

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.24162 of 2012

N.Hariharan

.. Petitioner

Vs.

1. The Superintendent of Police,  
Railways, Chennai-8.

2. The Inspector General of Police,  
Railways, Chennai-8.

3. The Director General of Police,  
Dr.Radhakrishnan Salai,  
Mylapore, Chennai-4.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari calling for the records of the respondents 1 & 2 in connection with the impugned order passed in Na.Ka.No.G1/PR No.26/2010 dated 05.05.2011 and RC No.A2/3436/2011 dated 22.12.2011 and quash the same.

For Petitioner .. Mr.T.Ayngaraprabhu

For Respondents.. Mr.S.Gunasekaran,  
Addl. Govt. Pleader

सत्यमेव जयते  
ORDER

The petitioner has approached this Court seeking the following reliefs:

''To issue a certiorari calling for the records of the respondents 1 & 2 in connection with the impugned order passed in Na.Ka.No.G1/PR No.26/2010 dated 05.05.2011 and RC No.A2/3436/2011 dated 22.12.2011 and quash the same.''

2.The petitioner was directly recruited as Gr-II Police Constable through a selection conducted by Tamil Nadu Uniformed Services Recruitment Board and was posted on 15.07.2002. After

serving various Battalions, he was transferred finally to Coimbatore City Armed Reserve in the year 2006. While serving in Coimbatore, he was transferred on OD basis to the Railway Police and had been serving in Podanur Railway Station.

3.While serving in the Podanur Railway Police Station, the petitioner could not report for duty on 06.11.2010 and he was admitted in the Government Police Hospital in Coimbatore as in-patient, due to his ill-health and he had initially availed medical leave for 15 days from 08.07.2010 to 22.07.2010. However, the petitioner could not recover from his illness and therefore, he requested for further grant of medical leave from 23.07.2010 to 01.08.2010 and thereafter, for few more days, since he could not recover from his illness completely, he could not report for duty after 02.08.2010. On account of his continuous absence after the medical leave for 21 days, the order of desertion was issued on 27.10.2010. Thereafter, the petitioner was issued a charge memo on 09.12.2010 in PR No.21/2010 under Rule 3(b) of TNPSS (D&A) Rules, alleging that the petitioner did not report for duty on 02.08.2010, after completing the medical leave from 06.07.2010 to 01.08.2010 and further, continued to be absent for more than 21 days. When enquiry officer was appointed, no witnesses were examined. Without considering the explanation submitted by the petitioner, a report was filed by the enquiry officer on 02.03.2011 holding that the charges have been proved against the petitioner. According to the petitioner, a copy of the enquiry findings had not been furnished to him. Without furnishing a copy of the enquiry findings, the disciplinary authority accepting the findings of the enquiry officer, passed the order dated 05.05.2011, imposing a punishment of compulsory retirement from service.

4.According to the disciplinary authority, in view of the petitioner admitting his absence, there was no scope for holding any further enquiry in the matter and therefore, imposed the penalty, which is impugned in the present writ petition.

5.According to the petitioner, the penalty order was served by pasting on the doors of his house on 20.05.2011. However, the petitioner was not aware of the same as he was not available in his native place. On his return to his native place, after learning of the order, an appeal was submitted before the second respondent, but the same was rejected on the ground that the appeal was time barred vide proceedings of the second respondent, dated 22.12.2011. Thereafter, the petitioner was directed to submit a mercy petition to the Head of the Department which he had submitted in the first week of January 2012 and there is no response in the mercy petition till the

date of filing of the writ petition. Therefore, the petitioner is before this Court, challenging the order of the first and second respondents, dated 05.05.2011 and 22.12.2011 respectively.

6. Learned counsel for the petitioner at the outset would submit that the enquiry was not properly conducted as no opportunity was afforded to the petitioner, who effectively participated in the enquiry. No witnesses were examined and on the basis of the submission made by the petitioner alone, an enquiry report was submitted holding the charges proved. The petitioner's explanation was not properly considered and therefore, the findings of the enquiry officer are nothing but perverse finding and the same cannot be countenanced in law or on facts.

7. The learned counsel for the petitioner further submitted that on the basis of flawed report given by the enquiry officer, the disciplinary authority/first respondent herein had imposed severe penalty of 'compulsory retirement', without appreciating the reasons explained by the petitioner for his absence during the relevant period. The disciplinary authority has also not appreciated the fact that the copy of the enquiry officer's report was not furnished to the petitioner which fact by itself would vitiate the disciplinary action, in view of the settled principle of law on the present subject matter.

8. More over, the appellate authority is vested with the statutory powers to deal with the appeals and has returned the appeal only on the ground that the same was preferred belatedly. The return of the appeal by the appellate authority is time barred, is nothing but failure on the part of the appellate authority to discharge its statutory duty cast upon him under the rules.

9. Upon notice, Mr. S. Gunasekaran, learned Additional Government Pleader entered appearance for the respondents and filed a detailed counter affidavit.

10. In the counter affidavit, it is stated that a fair opportunity was afforded to the petitioner in the enquiry and since the petitioner seemed to have accepted the charges, there was no scope for proceeding with the enquiry any further. Since the absence of the petitioner was borne out by the records, no prejudice was caused to the petitioner. Therefore, the disciplinary authority had rightly taken a call and imposed a penalty of compulsory retirement by taking a lenient view of the matter.

11.The learned counsel for the respondents would submit that admittedly, the appeal has been preferred belatedly without proper explanation and therefore, the appellate authority has rightly rejected the appeal as time barred and therefore, the same cannot be found fault with.

12.The learned counsel for the petitioner would finally submit that apart from vitiating factors as pointed above in the matter of conducting enquiry and imposition of penalty, the punishment imposed on the petitioner who has rendered less than 10 years of service, is disproportionate. He would submit that the punishment of compulsory retirement is akin to removal from service for unauthorised absence for a few days and such punishment was found to be disproportionate by the learned Division Bench of this Court. In similar circumstances, it has also been followed by the learned Single Judge of this Court recently in W.P.No.6873 of 2013 dated 09.09.2017. He would draw the attention of this Court to para-6 of the judgment of the learned Single Judge, which held the similar issue, is extracted below:

This Court, after considering the rival submissions of the learned counsel for the parties and upon perusing the relevant materials and pleadings placed on record is of the considered view that as rightly held by the learned Single Judge of this Court, as he then was, in the aforesaid writ petition, a punishment imposed on the petitioner, namely, the removal from service, is grossly disproportionate to the gravity of misconduct (Desertion) alleged against the petitioner. There cannot be two opinions that for solitary act of misconduct, punishment of removal from service is too excessive, particularly, considering the age of the petitioner, who was only 32 years at the point of time. Having concluded so, this Court has to see as to what punishment should be imposed on the petitioner instead of removal from service. Considering the evidence in the enquiry proceedings and the order passed by the disciplinary authority, this Court is of the view in the fitness of things, that the petitioner having been removed from service as early as in 2007 and has been out of employment for over 10 years, the punishment of removal from service imposed on the petitioner is modified to the extent that the petitioner is directed to be reinstated in service without any backwages for the period from the date of his removal from service till the date of his

reinstatement. Denial of backwages for a long period of 10 years is a sufficient punishment to be imposed on the petitioner in the facts and circumstances of the case.

13. In the above case, this Court has finally substituted the penalty as follows:

"7. In the light of above, the respondents are directed to pass orders of reinstatement of the petitioner in service without backwages within a period of two months from the date of receipt of a copy of this order. On being reinstated, the petitioner is entitled to all other attendant benefits."

14. This Court has given its anxious consideration to the rival submissions of the learned counsel for the parties and perused the materials and pleadings placed on record.

15. As rightly pointed out by the learned counsel for the petitioner that the entire disciplinary action which culminated into imposition of penalty of compulsory retirement from service is vitiated. First of all, on the ground that no proper enquiry was conducted against the petitioner in terms of rule position. Further, the enquiry report copy was not furnished to the petitioner. The order passed by the Disciplinary Authority on the basis of flawed findings cannot also be sustained in law and even otherwise without adhering the mandatory procedure for furnishing of enquiry report, such penalty cannot be imposed on him. Further, the opportunity of appeal being considered on merits has also not been given. Then, in the present case, the appellate authority's decision to reject the appeal as time barred without appreciating the explanation submitted by the petitioner, is without justification.

16. Learned counsel for the respondents would submit that the petitioner was in the habit of frequently absenting without informing to the department. In any event, the following order is passed for giving a last opportunity to the petitioner to correct himself in future. In case, the petitioner is going to continue with this attitude of absentism without proper reasons and without getting permission from the department, it is always open to the respondents to proceed against him, as they may be advised in future.

17.For all the above reasons, the petitioner is entitled to succeed. However, in view of the fact that the petitioner was absent without giving proper reasons, continuously for several weeks and such conduct does advance the cause of discipline, the petitioner has to be imposed with punishment of forfeiture of backwages as a method of corrective measure so that in future, he does not absent or commit any misconduct during his service.

18.In the above said circumstances, the writ petition is allowed and the impugned orders passed by respondents 1 and 2 in Na.Ka.No.G1/PR No.26/2010, dated 05.05.2011 and RC No.A2/3436/2011 dated 22.12.2011, are set aside and the respondents herein are directed to reinstate the petitioner in service with all other attendant benefits etc., However, the petitioner is not entitled to the backwages from the date of compulsory retirement till the date of reinstatement into service. The denial of backwages for the period of punishment is sufficient penalty to be imposed on the petitioner in the facts and circumstances of the case. The respondents are directed to pass the consequential order within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintendent of Police,  
Railways, Chennai-8.

2. The Inspector General of Police,  
Railways, Chennai-8.

3. The Director General of Police,  
Dr.Radhakrishnan Salai,  
Mylapore, Chennai-4.

+1 cc to the Govt Pleader sr 88175

+1 cc to Mr.M.Muthappan Advocate sr 87300

W.P.No.24162 of 2012

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