

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2016

CORAM

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.36036 of 2015

and

M.P.No.1 of 2015

S.Jawahar

... Petitioner

Vs.

The Deputy Commissioner of Police,
Armed Reserve-I,
Chennai City Police,
Office of the Commissioner of Police,
Vepery,
Chennai-600 007.

... Respondent

Prayer:Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorari, calling for the records relating to the impugned order passed in Na.Ka.No.82/105700/T.P.4(2) 2015 in C.C.P.Order No.3163/2015, dated 29.10.2015 on the file of the respondent and to quash the same.

For Petitioner : Mr.V.Ravi

For Respondent : Mr.S.Gunasekaran

Additional Government Pleader

O R D E R

This Writ Petition has been filed by the petitioner challenging the impugned order passed by the respondent in Na.Ka.No.82/105700/T.P.4(2) 2015 in C.C.P.Order No.3163/2015, dated 29.10.2015.

2.Heard Mr.V.Ravi, learned counsel for the petitioner. Mr.S.Gunasekaran, learned Additional Government Pleader accepts notice on behalf of the respondent.

3.The petitioner joined the service as Constable in the Police Department on 31.10.1997 and was posted as Guard

Commander in the grade of Head Constable (Police No.21383) at the Judicial Academy, Maligai, Raja Annamalai Puram, Chennai from 14.11.2013. The petitioner, on 26.10.2015, has entered into the sentry book that one Pandiarajan, PC 40482 was sent to take food and rest at 18.05 hrs. But on enquiry by the higher officials, it was found that the said Pandiarajan was absent on the said date and he made the entry in the sentry book as if the said Pandiarajan has performed the guard duty from 18.00 hrs., to 21.00 hrs., (6 p.m. to 9 p.m.) on 25.10.2015 and was sent to night rest at 21.05 hrs., (9.05 pm) and after rest, he has to report to duty on 26.10.2015 at 11.45 hrs., but he was absent for duty and went to his native place Sholavanthan, Madurai, without prior permission or leave from the Superior Officers and also found that he was involved in a criminal offence on 26.10.2015 at 23.20 hrs., (11.20 pm) and a case was registered in Sholavanthan Police Station in Cr.No.314/2015 under Sections 147, 294(b), 323, 341 and 506(i) IPC on 27.10.2015 at 00.30 hrs., on the complaint of one Dr.S.Senthil Nathan against PC 40482 R.Pandiarajan and 6 others. They were arrested and remanded to judicial custody at Criminal and Civil Judicial Magistrate Court, T. Vaadipatti, Madurai District. After enquiry by the Assistant Commissioner of Police-I, Armed Reserve-I on 28.10.2015, it was found that the petitioner made a wrong entry in the sentry book showing that PC 40482 Pandiarajan was sent to food and rest at 18.05 hrs. Therefore, he was placed under suspension for the said offence.

4.The charge memo was issued to the petitioner on 27.10.2015 and the petitioner has given his explanation to the respondent on 28.10.2015 denying the charges levelled against him in the charge memo. Without considering the petitioner's explanation, the respondent had issued the order of suspension dated 29.10.2015 and the same was not reviewed till date. Hence, the petitioner has come forward to this Court with the present Writ Petition.

5.The learned counsel for the petitioner submitted that the said Pandiarajan, who is responsible for the petitioner's suspension, has been reinstated into service and therefore, pleaded that the case of the petitioner may also be considered by the respondent on sympathetic ground and this Court may issue a direction to the respondent to revoke the suspension order of the petitioner dated 29.10.2015 and reinstate him into service.

6.A detailed counter affidavit has been filed by the respondent. The learned Additional Government Pleader appearing for the respondent would submit on instructions, that the petitioner has been issued with the charge memo under Rule 3(b) in PR.No.471/PR IV(2)/2015. He would submit that after receiving the explanation, the Assistant Commissioner of Police, Motor Transport (Mount) has been nominated as Enquiry Officer on

01.12.2015 and the enquiry is under process and contended that it is not a fit case for revocation of suspension and pleaded for dismissal of the writ petition.

7.No doubt, as per the well settled legal position enunciated by the Hon'ble Apex Court in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another passed in Civil Appeal No.1912 of 2015 dated 16.02.2015 reported in 2015 (7) SCC 291 as well as the Government Circular issued in Letter No.13519/N/2015-1, dated 23.07.2015, the case of the petitioner after issuance of charge memo, deserves review. It appears to the Court that the respondent has not reviewed the order of suspension. Since the petitioner has come to this Court without making any representation to the respondent to consider his case, he is directed to submit a representation to the respondent within a week from the date of receipt of a copy of this order. On receipt of the same, the respondent is directed to consider the petitioner's representation as per the ratio laid down by the Hon'ble Apex Court in Ajay Kumar Choudhary's case and also in the light of the Government Circular issued in Letter No.13519/N/2015-1, dated 23.07.2015 and pass appropriate orders in accordance with law, within a period of four weeks thereafter.

8.With the above observation and directions, this writ petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Deputy Commissioner of Police,
Armed Reserve-I,
Chennai City Police,
Office of the Commissioner of Police,
Vepery,
Chennai-600 007.
+1 cc to Government Pleader sr.21255

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