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W.P.No.479 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.479 of 2019

E.Kumaran

... Petitioner

Vs.

1. The Director General of Police,
No.1, Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004

2. The Deputy Inspector General of Police,
Kancheepuram Range,
Kancheepuram District – 631 501

3. The Superintendent of Police,
Kancheepuram District

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records relating to the order of initial punishment imposed by the 3rd respondent in PR No.24/2012 dated 07.11.2012 followed by the Suo-moto review order passed by the 2nd respondent by Proceedings in Na.Ka.No.B2/10669/2012 dated 14.02.2013 and order passed by the 1st respondent by proceedings in Rc.No.67262/AP.I(2)/2013 dated 14.02.2017 dismissing the petitioner's mercy cum appeal petition dated 25.03.2013 and quash the same.



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For Petitioner : Mr.G.Magesh kumar

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

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorari to call for the records relating to the order of initial punishment imposed by the 3rd respondent in PR No.24/2012 dated 07.11.2012 followed by the Suo-moto review order passed by the 2nd respondent by Proceedings in Na.Ka.No.B2/10669/2012 dated 14.02.2013 and order passed by the 1st respondent by proceedings in Rc.No.67262/AP.I(2)/2013 dated 14.02.2017 dismissing the petitioner's mercy cum appeal petition dated 25.03.2013 and quash the same.

2. The brief facts of the case are as follows:-

(i) On 19.04.2012 under the order of the DSP, Madurantakam, the petitioner reported to the co-deliquent, viz., T.Dhamodaran, Special Sub Inspector of Police, Madurantakam to protect one Ramesh @ Rakki Ramesh, who was admitted as in-patient in Chengalpattu Medical College Government Hospital and had a life threat. Along with the petitioner, two other persons, viz., Mohan, Head constable and Duraisamy, Constable were posted. Since the petitioner and others were not in a position to find



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as to who are attenders and who could cause injury to the said Ramesh, some persons, under the guise of attenders caused injuries to the said Ramesh. The said persons, being armed, people had scattered and rushed to the petitioner and others, thereby disenabled the petitioner and others to effectively protect Ramesh @ Raaki Ramesh. However, the petitioner and other members have stopped the assailants from further injuring the said Ramesh @ Raakki Ramesh and saved his life.

(ii) After the said incident, the petitioner was placed under immediate suspension and was given punishment roll in PR No.24/2012 dated 07.11.2012 under Rule 3(b) of Tamilnadu Police Subordinate Services Rules, after affording opportunity of hearing, the enquiry officer submitted his report dated 15.09.2012, thereby 'reduction of pay by one stage for one year without cummulative effect' was awarded. When there is time for availing appeal remedy, the 2nd respondent exercised review power and issued show cause notice to the petitioner and others on 07.01.2013. Thereafter, written explantion was submitted by the petitioner to the 2nd respondent on 04.02.2013, however, the same was not considered and an order in Na.Ka.No.B2/10669/2012 and Na.Ka.No.B2/10665/2012 dated 14.02.2013 was passed thereby enhanced the punishment from 'reduction of pay by one stage for one year without cumulative effect' to that of 'postponement of increment for two years with cumulative effect' to the



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petitioner as well as the co-delinquent officer, viz., Damodaran.

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(iii) The co-delinquent officer, viz., Damodaran and the petitioner preferred mercy cum appeal petition before the 1st respondent on 25.03.2013. The same was considered by the 1st respondent but two different orders were passed. The mercy cum appeal petition of the petitioner was dismissed, whereas the mercy cum appeal of the said Damodharan was allowed, thereby modified the punishment to 'postponement of increment for one year, which shall not operate to postpone his future increments' to the said Damodaran. The petitioner was given selective treatment to one and the same facts, hence this petition.

3. The learned counsel for the petitioner would submit that the 1st respondent had not treated the delinquents equally, which is clearly contra to Article 14 of the Constitution of India. The 2nd respondent without being waited for exhausting the appeal remedy, had exercised review power, thereby disenabled the petitioner herein to prefer appeal against the order of the 3rd respondent herein. Further, Rule 15-A (2) of the TN Police Sub-ordinate services rules, clearly indicates that no proceeding of review shall be commenced before the expiry of appeal time and as per Rule 9, the petitioner was given two months time for appeal.



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4. The learned counsel for the petitioner also submits that the petitioner is the head constable and the petitioner along with one Damodaran, who is Special Sub Inspector of police were awarded with same punishment. Though the said SSI was in possession of pistol and has to instruct what should be done, he has failed to do so. But the authority had passed an order in favour of the said Damodaran, which is clear abusive process of law, thereby pleaded that the same indulgence shall be shown to this petitioner also.

5. Per contra, the learned Additional Government Pleader appearing for the respondents would submit the petitioner should have known about the case details of the accused before taking the guard duty. Further, there is no need to provide any alert by the superiors before taking the guard duty. Moreover, P.W.2 has clearly stated that on 21.04.2012 at 0355 hrs, he went to the hospital and alerted the guard police personnel about the seriousness of the guard duty, suitable instructions were given to the guard and necessary entries were also made in the entry relief book (P.Ex.2). The petitioner's contention that no precautionary and preventive action was taken to prevent the occurrence by the Inspector of Police is not acceptable. Only after affording opportunity to the petitioner and after persuing all the documents and the enquiry report, the authority has



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passed an order, thereby pleaded to dismiss the petition.

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6. Heard the learned counsels on either side and perused the documents placed on record carefully.

7. At the outset, it is clear that both the persons, viz., the petitioner and the said Damodaran were negligent and acted in a very casual manner while they were on duty by not providing appropriate protection to the person, who was already injured and admitted in the hospital for treatment. Further, in their explanation, they have not stated how such incident could have been prevented. The petitioner is now seeking reduction of his punishment on par with the other personnel who is incharge and superior to him. On going through the reasons stated by the said officer / DIG of police, it is clear that he has followed two different yardsticks for the same offence committed by the two different police personnel.

8. It is pertinent to note that for the other person, viz., T.Damodharan, Special Sub Inspector of Police, the 1st respondent / Director General of Police, Chennai vide proceedings Rc.No.067445/AP.I(2)/2013 dated 12.11.2016, had stated that the 'charges have been well established through the deposition of P.Ws.1 to 5 and



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Exhibits P.1 to 8, however, considering the fact that it is his only punishment he modified the punishment to that of **'postponement of increment to the period of one year, which shall not operate to postpone his future increments'**.

9. As far as the petitioner's case is concerned, the Director General of Police, Chennai by stating that *"charges have been well established through the deposition of P.Ws.1 to 5 and Exhibits P.1 to 8 and considering the gravity of the charges, the punishment imposed is not excessive"*, had dismissed the petition of the petitioner, vide proceedings Rc.No.67262/AP.I(2)/2013 dated 14.02.2017.

10. Considering the above said facts and circumstances of the case and taking note of the fact that for the same offence, same punishment was awarded by the 3rd respondent and upon suo motu Review, the 2nd respondent has also awarded same punishment, ie., **'Postponement of increment for a period of two years with cumulative effect'**, vide proceedings in Na.Ka.B2/10669/2012 and Na.Ka.B2/10665/2012 dated 14.02.2013, however, upon mercy-cum-appeal petition, before the 1st respondent, in respect of Damodharan, the said punishment was modified into **'postponement of increment to the period of one year, which shall not operate to postpone his future increments'** without any valid



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reasons, the sole reason stated by the 1st respondent is '*considering the fact that this is his only punishment*', whereas, in respect of the petitioner, the same was not done, there cannot be any disparity among the personnel for the same offence and selective treatment cannot be made for the same set of facts and there is no acceptable / cogent / tangible reasons stated by the 1st respondent to modify the punishment of the said Damodaran, hence this Court is of the view that the indulgence shown to the said Damodaran vide Rc.No.067445/A.P.I(2)/2013 dated 12.11.2016 shall be shown to the present petitioner also.

11. Accordingly, the proceedings passed in Rc.No.67262/AP.I(2)/2013 dated 14.02.2017 passed by the 1st respondent is set aside and the petitioner is hereby awarded the punishment of **'postponement of increment for a period of one year, which will not operate to postpone future increment'**.

With the above observation, the present petition is disposed of. No costs.

11.12.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd



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V.BHAVANI SUBBAROYAN J.

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