

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.11758 of 2013
and M.P.No.1 of 2013

R.Ramar

.. Petitioner

vs.

1. The Commanding Officer,
110, INF BN (TA) Madras,
HQ CE (P) Beacon,
Pin-934 310,
801FPO, C/o. 56APO.

2. The Officer-in-charge,
The Records, The Madras Regt.
Wellington (Nilgiris),
Pin-643 231 (900 458)
C/o 56APO.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the first respondent to reinstate the petitioner in service as a Sepoy/GD in respect of No.10167122H Rank Sepoy with all back wages, eligible promotions, continuity of service and all other attendant benefits by considering the representation dated 23.02.2013.

For Petitioner : No Appearance

For Respondents : Mrs.N.K.Nithilavani
Central Government Standing Counsel
for R1 and R2

O R D E R

The learned counsel for the petitioner is absent.

2. Counter affidavit on behalf of the respondents is filed by the learned counsel appearing for the respondents. Considering the limited scope of prayer sought for by the petitioner, this writ petition is taken up for final disposal and disposed of on merits.

3. The petitioner, while working as Sepoy/GD in the Territorial Army, 110 Infantry Battalion (TA), Madras at Red Field, Coimbatore, had demanded illegal gratification of Rs.80,000/- from one Sathish Kumar and accepted a sum of Rs.2,000/- thinking that it is Rs.80,000/- and in this regard, the defacto complainant has lodged a complaint, based on which, the Inspector of Police, SPE/CBI/ACB, Chennai has registered a case in Cr.No.RCMA/2008 A 0006 for the offences under Sections 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988. Subsequently, the petitioner had demanded from the said Sathish Kumar to pay a sum of Rs.80,000/- and informed him that only after receipt of Rs.80,000/-, certificates will be returned to him. Trap laid in this regard became successful. The Central Bureau of Investigation, after investigation, has filed a charge sheet in C.C.No.23 of 2008 before the Court of Principal Session Judge for C.B.I. Cases, Chennai. The said case, after full fledged trial, had ended in conviction, vide judgment dated 29.03.2010, sentencing him to undergo 1 year rigorous imprisonment with a fine of Rs.1,000/- in default to undergo 3 months simple imprisonment for the offence under Section 7 of the Prevention of Corruption Act, 1988 and sentenced to undergo 1 year rigorous imprisonment with a fine of Rs.2,000/- in default to undergo 3 months simple imprisonment for the offence under Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 and the sentences were ordered to run concurrently.

4. The petitioner, aggrieved by the judgment of conviction and sentence passed by the Trial Court, had filed an appeal in C.A.No.240 of 2010 on the file of this Court and this Court, vide judgment dated 22.02.2012, had allowed the criminal appeal and acquitted the writ petitioner holding that the prosecution has miserably failed to prove the guilt of the appellant/writ petitioner for the above offences beyond reasonable doubt. The petitioner, after receipt of the judgment copy, submitted a representation dated 19.09.2012 through proper channel, praying for his reinstatement with consequential benefits and it was also acknowledged by the first respondent and it was replied by

the first respondent stating that he cannot be reinstated into service as he has involved in a disciplinary case. The petitioner has also sent another representation dated 23.02.2013 to the first respondent, praying for his reinstatement, but no action was taken.

5. Mrs.N.K.Nithila Vani, learned Central Government Standing Counsel appearing for the respondents would contend that the matter is pending consideration of the first respondent and appropriate direction may be given to the first respondent to consider and dispose of the petitioner's representation dated 23.02.2013 at an early date.

6. This Court paid its best attention to the submission made by the learned counsel appearing for the respondents and also perused the materials placed before it.

7. No doubt, the writ petitioner was convicted for the offences under the Prevention of Corruption Act, 1988 and was convicted by the Trial Court and on appeal, this Court has set aside the judgment of conviction passed by the Trial Court by holding that the prosecution has miserably failed to prove the guilt of the appellant/writ petitioner beyond reasonable doubt. The petitioner, immediately after conviction, was dismissed from service and since he has been acquitted by this Court, he should have been reinstated into service with consequential benefits in accordance with law. The petitioner, in this regard, has also submitted a representation dated 19.09.2012 to the first respondent and it was replied by the first respondent stating that he has involved in a disciplinary case.

8. A perusal of the counter affidavit filed by the respondents would disclose that no disciplinary proceeding has been initiated or pending against the petitioner and admittedly, no charge memo has been issued on the petitioner based on the judgment of conviction and sentence passed by the Trial Court and since he has been acquitted by this Court, on appeal, the respondents, in all fairness, ought to have reinstated the petitioner into service and confer him with all consequential benefits in accordance with law, but they failed to do so and not taken any decision on his representation dated 23.02.2013 and the delay in taking decision on the part of the first respondent is deprecated.

9. In the result, this Writ Petition is disposed of and the first respondent is directed to dispose of the petitioner's representation dated 23.02.2013 on merits and in accordance with law, in the light of the observations made in this writ petition and pass orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Commanding Officer,
110, INF BN (TA) Madras,
HQ CE (P) Beacon,
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801FPO, C/o. 56APO.
2. The Officer-in-charge,
The Records, The Madras Regt.
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Pin-643 231 (900 458)
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+1cc to Mrs.N.K.Nithilavani, Advocate, S.R.No.39614

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CS/12/06/17

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