



W.P.No.35730 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.35730 of 2005

K.Suthanthirarajan

... Petitioner

Vs.

1.The Superintendent of Police,
Cuddalore District

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

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records of the respondents in connection with the impugned order passed by the first respondent in C.No.H2/PR 45/03 u/r 3(a) dated 03.07.2003 and confirmed by the second respondent in C.No.B3/A.P./61/2003 dated 02.09.2003 and to quash the same.



WEB COPY



W.P.No.35730 of 2005

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

For Respondents : Mr.L.S.M.Hasan Fizal,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 03.07.2003, thereby imposed punishment of postponement of next increment for a period of one year without cumulative effect and the order passed by the second respondent dated 02.09.2003, thereby confirmed the order of the first respondent.

2. The petitioner had entered into service as a directly recruited Sub-Inspector of Police on 28.09.1987. Thereafter he was promoted as Inspector of police on 28.09.2002. While he was serving as Inspector of Police, Prohibition Enforcement Wing in Cuddalore from 04.09.2002, the petitioner was served with charge memo in PR.No.45 of 2003 dated 15.03.2003, which reads as follows:



W.P.No.35730 of 2005

WEB COPY

"highly reprehensible conduct in not strictly enforcing Tamilnadu Prohibition Act, 1937 as seen with the detection of cases by the Special party led by the Superintendent of Police, Cuddalore district at Samattikuppam of Kullanchavadi P.S. Limits on 8.3.03 vide Kullanchavadi P.S. Crime No.113, 114/2003 u/s 4 (1)(b) and 4(1-A) TNP Act, 1937.

On receipt of the same, the petitioner submitted a detailed explanation on 10.04.2003. Without satisfying with the explanation submitted by the petitioner, an enquiry officer was appointed to conduct enquiry. However, no witness was examined on the side of the disciplinary authority. The documents which were annexed along with the charge memo were relied upon by the enquiry officer and also the explanation submitted by the petitioner, the enquiry officer had drawn up a minute as enquiry report and held that the charges proved. Even then, the enquiry report was not furnished to the petitioner and based on the findings of the enquiry officer, he was imposed punishment of postponement of his next increment for a period of one year without cumulative effect by an order dated 03.07.2003. Aggrieved by the same, the petitioner preferred appeal



W.P.No.35730 of 2005

before the second respondent and the same was also dismissed and confirmed the punishment imposed by the first respondent.

3. Mr.K.Venkatramani, the learned Senior Counsel appearing for the petitioner submitted that the first respondent passed final order without any reasoning by non-speaking order. The second respondent is being appellate authority also passed non-speaking order without any discussion regarding the explanation submitted by the petitioner for the charges. There is no discussion with regards to adequacy or inadequacy of punishment. Therefore, the order of confirmation passed by the second respondent is in violation of rule 6(3) of Tamilnadu Police Subordinate Services (Discipline and Appeal) Rules. The petitioner was not given any opportunity to appear before the enquiry officer and no witness was examined on the side of the disciplinary authority as well as on the side of the delinquent i.e. the petitioner herein. Therefore it is violation of principles of natural justice. Even after enquiry, the petitioner was not served with any enquiry report and he was not issued any show cause notice. Though the charge issued under Rule 3(a) of Tamilnadu Police



W.P.No.35730 of 2005

Subordinate Services (Discipline and Appeal) Rules and it is summary proceedings, no enquiry was conducted and the petitioner was not given opportunity to appear before the enquiry officer to put forth his defence.

4. The respondents filed counter and Mr.L.S.M.Hasan Fizal, the learned Additional Government Pleader submitted that the petitioner acknowledged the charge memo and he submitted explanation. After analysing the explanation and prosecution documents, the enquiry officer held the charges proved and submitted its minutes. Based on the proved minutes, the petitioner was awarded punishment. The appeal was also dismissed by the appellate authority and the punishment was awarded as per the Rules. As such, there was absolutely no illegality in the orders passed by the respondents.

5. Heard, Mr.K.Venkatramani, the learned Senior Counsel appearing for the petitioner and Mr.L.S.M.Hasan Fizal, the learned Additional Government Pleader appearing for the respondents.



W.P.No.35730 of 2005

WEB COPY

6. The learned Senior Counsel appearing for the petitioner relied upon the judgment of the Hon'ble Division Bench of this Court in the case of ***C.K.G. Nathan Vs. Assistant Commandant Central Industrial Security Force, CISF Unit, CPCL, Manali, Chennai and Another*** reported in ***(2009) 5 MLJ 1121***, wherein the Honorable Division Bench of this Court held that the disciplinary authority is duty bound to consider the imputation of the misconduct or misbehaviour committed by the delinquent officer, the explanation offered by him and the relevant records to satisfy himself as to whether an enquiry, is necessary or not in terms of Rules. When the delinquent specifically refutes the charges, the following *Rationes Decidendi* drawn up by the Hon'ble Division Bench of this Court:

I. "Even in case where the rules do not make a provision for enquiry in cases where minor penalties are imposed, nevertheless, the compliance of the principles of natural justice may be required and the non compliance may vitiate the order. It depends upon the facts of each case. In the event the charges are very minor and the order imposing minor penalty merely refers to the charge without



WEB COPY



W.P.No.35730 of 2005

adversely imputing anything about the delinquent employee, the failure to conduct an enquiry will not vitiate the order. However, the same cannot be the general rule. In case if the charges are serious in nature and nevertheless the employer proceeds to follow Rule 37 of the Central Industrial Security Force and the order of punishment contains certain adverse imputation, remarks or even comments on the delinquent employee which may be considered as a stigma or which may be likely to affect his reputation in the eye of public, certainly the failure to conduct enquiry by giving an opportunity to such delinquent employee would vitiate the order for non compliance of the principles of natural justice. This principle also applies to the case where charges are minor, nevertheless some imputations/observations are made against the delinquent. The test to decide whether an enquiry is required or not is not the mere fact of minor penalty is imposed, but the nature of charges, the nature of observations or findings of the disciplinary authority while passing final orders of penalty.'

II. "An enquiry is mandatory, where the charges are refuted by the delinquent."



W.P.No.35730 of 2005

WEB COPY

7. Thus, it is clear that the principle also applies to the case where charges are minor, nevertheless some imputations/observations are made against the delinquent. The test to decide whether an enquiry is required or not is not the mere fact of minor penalty is imposed, but the nature of charges, the nature of observations of finding of the disciplinary authority while passing final orders of penalty. Further, an enquiry is mandatory where the charges are refuted by the delinquent.

8. In the case on hand, the petitioner categorically refutes the charges framed against him by detailed representation. In fact, the disciplinary authority appointed enquiry officer. The enquiry officer did not call upon any party, neither the delinquent nor the presenting officer to adduce any evidence. The enquiry officer, on the basis of the charge along with the documents which were annexed and the explanation submitted by the delinquent, prepared minutes in the form of enquiry report and submitted before the disciplinary authority. On the strength of the minutes, the disciplinary authority imposed punishment on the petitioner without even giving any opportunity to submit his explanation.



W.P.No.35730 of 2005

Therefore, the above judgment is squarely applicable to this case and the entire disciplinary proceedings is vitiated.

9. The learned Senior Counsel also relied upon the judgment of this Court in the case of ***Nawabkhan Vs. Superintendent of Police, Chengai MGR East District, Chennai and another*** reported in (2008) 7 ***MLJ 1275***, wherein this Court laid *Rationes Decidendi* as follows:

I. *"Holding an employee liable for the charges levelled against him on the basis of his explanation and documentary evidence, without conducting any enquiry, would result in injustice to him and is not justified."*

II. *"When the enquiry officer is not the disciplinary authority, the delinquent employee has got a right to have a copy of the report of the enquiry officer before the disciplinary authority arrives at a conclusion with regard to the guilt or innocence of the delinquent in respect of the charges levelled against him. Denial of right to the employee to have the copy of the enquiry report would definitely amount to denial of reasonable opportunity and violation of the principles of natural justice."*



W.P.No.35730 of 2005

WEB COPY

10. As stated supra, the petitioner was not given any opportunity to appear before the enquiry officer and he was not given any opportunity to adduce evidence to defend the charge. Even the minutes submitted by the enquiry officer was not served on the petitioner and he was not called upon to explain for the minutes submitted by the enquiry officer. Therefore, it is violation of principles of natural justice and the said judgment is squarely applicable to the case on hand and the entire disciplinary proceedings cannot be sustained and it is liable to be quashed.

11. Further, the Appellate Authority i.e. the second respondent failed to give any independent reasons for coming to the conclusion on that the charge against the petitioner had been proved. The Appellate Authority mechanically confirmed the order passed by the first respondent without any discussion by non speaking order. In the case of an appeal against an order of penalty, the appellate authority shall consider (a) whether the facts on which the order was based have been established (b) whether the facts established offered sufficient ground for taking action and (c) whether the penalty is excessive, adequate



W.P.No.35730 of 2005

or inadequate and after such consideration shall pass orders as it thinks, proper. The Appellate Authority i.e. the second respondent failed to state any reason on the crucial question as to whether the findings of the first respondent were unwarranted by the evidence on record. The Appellate Authority also failed to state that whether the penalty imposed was adequate or justified in the facts and circumstances of the case. Therefore the order passed by the second respondent is in violation of the rules relating to disposal of the appeal.

12. In view of the above discussion, the impugned orders passed by the first respondent in C.No.H2/PR 45/03 u/r 3(a) dated 03.07.2003 and confirmed by the second respondent in C.No.B3/A.P./61/2003 dated 02.09.2003 are quashed and the writ petition is allowed. It is made clear that the petitioner is entitled to monetary benefits, if any. There shall be no order as to costs.

25.08.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
lok



WEB COPY



W.P.No.35730 of 2005

G.K.ILANTHIRAIYAN, J.

lok

To

- 1.The Superintendent of Police,
Cuddalore District
- 2.The Deputy Inspector General of Police,
Villupuram Range, Villupuram
3. The Government Advocate,
High Court, Madras.

W.P.No.35730 of 2005

25.08.2023