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W.P.No.15767 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :25.07.2023

Orders Pronounced on :27.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.15767 of 2012

M.Pugalendi

... Petitioner

Vs

1. The Superintendent of Police,
Erode District, Erode.
2. The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore.
3. The Additional Director General of Police,
Law & Order, Chennai.
4. The Director General of Police,
Tamil Nadu, Chennai.

... Respondents

Prayer:– Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents in connection with the impugned orders passed by them in J2/PR120/96, dated 26.12.1996 C.No.A.P.30/D2/97 dated 03.06.1997, RC.No.AP.1(1)/262621/97 dated 09.05.1998 and RC.No.016977/AP1(1)/2010 dated 20.03.11.



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For Petitioner : Mr.K.Venkatramani, Senior Counsel
For Mr.M.Muthappan

For Respondents : Mr.Dr.T.Seenivasan,
Special Government Pleader

ORDER

The petitioner filed the above Writ Petition in the nature of Writ of Certiorari to quash the impugned order passed by the 4th respondent and to grant notional promotion.

2. The service matrix of the petitioner are that:

(i) The petitioner was directly recruited as a Sub-Inspector of Police in the year 1987 and appointed to service on 28.09.1987. Promoted as Inspector of Police on 08.02.2001.

(ii) While the petitioner was serving in Dharapuram Police Station, he was dealt with on a charge in PR.No.120/J2/1995 u/r 3(a) of TNPSS (D&A) Rules, 1955 for the following delinquencies.

(a), (b) & (c) Gross neglect of duty in not investigating the cases properly, promptly and in not writing Case Diaries and submitting final reports in the court in time in the cases investigated by him during the period from 15.03.1994 to 05.05.1995, by his Head Constable from 07.04.1993 to 05.05.1995 and his predecessors from 07.11.1993 to 05.05.1995.



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(iii) Resulted in award of punishment of censure and appeal was dismissed by the second respondent and Review was dismissed by the third respondent. Mercy Petition was also dismissed by the fourth respondent and hence the Writ Petition.

3. The sum and substance of the counter is that it is the bounden duty of the station House Officer (i.e., Sub-Inspector of Police) to investigate the cases reported in his Police Station limits and pending at the time of his tenure period also and to submit case diaries. It is also the duty of Station House Officer to peruse the investigation daily and submit the final reports within the time prescribed. If any misunderstanding exist between the petitioner and Inspector of Police, Dharapuram Circle, it would have been informed to the Higher Officials.

4. Heard both sides and perused the materials available on records.

5. The learned Senior Counsel appearing for the petitioner contended that he could advance the argument only on the legality not on facts and further contended that once a delinquent denied the charges, the Department has appointed a Enquiry Officer. The Enquiry Officer had chosen to submit a report without holding the enquiry and

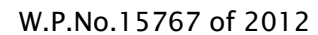


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hence it is same is bad in law. Enquiry has to be conducted and copy of the enquiry report has to be furnished and hence it vitiates the enquiry proceedings relied upon the judgment of this Court in W.P.No.26265 of 2007, dated 01.04.2009.

6. Per contra, the learned Special Government Pleader contended that on the date of issuance of charge memo under Section 3(a) of the Tamil Nadu Police Standing order, the petitioner herein had too deferred censure and in view of the issuance of charge memo, they become operational. Consequently, he has to suffer punishment in censure and hence his name could not be included in the panel as on 01.06.1997. Since the deferred censure came into force on 26.12.1996 and hence he was promoted only in the year 1999–2000.

7. The learned Senior Counsel for the petitioner contended that the subject matter of punishment namely censure is to be set aside and the petitioner is entitled for notional promotion for the period 1998 and 1999 and the petitioner is satisfied even if one increment in pension consequent therefor is given.



9. Yet another point is that he has taken a specific stand that confirmation of outstanding deferred punishment or cancellation of the same is to be considered only at the time of passing of final orders on the minutes drawn on any subsequent charges and that too if the charges are held has proved and definitely not on a same framing of charge itself during the period of deferment of punishment and hence operation of the earliest punishment of censure mere framing of charge memo does not arise.

10. The copy of the enquiry report was not served to the petitioner and hence, I find that ratio laid down in the above said Writ Petition No.26265 of 2007 as squarely applicable to the facts and circumstances of this case.



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11. In this regard, it remains to be stated that when the charges are denied, denial of the same must necessarily be presumed as one of placing the burden of proving the charges on the respondents. Though a right is conferred on the disciplinary authority to order enquiry if he is satisfied on the facts of the case. Enquiry is a bare minimum for a delinquent to expect from the employer before he is inflicted with the penalty, even in case of minor penalty. The principles of natural justice means "fair play in action" and the requirement of natural justice depends upon the facts of each case.

12. In the instant case, the second show cause notice before infringement punishment was not issued. The question of affording opportunity even for imposition of minor penalty came up for consideration before this Court in W.P.No.34587 of 2005 dated 01.04.2009 and this Court, following the judgment of the Supreme Court in O.K.Bhardwaj V. Union of India and others, 2002 SCC (L&S) 188, held that such an enquiry is mandatory, where the charges are refuted by the delinquent, and remitted the matter to the authorities for conduct of enquiry and thus I find that when an explanation of refutation of charges was not accepted and enquiry was taken up and finding were rendered in the impugned order holding the charges are proved. The



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copy of the enquiry report necessarily have to be supplied to the delinquent. Further, the second show cause notice before imposition of penalty, though minor in nature is mandatory not a empty formality to dispense with.

13. In my considered view, it is definitely a procedural lapse which could defeat the valuable right of a delinquent employee to establish his case as to the imputation.

14. For non furnishing of the copy of the enquiry report and non issuance of the second show cause notice before levy of punishment, the impugned order has to be necessarily interfered with. Consequently the impugned order as stated supra is hereby set aside. The petitioner is already retired from service and therefore he is entitled for notional promotion.

15. Has submitted by the learned Senior Counsel for the petitioner the "deferred censure" has become absolute censure during the period 1996 and therefore of the crucial date on 01.06.1997, he is not entitled to be included in panel for 1997-1998. However, he is entitled to be included in the panel for the year 1998-1999 since he has already retired from service, I am of the considered view that the notional



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promotion in the service records be given. However he is not entitled for any monetary benefit for the notional promotion during service period. However a increment in the pension be added which will meet the ends of justice.

16. In the result, this **Writ Petition is allowed** and the impugned order is set aside and there shall be a positive direction to the official respondents to give one increment in the pension benefits of the petitioner within a period of six weeks from the date of receipt of a copy of this order. No costs.

27.07.2023

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Index:Yes/No

Neutral Citation : Yes/No

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RMT.TEEKAA RAMAN,J.,

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