



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.8983 of 2020

and

W.M.P(MD)Nos.8214 & 8215 of 2020

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T.Gajendran

... Petitioner

vs.

1.The Director General of Police,
Office of the Director General of Police,
Chennai.

2.The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli District.

... Respondents

(R - 2 cause title amended vide order
dated 15.06.2021 in W.M.P(MD)No.7477 of 2021)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued by the second respondent in his proceedings PR.No.8/2018, Ramanad District/C.No.C1/9313/2018 -Tirunelveli Range, dated 13.12.2018 and order passed by the first respondent in his proceedings in RA.No.152643/AP/1(2)/2019, dated 28.06.2019 and quash the same and consequently direct the respondents to promote the petitioner to the post of Deputy Superintendent of Police on par with his juniors.

For Petitioner : Mr.C.Jeganathan

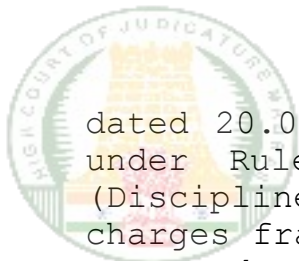
For Respondents : Mr.P.Subbaraj

Government Advocate

ORDER

The petitioner has filed the Writ Petition to quash the order passed by the second respondent, dated 13.12.2018 and the order passed by the first respondent, dated 28.06.2019 and consequently, directing the respondents to promote the petitioner to the post of Deputy Superintendent of Police on par with his juniors.

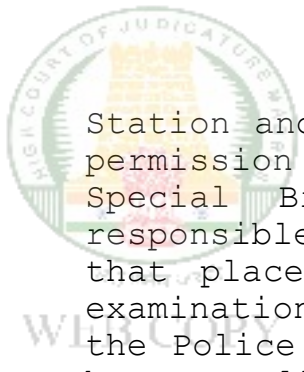
2.According to the petitioner, while he was working as Inspector of Police, Mandapam Police Station, Ramnad District, he was suspended from service on 02.09.2017. Subsequently, on 13.12.2017, the said order of suspension was revoked. A charge-memo,



dated 20.01.2018, was issued to the petitioner in PR.No.08 of 2018 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955, containing three charges. The charges framed against the petitioner relates to the incident, which occurred on 30.08.2017 at 23.00 hours. The petitioner gave his explanation. The Additional Deputy Superintendent of Police, Prohibition Enforcement Wing, was appointed as an enquiry officer and he conducted the domestic enquiry and filed his report on 10.08.2018, holding that all the three charges are proved. Based on the said report, a further explanation was called for by the second respondent and the petitioner submitted his explanation. The second respondent, by the impugned order, dated 13.12.2018, imposed a punishment of "postponement of increment for a period of two years, which shall operate to postpone his future increments", without considering the explanation submitted by the petitioner, enquiry report and evidences in proper perspective. The petitioner filed Mercy Petition before the first respondent on 29.05.2019 and the first respondent rejected the Mercy Petition, by order, dated 28.06.2019. Challenging the same, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner submitted that on 30.08.2017, the petitioner arrested one Santhosh Kumar relating to the offence under Section 8(c) r/w 20(b)(ii)(c) of NDPS Act in Crime No.151 of 2017 and brought the said Santhosh Kumar to the Police Station. While the petitioner was enquiring the said accused Santhosh Kumar, one Suresh Balaji, Constable attached to the Special Branch, came to the Police Station and dragged the said accused Santhosh Kumar outside the Police Station and took photos in his cell phone. The petitioner objected to the action of the said Suresh Balaji and there was a wordy quarrel between the petitioner and Suresh Balaji. During that time, taking advantage of the quarrel, the accused Santhosh Kumar escaped from the Police Station. The petitioner informed the same to the Deputy Superintendent of Police through his CUG phone number.

4.The learned counsel appearing for the petitioner further submitted that the accused Santhosh Kumar escaped only due to the intervention of Suresh Balaji, Constable attached to the Special Branch, who has dragged the accused outside the Police Station to take photographs. During the domestic enquiry, P.Ws.1 to 3, who were present at the time of occurrence, were examined by the Department and they deposed that the accused Santhosh Kumar was arrested and brought to the Police Station and while the said accused Santhosh Kumar was enquired by the petitioner in his room, Suresh Balaji, Constable, attached to the Special Branch, came to the Police Station and dragged the accused outside the Police Station and took photographs. During the quarrel between the petitioner and the said Suresh Balaji, the accused escaped. P.W.5-Deputy Superintendent of Police, in his evidence, admitted that no one could enter the Police



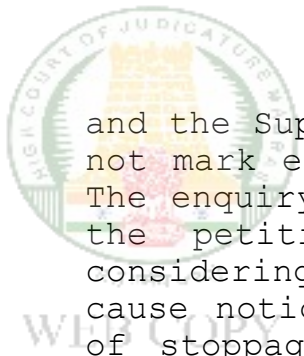
Station and take the accused outside the Police Station without the permission of the Inspector of Police. P.W.6-Inspector of Police, Special Branch, gave evidence that Suresh Balaji was found responsible for escape of the accused and he was transferred from that place. P.W.7-Deputy Superintendent of Police, in his cross-examination, admitted that Suresh Balaji took the accused outside the Police Station and took photographs and diverted the petitioner by quarrelling with him and the said Suresh Balaji was responsible for the escape of the accused Santhosh Kumar. The learned counsel appearing for the petitioner further submitted that the enquiry officer failed to consider these evidences and found that the charges are proved, which is erroneous and contrary to the evidence on record.

5.The second respondent/Disciplinary Authority, without properly appreciating the evidence and explanation of the petitioner, mechanically accepted the finding of the enquiry officer and imposed the punishment. Similarly, the Mercy Petition filed by the petitioner was rejected by the first respondent, without appreciating the materials on record and both the orders of the second respondent and the first respondent are non-speaking orders and no proper reason is given for imposing the punishment.

6.The learned counsel appearing for the petitioner further submitted that the disciplinary proceeding was initiated against Suresh Balaji, Constable, attached to the Special Branch, who was only responsible for the escape of the accused Santhosh Kumar. He was imposed with a punishment of postponement of increment for a period of two years with cumulative effect by the disciplinary authority. On appeal, the punishment was modified and reduced to postponement of increment for a period one year without cumulative effect. The Mercy Petition of Suresh Balaji was considered by the first respondent and modified the punishment as "Black Mark".

7.The learned counsel appearing for the petitioner further submitted that the person responsible for the escape of the accused is Suresh Balaji and he has been imposed only the punishment of "Black Mark". While so, the punishment imposed to the petitioner, who is not responsible for the incident, is invalid and illegal and the same is liable to be set aside.

8.The respondents filed counter-affidavit. Mr.P.Subbaraj, learned Government Advocate appearing for the respondents reiterated the averments in the counter-affidavit and submitted that when the petitioner arrested the accused Santhosh Kumar and brought to the Police Station, the petitioner failed to arrange sufficient number of Police Personnel for Bandobust and failed to prevent Suresh Balaji for taking the accused Santhosh Kumar outside the Police Station. The petitioner did not inform the intervention of Suresh Balaji to the Inspector of Police, Deputy Superintendent of Police



and the Superintendent of Police, Special Branch. The petitioner did not mark entries in the register maintained in the Police Station. The enquiry officer gave a report that the charges levelled against the petitioner are proved. The disciplinary authority, after considering the explanation of the petitioner to the second show-cause notice, accepted the enquiry report and imposed a punishment of stoppage of increment for a period of two years which shall operate to postpone his future increments. The petitioner did not file any appeal within the time. The Mercy Petition filed by the petitioner was rejected by the first respondent. Both the petitioner and Suresh Balaji, Constable attached to the Special Branch, were responsible for the escape of accused Santhosh Kumar. Both of them have been dealt with under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955 and awarded the same punishment of postponement of increment for a period of two years with cumulative effect. Hence, the punishment imposed by the respondents is valid. While the petitioner was working as Inspector of Police from 2010, he was imposed with 6 punishments and prayed for dismissal of the Writ Petition.

9. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

10. From the materials available on record, it is seen that the petitioner was imposed with a punishment of stoppage of increment for a period of two years, which shall operate to postpone his future increments on the ground that he was responsible for escape of one accused Santhosh Kumar, while he was working as Inspector of Police in Mandapam Police Station, Ramanathapuram. On the other hand, it is the defence of the petitioner that only because of the intervention of one Suresh Balaji, Constable attached to the Special Branch, the accused Santhosh Kumar escaped. In the counter-affidavit, the respondents have stated that on 30.08.2017 at about 20.30 hours, the petitioner along with Manimaran, Training Sub-Inspector of Police and Mailaiselvan, Special Sub-Inspector of Police went to Ramanathapuram, Kenikarai - Devipattinam Road and arrested the accused Santhosh Kumar, S/o. Karuppiyah and brought him to Mandapam Police Station at about 23.00 hours. At that time, Suresh Balaji, Constable attached to the Special Branch, called the accused Santhosh Kumar to the portico of the Police Station and took photographs. Hence, a quarrel arose between the petitioner and Suresh Balaji, Constable attached to Special Branch. Taking advantage of the quarrel between the petitioner and Suresh Balaji, Constable attached to the Special Branch, the accused Santhosh Kumar escaped from the Police Station premises.

11. In the domestic enquiry, the respondents examined 8 witnesses. P.W.1 to P.W.3, who were present in the Police Station when the incident took place, deposed about the intervention of Suresh Balaji, Constable attached to the Special Branch and due to



the quarrel between the petitioner and the said Suresh Balaji, the accused Santhosh Kumar escaped from the Police Station. The learned counsel appearing for the petitioner referred to the evidence of witnesses examined in the domestic enquiry, filed in the typedset of papers, to substantiate his contention that witnesses produced by the respondents before the enquiry officer, deposed only Suresh Balaji, Constable attached to the Special Branch, is only responsible for the escape of the accused Santhosh Kumar and also the evidence of P.W.5-Deputy Superintendent of Police, who admitted that no one can enter into the Police Station and take the accused outside the Police Station without permission of the Inspector of Police. P.W.6-Inspector of Police, Special Branch, in his evidence, has stated that Suresh Balaji, Constable attached to the Special Branch, was found responsible for the escape of the accused Santhosh Kumar and he was transferred to another District. P.W.7 and P.W.8 also deposed in the same line as that of P.W.1 to P.W.3 and also deposed that there were sufficient Police Personnel at the time of incident.

12.The evidence of witnesses reveal that due to the intervention of Suresh Balaji, the accused Santhosh Kumar has escaped from the Police Station. The petitioner has stated in his affidavit that the petitioner has informed about arrest and escape of the accused from his CUG phone. The respondents have not denied the same. Further, P.W.7-Deputy Superintendent of Police in his cross-examination, has admitted that the petitioner informed about the arrest and escape of the accused to his higher officials. The enquiry officer has not properly appreciated the evidence let in by the petitioner and erroneously held that the charges levelled against the petitioner are proved. Similarly, disciplinary authority/second respondent and the first respondent have failed to consider the materials on record and erroneously accepted the report of the enquiry officer and imposed punishment. The respondents in the counter-affidavit stated that both the petitioner and Suresh Balaji, Constable attached to the Special Branch, were dealt with by the disciplinary proceedings and similar punishments were imposed to both the petitioner and Suresh Balaji. The said contention is contrary to the facts.

13.The learned counsel appearing for the petitioner produced a copy of G.O(D)No.40, Home (Police VI) Department, dated 11.01.2021, issued with regard to Suresh Balaji, in the additional typedset of papers. From the said G.O, it is seen that the punishment imposed on Suresh Balaji was reduced by the appellate authority to postponement of increment for a period of one year without cumulative effect. Further, the Government by G.O.(D)No.40, Home (Police VI) Department, dated 11.01.2021, has modified the same into that of "Black Mark". When Suresh Balaji, who was responsible for the escape of the accused Santhosh Kumar by intervening with the enquiry being conducted by the petitioner, taking him outside the Police Station,



took photographs of the accused and quarrelling with the petitioner, was awarded the punishment of "Black Mark", it is not correct to state that both the petitioner and Suresh Balaji, Constable attached to the Special Branch, were awarded same punishment. Further, as already pointed out by the enquiry officer, disciplinary authority and the first respondent have not properly appreciated the evidence let in by the respondents before the enquiry officer and erroneously held that the charges levelled against the petitioner are proved.

14.Considering all the materials in its entirety, this Court is of the view that the finding of the enquiry officer is erroneous, as the same is not based on the evidence. On the other hand, it is contrary to the evidence let in before the enquiry officer. The punishment imposed by the disciplinary authority/second respondent, which was confirmed by the first respondent based on the enquiry report, is invalid, illegal and are liable to be set aside.

15.In the result, the order passed by the second respondent, dated 13.12.2018 and the order passed by the first respondent, dated 28.06.2019 are quashed and the Writ Petition is allowed as prayed for. No costs. Consequently, connected Miscellaneous Petitions are closed. Bequest

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Director General of Police,
Office of the Director General of Police,
Chennai.
- 2.The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli District.

+1 CC to M/s.SPL GP (SR-19660[F] dated 18/06/2021)

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