



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.12.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 18168 of 2012

M.Anthonraj

..Petitioner

Vs

1.The Secretary to Government
Home (Police VI) Department
Fort St.George, Chennai-9.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.

3.The Inspector General of Police,
Villupuram Range,
Villupuram.

4.The Superintendent of Police,
Thiruvannamalai District,
Thiruvannamalai.

..Respondents

Prayer: writ petition is filed under Article 226 of Constitution of India for Writ of Certiorarified Mandamus, calling for the records in connection with the impugned order passed by the 4th respondent in C.No.H1/ PR 27/99 D.O.704/99 dated 20.4.99 and confirmed by the 3rd respondent in C.No.83/ AP.96/ 99 dated 23.11.99 and the Rejection Order passed by the 2nd respondent in RC No.181789/ 916/ AP I(2)/2000 dated 15.9.2000 and the impugned order of the 1st respondent in G.O.2(D) No.174 dated 17.3.2006 and quash the same and further direct the respondent to reinstate the petitioner into service and grant all consequential service and monetary benefits.

For Petitioner : Mr.Hemanth

For M/s.S.Sivakumar.

For Respondents: Mr.P.Anandakumar, GA



O R D E R

The relief sought for in the writ petition is to call for the records in connection with the impugned order passed by the 4th respondent in C.No.H1/ PR 27/99 D.O.704/99 dated 20.4.99 and confirmed by the 3rd respondent in C.No.83/ AP.96/ 99 dated 23.11.99 and the Rejection Order passed by the 2nd respondent in RC No.181789/ 916/ AP I(2)/2000 dated 15.9.2000 and the impugned order of the 1st respondent in G.O.2(D) No.174 dated 17.3.2006 and quash the same and further direct the respondent to reinstate the petitioner into service and grant all consequential service and monetary benefits.

2. The writ petitioner while working as Grade II Police Constable in Thiruvannamalai District Armed Reserve, he was deputed to attend the Superintendent of Police Bungalow. While he was proceeding to the duty he effected by suffocation and heavy chest pin on 19.09.1998 and after taken tables, he did not recover from the pain and suffocation, hence as advised by the doctor, he took treatment for illness. He has also taken Unani Treatment at Vaniyambadi for his illness. After recovery from the illness, the petitioner reported duty before the Deputy Superintendent of Police (AR) on 10.10.1998 and the petitioner was informed that he has been declared as deserter from 10.10.1998 on wards. Further the 4th respondent has issued a charge memo under Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules on 18.02.1999.

3. The petitioner had submitted a detailed explanation for the charge memo, but the 4th respondent without considering the explanation submitted by the petitioner, imposed a major punishment of 'removal from service' by an order dated 20.04.1999. The copy of the said order was serviced to the petitioner only on 03.06.1999. The petitioner instead of preferring an appeal, sent a mercy petition to the 2nd respondent, which in turn forwarded to the 3rd respondent to treat the same as appeal and to dispose of in the capacity of appellate authority. The 3rd respondent without considering the merits of the case, he simply rejected the petition on technical grounds 'as time barred'. The subsequent mercy petition to the 2nd respondent the Government also rejected, hence the present writ petition.

4. Heard both sides and perused the documents available on record.

5. The learned counsel for the petitioner has submitted that the 4th respondent has imposed a major punishment of removal from service by an order dated 20.04.1999 for the un authorised



absence and served the copy of the order only on 03.06.1999. Immediately, the petitioner has preferred a mercy petition to the 2nd respondent on 10.08.1999, therefore, there is no delay on the part of the petitioner as stated by the 3rd respondent in the impugned order. The said order was also confirmed by the 2nd respondent. Hence the aforesaid orders are liable to be set aside.

6. On the other hand, the learned Government Advocate appearing for the respondent has submitted that the order of the 4th respondent dated 16.04.1999 was acknowledged by the petitioner on 22.04.1999 but the petitioner preferred the appeal to the 3rd respondent only on 10.08.1999. Therefore, the rejection order passed by the 3rd respondent on the ground time barred is correct and does not require any interference by this Court.

7. Undisputedly, the petitioner has preferred a mercy petition to the 2nd respondent as against the order of punishment instead of appeal. Hence, the 2nd respondent directed the 3rd respondent to treat the said mercy petition as appeal and dispose of the same. Though the 3rd respondent has passed an order rejecting the appeal petition on the ground time barred, on a perusal of the said order, the 3rd respondent has not mentioned any reason for rejection, which is a clear non-speaking order. On this ground alone, the impugned order passed by the respondents is liable to be quashed.

8. At this juncture, it is relevant to rely upon the decision of this Court in the case of C.Devendhiran Vs. The Deputy Inspector General of Police, Villupuram Range (W.P.No. 150 of 2013) reported in 2020 (2) WLR 332, wherein I had an occasion to deal with the same issue in detail and held that the order passed by the appellate authority is a cryptic/non-speaking order. The relevant portion of the order is extracted hereunder;

"13. The Learned Senior Counsel for the Writ Petitioner has relied upon the decision reported in 1989 writ law reporter 274 considered rule 6(1) of TNPSS (D&A) Rules and it has been held as follows at para 3 and 4 of the said judgment.

"The rule enjoins the concerned authority to consider the three aspects set out therein specifically. Unless the appellate authority considers them it cannot be said that it has carried out its duties properly. The Supreme Court had occasion to discuss a similar question under R.27(2) of the Central Civil Services (Classification, Control and Appeal) Rules,



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1965. Dealing with the word 'consider' used in the said rule, the Supreme Court observed that the word 'consider' implies due application of mind-vide R.P.Bhatt v. Union of India. The following paragraph in the above judgment of the Supreme court can be usefully referred to with advantage-

"The word 'consider' in R.27(2) implies 'due application of mind'. It is clear upon the terms of R.27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) Whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) Whether the penalty imposed is adequate and thereafter pass orders confirming, enhancing etc, the penalty, or may remit back the case to the authority which imposed the same. R27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were unwarranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (2) of R.27(2) viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of R.27(2) of the Rules the impugned order passed by the Director General is liable to be set aside."

14. In another judgment of this Court in the case of K.Kandasamy Vs. Deputy I.G. of police, reported in 2006 (4) MLJ 1382 in para 7, this Court has held as follows :-



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"It is seen from the aforesaid portion of the impugned order that the Appellate Authority did not deal with any of the grounds of appeal raised by the petitioner. A departmental appeal is a continuation of the original proceedings. It is needless to point out that the last opportunity available for a delinquent, to canvass his case on merits, is at the appellate stage. After the appeal, a delinquent loses his right to challenge any disciplinary proceedings on merits, since the scope of interference on a revision or on a writ petition is very limited. Therefore, the rules themselves contemplate Appellate Authorities to go into the factual details and consider all the grounds of appeal before deciding an appeal. Unfortunately, the first respondent has chosen to dismiss the appeal by a non-speaking order and hence, the Appellate Authority's order is liable to be set aside."

15. It is also pertinent to refer the Judgment of the Hon'ble Supreme Court in Narinder Mohan Arya Vs. United India Insurance Company Ltd, reported in 2006(4) SCC 713, wherein the Hon'ble Supreme Court has held that even when an Appellate Authority agrees with the findings of the Disciplinary Authority in a departmental enquiry, it should give reasons so as to enable the Writ Court to ascertain there was an application of the mind as required by the relevant rules. The relevant portion is extracted hereunder;

"33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules."

16. In view of the decisions cited supra and Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, it is clear that the appellate authority is the final fact finding authority and he is expected to assess the evidences available on record by due application of mind and also record the reasons even though not elaborately, but indicating as to how the appellate authority has



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satisfied himself with the reasons given by the disciplinary authority. When Rule 6 (1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules mandates that the appellate authority should consider all those materials, in the instant case, no such finding has been given by the appellate authority except simply saying that he has perused some documents and came to the conclusion that the punishment awarded by the 1st respondent is not an excessive and rejected the same.

17. Considering the facts and circumstances of the case and also the decisions rendered by the Hon'ble Supreme Court and this Court cited supra, this Court with no hesitation, has come to the conclusion that the second respondent/ appellate authority has passed a cryptic order/non-speaking order without considering the issues that were raised by the petitioner in his Appeal. As rightly pointed out by the learned senior counsel for the petitioner, the order of the appellate authority/ 2nd respondent is not in conformity with the rule 6(1) of TNPSS (D&A) Rules.

18. In fine, the impugned order in RC. No.047950/AP1(2)/2000, dated 03.07.2010 passed by the second respondent in respect of P.R. No. 67/ 2009 is quashed and the matter is remitted to second respondent to consider afresh and to pass orders thereon, on merits and in accordance with law, within a period of twelve (12) weeks from the date of receipt of the copy of this order.

19. With the above observations and directions, this writ petition is disposed of. No costs."

9. On the facts of the present case on hand also the 3rd respondent/appellate authority had passed the impugned rejection order without mentioning any reason and without any discussion on the grounds raised by the petitioner. Therefore, in the light of the decision cited supra, the impugned order passed by the 3rd respondent is liable to be quashed. Accordingly, the following order is passed;

- i. Impugned orders passed by the 2nd & 3rd respondents are set aside
- ii. The 3rd respondent is directed to consider the petitioner's appeal on its own merits, in accordance with law and pass orders within a period of twelve (12) weeks after providing opportunity to the petitioner. It is needless to say the 3rd



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respondent shall pass a speaking order.
iii. Writ Petition is allowed in the above extent. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Home (Police VI) Department
Fort St. George, Chennai-9.
2. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai-4.
3. The Inspector General of Police,
Villupuram Range,
Villupuram.
4. The Superintendent of Police,
Thiruvannamalai District,
Thiruvannamalai.

+1 cc to Mr. S. Sivakumar, Advocate Sr. NO. 65770
+1 cc to Government Pleader Sr. NO. 66210

W.P. Nos. 18168 of 2012

mt(CO)
A.SK(02.02.2022)