BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:30.06.2011
CORAM:
THE HONOURABLE MR. JUSTICE K. VENKATARAMAN
WP(MD)No.7041 of 2011 and MP(MD)Nos.1 and 2 of 2011

K. Esakki Durai, Head Constable,
Town Police Station, Sankarankovil, Tirunelveli District. :Petitioner

-Vs-

1.The Director General of Police, DIG Office, Chennai - 4.
2.The Deputy Inspector General of Police,Tirunelveli Range,Tirunelveli.
3.The Superintendent of Police, Tirunelveli. :Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records relevant to the order passed by the first respondent in R.C.No.38206/AP/2(1)/2011 dated 21.03.2011 and quash the same.

For Petitioner :Mr.D.Sivaraman
For Respondents:Mr.T.S.Mohamed Mohideen,Additional Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

2.By consent of both the parties, the main writ petition itself is taken up for final hearing and disposal.

3.Challenging the order of the first respondent dated 21.03.2011, the petitioner has come up with the present writ petition.

4.In and by the said order dated 21.03.2011, the petitioner was awarded a punishment of "Reduction in time scale of pay by two stages for two years without cumulative effect". The said order is under challenge in this writ petition on the ground that except stating that the Enquiry Officer has held that the charges have been proved through the statement of prosecution witnesses, nothing has been independently considered by the first respondent before inflicting the punishment.

5.According to Mr. D. Sivaraman, the learned counsel appearing for the petitioner, the first respondent ought to have given independent reasons for coming to the conclusion and the punishment cannot be imposed basing only on the Report of the Enquiry Officer, which has not been discussed by the first respondent.

6.The learned Additional Government Pleader appearing for the respondents, though supported the order, he is unable to point out from the impugned order that the first respondent has given sufficient reasons to come to the conclusion that the charges against the petitioner had been proved.

7.While considering the submissions of the learned counsel appearing for the as well as the learned Additional Government Pleader appearing for the respondents, I am of the considered view that the first respondent has not given any reasons whatsoever to come to the conclusion that the charges have been proved and an award of punishment shall be imposed on him. In order to appreciate the same, it would be usefully extracted paragraph 5 of the impugned order of the first respondent, which reads as under:-

> "6.I have gone through the petition, PR file and connected records carefully. The charge is for reprehensible conduct in instigating Thevars against Dalits and turning abusive when issued a memo by his SHO. This has been established through exhibits 1, 9 - 14 filed by P.Ws.1,4 and 5. His efforts to discredit P.W.1 have also failed. The petitioner is in a department which is tasked to ensure communal harmony along with maintenance of order and not to act against it. The modified punishment is quite adequate. There is no reason to interfere".

The above said extracted portion of the order would reveals that the contention of the learned counsel appearing for the petitioner has to be accepted.

8.The Principal Bench, while dealing with a similar question, in **K.KANDASAMY Vs. DEPUTY INSPECTOR GENERAL OF POLICE, TIRUCHIRAPALLI RANGE TIRUCHIRAPALLI AND ANOTHER** reported in **(2006) 4 MLJ 1382** has held that when an order of punishment is imposed, reasons have to be given. The reasons given for the same in Paragraphs 7, 8 and 9 are usefully extracted hereunder:-

> "7.It is seen from the aforesaid portion of the impugned order that the Appellate Authority did not deal with any of the grounds of appeal raised by the petitioner. A departmental appeal is a continuation of the original proceedings. It is needless to point out that the last opportunity available for a delinquent, to canvass his case on merits, is at the appellate stage. After the appeal, a delinquent loses his right to challenge any disciplinary proceedings on merits, since the scope of interference on a revision or on a writ petition is very limited. Therefore, the rules themselves contemplate appellate authorities to go into the factual details and consider all the grounds of appeal before deciding an appeal. Unfortunately, the first respondent has chosen to dismiss the appeal by a non-speaking order and hence the appellate authorities order is liable to be set aside.
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> 8.A similar question came up for consideration before this Court in Arokiadoss v. The Deputy Commissioner of Police, Law and Order (South), Madras-8 and Anr. 1989 W.L.R. 274. In the said case also, an identical order similar to the one involved in the present case was passed by the Appellate Authority. Therefore, after considering the scope of the powers conferred upon the Appellate Authority, this Court held as follows in paragraph-3:

Rule 6(1) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 reads as follows:

In the case of an appeal against an order imposing any penalty specified in Rule 2, the appellate authority shall consider--

(a) Whether the facts on which the order was based have been established;

(b) Whether the facts established afford sufficient ground for taking action, and

(c) Whether the penalty is excessive, adequate or inadequate, and after such consideration shall pass orders as it thanks proper.

The rule enjoins the concerned authority to consider the three aspects set out therein specifically. Unless the appellate authority considers them it cannot be said that it has carried out its duties properly. The Supreme Court had occasion to discuss a similar question under Rule 27 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Dealing with the word 'consider' used in the said rule, the Supreme Court observed that the word 'consider' implies due application of mind-vide R.P. Bhatt v. Union of India MANU/SC/0193/1982. The following paragraph in the above judgment of the Supreme Court can be usefully referred to with advantage--

The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) Whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) Whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc, the penalty, or may remit back the case to the authority which imposed the same. Rule 27 (2) casts a duty on the appellate authority to consider the relevant factors set forth in Clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were unwarranted by the evidence on record. It seems that he only applied his mind to the requirement of Clause (2) of

Rule 27(2) viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside.

9.Thus it is clear that the appellate authority's order is in violation of the rules relating to disposal of appeals and consequently, it is liable to be set aside. Therefore, the writ petition is allowed. The order passed by the first respondent dated 29.9.1995 is set aside and the matter remitted back to the first respondent for a fresh disposal on merits in accordance with law and the said exercise shall be completed by the first respondent within a period of four months from the date of receipt or production of a copy of this order. No costs."

In view of the above stated position, I am inclined to set aside the impugned order of the first respondent dated 21.03.2011.

9.Accordingly, the impugned order of the first respondent dated 21.03.2011 is set aside and this writ petition stands allowed. It is needless to say that the respondents are at liberty to pass fresh orders, if they intend to proceed against the petitioner, after giving reasons therefor. However, there will be no order as to costs. Consequently, the connected M.P.(MD)Nos.1 and 2 of 2011 are closed.

Sd/-
Assistant Registrar (AE)

/ TRUE COPY /

Sub Assistant Registrar

To:

1.The Director General of Police, DIG Office, Chennai - 4.
2.The Deputy Inspector General of Police, Tirunelveli Range, Tirunelveli.
3.The Superintendent of Police, Tirunelveli.

Copy To:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.D.Sivaraman, Advocate. SR.No.21038.

+1CC to The Special Government Pleader. SR.No.21160.

Dpn/-
RP/13.07.2011/4P/7C.