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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.17497 of 2018

V.Dinesh

... Petitioner

Vs.

1. The State of Tamil Nadu
rep. by the Director General of Police,
Mylapore,
Chennai-600 004.
2. The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore.
3. The Superintendent of Police,
Tiruppur District,
Tiruppur.
4. The Deputy Superintendent of Police,
District Crime Record Bureau,
Tiruppur District,
Tiruppur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders passed in Pro. Roc. No.D2/14292/2015 dated 04.02.2016 on the file of the second respondent and order in PR No.47/2015 of Tiruppur District under Rule 3(b) dated 12.11.2015 on the file of the third respondent, to quash the same as illegal and arbitrary and consequently direct the respondents to restore the petitioner as Grade II Police Constable.

For Petitioner : Mr.L.Chandrakumar
for Mr.K.Muthu Ganesha Pandian

For Respondents: Mr.K.Sajeev Kumar
Counsel for Government



O R D E R

This Writ Petition is heard through Video Conferencing on 07.07.2021.

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2. On a complaint from one Tmt. Dheepika that the petitioner had married her on 17.03.2014, by concealing his first marriage with one Rajapriya, the petitioner was dealt with disciplinary action under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955 [hereinafter referred to as 'Rules'] in PR. No.47 of 2015, pursuant to the minutes of the Inquiry Officer, holding the charges against the petitioner as proved, the petitioner had given his further representation on 30.09.2015. Not being satisfied with the explanations, the third respondent herein had awarded the punishment of dismissal from service through an order dated 12.11.2015, for violation of Rule 23(1)(b) of the Tamil Nadu Police Subordinate Officer's Conduct Rules, 1964. On appeal, the second respondent herein, had confirmed the punishment of dismissal through his order dated 09.02.2016. Both these orders are put under challenge in the present Writ Petition.

3. The learned counsel for the petitioner raised grounds, questioning the procedure adopted by the Disciplinary Authority namely, the third respondent herein in awarding the punishment, as well as, the procedure adopted by the Appellate Authority namely, the second respondent herein in dealing with the petitioner's appeal. According to the learned counsel, the third respondent herein, while imposing the punishment, had not considered the evidences let in before the Inquiry Officer, that supports the case of the petitioner and therefore, the punishment imposed itself was pre-mediated. He further submit that the procedure adopted by the second respondent herein while dealing with the appeal was not in conformity with Rule 3(b)(ii) of the TNPSS (D & A) Rules and therefore the order in appeal, is also required to be set aside.

4. The learned Government Counsel on the other hand, submitted that the charges levelled against the petitioner herein are very serious in nature, which cannot be permitted, particularly, to a person belonging to the Armed Forces and therefore, no lenience is required.

5. Rule 2 of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955 prescribes various penalties which could be imposed upon the members of the Tamil Nadu Police Subordinate Services and an appeal against in all these penalties would lie before the Appellate Authority as per Rule 5.



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6. Before addressing the issues involved in the present Writ Petition, it would be appropriate to discuss the duties cast on the Disciplinary Authority under Rule 3(b)(ii), as well as, the Appellate Authority under Rule 6.

7. Rule 3(b)(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:

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.

8. As per the aforesaid Rule, the Disciplinary Authority is



required to consider the evidence adduced during the enquiry, before imposing any of the penalties specified in Rule 2. It is the case of the petitioner that the Disciplinary Authority had considered only such grounds which were detrimental to the petitioner's case and that the evidences that support his case have not been considered by the Disciplinary Authority. In this background, the punishment imposed by the Disciplinary Authority based on inappropriate evidences, cannot be sustained.

9. Insofar as the procedure adopted by the second respondent while dealing with the appeal is concerned, there is a duty cast on the Appellate Authority to abide by Rule 6. As per Rule 6, the Appellate Authority is required to consider as to whether the facts on which the order of penalty was based have been established; whether such established facts afford sufficient grounds for taking action; and whether the penalty is excessive or adequate or inadequate. On consideration of the aforesaid three factors, the Appellate Authority is required to pass appropriate final orders in the appeal filed by the members of the Service. For the sake of convenience, Rule 6 is extracted hereunder:-

"Rule 6 (1) In the case of an appeal against an order imposing any penalty specified in rule 2, the appellate authority shall consider-

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate; and after such consideration, shall pass orders-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case, to the authority which imposed the penalty or to any other authority with such direction, as it may deem fit, in the circumstances of the case.

Provided that

a) If the enhanced penalty which the appellate authority proposed to impose is one of the penalties specified in clauses (d), (e), (3), (h), (i) and (j) of rule 2 and an enquiry under sub rule (b) of rule 3 has not already been held in the case, the appellate authority shall, subject to the provisions, of sub rule (c) of rule 3, itself hold such enquiry or direct that such enquiry be held in accordance with the



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provisions of sub rule (b) of rule 3 and thereafter on consideration of the proceedings of such enquiry and after giving the appellant a reasonable opportunity of making representation against the penalty proposal on the basis of the evidence adduced during such enquiry, make such order as it may deem fit.

b) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties, specified in clauses (d), (e), (3), (h), (i) and (j) of rule 2 and an enquiry under sub rule (b) of rule 3 has already been held in the case, the appellate authority shall, after giving the appellant reasonable opportunity of making representation against the penalty proposed to be imposed on the basis of the evidence adduced during the enquiry, make such order as it may deem fit; and

c) no order imposing an enhanced penalty shall be passed in any other case unless the appellant has been given a reasonable opportunity, as far as may be in such enhanced penalty.

2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that the error or defect was not material and has neither caused injustice to the person concerned nor affected the decision of the case."

10. In the present case in hand, the petitioner was dealt with the charges under Rule 3(b) of the Rules for the delinquency that he had deceived and entered into a second marriage with Dheepika by concealing his earlier marriage with one Rajapriya and therefore violated Rule 23(1)(b) of the TNPSS Conduct Rules.

11. The Disciplinary Authority had agreed with the findings of the Inquiry Officer and imposed the punishment of dismissal from services. As against this order of punishment, the petitioner had preferred an appeal before the second respondent, which was rejected through the impugned order dated 09.02.2016.

12. The impugned order passed by the Appellate Authority, apparently is not in conformity with the procedure contemplated under Rule 6. The second respondent herein, in the impugned order, had not dealt with the facts on which the order of penalty was based and whether such established facts afford



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sufficient grounds for taking action. Rather, a reference has been made to the effect that the statements of the co-delinquent corroborates the charge against the delinquent, without dealing with the actual corroboration. Such a vague reference may not be sufficient to comply with the requirement of Rule 6, in view of the language employed therein. Apart from such a finding, the Appellate Authority had not come to the subjective satisfaction that the order of penalty was properly justified by the Disciplinary Authority or that, the facts established therein, afford sufficient grounds for taking action. In the absence of such reasoning, the procedure contemplated under Rule 6 stands violated and therefore the order in appeal, cannot be sustained. Furthermore, the Appellate Authority has also not appreciated the reasoning as to whether the penalty imposed by the Disciplinary Authority was excessive, adequate or inadequate, apart from a general statement that the punishment awarded is proportionate to the delinquency committed by the petitioner.

13. Since this Court has held that both the punishment imposed by the Disciplinary Authority/third respondent is in violation of Rule 3(b)(ii) and the Appellate Authority has not adopted the procedure contemplated under Rule 6, both the orders cannot be sustained and requires to be set aside.

14. In the result, the order of punishment passed by the third respondent herein dated 12.11.2015, as well as the order passed by the second respondent dated 09.02.2016, are hereby set aside and the matter is remitted back to the third respondent for fresh consideration, on the basis of the inquiry report. The petitioner is at liberty to submit further explanations on the report of the Inquiry Officer to the third respondent herein within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the third respondent shall consider the same, on its own merits and take further course of action in accordance with law, within a period of 12 weeks from the date of receipt of a copy of the further explanations.

15. With the above observations and directions, the Writ Petition stands disposed of. There shall be no orders as to costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

hvk/DP



To

1. The Director General of Police,
State of Tamil Nadu
Mylapore,
Chennai-600 004.
2. The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore.
3. The Superintendent of Police,
Tiruppur District,
Tiruppur.
4. The Deputy Superintendent of Police,
District Crime Record Bureau,
Tiruppur District,
Tiruppur.

+1cc to Mr.K.Muthu Ganesa Pandian , Advocate, S.R.No.31943

ORDER MADE IN

W.P.No.17497 of 2018

PL(CO)
SU(09/09/2021)