

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.11.2016

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.33213 of 2013

V.Nagarajan

.. Petitioner

Vs

1. The Superintendent of Police,
Railway Police,
Tiruchirapalli.
2. The Inspector of General of Police,
Railway Police,
Egmore,
Chennai-600 008.
3. The Superintendent of Police,
Trichy.
- 4.cThe Additional Inspector General of Police,
DGP Office,
Mylapore,
Chennai-600 004.

.. Respondents

Prayer .: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari to call for the records in the proceedings of the first respondent in C.No.F1/P.R.07/2013 under rule 3(b) of the Tamil Nadu Police Subordinate Service Discipline & Appeal Rules 1955 dated 10.09.2013 and quash the same.

For Petitioner : M/s.C.Rajan

For Respondents : Mr.K.Bala Murugan
Government Advocate

O R D E R

The petitioner who had initially joined the Police Department as Grade II Police Constable on 01.11.1994 was transferred in the year 2008 and posted as Grade II Police Constable in the Railway Police at Trichy. Subsequently, on 31.12.2012, he was directed to report before the third respondent,viz., Superintendent of Police, Trichy. Since the

petitioner had fallen sick, he could not report before the third respondent in time and hence had submitted his medical certificate along with his leave application to the third respondent on 17.01.2013 requesting him to grant medical leave. When the petitioner had subsequently reported for duty before the third respondent, he was directed to report before the first respondent. However, the first respondent refused to take him on duty stating that he had been declared 'as a deserter' by letter dated 09.04.2013. Pursuant to the same, a charge memo dated 13.08.2013 was issued to the petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, whereby an enquiry was proposed to be held against the petitioner with regard to his leave. Consequent to the charge memo, the petitioner was served with the impugned notice dated 10.09.2013, informing him that the Deputy Superintendent of Police, RCRB, Trichy, has been nominated as Enquiry Officer for the oral enquiry to be conducted against the petitioner. Aggrieved against the enquiry contemplated against him, the petitioner is before this Court.

2. Heard Mr.C.Rajan, learned counsel for the petitioner and Mr.Mr.K.Bala Murugan, learned Government Advocate appearing for the respondents.

3. Learned counsel for the petitioner would submit that the conduct of the respondents treating him as a deserter, is unwarranted, since the petitioner had earlier submitted his leave application along with the medical certificate. Learned counsel for the petitioner would also submit that it was only on the ground of medical ailments, the petitioner could not report for duty for a period of 57 days, which aspect has been informed to the third respondent in time. He would further submit that every absence without leave need not be treated as desertion, particularly in this case, when the petitioner has submitted the medical certificate along with his leave application and therefore, the oral enquiry against the petitioner is unwarranted.

4. Learned Government Advocate on the other hand would submit that the petitioner was earlier awarded three punishments under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, once treated as deserter in Trichy District and in the other two punishments, he was treated as deserter while he was working in Railway Police in Trichy District. In the present case, when the petitioner was repatriated to Trichy District on 31.12.2012, he had not joined duty. The Deputy Superintendent of Police, Railway Crime Records Bureau, Trichy was deputed as Enquiry Officer on 10.09.2013, pursuant to which, call letters were sent to the petitioner. Since the petitioner had not turned up for the oral enquiry, he was set ex parte and a memo has been sent to the petitioner on

11.12.2013 for submitting his written statement. Learned Government Advocate appearing for the respondents would also submit that the petitioner is a habitual deserter and only when he had absented himself for 60 days, he was treated as 'confirmed deserter' as per the Police Standing Orders.

5. I have given careful consideration to the submissions made by respective counsels.

6. In the case on hand, the petitioner owing to medical ailment had submitted the application seeking for leave along with his medical certificate to the third respondent. I am unable to appreciate the respondent's conduct in treating the petitioner as deserter in this background. There is a vast difference between desertion and unauthorised absence. 'Desertion' does not mean and include every departure from the post without permission. On the other hand, it should be coupled with the intention of the delinquent to never return to the post at all. The plain meaning of the word 'desertion' is to leave without intending to return. In the case on hand, the petitioner duly returned after the absence of 57 days and he had informed the respondents about his medical ailments supporting the same with medical certificate. Without reference to the same, the respondents have chosen to conduct oral enquiry against the petitioner. Merely because the petitioner was earlier treated as deserter, does not mean that every unauthorised absence would deem him to become as deserter.

7. I am unable to accept the submissions of the learned Government Advocate that the petitioner is a habitual deserter. In my considered view, a deserter cannot be deemed to be habitual. The act of deserting concludes with the fact that the delinquent had not returned back to the duty once and for all. Though the petitioner has specifically stated in the affidavit that he has submitted his leave application along with the medical certificate prior to conduct of oral enquiry, the respondents have not denied the same in their counter affidavit. As such, I have no other option but to conclude that the respondents in spite of having received the leave application treated the petitioner as deserter and chosen to conduct enquiry against him, which is not permissible. Accordingly, the enquiry contemplated against the petitioner emanating from the impugned notice dated 10.09.2013 is liable to be quashed.

8. No doubt, the petitioner being a member of Uniformed Force is expected to maintain and conduct himself as per the rules and regulations and be prompt in his duty. Nevertheless, I am also of the view that the petitioner who was aged about 38 years can be counselled to reform himself in future by not involving in such acts of unauthorised absence in future and should be strictly warned of the consequences in case of any

future conduct in like manner.

9. For the foregoing reasons, the oral enquiry emanating from the impugned notice dated 10.09.2013 is quashed. In the result, this writ petition is allowed. No costs.

s/d-
Assistant Registrar

/true copy/

Sub-Assistant Registrar

To

1. The Superintendent of Police,
Railway Police,
Tiruchirapalli.
2. The Inspector of General of Police,
Railway Police,
Egmore,
Chennai-600 008.
3. The Superintendent of Police,
Trichy.
4. The Additional Inspector General of Police,
DGP Office,
Mylapore,
Chennai-600 004.

+2 CC to M/s C. Rajan, Advocate SR 69526

+1 CC to The Govt. Pleader, SR 70105

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