



WEB COPY



WP.No.16183 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P. No.16183 of 2015

K.Prabhakaran

... Petitioner

Vs

1.Additional Director General of Police,
Law & Order,
Chennai 600 004.

2.Deputy General of Police,
Villupuram Range,
Villupuram

3.Superintendent of Police,
Cuddalore District,
Cuddalore.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 2nd respondent herein in his proceedings Range Order No.374/2013, Na.Ka.No.B2/PR 13/2013 dated 3.10.2013 and confirmed by the first respondent herein in his proceedings Rc.No.204239/AP.I(2)/2013 dated 13/11/2014 and quash the same and consequently direct the respondents to reinstate the petitioner into service together with all consequential service and monetary benefits.



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For Petitioner : M/s.Bala and Daisy
For Respondents : Mr.V.Veluchamy
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 03.10.2013 passed by the second respondent, thereby passed an order of dismissal from service and the same was confirmed by the first respondent by an order dated 13.11.2014.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

3. The petitioner had joined the Police Services as directly recruited Sub-Inspector of Police on 28.09.1987. Thereafter, he was promoted to the post of Inspector of Police in the year 2001. While being so, on 09.11.2011, he was issued with a charge memo consisting four charges. Without being satisfied with the explanation submitted by the petitioner, the Disciplinary Authority ordered for an enquiry. The Enquiry Officer conducted enquiry and concluded that except the first charge, other three charges were proved. Based on the enquiry report,



the second respondent passed final order, thereby the petitioner was dismissed from service. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and the order passed by second respondent was confirmed.

4. The learned counsel appearing for the petitioner would submit that the second respondent passed an impugned order taking into consideration the previous punishment imposed on the petitioner. When the second respondent intended to rely upon the previous punishment, it should be stated in one of the charge. That apart, there was no whisper about the previous punishment imposed on the petitioner and it cannot be considered, while imposing capital punishment. He further submitted that the charges 1 to 4 are one and the same for not taking any action against the criminals who sold band ganja. When the first charge was not proved, the fourth charge also ought to have been concluded as not proved, since there was no evidence to prove the charges. Further, the second show cause notice did not contain the details of the previous punishments which were to be considered for passing final order. Therefore, the petitioner was not given an opportunity to putforth his defence in respect of previous punishment to be imposed.

5. In support of his contention, he relied upon the Judgment



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reported in *AIR 1964 SC 506* in the case of *State of Mysore*

Vs.K.Manche Gowda, in which the Hon'ble Supreme Court held that the

second show cause notice does not mention that the Government intended to take his previous punishments into consideration in proposing to dismiss him from service. It is further held that the doctrine of “presumptive knowledge” or that of “purposeless enquiry”, as their acceptance will be subversive of the principle of “reasonable opportunity”. It is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.

6. He further relied upon the Order of this Court in *W.P.No.12354 of 2020* in the case of *T.Sarath Kumar, Vs. Director General of Police and others*, in which this Court held that the delinquent was not given any notice informing that the Disciplinary Authority had intended to take into consideration his past conduct and earlier punishments for imposing the punishment of dismissal from



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service and asking him to give explanation to that extent. Therefore, the order of dismissal was set aside and the matter was remitted back to the revisional authority for fresh disposal.

7. He also relied upon the Judgment of this Court in ***W.P.No.11223 of 2012*** in the case of ***D.Nagalingam Vs. The Secretary to Government, Home (Police-VI) Department, Chennai – 9***, in which this Court held that there is nothing to indicate that the respondents intended to take the previous absence of the petitioner for consideration while proposing to award punishment of dismissal from service. While awarding punishment of dismissal from service, the authority concerned had taken into account the past records without giving an opportunity to the petitioner.

8. On perusal of the records revealed that the following charges were framed as against the petitioner.

“(1) Gross dereliction of duty in not taking any action against Ganja sellers Madumutti @ John Peter of Periyakollai Colony, Senthil Raja of Kilangadu and Baskar of Periya Nellikollai and allowing them to carry on their trade, though you were instructed to take action



against them in S.B.Memos and as a result of your lethargic attitude, a special party arrested all the three accused and registered cases in Sethiyathope P.S. Cr.No.403/10 & Cr.No.404/10 u/s.20(b)(1) of N.D.P.S.Act.

(2) Reprehensible conduct in having failed to register cases on 02.09.2010 in connection with a clash that occurred between two groups at Mugantheriyankuppam, even though you sent police personnel to the spot in a police vehicle and you were aware that injured persons were admitted to hospital and thereby allowed delayed registration of case upto 05.09.2010.

(3) Reprehensible conduct in having foisted a case against one Muthaiyan, S/o. Somsundaram of Mugantheriyankuppam in Sethiyathope P.S. Cr.No.480/10 u/s. 147, 148, 294(b), 324, 323 of IPC and instructed the S.I. Of Police, Sethiyathope P.S. To effect illegal arrest and to remand him, who was not at all involved in the case on the instigation of one Thattanodai Ravi, even when the investigation was not commenced and it was in F.I.R. Stage.

(4) Failure to take action against the sellers of Ganja and C.Ds inspite of instructions through five



*memo's of Special Branch with list of persons involved,
and having failed to submit your reply.”*

9. The Enquiry Officer conducted enquiry and held that the first charge was not proved and other charges were proved. On perusal of the enquiry report, the second respondent issued show cause notice dated 30.07.2013 annexing with the enquiry report dated 16.07.2013. On receipt of the same, the petitioner submitted an explanation dated 13.09.2013 and on receipt of the same, the second respondent passed final order, thereby removed the petitioner from service. All the charges were not pertinent to the previous punishments imposed on him. All were new set of charges. The second respondent discussed about the enquiry report and the explanation submitted by the petitioner and passed final order. In the last paragraph of the final order before conclusion the reason for capital punishment was stated i.e., already the petitioner was given opportunity to correct his mistakes on so many occasions and even then, the petitioner failed to correct the mistake committed by him and as such, he is liable to be punished with capital punishment. Therefore, the punishment of removal from service was not based on the previous punishments imposed on the petitioner. Hence, the second show cause



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notice issued to the petitioner need not contained the previous punishments imposed on the petitioner, since it was not a reason for capital punishment of removal from service. Therefore, the capital punishment is not applicable to the case on hand.

10. On perusal of the charges and the report of the Enquiry Officer revealed that the first charge was not proved on the ground that the disciplinary authority failed to mark the memos issued by the communications to the petitioner with regard to drug pedlar in order to take appropriate action against him. The fourth charge also relates to non-taking action against the drug pedlar who is involved in the sale of Ganja. The said charges were not proved with all materials. Therefore, the second respondent rightly imposed the punishment of removal from service and the same was also confirmed by the first respondent in appeal.

11. The Disciplinary Authority agreed with the findings of the Enquiry Officer and passed order of punishment. Whereas, the evidence has been accepted by the Disciplinary Authority. In exercising the power of Tribunal, High Court could not interfere with the findings of facts



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rendered by revisiting the evidence as if the Courts are the Appellate Authority. Therefore, the power to review ultimately vests strictly with the tribunal and it is not that of the Appellate Authority.

12. Therefore, this Court finds no disproportionate of punishment was imposed by the first and second respondents herein. Therefore, this Court finds no infirmity or illegality in the order passed by the second respondent. Thus, the writ petition is devoid of merits and is liable to be dismissed. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs.

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Index:Yes/No
Internet:Yes/No

G.K.ILANTHIRAIYAN,J.

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To

WEB COPY

1.The Additional Director General of Police,
Law & Order,
Chennai 600 004.

2.The Deputy General of Police,
Villupuram Range,
Villupuram

3.The Superintendent of Police,
Cuddalore District,
Cuddalore.

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