



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 21318 of 2009

S.Thangasamy

...Petitioner

Vs

1. The Director General of Police,
Mylapore,
Chennai-600004.

2.The Commissioner of Police,
Chennai Urban, St.Thomas Mount,
Chennai -600016.

3.The Deputy Commissioner of Police,
Chennai Suburban Police,
St.Thomas Mount District,
Chennai

...Respondents

Prayer: writ petition is filed under Article 226 of Constitution of India for Writ of Certiorarified Mandamus, calling for records relating to 3rd respondents impugned order made in PR.No.55/H1/2008; CSPO.No. 525/2009 dt 25.4.2009 as confirmed by the 2nd respondent in Appeal No.07/H1/2009 dt 21.5.2009 and also that of the 1st respondent in Rc.No.120866/AP.3(3)/09 dt 28.8.2009 and quash the same and consequently direct the respondents to extend all benefits both service and monetary including eligible promotion.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.J.C.Durairaj, AGP

O R D E R

The relief sought for in the writ petition is to calling for records relating to 3rd respondents impugned order made in PR.No.55/H1/2008; CSPO.No. 525/2009 dt 25.4.2009 as confirmed by the 2nd respondent in Appeal No.07/H1/2009 dt 21.5.2009 and



also that of the 1st respondent in Rc.No.120866/AP.3(3)/09 dt 28.8.2009 and quash the same and consequently direct the respondents to extend all benefits both service and monetary including eligible promotion.

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2. The writ petitioner while working as driver under 3rd respondent he was proceeded departmentally on an allegation of having falsely communicated through mike that there was disturbance at railway grounds, Tambaram, which had resulted in higher officials on night rounds and storming operations on 05.07.2007 at 11.40 p.m ran to the spot and found that there was no such incident when the petitioner was on night rounds with S.I Thiru Alaganandam. The respondent has levelled the following charges against the petitioner under Rule 3(b) (i) of the Tamil Nadu Police Subordinate Service (D&A) Rules ;

- i. allegation that he consumed alcohol during work time
- ii. falsely communicated the information that there was some disturbance in railway grounds.

3. The learned counsel for the petitioner has further submitted that the petitioner has submitted a detailed explanation, denying the aforesaid charges and pointed out specific reasons to drop the charges. The enquiry officer after enquiry, has submitted a report to the Disciplinary Authority by holding charge no.1 is not proved and charge no.2 as proved. Based on the aforesaid report, the inspection authority viz., 3rd respondent passed an order of punishment of postponement of increment for two years with cumulative effect. Aggrieved by the said order, the petitioner preferred an appeal before the 2nd respondent. The said appeal was also rejected, thereafter the petitioner has submitted a Mercy Petition to the 1st respondent, the said Mercy Petition was also rejected without considering the reasons stated by the petitioner. Hence the impugned order passed by the respondents is liable to be set aside.

4. Courted affidavit filed by the respondent. By relying upon the counter affidavit, the learned Additional Government Pleader submitted that the petitioner while working as driver in S-15 Selaiyur Police Station, charges were framed against the petitioner under Rule 3(b)(i) of the Tamil Nadu Police Subordinate Service (D&A) Rules. According to the learned Additional Government Pleader, only after providing due opportunity to the petitioner and following procedures contemplated under the Rules, the punishment has been imposed for the charges levelled against the petitioner. The learned Additional Government Pleader has further submitted that the



petitioner himself has admitted the said charges during enquiry. Therefore, the punishment awarded by the respondents is proper and does not require any interference by this Court.

5. Heard both sides and perused the materials available on record.

6. According to the petitioner, the first charge framed against the petitioner that he was in drunken state and he misbehaved with the cricket players and threaten them was disproved by the petitioner and the enquiry officer has held that the said charge is not proved. Insofar as 2nd charge is concerned i.e. the petitioner has given falsely communication through mike that there was disturbance at railway grounds, Tambaram, which had resulted in higher officials on night rounds and storming operations on the said date was proved by the respondent and imposed punishment without any proper evidence. The petitioner himself admitted the said charge during the enquiry. Based on the admission, the petitioner made request to the respondents that the said punishment imposed on him is excessive and to consider for lessor punishment, so as to enable the petitioner to get pensionary benefits.

7. On perusal of the impugned order, it is clear that the respondents have not examined the Sub Inspector of Police namely Alagandam who was along with the petitioner at the time of incident and alleged to have found in drunken mood at the place. Further no other witnesses were also examined by the respondents to prove that there was no such disturbance on said date at the said place. In the absence of the any relevant evidence, this Court is not inclined to accept the contentions raised by the learned Government Advocate for the respondents. Further it is clear that the respondents have passed a cryptic order.

8. Considering the facts and circumstances of the case this Court is of the view that when the enquiry authority had chosen to hold a portion of the charge has not proved, there could no reliance for holding the other part of the charge as proved since the evidence being one and the same. Further in view of the absence of the clear evidence, this Court is inclined to hold that the enquiry was not conducted by examining necessary witnesses and passed a cryptic order. The respondents have also not produced relevant documents before this Court despite opportunities granted to them.

9. In view of the above discussions and taking into consideration the fact that during an enquiry, the petitioner



himself had admitted the said charge and based on his admission, he made a request to the respondents to consider for lessor punishment for getting pensionary benefits, this Court is inclined to modify the punishment by imposing lessor punishment in order to get pensionary benefits. Accordingly, the punishment imposed by the respondents is modified and ordered as follows;

- i. The impugned order passed by the respondents is set aside.
- ii. The punishment imposed by the respondents is modified as "postponement of increment for two years without cumulative effect"
- iii. The respondents are directed to revise the pensionary benefits of the petitioner and pay the same, within a period twelve weeks from the date of receipt of a copy of this order.
- iv. This Court makes it clear that the said modification of punishment is only for the purpose of availing pensionary benefits by the petitioner.
- v. The writ petition is partly allowed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The Director General of Police,
Mylapore,
Chennai-600004.
2. The Commissioner of Police,
Chennai Urban, St. Thomas Mount,
Chennai -600016.



3.The Deputy Commissioner of Police,
Chennai Suburban Police,
St.Thomas Mount District,
Chennai.

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+1cc to M/s.L.Chandrakumar, Advocate Sr.67677
+1cc to the Government Pleader Sr.68333

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