



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 25.10.2016

DATED: 23.02.2017

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The Hon'ble Mr.JUSTICE M.V.MURALIDARAN

W.P.(MD) Nos.10769 & 10770 of 2011
and MP(MD)Nos.1 and 1 of 2011

V.Justin Santhiyahoo .. Petitioner in W.P.No.10769/2011
S.M.Prabhu .. Petitioner in W.P.No.10770/2011

-vs-

- 1.The Director General of Police,
Central Reserve Police Force,
Block No.1, C.G.O. Complex,
Lodhi Road,
New Delhi-110 003.
- 2.The Inspector General of Police,
CS,Central Reserve Police Force,
Gomti Nagar,
Lucknow.
- 3.The Deputy Inspector General of Police,
Central Reserve Police Force,
Ismail Ganj, Old Airport,
Central Reserve Police Force Group Center,
Allahabad-211013.
- 4.The Additional Inspector General of Police,
Central Reserve Police Force,
Avadi,
Chennai-65.
- 5.The Commandant,
169 BN, Central Reserve Police Force,
Ismail Ganj, Old Airport,
Central Reserve Police Force-Group Center,
Allhabad-211 013. .. Respondents in both Petitions

<https://hdservicescourts.gov.in/services>
Prayer: Petitioners filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records relating to the order of the 5th respondent



Commandant-169 Battalion No.D.II-2/2004-169-EC-II, dated 09.02.2005 terminating the service of the petitioner, quash the same and further direct the 2nd respondent to re-instate the petitioners with all monetary benefits.

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For Petitioners : Mr.K.Vadivelu

For Respondents : Mr.Murugappan
CGSC for R1 to R5

COMMON ORDER

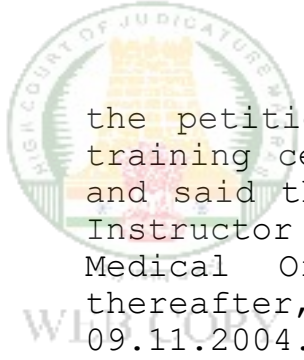
These writ petitions have been filed by the petitioners seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order of the 5th respondent Commandant dated 09.02.2005 terminating the service of the petitioners, to quash the same and to direct the 2nd respondent to re-instate the petitioners with all monetary benefits.

2. Since the challenge made in these writ petitions is one and the same, both writ petitions were heard together and common order is passed.

3. Briefly stated, the case of the petitioners is as follows:

The petitioners were appointed as Constable/GD in Central Reserve Police Force (hereinafter referred to as "CRPF") at Avadi, Chennai and joined duty on 1.9.2004 in the office of the Additional Deputy Inspector General of Police Group Centre, CRPF, Avadi. The petitioners along with few more Constables were directed to attend training at 169 CRPF Battalion at Allahabad for a period of one year. The petitioners attended the training at Allahabad from 27.09.2004 onwards. At the training centre, during rest days, the authorities, allow the trainees to go out to the nearby shops and/or other places to purchase articles for their daily use by making entry in the Out Pass Register.

4. On 31.10.2004 (Sunday), the petitioners were permitted to go out from the training centre along with few other trainees by the Company Head Master (hereinafter referred to as "CHM") for purchase of daily use articles without making entry in the Out Pass Register. Further, it is the duty of the CHM to accompany the trainees when they go out for their safety. Since on 31.10.2004 the CHM was busy with his work, he could not accompany the petitioners and could not entrust the responsibility on some other person to accompany them. The CHM allowed the petitioners to go out without any other person. When the petitioners walked around the camp nearby and returned to the training centre, the Instructor stopped the petitioners and other trainees and questioned how they were allowed to go out without making entry in the Out Pass Register and without CHM. When



the petitioners tried to explain in Tamil, the Instructor of the training centre could not understand the same and shouted in Hindi and said that the petitioners would be sent out from the camp. The Instructor of the training centre took the petitioners to the Medical Officer as if the petitioners consumed alcohol and thereafter, they were put in quarter guard for nine days till 09.11.2004. According to the petitioners, they have not purchased and/or consumed liquor, nor stored liquor in the training camp.

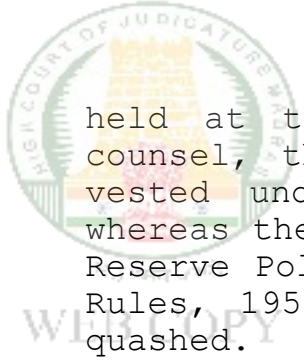
5. On 10.11.2004, the petitioners were allowed to rejoin the training and attended Test and Drill Test. The petitioners have also received salary for the month of November, 2004. On 28.12.2004, the petitioners were directed by the B-Company Commander to return the things given by CRPF. In obedience of the direction given by the Commander, the petitioners have returned the things. Thereafter, the CHM directed the petitioners to leave the training centre and obeying the said direction of the CHM, the petitioners returned to their native in Tamil Nadu.

6. According to the petitioners, after returning to their native, they sent representations to the Director General of Police, CRPF, New Delhi, requesting to permit them to continue the training. While so, on 09.02.2005, the petitioners received impugned order that their services were terminated with effect from 28.12.2004 on the ground that the petitioners were caught red handed under the influence of liquor and found guilty of leaving the camp area without prior permission of the competent authority. Aggrieved by the order impugned, the petitioners have filed appeals, which were rejected by the Inspector General of Police vide order dated 18.05.2005. Hence, the petitioners were constrained to file the writ petitions to quash the order of termination and to direct the concerned respondent to re-instate the petitioners with monetary benefits.

7. Denying the averments in the writ petitions, the respondents have filed counter-affidavit stating that the petitioners, who left the camp without any permission, were caught red-handed under the influence of liquor. Further, based on the evidence of the Doctor, medical report and batch-mates, order of termination was issued and prayed for dismissal of the writ petitions.

8. I heard Mr.K.Vadivelu, learned counsel appearing for the petitioners and Mr.K.Murugappan, learned CGSC appearing for the respondents. Perused the materials available on record.

9. Learned counsel for the petitioners submitted that the impugned order has been passed without holding any departmental enquiry and the Court of enquiry mentioned in the impugned order was



held at the back of the petitioners. According to the learned counsel, the impugned order has been passed in exercise of power vested under Rule 5(1) of Temporary Government Service Rules, whereas the services of the petitioners were governed by the Central Reserve Police Force Act, 1949 and the Central Reserve Police Force Rules, 1955. Therefore, the order of termination is liable to be quashed.

10. Learned counsel appearing for the respondents submitted that the impugned order has been passed, in exercise of the power conferred under the Rules and therefore, no fault can be found with the impugned order.

11. The case of the petitioners is that after they were sentenced to imprisonment for a period of nine days quarter guard for the alleged misconduct, they were allowed to resume the training, but thereafter, without assigning any reason, the petitioners were not allowed to continue the training and were directed to go home. When the petitioners were in their native, the respondent authorities communicated impugned order stating that the services of the petitioners were terminated. According to the petitioners, the said act of the respondent authorities is arbitrary.

12. The impugned order of termination dated 9.2.2005 reads as follows:

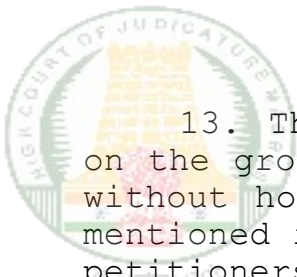
"Subject: REG TERMINATION FROM SERVICES

Please refer to your application dated 2/2005 and information notice, dated 31.01.2005 respectively.

Recruits namely, V. Justine Shanthiyahoo, G. Rajakumar, S.M. Prabhu and S. Suresh, who were undergoing the basis training in this unit were caught red-handed under influence of liquor and found guilty of leaving the camp/line without the prior intimation or permission or Competent Authority, by the DIGP, CRPF, Allahabad on 31.10.2004 and handed over to this unit. Subsequently, a court of Inquiry was held and the Rts, were terminated from their services w.e.f. 28.12.2004 after finding them guilty of misconduct.

(KENAL SINGH 21/C COMMANDANT-169-BN, CRPF (ADD) "

Aggrieved by the order dated 09.02.2005, the petitioners have preferred appeals to the Director General of Police, CRPF, New Delhi and the same were rejected by the Inspector General of Police on 18.05.2005.



13. The impugned order has been challenged by the petitioners on the ground that the order, though punitive in nature, was passed without holding any departmental enquiry, and the Court of Inquiry mentioned in the impugned order, if any, was held at the back of the petitioners.

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14. Referring to Rule 16 of the Central Reserve Police Force Rules, 1955, the learned counsel appearing for the petitioners submitted that the order of termination is not in consonance with Rule 16, as no notice was issued prior to passing of the termination order. The learned counsel would further submit that the impugned order is stigmatic having been passed by way of punishment, therefore, the same is unsustainable in law and also hit by rule of double jeopardy.

15. On a perusal of the impugned order, I find that the impugned order prima facie contrary to Rule 16 of the Central Reserve Police Force Rules, 1959, as admittedly, no notice was issued. Even otherwise, the impugned order cannot be sustained, as this is not simpliciter order of discharge, but punitive in nature, as specific allegations are levelled against the petitioners in the impugned order.

16. It is well settled law that an order, which is stigmatic in nature cannot be passed without following due process of law, and giving opportunity to defend to the employee concerned.

17. It is to be noted at this juncture that out of the four persons indicated in the impugned order, two of the similarly placed persons, viz., S.Suresh and G.Raja Kumar, have filed writ petitions being W.P.Nos.3292 and 3312 of 2006 challenging the very same impugned order and the learned Single Judge of this Court by an order dated 24.08.2011 set aside the impugned order. Therefore, in effect, the present writ petitions are covered by the said order.

18. On a perusal of the order in W.P.Nos.3292 and 3312 of 2006, it is seen that the petitioners therein have filed appeals challenging the order dated 9.2.2005 and the appeal were rejected by the Appellate Authority vide order dated 18.05.2005. Further on perusal of the aforesaid order reveals that the learned Single Judge, after recording the rival submissions of the respective counsel and also quoting the provisions of Rule 16 of the Central Reserve Police Force Rules, 1955, held as under:

"16. The impugned orders are prima facie contrary to Rule 16 of the Central Reserve Police Force Rules, 1959, as admittedly, no notice was issued. Even otherwise, the impugned orders cannot be sustained, as these are not simpliciter order of discharge, but punitive in nature,



as specific allegations are levelled against the petitioners in the impugned order. It is well settled law, that an order, which is stigmatic in nature cannot be passed without following due process of law, and giving opportunity to defend to the employee concerned.

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17. The orders of the appellate authority are on the face of it, arbitrary and shows non-application of mind, as it proceeded on presumption, that the orders were passed under Rule 5(1) of the Temporary Government Employees Rules, whereas the petitioners are governed by the statutory Rules i.e., The Central Reserve Police Force Rules, 1959 as mentioned in the letter of appointment of the petitioners.

18. The impugned orders also suffer from the vice of double jeopardy, as the petitioners were punished for the alleged misconduct, by sentencing them to 10 days quarter guard, and they could not be terminated from services by way of punishment for the same offence. Though, it was open to the competent authority to have assessed the over all conduct of the petitioners during the training to consider whether the petitioners could be returned or not, but the impugned orders, on the face of it are contrary to the statutory rules, and also against the constitutional mandate, that no order of punishment can be passed, without holding enquiry and giving an opportunity to the persons to show cause. The impugned orders, therefore, cannot be sustained in law."

19. The respondents have not produced any materials to show that as against the order in W.P.Nos.3292 and 3312 of 2006 dated 24.08.2011, appeal has been filed. In the absence of any materials to show that appeal has been filed, I am of the view that the order of the learned Single Judge in W.P.Nos.3292 & 3312 of 2016, dated 24.08.2011 attained finality and I do not want to take a different view when the order in the aforesaid writ petitions is elaborate/detailed order. Thus, I am of the view that the present writ petitions are squarely covered by the order in W.P.Nos.3292 and 3312 of 2006 dated 24.08.2011.

20. Even otherwise if we look into the merits of the matter, for the alleged misconduct, the petitioners were punished by sentencing them to nine days quarter guard and thereafter, allowed them to undergo training. Viewed from any angle, the order of termination is vitiated as no notice was issued prior to their termination and no documentary proof has been produced by the respondent authorities to refute the argument of the petitioners regarding violation of principles of natural justice, despite service of notice and filing of counter.



21. In the instant case, absolutely, there is no material produced by the respondent authorities to show that the elementary principles of natural justice have been followed before passing the impugned order. As stated supra, the impugned order is also hit by rule of double jeopardy, as the petitioners were punished for the alleged misconduct by sentencing them to nine days quarter guard and the petitioners could not be terminated from service by way of punishment for the same offence. Therefore, the impugned order is liable to be set aside and accordingly, the same is set aside.

22. In the result:

- (a) The writ petitions are allowed by setting aside the order in No.d.II-2/2004-169-EC-II dated 09.02.2005 passed by the 5th respondent;
- (b) The respondents are hereby directed to re-instate the petitioners into service and pay back all the service and monetary benefits from 09.02.2005;
- (c) The respondents are hereby directed to complete the said exercise within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected M.P. (MD) Nos.1 and 1 of 2011 are closed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

- 1.The Director General of Police, Central Reserve Police Force, Block No.1, C.G.O. Complex, Lodhi Road, New Delhi-110 003.
- 2.The Inspector General of Police,CS,Central Reserve Police Force, Gomti Nagar, Lucknow.
- 3.The Deputy Inspector General of Police, Central Reserve Police Force, Ismail Ganj, Old Airport, Central Reserve Police Force Group Center, Allahabad-211013.
- 4.The Additional Inspector General of Police, Central Reserve Police Force, Avadi, Chennai-65.
- 5.The Commandant,169 BN, Central Reserve Police Force, Ismail Ganj, Old Airport, Central Reserve Police Force-Group Center, Allahabad-211 013.

+2CC to Mr.K.Vadivelu, Advocate, SR.No. 10359

W.P. (MD) Nos.10769 & 10770/2011

23.02.2017