



W.P.(MD)No.2576 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.2576 of 2018

V.S.Kalivarathan

... Petitioner

Vs.

1.The Principal Secretary to Government,
Home Department,
Fort St.George,
Chennai-600 001.

2.The Director General of Police,
Mylapur,
Chennai-600 004.

3.The Additional Director General of Police,
Mylapur,
(Law and Order),
Chennai-600 004.

4.The Deputy Inspector General of Police,
Trichy Range,
Trichirapalli.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent in RC.No.061198/APIV(1)/2008 dated 02.07.2008, confirming the impugned order of the third respondent passed in RC.No.APIV(1)/027420/2008 dated 03.02.2008 and the impugned order of the third respondent in R.C.No.123271/APiv(1)/2014 dated 28.08.2014 and the impugned order passed by the first respondent in Na.Ka.No.G.O.212 dated 21.02.2017 and annulling all the orders passed by the respondents and to direct the respondents to fix the promotional avenues from the retrospective date with connected monetary and service benefits also.

For Petitioner : Mr.V.S.V.Venkateshvaran

For Respondents : Mr.S.P.Maharajan
Special Government Pleader

ORDER

This Writ Petition has been filed to call for the records relating to the order passed by the second respondent in RC.No.061198/APIV(1)/2008 dated 02.07.2008, confirming the impugned order of the third respondent passed in

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RC.No.APIV(1)/027420/2008 dated 03.02.2008 and the impugned order of the third respondent in R.C.No.123271/APIV(1)/2014 dated 28.08.2014 and the impugned order passed by the first respondent in Na.Ka.No.G.O.212 dated 21.02.2017, annul all the orders passed by the respondents and direct the respondents to fix the promotional avenues from the retrospective date with monetary and service benefits also.

2. The case of the petitioner is that the petitioner joined duty as Sub-Inspector of Police in the year 1987 and he was given promotion as Inspector of Police in the year 1998 and he completed 30 years of service. At present, he is working as Deputy Superintendent of Police. While so, he was served with a charge memo by the fourth respondent in P.R.No.77 of 2006 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, for the reason that when he was working as Inspector of Police at Manaparai Police Station, on 15.02.2006, he conducted a prohibition raid and registered a criminal case in Crime No.87 of 2006 for the offence committed by the accused under Section 4(1) r/w Section 4(1)(A) of the Tamil Nadu Prohibition



3. During the course of the said raid, it was alleged that he took a sum of Rs.24,000/- from the house of the accused Rani and handed over a sum of Rs.10,000/- to the Sub-Inspector of Police, namely, Ramesh Kumar/P.W.7. Based on the complaint, charges were framed and enquiry was proceeded with in which 12 witnesses were examined and several documents were marked. Thereafter, the Enquiry Officer has drawn a proven minute against the petitioner and based on the proven minute, the Disciplinary Authority has imposed the punishment of reduction of pay by one stage for a period of one year and the period of reduction shall operate to postpone his future increment. Aggrieved by the same, the petitioner has preferred an appeal before the Appellate Authority and the Appellate Authority has modified the punishment imposed on the petitioner as reduction in time scale of pay by one stage for one year and it shall not operate to postpone his future increment, against which, the petitioner has filed a revision by way of mercy petition before the second respondent and the same was dismissed.



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4. Challenging the findings rendered by the Appellate Authority as well as the Revisional Authority, the petitioner has filed a writ petition before this Court in W.P(MD).No.8288 of 2008 and this Court, vide its order dated 26.06.2014, has set aside the punishment imposed by the Appellate Authority as well as the Revisional Authority on the ground that the Appellate Authority as well as the Revisional Authority, without adducing any proper reason, arrived at a conclusion and remanded back the same to the Appellate Authority to redo the entire process. Again, the Appellate Authority has passed the order, vide proceedings dated 28.08.2014, confirming the earlier order, as against which, the petitioner has preferred a petition before the first respondent on 10.09.2014. However, the first respondent, vide proceedings dated 21.02.2017, has confirmed the order passed by the third respondent/Appellate Authority. Challenging the same, the present writ petition has been filed.

5. The learned counsel appearing for the petitioner would submit that the Enquiry Officer has examined two set of witnesses (i.e.,) one is on the accused side and another is on the official side. Though initially



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the deposition was recorded by the Enquiry Officer with regard to the accused side and the official side, the deposition does not correlate with each other. Further, during the cross-examination, major part of the witnesses turned hostile except P.W.7. However, the evidence of P.W.7 is also not corroborated with any other witnesses. However, the Appellate Authority as well as the Revisional Authority had mechanically arrived at a conclusion that the petitioner has committed guilt and imposed a punishment against the petitioner. In support of his contention, the learned counsel appearing for the petitioner relied upon the judgments of the Hon'ble Supreme Court of India in the case of *Narayan Dattatraya Ramteerthakhar vs. State of Maharashtra and others* reported in (1997) 1 SCC 299, *H.C.Lenin vs. Commissioner of Police, Coimbatore and another* reported in (2006) 3 MLCJ 900, *State of Madras vs. A.R.Srinivas* reported in (1996) 0 Supreme (SC) 78 and *Central Bank of India Limited vs. Prakash Chand Jain* reported in (1969) 0 MLJ (Cri) 748.



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6. The learned Special Government Pleader appearing for the respondents would submit that before framing the charges against the petitioner, a preliminary enquiry was conducted into the allegations levelled against the petitioner. During enquiry, 11 witnesses were examined and the same set of witnesses were examined orally in P.R.No.77 of 2006. During the oral enquiry, the prosecution witnesses were gained over by the petitioner and turned hostile. Based on the materials, the Enquiry Officer had held that the charge levelled against the petitioner is proved.

7. After considering the fact put forth by the petitioner, the Disciplinary Authority has awarded the punishment of reduction in time scale of pay by one stage for a period of one year and the period of reduction shall operate to postpone his future increments. As against the order of punishment, and in the appeal preferred by the petitioner, considering the 21 years of service put forth by the petitioner, the third respondent has taken a lenient view and the punishment was modified. Thereafter, a mercy petition was filed by the petitioner before the second



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respondent and the same was rejected as the punishment awarded was just and not excessive. Aggrieved over the same, he has filed W.P(MD).No.8288 of 2008 and this Court, vide order dated 26.06.2014, has set aside the orders passed by the Director General of Police and the Additional Director General of Police and remanded the matter back to the Additional Director General of Police, who is the third respondent herein. Only after considering each and every objection of the petitioner, the third respondent has confirmed the punishment already imposed. Aggrieved over the same, he preferred a petition to the Government with a request to set aside the punishment. The Government, after considering all the factual aspects, vide G.O.(D).No.212, Home (Pol-IV) Department, dated 21.02.2017, rejected the request of the petitioner.

8. Heard the learned counsel on either side and perused the materials available on record.

9. The facts in the present case are not in dispute. Admittedly, when the petitioner was working as Inspector of Police in Manaparai



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Police Station on 15.02.2006, he conducted a prohibition raid and instructed P.W.7, Sub-Inspector of Police to register a case against the accused Rani for the offence under Section 4(1) read with Section 4(1)(A) of the Tamil Nadu Prohibition Act in Crime No.87 of 2006. After registration of the case, there was a complaint against the petitioner as if the petitioner, while conducting the prohibition raid, had broken open the wooden box in the house of the accused Rani and had taken a sum of Rs.24,000/-. The enquiry initiated was ended against him and punishment was imposed by the disciplinary authority. However, the order in appeal and revision were set aside and on remand, the impugned order has come to be passed.

10. This Court has perused all the evidence adduced by the Enquiry Officer. Initially, the relatives of the accused persons and the person, who approached the Deputy Superintendent of Police with regard to the amount recovered by the petitioner, were examined. Subsequently, they turned hostile and their evidence is not useful. However, the Disciplinary Authority, the Appellate Authority and the Revisional



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Authority had elaborately discussed with regard to the evidence of all official witnesses including P.W.7, P.W.9 and P.W.10. Admittedly, P.W.7 is the Sub-Inspector of Police, who registered a case against the accused Rani. The evidence of P.W.7 would reveal that he received instructions from the petitioner with regard to the raid conducted by him, based on which, he has registered a case against the accused person who is the relative of P.W.1 for the offence under Section 4(1) read with Section 4(1)(A) of the Tamil Nadu Prohibition Act. P.W.7 has not acted with the petitioner at the time of conducting the raid. However, it is an admitted fact that during the course of raid, the petitioner had broken open the wooden box and seized a sum of Rs.24,000/- which was elicited from the mahazar. The petitioner has refused to draw a mahazar and he told that he will take care of them. At the instance of P.W.4, Panchayat Union Chairman, P.W.5, Town Secretary, P.W.6, Former President, the petitioner appeared before the Deputy Superintendent of Police.

11. P.W.7, in his deposition, has stated that the said amount was received by him from the petitioner through P.W.10. This deposition

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makes it clear that there was a *prima facie* case against the petitioner with regard to the illegal possession of amount recovered from the house of the accused Rani, who is the relative of P.W.1. The said fact was elaborately discussed by the Enquiry Officer and thereafter, the Enquiry Officer has drawn a proven minute against the petitioner, which resulted in the impugned punishment.

12. It is to be pointed out that the standard of proof required in a departmental proceeding is not in the same league as the standard of proof required to establish a charge in a criminal case. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. While the standard of proof in a criminal trial would be on the basis of the provisions of the Evidence Act and other statutes, however, in the departmental proceedings, it is only on the touchstone of preponderance of



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probabilities, the evidence is evaluated and, therefore, it is impermissible to equate the way in which the evidence ought to be evaluated.

13. In the case on hand, the enquiry officer as well as the other authorities, viz., the disciplinary authority, the appellate authority and the revisional authority have taken into consideration the enquiry report as well as all the evidences in proper perspective while imposing the punishment. In fact, the modification of punishment by the appellate authority from what has been imposed by the disciplinary authority makes it clear that not only the appellate authority has taken into consideration all the materials, but also considered the punishment imposed vis-à-vis the charges leveled against the petitioner and has modified the punishment. This clearly shows the application of mind on the part of the appellate authority.

14. Unless perversity and arbitrariness is shown in the order passed by the disciplinary authority, as confirmed by the other authorities, this Court, under Article 226 of the Constitution shall not ordinarily interfere



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with the punishment imposed, as the duty of the Court is only to see whether the enquiry has been conducted in a proper manner. It is not for this Court to substitute its views or the manner in which the evidence ought to be looked into. So long as the decision making process is not perverse Courts shall not interfere with the same. In the background of the aforesaid facts, it is abundantly clear that the authorities have applied their mind in proper perspective while deciding to impose the punishment on the petitioner.

15. The only issue, which now requires determination is the proportionality of the punishment inflicted on the petitioner. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In ***Prem Nath Bali – Vs -***



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High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

“20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the



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proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.”

(Emphasis Supplied)

16. From the ratio laid down by the Apex Court above, it is crystal clear that the power to interfere with the punishment should be exercised only if the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges and, thereby, shocking the conscience of the Court or if it is in contravention of the Rules. In the case on hand, the punishment imposed on the petitioner could in no manner be termed to be not in proportion to the charges proved against the petitioner. The



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petitioner being a member of the uniformed service, is bound to conduct himself with honesty, integrity and without causing any reputation loss to his service. However, the act of the petitioner is not conducive of the members of the force and, therefore, the disciplinary authority has thought it fit to impose the punishment, which has subsequently been modified. Therefore, the said punishment cannot be said to be excessive, disproportionate or shocking the conscience of the Court. Resultantly, a far less punishment than the one imposed by the disciplinary authority has been imposed on the petitioner, which does not warrant any interference at the hands of this Court as the said punishment is proportional to the gravity of the charges made out.

17. Accordingly, this Writ Petition is dismissed. No costs.

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NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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Home Department,
Fort St.George,
Chennai-1.
- 2.The Director General of Police,
Mylapur,
Chennai-4.
- 3.The Additional Director General of Police,
Mylapur,
(Law and Order),
Chennai-4.
- 4.The Deputy Inspector General of Police,
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M.DHANDAPANI,J.

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