

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.07.2020

DELIVERED ON : 04.09.2020

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

W.P.(MD)No.8909 of 2015
and M.P.(MD)No.1 of 2015

V.Marimuthu Petitioner

Vs.

- 1.The Director General of Police,
Chennai - 600 004.
- 2.The Commissioner of Police,
Coimbatore City, Coimbatore.
- 3.The Deputy Commissioner of Police (H.Qrs)(i/c)
Armed Reserve, Coimbatore City. Respondents
(R2 amended as per order of this Court in M.P.(MD)No.2 of 2015 in
W.P.(MD)No.8909 of 2015 dated 19.06.2015)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the second respondent issued in his proceedings RC.No.F3/AP-08/2015, dated 16.04.2015 and quash the same.

For Petitioner : Mr.A.Thirumurthy,
for M/s.Victory Associates
For Respondents : Mr.J.Gunaseelan Muthiah,
Additional Government Pleader

ORDER

The petitioner challenges the punishment imposed by the third respondent as modified by the second respondent.

2.Service matrix of the petitioner that are necessary for the determination of this petition are as follows:

2(i)Tr.V.Marimuthu, PC-3924, Madurai City formerly PC 1153/CC, Coimbatore City herein after referred to as petitioner was enlisted as Grade II Constable on 05.01.2006 and posted to Coimbatore City Armed Reserve. Subsequently, he was transferred and posted to Madurai City. The department action u/r 3(b) of TNPSS D&A Rules 1955 in P.R.No.48/2012 to 75/2012 of Coimbatore City have been initiated against the 28 police personnel including the petitioner in P.R.No.56 of 2012 for the following delinquencies.

1)09.12.2012 அன்று காலை சுமார் 10.00 மணியளவில் நீர் கோவை மாநகர ஆயுதப்படை, அலுவலகத்திற்கு துணை காவல் துணை ஆணையரை சந்தித்து ஆயுதப்படை மாறுதல் உத்தரவு வரப்பெற்றவர்களை அன்றே விடுவித்து அனுப்ப வேண்டும் என்று கோரியுள்ளீர்கள், துணை காவல் ஆணையர், ஆயுதப்படை மாறுதல் உத்தரவு வரப்பெற்றவர்களை அன்றே விடுவித்து அனுப்ப வேண்டும் என்று கோரியுள்ளீர்கள், துணை காவல் ஆணையர், ஆயுதப்படை அவர்கள் இரண்டு அல்லது மூன்று நாட்களில் அனைவரையும் விடுவிக்க அறிவுறுத்தியுள்ளார் எனவே ஒரே நாட்கள் கர்த்திருக்கும்படி அறிவுரை கூறியும், அவரது அறிவுரையை ஏற்றுக்கொள்ளாமல் மாறுதல் வரப்பெற்றவர்கள் அனைவரையும் இன்றே விடுவிக்க வேண்டும் அல்லது மற்றவர்களையும் விடுவிக்கக் கூடாது என கூக்குரலிட்டு வெளியேறி உயர் அதிகாரியின் உத்தரவுக்கு கட்டுபடாத ஒழுங்கீனமான செயல்.

2)09.12.2010 அன்று சுமார் 10.00 மணியளவில் காவல் துணை ஆணையர், ஆயுதப்படை அலுவலகத்திற்கு சென்று அவரது உத்தரவிக்கு கட்டுப்பாடமல் கூக்குரலிட்டு வெறியேறிய நீர், ஆயுதப்படையை சேர்ந்த மற்ற 27 காவலர்களுடன் சேர்ந்து ஆயுதப்படையிலிருந்து மாநகர காவல் அலுவலகத்திற்கு ஊர்வலமாக வந்து காவல்துறையின் ஒழுங்கு கட்டுப்பாடு மற்றும் கண்ணியத்திற்கு பொதுமக்கள் மத்தியில் குந்தகம் ஏற்படுத்திய செயல்.

3)09.12.2010 அன்று மாநகர காவல் ஆணையர் அலுவலகத்திற்கு ஊர்வலமாக வரும்போது பிரபல நாஸ்திகர்களுக்கு தாங்கள் ஊர்வலமாக வந்ததன் நோக்கம் குறித்து தன்னிச்சையாக தகவல் அளித்ததன் மூலம் 1964 -ம் ஆண்டு தமிழ்நாடு காவல் சார்நிலை அலுவலர்கள் நடத்தை விதி 15(2) மீறிய செயல்

2(ii)Charge memo was served on the petitioner on 10.07.2012 and he opted for an oral enquiry. The Assistant Commissioner of Police, Armed Reserve, Coimbatore City was nominated as common enquiry officer in all the PRs including the PR against the petitioner. During oral enquiry 6 numbers of PWs deposed and through the 14 numbers of prosecution exhibits were filed. The petitioner made cross examination with all PWs. Further he did not produce any defence witness to defend his case.

2(iii)After completion of the oral enquiry, the petitioner submitted his explanation before the enquiry officer on 24.02.2014.

2(iv)After analyzing all the records pertaining to statements of PWs, prosecution exhibits and explanation of the petitioner, the enquiry officer held all 3 counts of the charge as proved in his minute

dated 07.05.2014 on the strength of the deposition of PWs and prosecution exhibits 1 to 19 filed by them, the enquiry officer came to the conclusion. A copy of the minute was served on him on 27.07.2014 and further representation called for him.

2(v)The petitioner has submitted further representation on 11.08.2014. Agreed with the findings of the enquiry officer, the disciplinary authority i.e the Deputy Commissioner of Police, Head Quarters (i/c) Armed Reserve, Coimbatore awarded the punishment of postponement of increment for three years with cumulative effect on 14.01.2015. This order was served on the petitioner on 01.02.2015.

3.The petitioner preferred an appeal against the above order before the Commissioner of Police, Coimbatore City. Considering the short service and as it was the first instance, his appeal was considered leniently and the punishment of postponement of increment for three years with cumulative effect was modified into that of postponement of increment for two years without cumulative effect by the Commissioner of Police, Coimbatore City on 16.04.2015. Aggrieved against the said order, the petitioner filed this writ petition.

4.The learned counsel appearing for the petitioner submitted that there is no evidence regarding the participation of the petitioner

in the alleged rally said to have been taken place on 09.12.2010 and he was relieved from the said Armed Reserve on 09.12.2010 at 11.30 am and he is also absent in the alleged procession. and there is a delay of 1 ½ years in initiation of Departmental proceedings. He further stated that the disciplinary authority has not recorded the finding as to whether the charges are proved or not. Besides, the appellate authority has modified the punishment to the effect that postponement of increment for two years which shall not operate to postpone his future increment (without cumulative effect).

5.The learned Additional Government Pleader appearing for the respondents would submit that charges against the petitioner has been amply proved by PWs.1, 3 and 4 as pointed out by the Enquiry Officer and furthermore, as many as charges were proved and the disciplinary authority has initiated the proceedings and hence, the delay has been caused for initiation of the Departmental Proceedings.

6.The learned Additional Government Pleader further submitted that in view of the specific findings referred by the disciplinary authority it has been rightly awarded stoppage of increment for a period of three years with cumulative effect. Subsequently, the second respondent / Commissioner of Police / appellate authority has taken a lenient view reduced the punishment

of stoppage of increment for a period of two years without cumulative effect.

7.The learned counsel appearing for the petitioner submitted that initiation of the disciplinary proceedings is barred by the limitation, in view of the latches and the alleged delinquency is not proved in the manner known to law. The quantum of punishment inflicted is not in consummated with the charges.

8.I have heard the rival submissions of the both parties and gone through the materials on record. It is seen that the petitioner, while he was working as Police Constable in Coimbatore Corporation, said to have agitated against the Commissioner of Police in the campus of the Commissioner Officer, in connection with the mass transfer order. While issuing reliving order as per serial number, initially 132 members relived and remaining others were allotted other works namely to produce the accused before the Criminal Court and to engage the armed reserve for law and order panthobasth and escort for VIP visit. The Commissioner of Police announced that second part of the transfer list will be released in one or two days.

9.Aggrieved from the said announcement, the petitioner along with 28 Police personnel appears to have assembled together

and agitated before the Office of the Commissioner and the said fact is reported in the News Paper and some of the participants of the agitation have given interview to the press and the same was reported in print Media.

10. Taking into consideration of the entire circumstances, summons were issued to the 28 persons and after obtaining necessary orders from the Administration side, these disciplinary proceedings have appeared to be initiated and hence, I find delay in initiation of the disciplinary proceedings, has been duly explained by the third respondent in his counter.

11. Accordingly, I find that the plea of the petitioner that there was delay in initiation of the disciplinary proceedings has been duly explained to make sufficient cause, in view of the administration reasons and accordingly, this point held against the petitioner.

12. After perusing evidence of P.W.6 Sasikala, Woman Constable, the presence of the petitioner in the agitation has been found to be accepted by the Enquiry Officer. After perusing the statement recorded by the Enquiry Officer, it is also come to light that immediately after the incident, the petitioner along with other delinquencies participated in the rally for the non-releasing of those

transferred were also relived on the very same day.

13. On close scanning and scrutiny of the enquiry report, both Enquiry Officer and the Disciplinary Authority had considered the Department evidence of the Witness No.6, who spoke about the presence of the petitioner in the crowd on the alleged date. After going through the evidence of Department evidence recorded in the departmental enquiry and the corresponding finding rendered by the Enquiry Officer, I find that the charge against the petitioner have been proved and the Enquiry Officer has rightly come to the conclusion that the presence of the petitioner on 09.12.2010 and the charges were stands duly proved.

14. It is to be stated that the standard of proof that is required in departmental enquires, is only to extent of preponderance of probability and not proof beyond all reasonable doubts. This same principle has been followed in the departmental action enquiry against the petitioner and all the counts of the charges were held proved based on the deposition of the PWs and the prosecution documents filed by them.

15. It is to be stated that,

a) Rule 25 of the Tamil Nadu Police Subordinate Police

Officers conduct Rules is also laid down as strikes- No police officer shall engage himself in strike on incitements there to on in “similar activities”.

b)For the purpose of this Rule, the expression “Similar activities” (emphasis supplied) shall be deemed to include the absence from work without permission or neglect of duties on any other act done or omitted to be done with the object of compelling something to be done by superior officers of the Government and shall include any demonstrative fast usually called hunger strikes for similar purpose.

16.In Administrative law, transfer order and relieving order are two different things. Depending upon the administrative exigency the relieving order will come into force on a later date and the same is not *per se* arbitrary. In the instance case, the Deputy Commissioner of Police has effected the order of transfer and has given instructions to the concerned Officers to relieve from serial Nos.1 to 134 on the same day and taking note of the service of the armed reserve police is required for production of under trial prisoners in the Court for trial as required under the Code of Civil Procedure and for extension of remand order, production of accused before the concerned Judicial Magistrate or Sessions Judge and for deployment of the Armed Reserved Police in sensitive communal areas in Coimbatore and for

deployment of the police personnels to maintain law and order and bandobasth and also taking note of the escort for VIPs as segregate upto in the serial No.132 to be relieved on the same day. Remaining balance persons to be relieved after few days on arrival of the transferred candidates from other Districts to Coimbatore District. Aggrieved over the such an action, it appears that the petitioner has alleged to commit the charge.

17.As per the proved charges, the petitioner assembled in the ground of the Commissioner of Police Office in Coimbatore and formed themselves as a group by shouting slogans against the Commissioner of Police and created ruckus in the Office of the Deputy Commissioner of Police and Commissioner of Police in the same complex and rhoered the higher officials and demanded for immediate relieving of the entire transfer order and while assembling and shouting against the Commissioner of Police and the Deputy Commissioner of Police, they went march in the play ground and delivered interviews to the press and media, which is breft of truth levelling baseless allegation against the Uniformed Police Officials without material by casting colour on the orders of the Commissioner, which this Court finds that the action of the petitioner and other persons involved falls under "Similar Activities" as mentioned in the Rule 25 supra.

18.Thus, I find that the charges against the petitioner are squarely fall under the category of “similar activities” as mentioned in the Rule 3 of the Tamil Nadu Police Subordinate Police Officers conduct Rules along with the Rule 25 of the Tamil Nadu Police Subordinate Police Officers conduct Rules and hence, the Disciplinary Authority has taken note of the gravity of the offence and also taken note of the fact that there is no dispute in the fact that the petitioner was relieved with other 132 police personnel in the forenoon of 09.12.2010 at 11.30 hrs. whereas the fact of his participation in the rally and other connected incidents had been also amply proved through the deposition of the Department witnesses and the prosecution documents filed by them duly corroborated the oral evidence of Department and accordingly, awarded punishment of stoppage of increment with cumulative effect for three years.

19.The learned counsel for the petitioner submitted that the Appellate Authority has not applied his mind and without application of mind has decided the appeal.

20.I have perused the order passed by the Appellate Authority. I find that the Appellate Authority took lenient view and modify the punishment into that of postponement of increment for two

years which shall not operate his future increments (without cumulative effect) the Appellate Authority has issued a justful and reasonable order, considering the short service of the petitioner and this was the first instance.

21. Taking into consideration of the act of the delinquencies, which is squarely falls under Rules 3 and 25 of the Tamil Nadu Police Subordinate Police Officers conduct Rules, the Disciplinary Authority has rightly inflicted punishment of stoppage of increment for three years with cumulative effect. However, it appears that the Appellate Authority/Commissioner of Police, being an Office with gentleman attitude, has taken lenient view that on the ground that the petitioner rendered only short service and that was first instance, that the proved misconduct, falls under similar activities as modified and reduced the quantum of punishment, I find that the order passed by the Commissioner of Police is soft in nature.

22. Since the Commissioner of Police has taken lenient view in reducing punishment from stoppage of increment for three years with cumulative effect to stoppage of increment for two years with cumulative effect, cannot be termed as excessive and the same is in consonance with the proved charges and hence, there was no illegality or infirmity in the order passed by the second respondent

and the same is hereby confirmed. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.09.2020

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

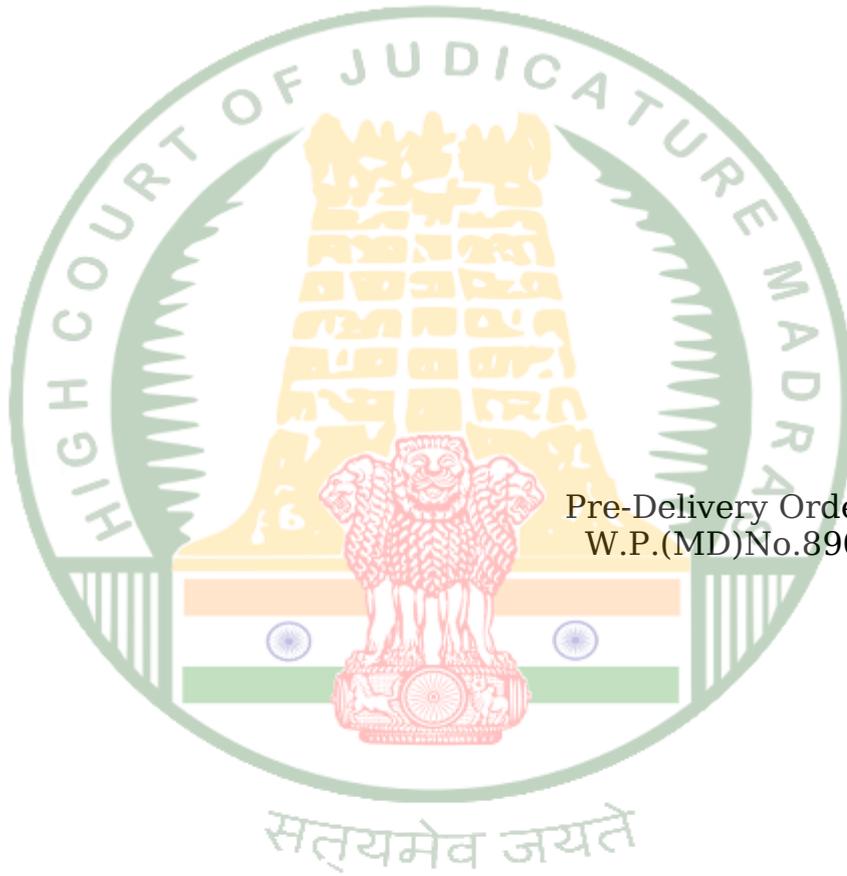
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RMT. TEEKAA RAMAN,J.

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Pre-Delivery Order Made in
W.P.(MD)No.8909 of 2015

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