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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.14379 of 2016

V.James Selvadurai

...Petitioner

Vs

1. The Deputy Commissioner of Police,
Traffic (North), Kilpauk,
Chennai 600 010

2. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai 600 007.

3. The Director General of Police,
Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in connection with the impugned order passed by him in RC.No.857/34289/PR.2013 in PR No.PR/47/PR5/CPO/2012 dated 24.03.2014 and confirmed by the third respondent in RC No.88880/AP3(2)/2014 dated 13.01.2016 and quash the same and direct the respondents to reinstate the petitioner into service and grant all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkatramani,
Senior Counsel
for Mr.M.Muthappan

For Respondents: Mr.K.V.Sajeev Kumar,
Government Counsel

O R D E R

By consent of both the parties, this writ petition is taken up for final disposal.



2. The petitioner herein, while serving as a Grade-I Police Constable, was leveled with certain charges to the effect that he has demanded dowry from his wife and further, he was having illicit relationship with another lady. Pursuant to the Enquiry Officer's report, the charges came to be proved and accordingly, the first respondent herein had imposed punishment of Compulsory Retirement from his services, through his order dated 24.03.2014. The said order of the disciplinary authority was confirmed by the respondents two and three herein, through their subsequent orders dated 24.03.2014 and 13.01.2016. Challenging the same, the present writ petition has been filed.

3. One of the main grounds raised by the learned Senior Counsel appearing for the petitioner is that pursuant to the report of the Enquiry Officer, the petitioner herein had given a detailed further representation on 06.03.2014, which has not been dealt with by the disciplinary authority, which is not in conformity with the rules under the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955.

4. The learned Government Pleader, on the other hand, submitted that the charges leveled against the petitioner herein are very serious in nature, which cannot be tolerated, insofar as the part of the armed forces is concerned and therefore, no lenience is required.

5. Rule 3B(ii) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955 reads as follows:

(ii) After the inquiry of 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 if 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 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 evidences 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:



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Provided that in every case where it is necessary to consult the Tamil Nadu Public Service Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty:

Provided, further that in the case of a person appointed to a post of temporary department by recruitment by transfer from any other class or service, the State Government may at any time before the appointment of the said person as a full member of the said post, revert him to such other class or service either for want of vacancy or in the event of his becoming surplus to requirement or if the State Government are satisfied that he has not got the necessary aptitude for work in said post, without observing the formalities prescribed in this sub rule.

6. A bare reading of the aforesaid rule indicates that, any representation received by the disciplinary authority, prior to imposing the order of penalty, requires to be mandatorily considered. In the present case, the disciplinary authority, in its impugned order dated 24.03.2014, has dealt with the petitioner's case and awarded the punishment in the following manner.

2. The Assistant commissioner of Police, Home Guard (North) Chennai who conducted OE in this PR, has held the charge against the delinquent "as proved". The further representation of the delinquent is not acceptable. The statements of 7 PWs and 7 Prosecution Exhibits will prove the delinquency committed by the delinquent. The Enquiry Officer after carefully analyzing the above statements and records has come to conclusion that the charges against him have been proved.

3. Under these circumstances, I have gone through the minute and connected records and accepted the findings of Enquiry Officer. I award the punishment of "Compulsory Retirement from the service" with immediate effect.

7. The aforesaid order is absolutely in violation of the procedure contemplated under Rule 3B(ii), which mandates consideration of the grounds raised by the delinquent in his further explanation. A mere statement in the order that the



further representation is not acceptable would not suffice and the disciplinary authority is required to apply its mind to the various defences raised by the delinquent in the further explanation, before taking a decision with regard to further action on the proved charges. In the absence of the same, the consequent punishment cannot be sustained. It goes without saying that the subsequent order passed by the higher officials in the appeal petition and the mercy petition also cannot be sustained.

8. In the light of the above observations, the impugned order dated 24.03.2014 passed by the first respondent herein is quashed and the matter is remitted back to the first respondent herein for fresh consideration. The petitioner is also at liberty to give a fresh representation, in addition to the earlier representation given by him on 06.03.2014, within a period of 15 days from the date of receipt of a copy of this order. On receipt of the fresh representation, if any, the first respondent herein shall consider the same, as well as the earlier representation dated 06.03.2014 and render specific findings on all the grounds raised by the petitioner in these representations and pass a detailed order, in conformity with the procedure contemplated Rule 3B(ii) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955. The first respondent herein shall endeavour to complete the process atleast within a period of 3 months from the date on which the representation of the petitioner is received. Consequently, the subsequent orders passed by the respondents two and three dated 24.03.2014 and 13.01.2016 are also quashed.

9. The writ petition stands allowed, accordingly. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Deputy Commissioner of Police,
Traffic (North), Kilpauk,
Chennai 600 010



2. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai 600 007.

3. The Director General of Police,
Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

+1cc to Mr.Muthappan, Advocate, S.R.No.32493

W.P.No.14379 of 2016

PCH(CO)
RGA(06/08/2021)