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W.P.No.28889 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.28889 of 2022
and
W.M.P.No.28181 of 2022

M.Elancheran

...Petitioner

Vs.

1.The Commandant,
TSP XIII Battalion,
Poonamallee, Chennai – 600 056.

2.The Deputy Inspector General of Police,
Armed Police, Chennai - 600 010.

3.The Director General of Police,
Head of Police Force,
Tamil Nadu, Chennai - 600 004.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in connection with the impugned order passed by him in A4/PR No.17/2019 under Rule 3(b) dated 04.09.2009 and confirmed by the third respondent in RC No.001628/AP.3(1)/2021 dated 22.06.2022 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.



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For Petitioner : Mr. K.Venkataramani, Sr. Counsel
for Mr.M.Muthappan

For Respondents : Mrs.V.Yamuna Devi, SGP

ORDER

The petitioner was implicated with certain charges under Rule 3(b) of the Tamil Nadu Police Sub-ordinate Service (Discipline & Appeal) Rules, 1955 [hereinafter referred to as "TNPSS (D & A) Rules"]. The gist of charge against the petitioner was that he was involved in a criminal case for the offences under Sections 3(2)(a), 3(2)(b), 4(1) and 5(1)(a) of the Immoral Traffic (Prevention) Act, 1956. In the statement of allegations, it is stated that the petitioner, who held the post of Police Constable, had remained on unauthorised absence for about six months and had taken Bethel Lodge on lease and had been acting as a Manager there. When a raid was conducted in the lodge on 04.05.2019, it was found that there were immoral traffic activities in the said lodge involving the petitioner also and hence he was arrested and a case in Cr.No.83 of 2019 was registered against him. The petitioner was placed under suspension by the first respondent on 05.05.2019 and he was dealt with the charges under Rule 3(b) of the TNPSS (D & A) Rules



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which was served on him on 06.06.2019. An oral enquiry was conducted and the petitioner was given reasonable opportunities to defend his case, but however the petitioner had failed to cross examine the prosecution witnesses during the course of enquiry or submit his explanation. In this background, the enquiry officer held that the charges against the petitioner was 'proved' and accordingly, he was awarded the punishment of removal from service through an order dated 04.09.2019. The petitioner did not prefer any appeal against the original order of punishment and hence the Deputy Inspector General of Police (Armed Force) had *Suo-moto* reviewed the order of punishment and confirmed the same on 14.11.2019. The petitioner's criminal case had ended in acquittal through a judgment in C.C.No.1 of 2020 dated 10.11.2021. In this background, the petitioner had given a representation to the Director General of Police, Chennai on 23.12.2021, with a request to reinstate him back into service in view of the judgment of the Criminal Court acquitting him from the charges. The third respondent herein had however rejected the petitioner's request through an order dated 22.06.2022. Both the orders of the disciplinary authority, as well as the third respondent herein, are put under challenge in the present Writ Petition.



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2. The learned Senior counsel for the petitioner predominantly raised grounds to the effect that the enquiry was conducted ex-parte and no notice of enquiry was served on the petitioner, nor any opportunity was given to him during the course of enquiry. He also submitted that the petitioner had preferred a petition to the third respondent seeking for review of the order of punishment and the same was considered under Rule 15A(1)(ii) of the TNPSS (D & A) Rules, in which the ground of acquittal has not been addressed by the third respondent herein.

3. Per contra, the learned Special Government Pleader vehemently opposed the submissions and stated that the charges against the petitioner, who is a member of the Uniformed Services, are very serious in nature. She stated that due opportunity was extended to the petitioner during enquiry and that the petitioner was also absconding at the time of enquiry on most occasions. This apart, she had submitted that since the charges against the petitioner had been proved, the punishment of removal from service is proportionate to the serious charges against him. Insofar as the order passed by the third respondent herein dated



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22.06.2022 is concerned, she submitted that since the petitioner had not preferred any appeal, the original punishment order was *Suo-moto* reviewed by the Deputy Inspector General of Police and since the order of the third respondent was treated only as a Mercy Petition, there is no infirmity in the rejection.

4. I have given careful consideration to the submissions made by the respective counsels.

5. So far as the petitioner's plea that he was not served with the notice of enquiry which has disabled him to participate in the oral enquiry is concerned, the petitioner's own affidavit filed in support of the petition in this regard is contrary to such a submission. In para 10 of his affidavit, he has stated that since he was implicated in the criminal case, he could not reside in his native place and he was forced to stay away from his native village. Further, due to financial difficulties, he could not attend the oral enquiry and moreover, he was facing a criminal case which was under trial before the Additional Mahila Court, Nagapattinam in C.C.No.1 of 2020. He was also on conditional bail and could not move out of Nagapattinam. In para 11, he claimed that he had



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informed the enquiry officer to conduct the disciplinary proceedings after completion of the criminal case. In para 12 of the affidavit, he had reiterated that he did not reside in his native place on account of insult and shame by his family members. In para 13, he has admitted that he was not informed to be present in the village for serving the notice of hearing. All these averments in the affidavit categorically indicates that he was well informed of the enquiry, but had not chosen to appear in the enquiry in view of the pendency of the criminal case.

6. In the counter affidavit filed by the respondents, it is stated that the petitioner was given proper intimation about the oral enquiry and he had also attended the oral enquiry and perused the statements of the prosecution witnesses, whom he did not cross examine. The petitioner was given advance information about the enquiry by the enquiry officer and though he had perused the statement of the prosecution witnesses, he had not cross examined them. In view of the categorical statements made by the petitioner himself in the affidavit, I do not find any merits in the claim of the learned Senior counsel that due opportunity was denied during the course of oral enquiry. Consequently, it requires



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to be held that the enquiry was duly conducted after extending an opportunity to the delinquent.

7. Insofar as the second ground that the third respondent herein had not considered the petitioner's request to review the order based on the judgment of the Criminal Court, acquitting the petitioner from the charges are concerned, I have perused the order dated 22.06.2022 passed on the petitioner's petition dated 23.12.2021, which was only on the ground that he had been acquitted from the criminal charges and therefore, sought for review of the punishment. However, the third respondent in his order dated 22.06.2022, had not addressed this ground at all.

8. The order passed by the third respondent herein was treated as a Mercy Petition under Rule 15(A)(1)(ii) of the TNPSS (D & A) Rules. Rule 15 (A)(2) of the TNPSS (D & A) Rules provides that an application for review shall be dealt with in the same manner as if it were an appeal under these rules. Rule 6 provides the mode by which the appeal under the Rules has to be dealt with. As per the Rule, the Authority has to consider as to whether the facts on which the order was passed have been established;



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whether the facts established afford sufficient ground for taking action and whether the penalty was excessive, adequate or inadequate and thereafter pass orders. These mandatory procedure under Rule 15(A)(2) has not been followed while the order dated 22.06.2022 was passed. More particularly, when the petition made by the petitioner was only on the ground that he has been acquitted in the criminal case, the third respondent ought to have addressed this ground.

9. At this stage, it would be relevant to point out that a mere acquittal in a criminal case would not absolve a delinquent from the departmental proceedings and that the departmental proceedings can be proceeded with parallelly, on the probabilities of the case. However, since the order is not in conformity with the Rules, the same requires to be reviewed.

10. In this background, the order of the third respondent herein dated 22.06.2022, is set aside and the matter is remitted back to the third respondent for fresh consideration. The third respondent herein shall consider the petitioner's request for reviewing the original punishment order on the ground that he has



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been acquitted from the criminal case by the Criminal Court. It is made clear that this Court has not expressed any of its views with regard to the merits of the case and that the third respondent herein is at liberty to pass final orders, on the petitioner's petition, on its own merits and in accordance with law, preferably within a period of three months from the date of receipt of a copy of this order.

11. The Writ Petition stands disposed of accordingly. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

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Index:Yes/No
Order: Speaking/Non-speaking
Neutral Citation : Yes/No

DP

To

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M.S.RAMESH,J.

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