



WP(MD)No.9775 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.9775 of 2021
and
WMP(MD)No.7504 of 2021**

M.Kubendran

... Petitioner

Vs

**1.The Director General of Police /
Head of the Police Force,
Mylapore,
Chennai – 4.**

**2.The Commissioner of Police,
Madurai City,
Madurai.**

**3.The Deputy Commissioner of Police,
Madurai City (Crime),
Madurai.**

...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 pertaining to the impugned order in RC.No.261454/AP11(3)/2020, dated 30.05.2020 on the file of the respondent No.1 and quash the same as illegal.

For Petitioner : Mr.R.Venkatesan

For Respondents : Mr.G.V.Vairam Santhosh,

Special Government Pleader



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ORDER

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The petitioner a Police Constable Grade-II was dealt with a charge memo under Rules 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 in PR.No.4 of 2019, he was imposed with a punishment of postponement of next increment for a period of two years, which shall not operate to postpone his future increments by the 3rd respondent / the Deputy Commissioner of Police, Madurai City. As against this order of punishment dated 25.03.2019, the petitioner has filed an appeal on 10.05.2019 before the 2nd respondent / the Commissioner of Police, Madurai City and it was rejected by the 2nd respondent on 31.10.2019. In the meantime he has also filed a mercy petition before the Director General of Police on 27.09.2019.

2.As against the order passed in the appeal by the 2nd respondent, the petitioner has filed a writ petition in WP(MD)No.26026 of 2019 before this Court. This Court by order dated 27.01.2020 has disposed of the writ petition with liberty to file a fresh mercy petition before the 1st respondent, in view of the order passed by the 2nd respondent.



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Accordingly the petitioner has filed another mercy petition before the 1st respondent and the same was rejected by order dated 30.05.2020, which is challenged in this writ petition.

3.The learned Counsel for the petitioner submits that the CSR was not given by the petitioner and he has no authority to issue CSR. However it was not considered by the authority in the enquiry. There is no specific evidence for the allegation levelled against the petitioner. The punishment was imposed based on the principle of preponderance of probabilities. The non consideration of the petitioner's mercy petition violates Article 14 and 16 of the Constitution of India. He has further relied on the Government order in GO(MS)No.559, Home (Police VI) Department, dated 07.12.2021 and submits that the government has taken a decision to cancel the minor punishment imposed under Rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules on the police personnel. Therefore, this government order would be applicable to the petitioner for reconsideration of the punishment imposed on him.



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4.The learned Special Government Pleader appearing for the respondent submits that one Meena of Madurai has lodged a complaint before the 2nd respondent as against this petitioner that he has taken away a sum of Rs.80,000/- and a cell phone from her house and has not returned it to her. Based on the complaint, the 2nd respondent has ordered for a discreet enquiry to be conducted by the 3rd respondent. Accordingly 3rd respondent conducted a discreet enquiry and filed a report on 16.08.2009 that there are prima facie materials as against this writ petitioner. Therefore departmental proceedings were initiated as against the petitioner under Rules 3(a) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 in PR.No.4 of 2019 by issuing a charge memo dated 07.01.2019. The petitioner has submitted a representation seeking for the documents cited in the charge memo and those documents were furnished to him. He has submitted his explanation on 11.02.2019. Subsequently the disciplinary authority has imposed a punishment of postponement of next increment for a period of two years, which shall not operate to postpone his future increments. The petitioner has filed an appeal before the 2nd respondent and also filed a mercy petition before the 1st respondent. The appeal was rejected by the



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2nd respondent by order dated 31.10.2019. The mercy petition filed by the petitioner before the 1st respondent was also rejected. Challenging the same petitioner has filed this writ petition. The petitioner has not challenged the order passed by the disciplinary authority.

5.He further submits that the procedures have been followed as per the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. Further the writ petitioner has concealed the fact of seized amount of Rs.80,000/- from one Selvam's house in the presence of the complainant / his wife Meena. It came to light during the enquiry through Exs.1,2 and 4. This conduct of the petitioner in concealing the fact of seizure of the money by the petitioner is highly reprehensible leading to tarnish the image of the police department among the general public.

6.This Court considered the rival submissions and perused the materials placed on record.

7.The petitioner was dealt with a charge under Rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules



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1955 in PR.No.4 of 2019 for his indisciplined conduct while he was attached with a special team. The petitioner under the pretext of search, entered into the house of one Selvam and seized liquid cash of Rs.80,000/-and the same was neither returned nor was it accounted for. Therefore the department has conducted an enquiry and has imposed a punishment of postponement of next increment for a period of two years which shall not operate to postpone his future increments. It has been confirmed by the appellate authority and also by the revision authority. His mercy petition was also rejected. The petitioner has now claimed for parity with the persons, who have been dealt with disciplinary proceedings under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules and was exempted from punishment vide GO.Ms.No.559 Police Department, dated 07.12.2021. He has relied on clause (vi) of the said government order and submits that the petitioner was not considered for the promotion. Clause (vi) of GO.Ms.No.559 Police Department, dated 07.12.2021 reads as follows:

“If the minor punishment imposed under rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, which was completed



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prior to 13.09.2021 and falls within the check period of a panel and stood as a bar for inclusion in the panel, the cases of such candidates shall be examined separately on a case to case basis for inclusion in the respective panels.

8.The departmental proceedings was initiated on 07.01.2019; punishment was imposed on 25.03.2019; the appeal was rejected on 10.05.2019. The mercy petition was rejected on 30.05.2020. The respondent claims that the punishment was given effect from 01.04.2019 to 31.03.2021, before passing the government order, that the next panel was drawn in the year 2022 and the petitioner's name was not considered for promotion.

9.In view of the above discussion, this court directs the respondents to consider the case of the petitioner in the light of GO.Ms.No.559 Police Department, dated 07.12.2021 and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly.

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B.PUGALENDHI.J.,

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