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W.P.No.33318 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.333318 of 2016

S.Sivaraj

... Petitioner

Vs.

1. The Government of Tamil Nadu
rep by the Principal Secretary to Government,
Home (Prisons-2) Department,
Fort St.George, Chennai-600 009.
2. The Deputy Inspector General of Prisons, Trichy
3. The Superintendent, Central Prison, Cuddalore

... Respondents

Prayer : Writ Petition 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 of the first respondent in G.O.(2-D) No.108 Home (Prisons-2) Department dated 23.2.2016 confirming the orders passed by the second respondent in No.2613/Mu.U/2010 dated 27.10.2010 and the orders passed by the third respondent in No.15187/Po-1/2009 dated 2.8.2010 and quash the same orders and direct the respondents to reinstate the petitioner in service with attendant consequential benefits.

For Petitioner : M/s Arasu Sanga Tamil
and R.L.Vetrivel

For Respondents : Mr.K.H.Ravikumar
Government Advocate



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ORDER

The petitioner herein, while serving as Male Nursing Assistant in Central Prison at Cuddalore, was levelled with certain charges, through Charge Memo dated 18.11.2009, alleging that he had concealed contra band (ganja) on his self and had transferred the same to the prisoner and apart from that another allegation that there was Rs.500/- in his pocket, which was seized by the investigation team.

2. On the basis of the levelled charges, the petitioner was subjected to enquiry and in the enquiry report dated 01.04.2010, the charges against him were held to be proved. The petitioner had submitted his further explanation on 28.04.2010 to the enquiry report. However, the disciplinary authority, through order dated 02.08.2010, had imposed punishment of dismissal from service. As against the order of dismissal, the petitioner preferred an appeal on 01.09.2010 before the second respondent herein. In the appeal, the petitioner had raised several grounds, questioning the enquiry report as well as the proceedings. The petitioner had stated that due opportunity was not extended to him during the course of enquiry. This apart, the petitioner had stated that the key witness to the delinquent was not examined by the respondents and therefore, the enquiry



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itself was vitiated. The second respondent, herein, however, rejected the petitioner's appeal on 27.10.2010. Further, a revision preferred by the petitioner before the first respondent herein was also rejected on 23.02.2016. Challenging the orders of punishment, appeal and the revision, the present writ petition has been filed.

3. As stated above after the disciplinary authority had imposed the punishment of dismissal from service on 02.08.2010, the petitioner preferred an appeal on 01.09.2010. In the appeal, several grounds were raised against the enquiry proceedings as well as the order of the disciplinary authority. However, the second respondent herein, while passing the order on 27.10.2010 had merely observed that the petitioner had admitted the charges levelled against him during the course of enquiry and that since he had stated that there are no witnesses on his side during the course of enquiry, his present request for denial of witnesses during the course of enquiry cannot be accepted. Apart from such observation, there is no independent finding by the appellate authority with regard to the grounds raised by the petitioner touching upon the conduct of the enquiry as well as the order of the disciplinary authority.

4. Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal)



Rules, 1955 provides for the procedure to be adopted by the appellate authority to deal with an appeal petition. As per the said Rule, “ *In the case of an appeal against an order imposing any penalty specified in Rule 8 or 9, the appellate authority shall consider whether the facts on which the order was based has been established; whether the facts established afford sufficient ground for taking action and whether the penalty is excessive, adequate or inadequate.*” Thus, the duty cast upon the appellate authority while dealing with the appeal is that he should come to an subjective satisfaction that the punishment was based on the established facts before the disciplinary authority. In other words, the appellate authority ought to have dealt with the findings of the enquiry officer in detail as well as answer the grounds raised by the petitioner and so also the order of punishment by the disciplinary authority before passing final orders in the appeal.

5. In the instant case, the second respondent herein, had not complied with any of these requirements of Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 while dismissing the petitioner's appeal. As such, the order itself could be said to be a non-speaking order, which cannot be sustained in law.



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6. In view of the violation of the Rule it would be appropriate that the matter may be remitted back to the second respondent herein for re-consideration. In this background, the subsequent order passed by the first respondent in the revision is liable to be set aside.

7. Learned counsel for the petitioner submits that after the order was passed by the second respondent in the appeal, the criminal court had dealt with the set of charges identical to those that were levelled in the disciplinary proceedings and has acquitted the petitioner through a judgment dated 19.12.2012 in C.C.No.71 of 2011. Since the judgment of acquittal was not available when the appellate authority had dealt with the matter, the petitioner could be granted liberty to file additional grounds touching upon the judgment of acquittal of the criminal court.

8. In the light of the above proceedings, the impugned order passed by the second respondent dated 27.10.2010 as well as the order of the first respondent in G.O.(2-D) No.108 Home (Prisons-2) Department dated 23.2.2016 are set aside and the matter is remitted back to the second respondent herein for reconsideration. The petitioner is at liberty to raise additional grounds limited to those that find place in the judgment of acquittal



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in C.C.No.71 of 2011 dated 19.12.2012 within a period of fifteen days from the date of receipt of a copy of this order and thereafter, the second respondent herein shall consider the petitioner's original appeal dated 01.09.2010 together with the additional grounds raised, if any, and pass a speaking order, by following the procedure contemplated under Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal), 1955, within a period of three months.

9. With the above direction, the writ petition is disposed of. No costs.

23.01.2023

Speaking/Non-speaking order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes/No

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M.S.RAMESH,J.

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