



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.NO.2786 OF 2021
AND
C.M.P.NO.18279 OF 2021

1. The Superintendent of Police,
Nagapattinam District.
2. The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.
3. The Director General of Police,
Mylapore, Chennai-4.

... Appellants/Respondents

-vs-

R.Jeevanandan
S/o.Raja
Head Constable 878
Sirkali Traffic Police,
Nagapattinam District.

... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 28.08.2018 made in W.P.No.7392 of 2014 and allow this Writ Appeal.

Prayer in W.P.No.7392 of 2014:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the respondents in connection with the impugned order passed by the first respondent in PR No.21/2010 dated 11.02.2011 and the second respondent in C.No.B2/5478/2011 dated 20.07.2011 and quash the same.



WEB COPY

For Appellants : Mr.P.Ananda Kumar
Govt. Advocate

For Respondent : Mr.K.Venkataramani,
Senior Counsel
For Mr.M.Muthappan

J U D G M E N T

S.VAIDYANATHAN, J.,
AND
MOHAMMED SHAFFIQ, J.,

This Writ Appeal has been filed, challenging the order dated 28.08.2018, passed by the learned Single Judge in W.P.No.7392 of 2014, in and by which, the imposition of enhanced punishment in the suo motu review proceedings has been set aside.

2. For the sake of brevity, the parties are referred to by their nomenclature in the Writ Petition as "Writ Petitioner and the Respondents" in this order.

Brief Facts in nutshell:

3. It is submitted by the Writ Petitioner that he was recruited as Grade-II Police Constable in the Chennai City Armed Reserve Police on 01.08.1994 and subsequently, he was transferred to the Law & Order wing in the year 1996. He was suspended from service on 07.04.2010 for allowing an accused in Crime No.32 of 2010 to escape from the lawful custody and a charge memo was issued against one Mariappan and the Writ Petitioner, who escorted the accused on the date of incident.

3.1. According to the Writ Petitioner, after enquiry, the Enquiry Officer held that the charges against the Writ Petitioner were proved and accepting the report of the Enquiry Officer, the Writ Petitioner was imposed with a punishment of postponement of increment for one year without cumulative effect by an order dated 11.02.2011. It is further submitted that though the Writ Petitioner did not prefer any appeal against the show cause notice, the 2nd respondent therein, suo motu, issued a show cause notice dated 05.05.2011 and enhanced the punishment into the one of stoppage of increment for two years with cumulative effect.

3.2. It is the case of the Writ Petitioner that the enhanced punishment imposed by the 2nd respondent is unjust and illegal and there are no valid reasons assigned for enhancement of punishment. Therefore, it was pleaded that the issuance of show cause notice is highly unsustainable and the same is liable to be set aside.



4. Learned Government Advocate appearing for the Appellants contended that on account of the carelessness and dereliction in duty, an accused, who was involved in a case in Crime No.32 of 2010 for an offence under Section 379 IPC on the file of the Medical College Police Station ran away from the custody. The delinquency committed by the Writ Petitioner was very serious in nature and since the 2nd Respondent felt that the punishment imposed was not commensurate with the misdemeanour of the Writ Petitioner, the punishment was enhanced in proportion to the act of delinquency. The Writ Petitioner, having failed to prefer any appeal against imposition of original punishment and considering the serious lapse, cannot be shown any leniency and the learned Single Judge failed to take note of the said aspect. Hence, it was prayed that the punishment imposed by way of suo motu review proceedings does not warrant any interference by this Court and the order of the learned Single Judge is to be quashed.

5. Heard the learned Government Advocate for the Appellants and the learned Senior Counsel for the Respondent and perused the material documents available on record.

6. It is seen that the Writ Petitioner, while serving in the Control Room, allowed one accused by name Dhanasekaran facing criminal charges under Section 379 IPC, to escape from the custody at the entrance of the Juvenile Home. It was alleged that the Writ Petitioner and one another Police Constable Mariappam were responsible for the escape of the accused from the entrance of the Juvenile Home. After a detailed enquiry, a punishment of postponement of increment for one year without cumulative effect was awarded accepting the report of the Enquiry Officer, the Writ Petitioner was imposed with a punishment by an order dated 11.02.2011. Thereafter, the Deputy Inspector General of Police, by exercising the suo motu powers, has enhanced the punishment.

7. It is no doubt true that power to enhance the punishment is vested with the Officer / Appellate Authority, but, it has to be certainly done following the norms. Mere calling for explanation and imposition / enhancement of punishment alone is not sufficient and the Authority concerned must pass a speaking order, after recording reasons, plea of the party, etc. In this case, a perusal of the order of the Reviewing Authority is nothing, but a non-speaking order. For the sake of convenience, the relevant portion of the order is extracted hereunder:

"4. I have gone through the minute, order, explanation to show cause notice and other connected records. The delinquent himself stated in his explanation that the accused is in the habit of



WEB COPY

frequently escaping from the escort. In such a case, the delinquent might have been very vigilant in which he failed. The explanation of the delinquent is not convincing and acceptable. Hence, I enhance the punishment into that of postponement of increment for two years with cumulative effect in commensurate to the delinquency."

8. Learned Single Judge has rightly accepted the contention of the Writ Petitioner, in addition to accepting the plea of the Writ Petitioner that the co-employee, namely, Mariappan, who also sails in the same boat, was awarded a punishment of stoppage of one increment. When both Police Officials were responsible for the accused to escape, awarding a lesser punishment to one person and the enhanced punishment to the other person amounts to discrimination. Moreover, there is no discussion in the order dated 20.07.2011, while reviewing the order of the Disciplinary Authority. Therefore, we are of the view that learned Single Judge is right in restoring the original punishment, which, in our considered opinion, is perfectly valid and does not call for any interference.

9. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ar

To

1. The Superintendent of Police,
Nagapattinam District.
2. The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.
3. The Director General of Police,
Mylapore, Chennai-4.

+1cc to M/s.M.Muthappan, Advocate, S.R.No.9797

+1cc to the Government Pleader, S.R.No.9889

W.A.No.2786 of 2021

GMR(CO)

RLP(24/03/2022)