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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.6348 of 2023

and

W.M.P.No.6386 of 2023

M.Kumaravelu

... Petitioner

Vs.

1.Government of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Home Department,
Fort St. George,
Chennai 600 009.

2.The Superintendent of Police,
Thiruvallur District,
Thiruvallur District.

... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 23.10.2020 bearing G.O.(2D).No.260, Home (Pol.2) Department and the order of the 1st respondent dated 05.09.2022 bearing G.O.(2D).No.362, Home (Police-2) Department as illegal, arbitrary and contrary to law and consequently direct the respondents to pay the monetary value of the increment for one year to the petitioner.



For Petitioner : M/s.Balan Haridas

For Respondents : Mr.P.Kumaresan
Additional Advocate General
Assisted by Mrs.V.Yamuna Devi
Special Government Pleader

ORDER

The petitioner herein while serving as Deputy Superintendent of Police under the respondents / Department, was levelled with three charges through a charge memo dated 16.05.2017 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. The sum and substances of the three charges are as follows;

1. (a) The first charge is to the effect that the Investigation Officer, namely one Mr.Surendra Kumar, had not arrested the real culprits in Crime No.36 of 2015, which aspect was failed to be effectively monitored by the petitioner herein Mr.M.Kumaravelu, Deputy Superintendent of Police and therefore, there was a dereliction of duty. (b) The second charge is that in view of the failure on the part of the Investigation Officer Mr.Surendra Kumar to arrest the real culprits in Crime No.36 of 2015 and the consequential



failure on the part of the petitioner herein to monitor the investigation effectively, he was responsible for transfer of investigation in Crime No.36 of 2015 to the Crime Branch-Criminal Investigation Department (CBCID). (c) The third charge is that the petitioner had received a sum of Rs.1,00,000/- as bribe for not arresting the real accused.

2. On the basis of the levelled charges, an enquiry was conducted in which the charges one and three were held as not proved. However, the second charge alone was held to be proved. Not being satisfied with the further explanation rendered by the petitioner to the Enquiry Officer's report, the Disciplinary Authority had imposed punishment of stoppage of increment for a period of one year without cumulative effect through the impugned order in G.O.(2D).No.260, Home (Police.2) Department dated 23.10.2020. On the review petition filed by the petitioner herein, the order came to be confirmed by the Government in G.O.(2D).No.362, Home (Police.2) Department on 05.09.2022. These two orders are under challenge in the present writ petition.



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3. The learned counsel for the petitioner has submitted that since the second charge is a consequential charge to the first charge, the findings of the Enquiry Officer holding the second charge has proved, while the first charge was not proved is vitiated and this aspect was not considered by the Government also. Hence the impugned punishment order as well as the order in Revision cannot be sustained.

4. The learned counsel for the petitioner also submitted that together with the petitioner herein, the Investigation Officer Mr.Surendra Kumar, Inspector of Police, was also levelled with similar charges and while punishment of censure was awarded to him, the respondents have awarded a greater punishment of stoppage of increment and in view of the disparity in these two punishments, the petitioner is entitled to succeed.

5. Per contra, the Additional Advocate General appearing on behalf of the respondents placed the reliance on the averments in the counter affidavit and submitted that during the investigation, the de-facto complainant had identified the real culprits involved in Crime No.36 of 2015 and in spite of the same, only one person among these were identified as accused and was



implicated in the crime by the Investigation Officer, which aspect was not effectively monitored by the petitioner herein. He further submitted that during the course of enquiry, due opportunities were extended to the petitioner for putting up his defence and the Disciplinary Authority had considered the further representation given by the petitioner pursuant to the enquiry report and had imposed the punishment of stoppage of increment for a period of one year without cumulative effect. He further submitted that punishment is proportionate with the levelled charges and hence no interference is required to the same.

6. I have given careful consideration to the submissions of the respective counsels appearing on behalf of the parties and before addressing the grounds raised by the learned counsels on either side, it would be relevant to point out certain procedural irregularities in the entire disciplinary proceedings, which goes to the root of the matter.

7. Among three charges levelled against the petitioner, the third charge is a charge of corruption, alleging that he had received a sum of Rs.1 Lakh as bribe for not arresting the real accused. Under Rule 4 of the Tamil Nadu Civil



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Services (Disciplinary Proceedings Tribunal) Rules, 1955, the Government is mandated to refer cases relating to officers of the State service in respect of the matters involving corruption on the part of such officers to the Disciplinary Proceedings Tribunal. Apart from the charge of corruption against the petitioner, two other charges were also levelled against the petitioner through charge memo dated 16.05.2017. Under Rule 4(2) of the Disciplinary Proceedings Tribunal Rules, the Government will be empowered to refer all these charges to the Tribunal along with the charges of corruption. However, overlooking these mandatory procedures, the petitioner was dealt with under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules alone and the Enquiry Officer also had conducted the enquiry. Thus, the very foundation of the departmental proceeding is flawed by procedural irregularity and hence, all the consequential proceedings of the order of punishment would stand vitiated.

8. The learned counsel for the petitioner submitted that the charges one and two are inter-connected and therefore, when the first charge was not proved the second one automatically requires to be held as not proved also and therefore, the enquiry report, which is the basis for the imposition of



punishment, shall stand vitiated. As pointed earlier, the first charge was to the effect of the Inspector of Police had not arrested the real accused in Crime No.36 of 2015 and this aspect was not monitored properly by the petitioner herein, who was his superior. This charge against the petitioner was held as not proved. The second charge is a continuation and consequential alleged inaction on the part of the petitioner herein. As per this charge, since the petitioner herein had failed to monitor the investigation conducted by the Investigation Officer, who had not arrest the real accused in Crime No.36 of 2015, the case came to be transferred to CBCID. I am in agreement with the stand taken by the learned counsel for the petitioner in this regard.

9. The second charge is undoubtedly a consequence to the first charge levelled against the petitioner herein. When the Enquiry Officer had found that there was no dereliction of duty in the supervision of the petitioner herein over Crime No.36 of 2015, I am unable to comprehend as to how the Enquiry Office can hold that due to the dereliction of duty in this regard, the case in Crime No.36 of 2015 came to be transferred to the CBCID. Thus, when the second charge is a consequential charge to the first charge and both being inter-connected to each other, holding the second charge as proved and the



first charge as not proved would amount to non-application of mind on the part of the Enquiry Officer. The Disciplinary Authority also had not taken this aspect into consideration, but had mechanically affirmed the findings of the Enquiry Officer.

10. Thus, in light of the findings of the Enquiry Officer holding the first charge as not proved, the second charge requires to be held as not proved only. If that be so, the consequential punishments by the Government and the subsequent order of review, cannot be sustained.

11. The learned counsel for the petitioner submitted that in view of the pendency of the disciplinary proceedings, though his name was originally found in the promotional panel for the post of Additional Superintendent of Police, his name was deferred by citing the pendency of the disciplinary proceedings.

12. Now that this Court has held that the entire disciplinary



proceedings stands vitiated and the consequential punishments cannot be legally sustained, the petitioner is deemed to have continued his service with unblemished record and therefore, he would be entitled for all the service benefits including continuity of service, which shall extend the benefit of his promotion, without reference to any disciplinary proceedings as pending on the crucial date.

13. For all these reasons, the impugned orders passed by the 1st respondent bearing G.O.(2D).No.260, Home (Police-2) Department dated 23.10.2020 and the consequential order bearing G.O.(2D).No.362, Home (Police-2) Department dated 05.09.2022 are quashed. Consequently there shall be a direction to the respondents to pass appropriate orders, extending all the service and monetary benefits to the petitioner herein, including the promotional benefits to the next higher post and place the petitioner in the seniority list of the promoted list above his immediate junior. Such orders shall be passed within a period of four (4) weeks from the date of receipt of a copy of this order.

14. With the above directions, this Writ Petition stands allowed. No



costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes

Neutral Citation : Yes

Speaking order

Note: Issue Order copy on 10.01.2024.

To

1.The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Home Department,
Fort St. George,
Chennai 600 009.

2.The Superintendent of Police,
Thiruvallur District,
Thiruvallur District.



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