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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.30444 OF 2019

L.George William

... Petitioner

.Vs.

1. The Commissioner of Police,
Greater Chennai Police,
E.V.K.Sampath Road,
Veppery, Chennai - 600 007.

2. The Deputy Commissioner of Police,
Pulianthoppu District,
Chennai.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the 1st respondent in Rc.No.PR V(1)/115/132274/CPO/2018 dated 27.06.2019 and to quash the same and consequently directing the Respondents to allow the Petitioner to continue to work in the post of Special Sub Inspector in Tamil Nadu Police Subordinate Service, with all consequential and other attendant benefits.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : Mr.K.Tippu Sulthan
Government Advocate

ORDER

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

2. On a set of charges, the petitioner was subjected to departmental proceedings. Incidentally, on the same set of charges, the petitioner was also implicated in a criminal case, which led to his acquittal, through the Judgment and Decree



dated 03.05.2017 passed in Sessions Case No.93 of 2014 on the file of the learned Single Judge, Fast Track Mahila Court, Vellore.

3. Pursuant to the enquiry conducted in the departmental proceedings, the second respondent herein had originally imposed the punishment of postponement of increment for the next three years, with cumulative effect, through an order dated 24.01.2018. As against the same, the petitioner preferred an appeal before the first respondent on 10.03.2018. Pursuant of the appeal petition, the first respondent herein had issued a Show Cause Notice dated 28.02.2019 stating that the punishment imposed on the petitioner by the second respondent did not commensurate with the delinquency and therefore proposed to enhance the punishment. After considering the petitioner's explanation dated 11.03.2019 to the Show Cause Notice, the present impugned order was passed by the first respondent on 27.06.2019, enhancing the punishment into one of removal from service. The order of the first respondent is challenged in the present writ petition.

4. One of the main grounds raised by the petitioner in the present writ petition is that the petitioner was not given an opportunity to put forth his objections with the explanation, since the Show Cause Notice did not assign the reasons for proposing an enhanced punishment.

5. Per contra, the learned Government Advocate appearing for the respondents submitted that the offences are very grave in nature and the original punishment imposed by the second respondent was not in conformity with the enhanced punishment. He also submitted that the first respondent herein had thought it fit to issue Show Cause Notice proposing enhancement of punishment and after considering the petitioner's explanation in this regard, the impugned order came to be passed. As such, the learned Government Advocate would submit that no interference is required with the impugned order.

6. Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955, prescribes the procedure by which the Appellate Authority is required to consider the appeal against the original punishment. As per such rule, the Appellate Authority is required to establish the facts on which the punishment was imposed and whether such facts affirm sufficient grounds for taking action. The Appellate Authority is also required to analyze the proportionateness of the punishment vis-a-vis the charges.

7. Apart from adopting the procedure contemplated in Rule (6) as stated above, whenever the Appellate Authority is of the



view that the original punishment awarded does not commensurate with the delinquency, there is a duty cast on the Appellate Authority to assign the reasonings for which the proposal for enhancement of punishment is sought to be made. This is more pertinent for the purpose of extending an opportunity to the Delinquent Officer rendering an effective explanation to the proposal. Unless, the Delinquent Officer is made aware of the grounds on which the Appellate Authority intends to enhance the punishment, he may be deprived to substantiate as to why the punishment should not be enhanced.

8. It is needless to point out that, before the Delinquent Officer, the petitioner would have been appraised of the various charges and the reasons for the Delinquent Authority to have imputed the charges on the delinquency. It is on this basis, the Delinquent Officer would have also rendered his explanation, pursuant to which, he was also extended an opportunity to establish his case before the enquiry officer, whereas, when the issue is before the Appellate Authority, there is no further enquiry and the proposal for enhancing the punishment proceeds only on the basis of the explanation rendered by the delinquent to the Show Cause Notice proposing enhanced punishment. Under these circumstances, unless the Appellate Authority spells out the grounds on which the enhanced punishment is proposed, the Delinquent Officer would be deprived of making an effective explanation. Subsequently, it can be stated that such a notice without reasons would be in violation of Principles of Natural Justice and cannot be sustained.

9. A Hon'ble Division Bench of this Court in the case of The Chairman-cum-Appellate Authority and another Vs M.Hariharan passed in W.A.No.1047 of 2011 dated 06.07.2017 had substantiated this aspect in the following manner:-

'13.The very purpose of drawing a show cause notice is to convey in clear terms what was sought to be undertaken by the Appellate Authority. If the Appellate Authority tersely communicates its decision to enhance the punishment without spelling out the grounds or reasons for such likely enhancement of the punishment, the employee concerned would be left to grope in the dark as he would not be knowing the reasons that weighed heavily on the mind of the Appellate Authority before he firms up his opinion as to whether the case calls for enhancement of punishment.

14.If the reasons are not spelt out, the employee concerned will not be able to furnish an effective reply. The show cause notice is not



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intended to be an empty formality. It is squarely intended to convey to the man concerned the reasons for which the proposed action is either taken or initiated. When show cause notice spells out the reasons, the employee concerned will have an effective opportunity to neutralize those reasons that weighed with the Authority which has drawn the show cause notice. Therefore, a bald, laconic or non reasoned show cause notice reduces itself to a mere empty formality and in substance, they will not be providing a meaningful or truthful opportunity for the person concerned to set forth his objections in respect thereof. When no such opportunity is thrown to the employee, the very exercise of drawing a show cause notice reduces its utility and effectiveness. It becomes an un-productive exercise for lack of substance and meaning.

15. For sheer lack of reasons in the show cause notice, the final Appellate Order passed on 14.10.2010 cannot be sustained because when the substratum collapses, the superstructure has to necessarily come down. We have therefore, no hesitation to hold that the show cause notice drawn in the instant case on 14.06.2010 by the Appellate Authority is not sustainable.''

10. Thus, there is duty cast on the Appellate Authority to set forth the reasons in the Show Cause Notice for the proposed enhancement of punishment and in the absence of the same, the punishment, which culminates from the Show Cause Notice that lacks reasons, cannot be sustained, in the light of the ratio laid down by the Hon'ble Division Bench of the aforesaid decision.

11. However, since this Court had found fault with the procedure adopted by the Appellate Authority in issuance of the Show Cause Notice and by taking into account the objections raised by the learned Government Advocate, I am of the view that if the Appellate Authority can be given an opportunity to re-exercise their powers and issue a fresh Show Cause Notice, assigning the reasons for the proposed enhancement of punishment, thereby extending an opportunity to the petitioner to render his explanation. Though such an observation has been made, this Court has not given a positive direction to the Appellate Authority to issue a fresh notice and that it would be open to the Appellate Authority to exercise this option, if they opt to do so.



12. In the light of the above observations, the impugned order dated 03.05.2017 on the file of the learned Single Judge, Fast Track Mahila Court, Vellore, is set aside and the matter is remitted back to the first respondent. On receipt of a copy of this order, the first respondent is at liberty to issue a fresh Show Cause Notice assigning the reasons for the enhanced punishment by calling upon the petitioner to render his explanation within a reasonable time, if they choose to do so. On receipt of such representation, the first respondent herein shall consider the explanation and after giving due opportunity to the petitioner, shall adhere to the procedure contemplated under Rule (6) of the Tamil Nadu Police Subordinate Services (D&A) Rules, 1955, and pass a speaking order, atleast within a period of three months from the date of receipt of a copy of the petitioner's further explanation.

13. This Writ Petition stands disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Police,
Greater Chennai Police,
E.V.K.Sampath Road,
Veppery, Chennai - 600 007.
2. The Deputy Commissioner of Police,
Pulianthoppu District,
Chennai.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.37209
+1cc to the Government Pleader, S.R.No.37386

W.P.NO.30444 OF 2019

KSM(CO)
PBS/26/08/2021