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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2021

CORAM:

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

W.P.No.18149 of 2009

Aboobakkar

... Petitioner

vs.

1.State of Tamil Nadu rep.
Rep. by Principal Secretary to
Govt. Home Dept.
Madras-9.

2.The Commissioner of Police,
Egmore, Chennai-8.

3.The Deputy Commissioner of Police,
South Egmore, Chennai-8.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records of the first respondent in G.O.Ms.No.469 dated 14.03.1991, confirming the order C.No.48AP/PR1(4)/88 dated 11.10.1989 of the second respondent confirming the order P.R.No.185/PRII(4)/87 dated 29.03.1989 of the third respondent and quash the same.

For Petitioner : Mr.V.K.Sathiamurthy

For Respondents : Mr.S.John J.Raja Singh,
Government Advocate

O R D E R

The petitioner was employed as Grade I Police Constable and had been dismissed from service by order passed by the Deputy Commissioner of Police/R3 on 29.03.1988. In appeal before the



Commissioner of Police/R2, the petitioner had alleged violation of principles of natural justice. According to him, notice ought to have been issued by R3 intimating him of the proposed punishment and calling for a reply in that regard. The appeal was rejected on 11.10.1989, pursuant to which a Revision Petition was also filed before the Director General of Police (DGP). The same was forwarded to the Government, since the DGP happened to be the appellate authority, who decided the appeal and the State vide order dated 14.03.1991 also came to reject the Revision Petition.

2. The petitioner thereafter filed an application before the Tamil Nadu Administrative Tribunal (Tribunal) and upon abolition of the Tribunal, the matter had been transferred to the file of this Court. It is in the aforesaid circumstances that this Writ Petition has come up before me for consideration.

3. The sole ground that has been raised in the Writ Petition and also argued before me is a gross violation of principles of natural justice. According to the petitioner, a charge memo was issued to him calling for explanation in regard to the charges laid. After consideration of the explanation filed by him and due enquiry, charges have come to be framed and an enquiry report prepared. Though the petitioner would allege that the enquiry report has not been served upon him, the pleadings (affidavit filed in support of the Writ Petition and appeals filed before R2 and thereafter the DGP), do not reflect this submission.

4. The only ground agitated in the pleading is that R3, upon receipt of the charges and the enquiry report, had called for an explanation from the petitioner which was also duly furnished by him. However, no show cause notice was issued thereafter crystallizing the punishments that he intended to impose. This issue was framed and on 16.09.2021 the following direction was issued to the respondents.

"The specific point urged in this writ petition is violation of Rule-3(b)(ii) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, which require a notice to be issued to the concerned employee setting out the punishment proposed to be imposed. In this case, the petitioner has, vide ground-12 of the affidavit filed in support of the writ petition, stated that this procedure has been given a go-by and a statutory notice has not been issued. There is no denial of this aspect of the matter in the counter, though



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it is stated that the procedure has been complied with.

2. In order that there be clarity, let the records be produced to verify whether any notice has been issued as aforesaid."

5. In response thereto, written instructions dated 24.09.2021 have been placed on record to the effect that Rule 3 (b) (ii) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 (in short 'TNPSS (D&A) Rules') that sets out the procedure in these matters was amended with effect from 04.09.1979 dispensing with the necessity to issue second show cause notice by the competent authority who proposes to impose punishment.

6. The amendment, (based upon Articles 42 and 311(2) of the Constitution of India) does away with the necessity to extend an opportunity of representation upon the penalty proposed. The only opportunity contemplated shall be in respect of the charges framed.

7. Thus, post the date of amendment, that is, 04.09.1979, upon completion of enquiry, the noticee must be heard in regard to the charges framed, the competent authority must serve a copy of the enquiry report upon the officer and call for a response thereto and there is no necessity for a further show cause notice indicating the punishment proposed.

8. Learned Counsel for the petitioner would fairly admit to the position that a copy of the enquiry report has been furnished and an explanation sought for from him prior to passing of the impugned order. This satisfies the requirement of Rule-3(b) (ii) of the TNPSS (D&A) Rules, post amendment.

9. Pursuant to the aforesaid amendment, G.O.Ms.No.847 Home (Police - V) Department dated 15.06.1999 has been issued clarify the above position, the relevant portion of which is extracted below:

(ii)After the inquiry or personal hearing referred to in clause (i) has been completed and if the authority competent to impose the penalty specified in that clause, is of the opinion, on the basis of the evidence adduced during the inquiry, any of the penalties specified in rule 2 should be imposed on the person charged, it shall, before making an order imposing such penalty, furnish to him a copy of the report of the inquiry or personal hearing or both, as the case may be, call upon to submit his further representation, if any, within a reasonable time, not



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exceeding fifteen days. Any representation received on his behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the inquiry only. It shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed.

10. Thus, in summary and to reiterate, post 15.06.1999, procedure to be adopted in the matters concerning imposition of major punishment under Rule 3 of the TNPSS (D&A) Rules are (i) framing of charges and forwarding of the same along with statement of charge and all annexures to the noticee calling for explanation, (ii) receipt of explanation from the noticee (iii) conduct of enquiry including personal hearing of the noticee, (iv) forwarding of the enquiry report to the competent authority simultaneous with furnishing of a copy of the same to the noticee, (v) competent authority to call for an explanation from the noticee, (vi) competent authority to decide the matter based on the enquiry report furnished by the Enquiring Authority and the explanation furnished by the noticee without necessity for any further show cause notice. This procedure is not shown to have been violated in the present case.

11. Learned Counsel for the petitioner relies on the judgment of Supreme Court in the case of S.P.Malhotra Vs Punjab National Bank and others (CDJ 20913 SC 577) in the context of the Industrial Disputes Act, wherein the ratio is that the principles of natural justice require the authority who has to take a final decision in the matter to afford an opportunity to the Officer charged of misconduct to file a representation before he records his findings on the charges framed against the Officer. In this case, such opportunity has been so afforded to the petitioner.

12. Learned Counsel for the petitioner also argues that one Suseelan who was also mulcted with same charges as laid against the petitioner, was let off easy and only visited with reduction in pay of one stage for one year without affecting future increments. No material is placed before me in support of this submission and in the absence of any evidence to compare the charges in that case, this submission is of no assistance to the petitioner. In fact, the counter filed, while referring to the charges laid against the petitioner, mentions the involvement of Suseelan in one part of the activity. Thus, it appears that the involvement of, and charges laid against Suseelan are less in gravity.



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13. This Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

sl/kbs

To

1.The Principal Secretary to
Govt. Home Dept.
Madras-9.

2.The Commissioner of Police,
Egmore, Chennai-8.

3.The Deputy Commissioner of Police,
South Egmore, Chennai-8.

+1cc to Mr.C.Rajan, Advocate Sr No.50346
+1cc to the Government Pleader Sr No.50853

W.P.No.18149 of 2009

RLD (CO)
PR (02/11/2021)