05 and Rc. No.C2/Appeal 38/05 dated 16.09.2005, wherein it is mentioned that since the petitioners have not submitted their explanation within the stipulated time, the punishing authority has passed the orders after discussing all the delinquencies committed by the appellants in depth in "F" order. It is also observed that the appellants have not disputed the delinquencies committed by them in the appeal petition. Therefore, the charge that they quarreled with another police constable and involved in criminal acts, thereby brought disrepute to the police force have been proved and they were rightly punished by the disciplinary authority. Thereafter, as stated supra, they were acquitted from the criminal case as charges were not proved. Hence, they filed a mercy petition before the Director General of Police, which was also rejected in Rc. No.56901/AP.3(1)/2008 and Rc. No.39604/AP.3(1)/2008 dated 30.05.2008. Aggrieved over the same, the present Writ Petitions have been filed by the petitioners.

4. I have heard the submissions on both side. From the materials produced before this Court, it is seen that from the beginning the delinquent petitioners have been stating that they were not under the habit of drinking liquor and that a false case has been foisted against them due to previous enmity with S.I. by name Paneerselvam. They were victimised at the influence of the officers who have inimically disposed against them. It is noted that during the enquiry also many of the witnesses have turned hostile. In the enquiry report, the enquiry officer gave a categorical finding that even though allegations were made against the petitioners that they uttered vulgar, filthy or unparliamentary language, it was not established by proper evidence. Even though it is proved that they visited the liquor shop, it is not proved that they have consumed liquor. From the records it is seen that the police have sent the delinquents to the medical test and it was reported that there was no trace of consumption of liquor. Further, there was a categorical finding by the enquiry officer that there is no evidence to establish that the petitioners quarreled with other police personnel namely Sakthivel Nayak 320 and that they prevented one Babu Nayak 445 from discharging his duties.

5. The entire enquiry report proceeds to the finding that the charges were not proved by proper evidence. However, it is found that by registration of a crime in Crime No.519/05, they have brought disrepute to the police force and hence the charges were held to be proved.



6. It is pertinent to note that the principles of natural justice requires ample opportunity to be provided to the delinquents to effectively defend their case. It is noted that they were served with the enquiry report on 29.06.2005 and directed to submit their objections within 15 days. As observed supra, 15 days time expired on 14.07.2005, that means, till 14.07.2005, the petitioners were entitled to submit their objections against the enquiry report. It is expected that a fair disciplinary officer shall await for the objection and consider the same in detail and apply his mind and pass final orders. But, strangely, in this case, the delinquents have sought for extension of time on 12.07.2005 and that was rejected on 13.07.2021 and the copy was forwarded to them, which means, the petitioners would have received the rejection of their request either by 13.07.2005 or by 14.07.2005. When the request was rejected on 13.07.2021, hardly one day time was there to submit their objection. But, strangely, this one day time was also denied to them and the final orders were passed on 14.07.2005, which means, the final orders have already been prepared and issued on 14.07.2005 without waiting for the explanation of the delinquents. Such kind of orders within the time granted for submission of objections to the enquiry report is absolutely violative of principles of natural justice and it shows that it is a pre-determined order. Pre-determined orders shall be construed tainted with malafides.

7. Furthermore, the petitioners made an appeal against the order of punishment, wherein they have raised the point that, they are tee totalers and never consumed liquor. Further they have taken the support of the enquiry report and the evidence adduced before the enquiry officer to dis-prove the charges framed against them. It is expected that the appellate authority shall apply his mind to the grounds of appeal raised by the appellants and pass a reasoned order for not accepting the grounds. But, contrary to the facts, the appellate authority records that the appellants were given 15 days time to submit their objections, but, they have not submitted their objections within the stipulated time and that the final order was passed within 15 days time in accordance with the settled procedure. Such an order is without application of mind and discharge of duties in a mechanical manner. There is no discussion about the time sought for by the appellants for submitting their objections. Further, the petitioners clearly denied the charges before the enquiry authority as well as before the appellate authority. But the Appellate Authority records that the appellants have not disputed the delinquencies committed by them in their appeal. Such a finding is absolutely perverse, contrary to evidence and without application of mind.



8. Later, the Criminal Court has given a categorical finding in its judgment that the complainant in C.C.No.568 of 2005 had pretended before the doctor as though he was suffering from pain. The doctor who was examined as P.W.1 before the Criminal Court has categorically deposed that the defacto complainant has pretended and he has not stated to him that he was assaulted by anybody and the details as to when and where and by whom he was assaulted. The Criminal Court has given a categorical finding that if the incident was true, the defacto complainant would have stated the same to the doctor (P.W.1) at the time of admission for treatment. Therefore, the Criminal Court has disbelieved the evidence of allegation made by the prosecution and held that the petitioners were not guilty of their offences. In the opinion of this Court, the petitioners were not acquitted on the ground of benefit of doubts, but it was decided that they were not guilty of their offences. If that is so, filing of police complaint and implication of the petitioners in the enimical case is false. The person who had given the false complaint should be penalized. This material fact has not been considered by the superior authorities. However, unfortunately, when they submitted the mercy petition to the Director General of Police along with the orders passed by the Criminal Court, the same was not considered and it was rejected with an observation that no fresh point for consideration has been made. The subsequent developments and categorical findings of the Criminal Court were not at all considered. Such non application of mind and non consideration of the material fact is alien to service jurisprudence and is violative of principles of natural justice.

9. In that view of the matter, I consider it a fit case for setting aside the impugned orders and remitting back to the disciplinary authority to provide an opportunity to the delinquents to submit their further representation to the enquiry report and pass a reasoned order after applying mind to all the material evidence placed before it.

10. Accordingly, the impugned orders passed in P.R.No.08/2005 and P.R.No.07/2005 dated 14.07.2005 of the first respondent stand set aside and consequently the orders passed by the Appellate Authority also stand set aside. The petitioners are directed to submit their further representation to the first respondent within a period of 14 days from the date of receipt of a copy of this order and the first respondent is directed to pass final orders within a period of four(4) weeks thereafter.



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11. Accordingly, these Writ Petitions are ordered. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Bga

Copy to

- 1.The Commandant,
T.N. Special Police III Battalion,
Veerapuram, Chennai 55.
 - 2.The Deputy Inspector General of Police,
Armed Police, Chennai 10.
 - 3.The Director General of Police,
Chennai 4.
 - 4.The Inspector General of Police,
Armed Police, Trichy.
- +1cc to Government Pleader, High Court, Madras (SR No.33304)

W.P.Nos.19681 & 19682 of 2008

AKII (CO)
PR (04/08/2021)