



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.28236 of 2014

G.Devaprakasam

... Petitioner

Vs.

1. The Deputy Commissioner of Police
Chennai City Police, Chennai
2. The Commissioner of Police
Chennai City, Chennai
3. The Director General of Police
Tamil nadu, Chennai
4. The Secretary to Government
Home (Police II) Department
Fort St. George, Chennai-9

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for the records of the respondents in connection with the impugned order passed by the 1st respondent in PR No.527/4(2)/2008 dated 08.01.2010 by the 2nd respondent in PR 527/IV(2)/2008 dated 13.08.2010 and by the 3rd respondent in RC No.199615/AP3(3)/2010 dated 01.03.2011 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

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

For Respondents : Mr.C.Selvaraj, Govt.Advocate

- - - - -



O R D E R

The petitioner was directly recruited as Grade II Police constable through a selection conducted by Tamil Nadu Uniform Services Recruitment Board and was appointed on 15.04.1997. While he was in service, in Chennai City Armed Police, he was issued with the desertion order for absenting himself for 21 days from 02.08.2008. As per Rule 95(1) of PSO, he was confirmed as a deserter in CPO.No.336/2008 dated 02.09.2008. Later, the petitioner appeared before the Additional Commissioner on 17.09.2009 and he was taken back for duty and he joined service on 17.09.2009 itself. While so, a charge memo was framed in PR.No.527/PR4(2)/2008 dated 27.11.2008. An oral enquiry was conducted and the enquiry officer found the charges proved by his report dated 11.11.2009. The Disciplinary Authority imposed a punishment of reduction in time scale of pay by two stages for two years without cumulative effect on 08.01.2010. The petitioner did not prefer any appeal and the order has become final. But, however, the Commissioner of Police by virtue of the powers conferred in him u/r 15(A) (1)(1) of Tamil Nadu Police Subordinate Services (Discipline And Appeal) Rules, 1955 (hereinafter TNPSS (D&A) Rules) has taken out the matter suo motu review and issued a show cause notice dated 22.04.2010 in Rc.No.527/PRIV(2)/2008, wherein he has called for explanation from the petitioner to show cause as to why he should not be dismissed from service on the basis of his past conduct for the habitual desertion deserting the force for 11 times and absented for 1532 days. Ultimately, by an order dated 13.08.2010 dismissed the petitioner from service. Aggrieved over the same, the petitioner preferred an appeal and it was rejected in Rc.No.199615/AP.3(3)/2010 dated 01.03.2011 by the 3rd respondent. He submitted representations to the Government on 01.04.2011 and approached this Court.

2. I heard the submissions made by both the sides.

3. At the outset, it is noted that a charge memo was issued to the petitioner on 27.11.2008 for having deserted the force without leave or permission continuously for a period of 21 days from 02.08.2008. The gravamen of the charge is that the delinquent was supposed to report to work for escort duty for the Chief Justice of High Court at 08.00 clock on 02.08.2008, without reporting and without getting prior permission absented himself in violation of PSO 279(3) and (4) part 1 and absented himself for more than 21 days which amounts to desertion in view of 95(1) PSO Vol. I. A reading of statement of imputation of the misconduct as well as the enquiry proceeding dealt with



overstayal of 21 days from 02.08.2008 and evidence was adduced in support of the charges. But, I do not find any charge relating to the habitual misconduct committed by the petitioner or any evidence on this aspect.

WEB COPY

4. It is also imperative to note that the petitioner after receiving the order of desertion dated 02.08.2008, as mandated appeared within 60 days and submitted his explanation before the Additional Commissioner. On 11.08.2009, the Additional Commissioner in his proceedings PR.No.IV(2)/103379/330/08 dated 11.08.2009, ordered the petitioner to be taken back for duty. As per the above order dated 11.08.2009, the petitioner also reported duty on 17.09.2009 and was working continuously.

5. If that be so, the circumstances in which he was taken back to duty and his conduct thereafter should have also been considered. The Disciplinary Authority considering the totality of circumstances imposed the punishment of reduction in time scale of pay by two stages for two years without cumulative effect. The order has become final as the petitioner has not preferred any appeal.

6. Now that Commissioner of Police has taken up this case for suo motu review by virtue of power conferred on him u/r 15 (A) (1) (i) of TNPSS (D&A) Rules. Rule 15(A) reads as under:

Rule 15A.(1) Notwithstanding anything contained in these rules:

- (1) the State Government or
- (ii) the Head of the Department directly under the State Government, in the case of Government servant serving in a department or office under the control of such Head of Department, or
- (iii) the appellate authority, within six months of the date of the order proposed to be reviewed; or
- (iv) any other authority specified in this behalf by the State Government by general or special order, and within such time as may be prescribed in such general or special order; may at any time, either on their or its own motion or otherwise call for the records of any inquiry and review any order made under these rules, after consultation with the Tamilnadu Public Service Commission where such consultation is necessary and may.

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or



WEB COPY

(c) remit the case to the authority which made the order or to any other authority, directing such authority to make such further enquiry, as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit.

Provided that no order imposing or enhancing the penalty shall be made by any reviewing authority unless the Government servant concerned has been given an reasonable opportunity of making representation against the penalty proposed. Where it is proposed to impose any of the penalties specified in clauses (d), (e), (f), *h), (i) and (j) of rule 2 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in sub rule (b) of Rule (3) and after giving a reasonable opportunity to the Government servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary.

Provided further that no power of review shall be exercised by the Head of Department, unless:

(i) the authority which made the order in appeal or

(ii) the authority to which an appeal would lie where no appeal has been preferred is subordinate to him

(2) No proceeding for review shall be commenced until after.

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules.

(4) No application for review shall be preferred more than once in respect of the same order.

Provided that members of the constabulary (Police Constables and Head Constables) shall be eligible to make one representation to the Government against the orders of dismissal or removal from service after exhausting the right of appeal.

Provided further that no application for review shall be entertained if it has not been made within a period of six months from the date of receipt of the order on which such application for review is preferred.



A reading of Sub Rule (1) (iv) (b) makes it clear that Head of the Department has powers to confirm, reduce or enhance or set aside the penalty imposed by an order.

WEB COPY

7. However, the Proviso to Rule 15 prescribes certain conditions. In cases, where the punishment of reduction to lower grade or lower time scale, recovery, compulsory retirement, removal from service are imposed, it shall precede by an enquiry by framing a charge and after giving reasonable opportunity to the Government servant. As per Sub Rule (b) of Rule 3 of TNPSS (D&A) Rules, for taking action for the major punishment it shall be reduced in the form of a definite charge and communicated to the person charged and after following the procedures of conducting enquiry based on sufficient record of evidence punishment shall be imposed. Sub Rule (b) of Rule 3 extracted as under:

" Rules 3.

(a).....

(b) (i) In every case where it is proposed to impose on a member of a service any of the penalties specified in clauses (d), (h), (i), (j) of rule 2 the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is framed and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires an oral inquiry or only to be heard in person. An oral inquiry shall be held if such an inquiry is desired by the person charges or is directed by the authority concerned. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, the person charged shall be entitled to cross examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing refuse to call a witness. After the inquiry has been completed, the person charged shall be entitled to put in; if he so desires, any further written statement of his defence.

Whether or not the person charged desired or had an oral enquiry, he shall be heard in person at any stage if he so desires before final orders are passed.



WEB COPY

A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of evidence, if any, and a statement of the findings and the grounds thereof."

8. When Rule 15 prescribes three conditions, the authority having power to have a suo motu review, confirm, reduce or enhance the punishment, for enhancement the punishment it is mandatory for him to adhere to the procedure laid down. We have already observed that the original enquiry proceedings, the charges do not relate to past habitual misconduct of the petitioner. No statement of imputation of misconduct speaks about it. The witnesses of the prosecution do not also adduce evidence in this direction. The entire disciplinary proceedings were confined only to the incident which had taken place on 02.08.2000 and thereafter i.e to say overstaying of absencing himself for 21 days and nothing else. If that be so, it is very clear that the delinquent was not given any opportunity to say anything about his past habitual absent any committed by him.

9. If such a charge was framed or an allegation was made, the petitioner would have an opportunity to confront such allegation by producing necessary evidence. On the other hand, the authority who exercised his power of suo motu review has made a statement that the past conduct shows that he is a habitual deserter. Such statement is predetermined and without giving an opportunity to the petitioner. If at all the authority wants to consider that, as provided in Rule 15, he should have conducted an oral enquiry on this aspect as per Sub Rule 3(b) for the punishment of removal from service as specified in Rule 2(i). As long as this mandatory procedure is not followed, it makes the order of the Reviewing authority bad. As such the order passed by the 2nd respondent is in violation of proviso to Rule 15(a) of TNPSS (D&A) Rules. As long as the mandatory requirement of providing fair opportunity as provided under Rule 3(b) is not afforded to the petitioner, it amounts to violation of principles of natural justice. Therefore, on the grounds of violation of rules as well as violation of principles of natural justice, this Court is inclined to set aside the punishment of removal from service made by the 2nd respondent. However, it is made clear that the petitioner will not be entitled to any monetary benefits for the period between his removal and reinstatement orders to be passed by the respondents. He will be entitled to attendant benefit notionally.

Writ petition is ordered in the above terms. A further direction is given to the 2nd respondent to pass appropriate



orders within a period of three months from the date of receipt of a copy of this order. No costs.

WEB COPY

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

kpr

To

1. The Deputy Commissioner of Police
Chennai City Police, Chennai
2. The Commissioner of Police
Chennai City, Chennai
3. The Director General of Police
Tamil nadu, Chennai
4. The Secretary to Government
Home (Police II) Department
Fort St. George, Chennai-9

+1cc to M/s.M.Muthappan, Advocate, S.R.No.36440

+1cc to the Government Pleader, S.R.No.36925

W.P.No.28236 of 2014

PMK (CO)
SU(20/09/2021)