



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	04.02.2021
DELIVERED ON:	08.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.8872 of 2019

and W.M.P.(MD) Nos.6890 & 6891 of 2019

(Through Video Conference)

WEB COPY

N.Premnath
Grade-I Police Constable 1817,
Armed Reserve,
Madurai District, Madurai

... Petitioner

Vs

1) The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai 600 004

2) The Commandant,
Tamil Nadu Special Office,
VI Battalion, Madurai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order of punishment imposed by the 2nd respondent in his proceedings in PR No.3/11 dated 07.07.2011 and the same being confirmed on the mercy petition by the 1st respondent vide his impugned proceedings in Rc.No.23731/AP3(1)/2014 dated 25.06.2016 and quash both and consequently direct the respondents to grant all service and monetary benefits on par with the petitioner's batch mates within the time limit that may be stipulated by this Court.

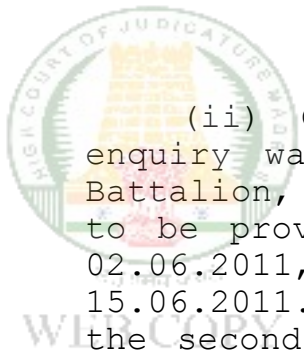
For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.P.Mahendran,
Additional Government Pleader

O R D E R

1. The brief facts of the case are as follows:

(i) The petitioner herein, while serving as a "Naik" in the Tamil Nadu Special Police (TSP), VI Battalion, Madurai, was dealt with charges in P.R. No.3/2011 under Rule 3(b) of the Tamil Nadu Police Sub-ordinate Services (Discipline and Appeal) Rules of 1955 (hereinafter referred to as the 'Rules'). He was served with a charge memo on 15.02.2011 on two charges - (i) negligence of duty and (ii) failure to keep his sub-ordinate Constables under control.



(ii) On rejection of his preliminary explanation, an oral enquiry was conducted by the Assistant Commandant II, TSP, VI Battalion, Madurai and the charges against the delinquent was held to be proved. The petitioner was served with the Minute copy on 02.06.2011, for which, he submitted his further representation on 15.06.2011. The Commandant of TSP, VI Battalion, Madurai, who is the second respondent herein, acted as the Disciplinary Authority and after consideration of the Enquiry Officer's findings and the petitioner's further representation, imposed the punishment of "*post-ponement of next increment for the period of one year with cumulative effect*", through the impugned order dated 07.07.2011.

(iii) As against the order of punishment dated 07.07.2011, the petitioner filed a petition before the Director General of Police, who is the first respondent herein, which came to be treated as a mercy petition and orders were passed under Rule 15(A)(1)(ii) of the Rules. Challenging the said order, the present writ petition has been filed.

2. At the outset, it requires to be pointed out that the order of the Disciplinary Authority, viz. the second respondent herein, is without jurisdiction, for the following reason. As stated earlier, the petitioner served as a "Naik" in the TSP, VI Battalion, Madurai at the time of delinquency under Rule 4, read with the Schedule to the Rules and the lowest Disciplinary Authority, who may impose the penalty of withholding of increments, is the Deputy Commandant of the Battalion and the Appellate Authority, against the order of the Disciplinary Authority, would be the Commandant. In the present case, the punishment of post-ponement of next increment for the period of one year with cumulative effect, was imposed by the Commandant of TSP, VI Battalion, Madurai. The consequence of the Commandant himself having acted as the Disciplinary Authority, has led to a situation whereby, the petitioner was deprived of filing an appeal against the original order of punishment before the Commandant, since the Commandant himself has acted as the Disciplinary Authority.

3. The Rules did not provide for any other form of appeal against the order of the Commandant. Apparently, the petitioner had chosen to make an appeal to the Director General of Police, since his right to the remedy of appeal was lost and therefore, he was constrained to approach the first respondent herein. The first respondent herein, in turn, had observed that the petitioner had not preferred an appeal against the order of Disciplinary Authority, which is factually not plausible since the Appellate Authority himself had acted as a Disciplinary Authority. When the petitioner had been deprived of his valuable right of appeal, the action of the second respondent in considering the Enquiry Officer's report and imposing a punishment, without any right of appeal, cannot be sustained.



4. This apart, the first respondent herein also, while dealing with the petitioner's mercy petition, had misconstrued the delinquency imputed on the petitioner. In paragraph no.7 of his order dated 25.06.2016, he had quoted the second charge to read, as if the petitioner herein has misbehaved in front of his senior officers. But, the second charge reads otherwise. The actual charge against the petitioner in this regard was that, the constable J.R.Nagarajan had attempted to harm himself and threatened his Superior Officers, who had come there on a surprise inspection. Hence, the mercy petition itself was dealt with on a misconception of the facts. On this core also, the order dated 25.06.2016, cannot be sustained.

5. For the foregoing reasons, PR No.3/11 dated 07.07.2011 passed by the second respondent is quashed. The respondents herein shall forthwith carry out the necessary corrections/ amendment in the service book of the petitioner and refund any monetary benefits, that may be due to the petitioner, forthwith.

6. It is also made clear that the respondents herein shall not quote the present disciplinary proceedings as an impediment for any of the service benefits, which the petitioner may be entitled to, including consideration for his future promotions. The writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

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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,
Kamarajar Salai,
Mylapore, Chennai 600 004

<https://hcservices.ecourts.gov.in/hcservices/>



2) The Commandant,
Tamil Nadu Special Office,
VI Battalion, Madurai.

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-3855[F] dated
08/02/2021)

Order made in
W.P. (MD)No.8872 of 2019

Dated:
08.02.2021

(DKS) CO
AP (08/02/2021) 4P 4C