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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.07.2021
PRONOUNCED ON : 12.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.2630 of 2017

Gurumoorthy

... Petitioner

Vs.

1. The Director General of Police,
Mylapore, Chennai-600 004.
2. The Inspector General of Police,
Intelligence, Chennai-600 004.
3. The Additional Superintendent of Police,
PEW, Vellore District,
Vellore.

... 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 in connection with the charge memo Tha.Pa.No.88/2005 dated August 2005 issued by the Additional Superintendent of Police, PEW, Vellore District, the third respondent herein and the order of punishment Vellore District PR No.88/05 u/r 3(b); C.No.D1./Sec/2433/10 dated 31.01.2012 passed by the Inspector General of Police, Intelligence, Chennai-4, the second respondent herein and the order of rejection on appeal Rc.No.15595/AP IV(2)/2016 dated 12.07.2016 passed by the Director General of Police, the first respondent herein and to quash the same and consequently, direct the respondents to extend all service benefits including annual increment.

For Petitioner : Mr.K.Venkataramani, Sr. Counsel
for Mr.Dr.R.Sampathkumar

For Respondent : Mr.K.Sajeev Kumar
Nos.1 & 2 Counsel for Government

For Respondent : Mr.K.Tippu Sultan
No.3 Counsel for Government



O R D E R

This Writ Petition is heard through Video Conferencing on 13.07.2021.

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2. Rule 2 of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955 [hereinafter referred to as 'Rules'], 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.

3. The procedure for considering the appeal is provided under Rule 6 of the aforesaid Rules. 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



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such enquiry be held in accordance with the 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."

4. In the present case in hand, the petitioner was dealt with charges under Rule 3(b) of the TNPSS (D & A) Rules, for the following delinquency:-

"Reprehensible misconduct of illegally obtaining the answer keys to Part-A and Part-B questions of the departmental promotion test from one PC 4301 Ramprasath and PC 4046 Ganesh Raj on 17.06.2004 and distributing the same to HC 273 Govindaraj and HC 1117 Rajendiran with ulterior motive to leak out the question paper by supplying the answer keys to the candidates at Vellore and Chennai City respectively to help the candidates to pass the examination. Thereby you failed to maintain absolute integrity in violation of Rule 24 of T.N.S.P.O. Conduct Rules, 1964."



Pursuant to the charges being held to be proved in the enquiry, the Disciplinary Authority had agreed with the findings of the inquiry officer and imposed the punishment of "reduction in timescale of pay by three stages, for three years with cumulative effect", through the order dated 31.01.2012. As against this order of punishment, the petitioner had preferred an appeal before the first respondent herein, which was rejected through the impugned order dated 12.07.2016, confirming the original punishment.

5. The impugned order passed by the Appellate Authority, apparently is not in conformity with the procedure contemplated under Rule 6. The first 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 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.

6. Since the Appellate Authority has not adopted the procedure contemplated under Rule 6, it would be appropriate to direct him to reconsider the appeal afresh.

7. In the light of the above observations, the impugned order dated 12.07.2016 passed by the first respondent, is hereby set aside and the matter is remitted back to the first respondent for fresh consideration. The petitioner is at liberty to submit additional grounds of appeal, within 7 days from the date of receipt of a copy of this order. On receipt of such additional grounds, if any, the first respondent herein shall consider the petitioner's original appeal petition dated 07.05.2012, along with the additional grounds of the petitioner, if any, and pass final orders, in conformity with the procedure contemplated under Rule 6 of the Tamil Nadu Police Subordinate Services Rules, atleast, within a period of three months from the date of receipt of a copy of this order.



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

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Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Director General of Police,
Mylapore, Chennai-600 004.
2. The Inspector General of Police,
Intelligence, Chennai-600 004.
3. The Additional Superintendent of Police,
PEW, Vellore District,
Vellore.

+1 cc to Mr.Dr.R.Sampathkumar, Advocate SR.No.40133
+1 cc to Special Government Pleader SR.No.40403

W.P.No.2630 of 2017

RSI (CO)
CT(27/08/2021)