

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.933 of 2014
and
M.P.No.1 of 2014

S.Loganathan

... Petitioner

Vs.

1. The Superintendent,
Central Prison, Coimbatore.

2. The Deputy Inspector General of Prisons,
Coimbatore Range, Coimbatore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the respondents in connection with the impugned order passed by the 1st respondent in Proc.No.12788/KC3/2011 dated 26.09.2012 and by the 2nd respondent in Ref.No.2737/Mu.Ou./2013 dated 03.08.2013 and quash the same.

For Petitioner : Mr.K.Venkataramani
Senior Advocate
For Mr.M.Muthappan

For Respondents : Mr.P.Kumaresan
[R1 & R2] Additional Advocate General
Assisted by
Mrs.S.Anitha
Special Government Pleader

ORDER

The minor penalty of stoppage of increment for one year without cumulative effect, imposed in the impugned order passed by the 1st respondent in proceedings dated 26.09.2012 and the Appellate order issued by the 2nd respondent in proceedings dated 03.08.2013 are under challenge in the present writ petition.

2. The petitioner was appointed as Grade-II Warder in the

year 2002. A charge memo was issued under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules against the writ petitioner in memo dated 27.08.2011, containing multiple charges for the alleged violation of Tamil Nadu Prison Manual and as well as the Government Servants Conduct Rules.

3. The petitioner submitted his explanations / objections, denying the charges and further objections on the ground that allegations are vague and made a request to mention the date and time and the place and other details regarding the allegations on 13.09.2011. On 27.09.2011, the petitioner received a reference, stating that based on the statements given by the Jail inmates of the prison, a charge memo was issued and further, the authority asked the petitioner to submit his reply within one week. The petitioner submitted a detailed representation, requesting the authorities to furnish the copies of 28 documents in order to deny his case. On 21.10.2011, the petitioner received a reply from the 1st respondent, directing the petitioner to visit the Sub-Jail and peruse all the documents within a period of 7 days in order to submit his reply. However, the petitioner again submitted a representation on 03.11.2011, insisting for the furnishing of those documents sought for by him in his earlier representation. The petitioner also submitted an application under the Right to Information Act, seeking the documents. The 1st respondent did not accepted the request of the petitioner to furnish the documents and therefore, the petitioner has not submitted his reply. The Authority Competent considered the materials available on records and imposed the punishment of stoppage of increment for one year without cumulative effect and thereafter, the petitioner preferred a Statutory Appeal before the 2nd respondent, which was also rejected by the 2nd respondent on 03.08.2013. The petitioner preferred a Review petition, which is yet to be disposed of.

4. The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended the writ petitioner elaborately submitted a representation to furnish the documents and without even furnishing the documents, the authorities have continued the disciplinary proceedings and passed the order and therefore, the order impugned is liable to be set aside.

5. The learned Senior counsel is of an opinion that, whenever charges are denied by the delinquent official, then an enquiry is mandatory even for imposing minor penalty under the rules. In other words, it is contended that even for 17 (a) charges, if the delinquent official denied the allegation, then an enquiry is to be conducted by furnishing the documents.

6. The learned Additional Government Pleader appearing on

behalf of the respondents objected the said contentions by stating that the charge memo has been initiated under Rules 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for imposing only minor penalty. The procedure contemplated under Rule 17 (a) of the Discipline and Appeal Rules are that the delinquent official will be provided with an opportunity to submit his explanations/objections on the allegations and based on the records available, the Disciplinary Authority is empowered to pass final orders in the disciplinary proceedings. In other words, summary proceedings are contemplated for imposing minor penalty. Thus, the proceedings followed by the respondents in this case are in consonance with the rules in force and therefore, the writ petition is to be rejected.

7. The charge against the writ petitioner was that on 04.07.2011, the petitioner had instigated the prisoners lodged in the Sub-Jail, Udumalai to act against the Sub-Jail administration and found in possession of pen camera when he was working in Sub-Jail, Udumalaipet and threatened the prisoners to act against the prison administration which is in violation of Rule 76(e) of Tamil Nadu Prison Rules, 1983, an act unbecoming of a Government servant. For the above conduct of the petitioner, prisoner's namely Chelladurai, Mounsamai, Masilamani, Guru @ Senthil gave a written complaint on 05.07.2011. Based on the written complaint by the prisoners, disciplinary action under Rule 17 (a) of Tamil Nadu Civil Service (Discipline and Appeal) Rules was initiated against the petitioner in memo dated 27.08.2011.

8. The respondents have further stated that an opportunity was granted to the writ petitioner to peruse all the documents. However, the petitioner has neither perused the records nor submitted his explanation. Contrarily, he was going on submitting representations only to furnish the documents. The respondents have stated that the allegations levelled against the writ petitioner is regarding threatening the prisoners to act against the administration, for which, no voluminous records are involved. Therefore, the petitioner again permitted to peruse the records in Sub-Jail, Udumalpet and to take extracts thereof in the respondent memo No.Pro.No.12788/SJ3/11, dated 21.10.2011 and thereafter, submit his explanation to the charges within 7 days. However, the petitioner submitted a representation under the Right to Information Act. Thus, the Disciplinary Authority had formed an opinion that the writ petitioner is adopting a delay tactics and he had not availed the opportunities provided to him more than one occasion to submit his explanation and to peruse the documents.

9. The learned Senior Counsel appearing on behalf of the

petitioner regarding the ground of conducting enquiry for imposing minor penalty, relied on the judgment of the Hon'ble Division Bench of this Court dated 01.04.2009 in W.P.No.26265 of 2007, wherein this Court has dealt with the case from Central Industrial Security Force (CISF). The Hon'ble Division Bench of this Court considered the Rule 34 (ix) of the Central Industrial Security Force Rules and Rule 37 (1)(b) of the said Rules. The said Rule 37(1)(b) empowers that in the event of the Disciplinary Authority so desires can order an enquiry. Therefore, the Central Industrial Security Force Rules, more specifically, Rule 37(1)(b) contemplates that "holding an inquiry, if the disciplinary authority so desires, in the manner laid down in sub-rules (3) to (22) of rule 36". Rule 36 contemplates procedure for imposing major penalties. Therefore, under the Central Industrial Security Act, 1968 and the Central Industrial Security Force Rules, 2001 contemplates, if the Disciplinary Authority so desires to conduct an enquiry even for imposing minor penalties, the procedures contemplated under Rule 36 can be followed. However, Rule 37 contemplates procedure for imposing of minor penalties. There is no such procedure contemplated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Enquiry is conducted only under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. However, Rule 17(a) contemplates Summary procedures and therefore, the said judgment of the Hon'ble Division Bench dealing with the Central Industrial Security Force Rules may not have any application with reference to Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. When Rule 17 (a) contemplates Summary proceedings for the purpose of imposing minor penalty, the enquiry cannot be directed to be considered or the said ground is to be considered for the purpose of setting aside the order of minor penalty.

10. The judgment of the Hon'ble Supreme Court of India relied on by the Division Bench of this Court in the case of O.K.Bhardwaj Vs. Union of India and Others reported in (2001) 9 Supreme Court Cases 180 also referred in the context of the Central Industrial Security Force Rules by the Division Bench and therefore, the said judgment relied on by the learned Senior Counsel for the petitioner are of no avail with reference to the facts and circumstances of the present case, more so, with reference to the procedures contemplated under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

11. This Court is of the considered opinion that in the present case, ample opportunities were afforded to the petitioner. However, the petitioner was reluctant in availing the opportunity and adopted delay tactics for the purpose of prolonging and protracting the disciplinary proceedings. Even after providing ample opportunities to submit his explanations,

the petitioner was going on insisting for furnishing of documents, despite the fact that the permission was granted to peruse the documents. Thus, the petitioner has intentionally not availed the opportunity, nor submitted his explanations and therefore, the same cannot be construed as non-providing of opportunity to the delinquent official. The minor penalty imposed is based on the procedures contemplated under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the authorities have not committed any infirmity or perversity, while following the procedures and taking a decision in the Departmental Disciplinary Proceedings. Thus, the petitioner has not established any acceptable ground for the purpose of considering the relief as such sought for in the writ petition.

12. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Jeni/Kak

To

1. The Superintendent,
Central Prison, Coimbatore.
2. The Deputy Inspector General of Prisons,
Coimbatore Range, Coimbatore.

+1cc to M/s.Muthappan, Advocate, S.R.No.43305

W.P.No.933 of 2014

SR-II(CO)
UMA(19/07/2022)