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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.07.2021

PRONOUNCED ON : 08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S. RAMESH

W.P.No.960 of 2017

and

WMP.No.958 of 2017

G.Rajaraman

...Petitioner

Vs.

1. The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.

2. The Additional Director General of Police (L & O),
Chennai-600 004.

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

...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 of the first respondent in connection with the impugned order passed by him in RO No.40/2014 in C No.82/PR/41/2013 dated 22.01.2014, confirmed by the second respondent in RC No.031425 API(2)/2014 dated 14.10.2014 and further confirmed by the third respondent in RC No.029124/API(2)/2015 dated 08.11.2016 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.Venkataramani, Sr. Counsel
for Mr.M.Muthappan

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



O R D E R

The present Writ Petition is heard through Video Conferencing on 13.07.2021.

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2. The charges against the petitioner is predominantly to the effect that on 28.07.2013, while he was serving as a Sub Inspector of Police at Avinankudi Police Station, Cuddalore District, he had misused his official position and entered into a Tasmac bar, consumed liquor, assaulted two persons, created records of drunkenness against another person, failed to register a case against such person etc. Pursuant to an enquiry, the first respondent had imposed the punishment of dismissal from service on 22.01.2014. The appeal before the second respondent and the review petition before the third respondent were rejected on 14.10.2014 and 08.11.2016 respectively. The petitioner challenges all these orders in the present Writ Petition.

3. The scope of interference in a matter of this nature, by the High Court exercising its power under Article 226 of the Constitution of India, is very limited. In *Kuldeep Singh Vs. Commissioner of Police & Others* reported in 1999 (2) SCC 10, it was held that the High Court cannot sit in appeal over the findings in the departmental enquiry and that the power of judicial review will be restricted only to cases when there is no evidence in support of the findings in the enquiry or the findings were perverse or made at the dictates of the superior authority or the findings recorded were such as could not have been reached by an ordinary prudent man. In the case of *State of Uttar Pradesh and another Vs. Man Mohan Nath Sinha and another* reported in 2009 (8) SCC 310, the Hon'ble Supreme Court held that the High Court can only question the decision making process and not the decision itself. A similar view was also taken in the case of *State Bank of India & Others Vs. Samarendra Kishore Endow and another* reported in 1994 (2) SCC 537.

4. In the present case, the charges against the petitioner was serious in nature. The petitioner herein had not challenged the conduct of the departmental enquiry alleging to the punishment on the ground that it is in violation of principles of natural justice. Nevertheless, it is seen that, after the incident that occurred on 29.07.2013, the petitioner was placed under suspension on 30.07.2013 and charges were framed against him under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal), Rules 1955 [TNPSS Rules], on 08.11.2013. The Petitioner had given his explanation to the charges and not being satisfied with the explanation, an enquiry was conducted. The Enquiry Officer in his report dated 14.12.2013, had examined nine witnesses and placing reliance on the evidences of P.W.1 to



P.W.4 and P.W.6, had held that all the charges against the petitioner to be proved. The first respondent herein, in his order dated 22.01.2014, had considered the further representation of the petitioner dated 12.12.2013 and had dealt with the charge memo, explanation, findings of the enquiry officer and the further representation of the petitioner and had independently adduced his reasons for imposing the punishment of dismissal from service. Thus, I do not find any infirmity in the original punishment imposed by the first respondent herein.

5. In the appeal before the second respondent dated 02.02.2014, the petitioner herein had raised several grounds touching upon the findings of the enquiry officer, as well as, the punishment imposed by the first respondent. However, in the order dated 14.10.2014, the second respondent herein had simply dealt with the grounds through a non speaking order.

6. Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, stipulates the mode in which the Appellate Authority is mandated to consider the appeal against the orders of the Disciplinary Authority. The said Rule 6 reads as 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 directing, as it may deem, fit in the circumstances of the case:"

7. A reading of the aforesaid Rule, imposes a duty on the Appellate Authority to establish as to whether the facts on which the punishment was based, were established and if so, whether such facts afford sufficient grounds for taking action. The Appellate Authority is also required to test the proportionateness of the penalty imposed. All these aforesaid factors requires to be established through a speaking order. However, contrary to the Rule proposition, the second respondent herein had dealt with the appeal in the following manner:



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"I have gone through the PR file and appeal petition, carefully. The appellant appeared in Tindivanam Deputy Superintendent of Police, office on 26.07.2013 at 11.00 hrs and after that his absence is proved on record and by witnesses. There is no proof about the claim for producing PW 4 by the appellant. All the three counts of the charges are proved by prosecution statements and exhibits. Considering the nature of delinquency, the punishment awarded is not excessive. The appeal is rejected."

8. The aforesaid extract is self explanatory, which reveals that the second respondent herein had acted contrary to the requirements of Rule 6. Thus, the order in appeal, cannot be sustained. In view of this, the subsequent order dated 08.11.2016 passed by the third respondent in the review petition also, cannot be sustained.

9. In the light of the above observations, the impugned order passed by the second respondent herein dated 14.10.2014 and the order of the third respondent dated 08.11.2016, are set aside and the matter is remitted back to the second respondent herein for reconsideration. The second respondent shall reconsider all the grounds raised by the petitioner in his appeal memorandum dated 02.02.2014 and pass a speaking order, in conformity with the procedure laid down under Rule 6 of the TNPSS Rules, within a period of 12 weeks from the date of receipt of a copy of this order.

10. The Writ Petition is ordered accordingly. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.



2. The Additional Director General of Police (L & O),
Chennai-600 004.

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

+1cc to Mr.M.Muthappan, Advocate, S.R.No.45444/2021

W.P.No.960 of 2017
and
WMP.No.958 of 2017

SR(CO)
RGA(30/09/2021)