



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE **S.VIMALA**

W.P(MD)No.21716 of 2016

and

W.M.P(MD)No.15528 and 15529 of 2016

M.Selvakumar

: Petitioner

Vs.

1.The Inspector General of Police,
Central Reserve Police Force - Southern Sector,
Road No.10-C, Near MLA/MPs Colony,
Gayathri Hills, Jubilee Hills,
Hyderabad, Telengana State.

2.The Deputy Inspector General of Police,
Central Reserve Police Force,
Chennai Range, Avadi,
Chennai - 600 065.

3.The Commandant,
42Bn.- Central Reserve Police Force,
District Police Training Centre,
Lalacheruvu, Rajahmudry,
Andhra Pradesh - 533 106.

4.M.K.Pandey,
Asst. Commandant and Enquiry Officer,
42Bn. - Central Reserve Police Force,
District Police Training Centre,
Lacheruvu, Rajahmudry,
Andhra Pradesh - 533 106.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records related to the punishment order No.P.VIII-1/2015-42-EC.II(MSK), dated 20.07.2015 passed by the third respondent and the order No.R.XIII-10/2015-EC-III, dated 27.01.2016 passed by the second respondent and order No.R.XIII-51/2016-Adm-7, dated 13.06.2016 passed by the first respondent and further order No.P.I.36/16-17-PBC-42, dated 27.06.2016 passed by the second respondent directing the petitioner to remit Rs.36,029/- and quash the same and consequently direct the respondents to reinstate the petitioner in service and to grant



all the service and other monetary benefits to the petitioner as per rules, within a time limit to be fixed by this Court.

For Petitioner : Mr.A.Thirumurthy
for M/s.Victory Associates.

For Respondents : No appearance

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O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, praying to quash the punishment order No.P.VIII-1/2015-42-EC.II(MSK), dated 20.07.2015 passed by the third respondent, Order No.R.XIII-10/2015-EC-III, dated 27.01.2016 passed by the second respondent, Order No.R.XIII-51/2016-Adm-7, dated 13.06.2016 passed by the first respondent and further order No.P.I.36/16-17-PBC-42, dated 27.06.2016 passed by the second respondent directing the petitioner to remit Rs.36,023/- and consequently to direct the respondents to reinstate the petitioner in service and to grant all the service and other monetary benefits to the petitioner as per Rules.

2.Heard the learned counsel appearing for the petitioner during admission.

3. The brief facts leading to the filing of this writ petition are as follows:

The petitioner is a Constable working in Central Reserve Police Force, from the year 2004 and he was posted at Srinagar in the State of Jammu and Kashmir. Later on, he was transferred and posted in 42, Battalion - Central Police Reserve Force (CRPF), Lalacheruvu, Rajamundiri, Andhra Pradesh. The petitioner has completed 10 years of service.

3.1. While so, the third respondent has issued a charge memo and the two charges are as follows:

(i)The petitioner deserted from duty on 03.11.2014 while moving for Jharkhand in connection in Jharkhand Assembly Election duty, 2014 at Bhilaspur Railway Station from the Spl. Train and reported to duty on 01.01.2015, i.e. after 59 days of desertion.

(ii)During the aforesaid period, the petitioner did not comply with the order of the superiors issued in the letters dated 15.11.2014, 26.11.2014 and 01.12.2014, which are the letters addressed to the petitioner asking him to report for duty immediately.

3.2.The petitioner has submitted an oral explanation stating that due to family problem, he could not comply with the orders of the superiors. In spite of the same, an enquiry was ordered by the third respondent. While so, on 04.02.2015, due to family problem,



he submitted a leave application for four months up to May, 2015 and he left for his native place and he returned for duty in May, 2015.

3.3. The third respondent directed him to meet the fourth respondent, who was appointed as Enquiry Officer. When he approached the fourth respondent, the fourth respondent accused him that the enquiry notices sent to him were returned as 'undelivered' and he directed him to come for enquiry after receipt of a letter fixing the date of enquiry. Till the middle of June, 2015, he did not receive any enquiry notice. When he approached the respondents 3 and 4 in the month of June, 2015, they did not permit him to work and also directed him to come in the month of August, 2015 for final enquiry. When he went on 14.08.2015, the third respondent issued the order dated 20.07.2015, ordering dismissal from service.

3.4. As against the order of dismissal, the petitioner filed an appeal before the second respondent and the appeal was also rejected by the second respondent, by the order dated 27.01.2016.

3.5. Against which, he preferred a Revision Petition before the first respondent and the first respondent has also rejected the Revision Petition vide order dated 13.06.2016.

3.6. Following the said order, the second respondent has passed the impugned order dated 27.06.2016, directing the petitioner to remit a sum of Rs.36,023/- alleging overpayment of certain allowances.

3.7. The orders passed by the respondents 1 to 3 are under challenge in this writ petition.

4. The learned counsel for the petitioner would submit that the initial order of dismissal itself is an order passed violating the principles of natural justice and without affording an opportunity of hearing to the petitioner and therefore, the initial order of dismissal dated 20.07.2015 and the consequential orders passed in the appeal and revision petition are liable to be set aside.

5. A perusal of the orders passed by the Enquiry Officer and the Disciplinary Authority would go to show that sufficient opportunity of hearing has been afforded to the petitioner and it is the petitioner, who did not make use of the same. In paragraph No.2 of the order dated 20.07.2015, passed by the third respondent, it is mentioned that the Central Reserve Police Force sent a letter dated 13.01.2015 through Registered Post with Acknowledgment Due to the home address of the petitioner with a direction to submit representations, if any, within a period of ten days from the date of receipt of the memorandum, for which, the petitioner did not submit any explanation. Thereafter, at the time of preliminary hearing, i.e., after the appointment of the Enquiry Officer, again a communication has been sent to his home address. During the examination of witnesses also, similar attempt has been made to serve notice on him. But the notice has



been returned with an endorsement "addressee is not in the address". Neither the petitioner appeared before the Enquiry Officer nor sent any communication stating that he will not be able to attend the proceedings. After taking several attempts, witnesses have been examined and in the absence of the petitioner, further decision has been taken by the authorities and the authorities have sent notices only to the address, which was furnished by the petitioner.

6. It is not the case of the petitioner that notices were sent to the address, which was not furnished by the petitioner. Whatever is possible on the part of the third respondent, to serve the notice on the petitioner, have been taken. It is not the case of the petitioner that opportunity of hearing, which is given by the third respondent, was utilized by him and that it is not the case of non-providing of any opportunity.

7. The learned counsel for the petitioner relied upon the decision of the Principal Bench of this Court, in W.P.No.6409 of 1999, dated 19.11.2012, (**S.Selvam v. The Commandant, Deputy Inspector General of Police, Inspector General of Police, Southern Region, Central Reserve Police Force and Another**), wherein this Court has expressed an opinion that even though the Central Reserve Police Force is a disciplined force and the employees are required to maintain discipline, such removal, deprives the means of livelihood of the employee and therefore, a lenient view has to be taken.

7.1. The observation that lenient view has to be taken, would not be applicable to the facts of the present case.

8. It is the contention of the respondents that the petitioner was guilty of overstaying of leave. This is a case, where the petitioner being a member of the disciplined force, remained deserted from the assigned duty for 59 days and it is a case of willful disobedience and he did not report for duty even after the authorities insisted him to report back for duty and therefore the orders passed by the respondents 1 to 3 are justifiable and the same did not require any interference. It is not a fit case for admission and accordingly the writ petition is dismissed at the admission stage itself. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To

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Andhra Pradesh - 533 106.

+1 cc to M/S.VICTORY ASSOCIATES SR.NO.68122

ORDER MADE IN
W.P(MD)No.21716 of 2016
and
W.M.P(MD)No.15528 and 15529 of 2016
11.11.2016

SMA/RSK/17.02.2017:5P/5C