

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.08.2017

CORAM

THE HON'BLE Mr.JUSTICE V.PARTHIBAN

W.P.No.5289 of 2011 and
M.P.Nos.1 of 2011 & 2 of 2012

N.Ramesh

... Petitioner

Vs

- 1.The Deputy Inspector General of Police,
CRPF, Chennai Range,
Avadi, Chennai.
- 2.The Commandant,
19 Battallion,
CRPF, RSP Trainees Hostel,
Sector-5, Rourkela, Orissa.
- 3.The Union of India,
Rep.by the Inspector General,
CRPF, Southern Sector,
Road No:10-C, Jubilee Hills,
Near MLA/MP's Colony,
Hyderabad-33.

(R3 - Impleaded as per order
dated 03.12.2014 in M.P.Nos.1 & 2 of
2012 in W.P.No.5289 of 2011).

...Respondents

prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 2nd respondent in proceeding No.P.VIII-4/2010-EC-11-19 dated 30.10.2010 and the appellate order passed by the 1st respondent in office order No.R.XIII-15/2010-ESTT.111 dated 03.05.2011 and the order passed by the 3rd respondent in proceeding No.R.XIII.11/12-ADM-7 dated 21.03.2012 and quash these orders and consequently direct the respondents to reinstate the petitioner in service with full backwages and other consequential service benefits.
(Prayer amended as per order dated 03/12/2014 in M.P.Nos.1&2 of 2012 in W.P.No.5289 of 2011).

For Petitioner : Mr.R.Prem Narayan

For Respondents : Mr.K.Gunasekar

O R D E R

Heard Mr.R.Prem Narayan, learned counsel appearing for the petitioner and Mr.K.Gunasekar, learned Standing Counsel appearing for the respondents.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 2nd Respondent in proceeding No.P.VIII-4/2010-EC-11-19 dated 30.10.2010 and the appellate order passed by the 1st Respondent in office order No.R.XIII-15/2010-ESTT.111 dated 03.05.2011 and the order passed by the 3rd respondent in proceeding No.R.XIII.11/12-ADM-7 dated 21.03.2012 and quash these orders and consequently direct the respondents to reinstate the petitioner in service with full backwages and other consequential service benefits."

3. The case of the petitioner is as follows:

The petitioner was appointed as constable in CRPF. While working so, he was issued with the charge sheet on 18.05.2010, and the charge as contained in the charge sheet is extracted below for better appreciation of the case.

"That the said No.991160181 Ct/GD N.Ramesh of B/19 Bn. CRPF while functioning as Ct/GD during the period of his stay at 58 Bn. CRPF, committed an act of misconduct in his capacity as a member of the force under Section 11(1) of CRPF Act 1949 in that he took Rs.2,000/- as loan from No.050580044 Ct/bug Satish Kumar of 58 Bn. CRPF. Again he asked Rs.1,000/- and this time No.050580044 Ct/Bug Satish Kumar of 58 Bn. CRPF has given his ATM card to withdraw Rs.1,000/-. On this No.991160181 Ct.GD N.Ramesh has withdrawn Rs.9,700/- from the ATM and without returning the ATM card or giving intimation, he reported back in this Unit. Thus, he has committed an act of cheating which is amounts to misconduct and prejudicial to the good orders and discipline of the force."

4. The case of the petitioner was that he was badly in need of money and therefore, he had overdrawn the cash from the ATM card given by his friend and before he could explain his situation to his friend, he had to be away from the station, in view of the police complaint given by his wife. According to the petitioner, there was an estrangement between him and his wife during the relevant period. The petitioner was also transferred in the meanwhile and therefore, there was no time left for him to explain to his friend. Under the circumstances, the petitioner was forced to overdraw the money

from the ATM card given by his friend. However, the case of the petitioner was that he had repaid the entire amount which was drawn by him from the ATM card.

5. In pursuance of the Charge memo, an enquiry was held and ultimately, on the basis of the findings of the enquiry, the second respondent issued the penalty order on 30.10.2010, removing the petitioner from service. Against the order of removal from service, the petitioner submitted an appeal on 15.11.2010, that appeal was not disposed of by the first respondent. In the circumstances, the petitioner had approached this court to challenge the punishment order dated 30.10.2010.

6. During the pendency of the writ petition, the first respondent had passed an order in the appeal on 03.05.2011, rejecting the same. Thereafter, it appears that a revision has been filed by the petitioner against the order passed by the appellate authority, before the third respondent. However, the said revision petition also came to be rejected by the 3rd respondent on 21.03.2012. Thereafter, an application was moved before this court seeking to amend the prayer assailing all the three orders passed by the respondents against the petitioner.

7. The learned counsel appearing for the petitioner at the outset, would submit that the charge which was framed against the petitioner had nothing to do with the official discharge of duties and the transaction was purely a private affair between him and his friend and the same was also sorted out in due course, since the amount which was borrowed had been settled in full. According to the learned counsel, the petitioner was in urgent need of money and therefore he had to draw the amount from the ATM card given by his friend and in any event, the situation was subsequently explained and the amount which was borrowed has also been settled in full.

8. In such circumstances, the order of Disciplinary authority imposing the harsh penalty of removal from service is disproportionate to the gravity of misconduct alleged against the petitioner. The said circumstances had also not been appreciated in proper perspective by both the appellate authority and the revisional authority as well. Therefore, he would urge this court to interfere with the quantum of penalty imposed on the petitioner. According to him, he has been out of service from the year 2010 and that by itself a punishment for the petitioner.

9. Upon notice, the learned Standing Counsel for the respondents entered appearance and filed a detailed counter. The learned counsel for the respondents would submit that though the transaction was between two colleagues of the Force but the conduct of the petitioner did amount to fraud and cheating and therefore, no lenient view could be taken in the

matter. According to him, if such person is allowed to be retained in the Force, it will send wrong signal to other persons of the Force. Therefore, the disciplinary authority has rightly taken a decision of imposing the penalty of removal from service which penalty had been confirmed and affirmed by both the appellate and the revisional authorities. He would also submit that earlier the petitioner was warned for certain minor dereliction of duty and therefore the present case does not warrant any interference from this court.

10. This court has given its anxious consideration of the rival submissions of the counsels and also perused the pleadings and materials placed on record. From the charge that was framed against the petitioner and the circumstances of the case which formed the basis of imputation to the charge, it could be seen that as rightly contended by the learned counsel for the petitioner that the transaction which gave rise to the charges was purely a private affair between the petitioner and his colleague in the Force. In any event, it has to be seen that the issue between the petitioner and his colleague has been sorted out and the amount taken as loan by the petitioner had been settled in full.

11. The explanation regarding the circumstances which forced the petitioner to overdraw the amount from the ATM card given by his friend, do carry some conviction. Since at the relevant time, the petitioner was facing heat from his wife side, as some complaints were given to the police by his wife during the period of their estrangement. The learned counsel appearing for the petitioner would submit that in any event, subsequently, the petitioner and his wife had patched up and they are living together.

12. In the light of the above facts and circumstances, it has to be seen whether the punishment of removal from service is commensurate with the gravity of misconduct alleged against the petitioner. As rightly contended by the learned counsel for the petitioner that the facts which gave rise to the charge memo, pertain to transaction between two colleagues in the Force and the same had nothing to do with the official discharge of duties on the part of the petitioner. As stated above, the explanation given by the petitioner, has some conviction and in the said circumstances, the punishment of removal from service can be construed to be one of harsh and disproportionate to the gravity of the offence alleged against the petitioner. Of course, the conduct of the petitioner cannot be fully condoned since the faith imposed by his friend had been misused by the petitioner under whatever circumstances that may have forced the petitioner to conduct himself in the manner. In the said circumstances, this court is of the view that the punishment of removal from service is disproportionate and therefore, the same is liable to be set aside.

13. In such circumstances, the impugned orders dated 30.10.2010, 03.05.2011 and 21.03.2012 of R1 to R3 are set aside. As regards the punishment is concerned, the period from which the petitioner was out of employment i.e., after 30.10.2010, till the date of reinstatement of service shall be treated as punishment as he has not been paid any wages and this Court finds that such punishment is sufficient in the facts and circumstances of the case.

14. Therefore, in the above circumstances, there shall be a direction to the respondents to reinstate the petitioner within a period of two months from the date of receipt of a copy of this order and the petitioner is entitled to continuity of service and all other attendant benefits except the wages for the period from the date of removal from service and till the date of reinstatement shall be treated as punishment.

15. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Inspector General of Police,
CRPF, Chennai Range, Avadi, Chennai.

2.The Commandant,
19 Battallion,
CRPF, RSP Trainees Hostel,
Sector-5, Rourkela, Orissa.

3. The Inspector General,
The Union of India,
CRPF, Southern Sector,
Road No:10-C, Jubilee Hills,
Near MLA/MP's Colony, Hyderabad-33.

+1cc to Mr.R.Premnarayan, Advocate SR.No.61748
+1cc to Mr.K.Gunasekar, Advocate SR.No.61425

WP.No.5289 of 2011

SCD(CO)
GN(15/09/2017)

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