



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) No.7033 of 2013

WEB COPY

N.Pandi

... Petitioner

Vs.

1.The Additional Director General of Police,
South Zone, CRPF,
Chandrayangutta,
Hyderabad - 05 (AP).

2.The Inspector General,
CRPF, Southern Sector,
Road No.10-C, Jubilee Hills,
Near MLA/MPs Colony,
Hyderabad - 33.

3.The Deputy Inspector General of Police,
Range HQRS,
C.R.P.F., Avadi,
Chennai - 600 065.

4.The Commandant,
28 BN, CRPF,
56 APO.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st Respondent in his proceedings No.R.XIII-31/2012-SZ-Legal dated 06.02.2013 confirming the order of the 2nd Respondent in his proceedings No.R.XIII.34/12-ADM-7 dated 16.08.2012 confirming the order of the 3rd Respondent in his proceedings No.R.XIII-7/2012-ESTT-III dated 04.04.2012 against the dismissal order passed by the 4th Respondent in his proceedings No.P-VIII-09/11-28-EC.II dated 05.11.2011 and quash the same and direct the Respondents to reinstate the Petitioner with back wages and all attendant benefits with continuity of service.

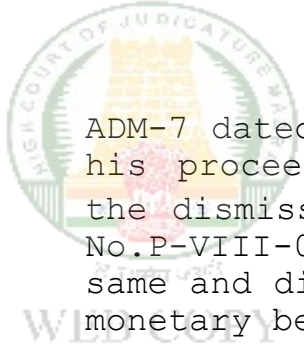
For Petitioner : Mr.K.K.Ramakrishnan

For Respondents : Mr.M.E.Appan (for R1 to R4)

CGC

O R D E R

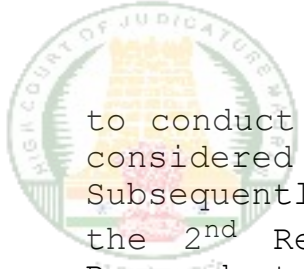
The instant writ petition is filed to call for the records pertaining to the order passed by the 1st Respondent in his proceedings No.R.XIII-31/2012-S2 Legal dated 06.02.2013 confirming the order of the 2nd Respondent in his proceeding No.R.XIII-34/12-



ADM-7 dated 16.08.2012 confirming the order of the 3rd Respondent in his proceedings No.R.XIII-7/2012-ESTT-III dated 04.04.2012 against the dismissal order passed by the 4th Respondent in his proceedings No.P-VIII-09/11-28-EC.II dated 05.11.2011 and prays to quash the same and direct the Respondents to reinstate the Petitioner with all monetary benefits with continuity of service.

2.The case of the Petitioner is that he was selected by the 3rd Respondent as Water Carrier and thereby got enrolled in the CRPF service on 02.06.2003 and was assigned the permanent No.030180033 CT/WC. The further case of the Petitioner is that the Petitioner served in the same capacity till 2005 in the 3rd Respondent Avadi Office and thereafter 2007 in the Manipur Region. It is the specific case of the petitioner that though he served sincerely and discharged his duty sincerely, several false allegations were made against him purely on discrimination as the Petitioner came from Tamil Nadu. In 2007 he was unable to attend his duty as because of the death of his child soon after birth. However, on 07.03.2011 when the Petitioner was working in the 4th Respondent camp he went to withdraw money from an ATM, he was taken by miscreants and escaped from the illegal custody and reached his native place. In the meanwhile, in the 1st week of August, 2011 the 4th Respondent sent a telegram to the wife of the petitioner for his absence in the camp. Thereafter the wife of Petitioner filed a Habeas Corpus Petition before the Madurai Bench of Madras High Court and during the pendency of the case the Petitioner rescued from the miscreants and appeared before the 3rd Respondent and thereafter he joined duty with the 4th Respondent.

3.However, the 4th Respondent issued a charge memo dated 26.08.2011 against the Petitioner in English and enquiry officer was also appointed to conduct the enquiry. The enquiry officer, without affording any opportunity to the Petitioner to get assistance to defend his case, in spite of the fact that the petitioner was not conversant in Hindi and English, the enquiry was conducted in Hindi and the charges were in English. The enquiry officer in the rank of Commandant have not conducted the enquiry properly that too in Hindi. Moreover, the enquiry officer found that all the charges were proved and on that basis the 4th Respondent passed the order of removal from service by his proceedings dated 05.11.2011. Thereafter the Petitioner filed appeal by raising specific grounds that he did not understand the enquiry proceedings and also specifically pleaded that he came to aware that the enquiry officer recorded the statement of petitioner as if he pleaded guilty further his specific case is that in ever pleaded guilty and all his statement during the enquiry were made only in Tamil Language. However the 3rd Respondent has not considered the grounds raised by the Petitioner but confirmed the order of the 4th Respondent by his proceeding dated 04.04.2012. Thereafter by raised all those grounds raised in the Appeal, the Petitioner filed a Revision before the 2nd Respondent on 19.04.2010. In the revision, the Petitioner made a specific request



to conduct the proceedings in the language known to him but without considered the same the revision was dismissed on 16.08.2012. Subsequently, the wife of the Petitioner sent a mercy Petition to the 2nd Respondent. In response to the mercy Petition, the 2nd Respondent directed the petitioner to file further revision to the 1st Respondent. Though, further revision was field before the 1st Respondent, but the same was dismissed by him dated 06.02.2013 without considering any points raised by the Petitioner. So, aggrieved over the order of dismissal from service the Petitioner has field the instant Writ Petition.

4.The learned counsel for the Petitioner would submit that the right of fair enquiry is the fundamental right of every person termed as delinquent. Here knowing the fact very well that the Petitioner is not well versed in Hindi and English, the Petitioner either should have been given assistance to get translated the proceedings or to defend himself in the language known to him. The failure of this exercise will definitely vitiate the whole enquiry. Moreover, the learned counsel for the Petitioner would contend that the recording the guilty in the language unknown to the petitioner and the conduction of enquiry in the unknown language is not only illegal but unfair and arbitrary. Further neither the Appellate authority nor the Revisional authority has considered the points raised by the Petitioner and answered accordingly. Further the order of removal is disproportionate to the charges as the money involved in the case was paid by the Petitioner on 23.09.2011 but the charge memo was on 05.11.2011. So, he prays to quash the impugned order of Respondents.

5.The Central Government counsel would contend that the Petitioner has filed his written statement in Hindi on 29.08.2011 and he wished to conduct the proceedings in Hindi during the preliminary hearing and did not inform that he was not well versed in Hindi and English. Further as per the office memorandum dated 10.08.2011 the individual has not asked for any defense assistant. All the prosecution witnesses were examined in the presence of the Petitioner and the copies of the day-to-day proceedings all documents were furnished to him. The act of the petitioner is indiscipline and cheating. So, the punishment imposed upon him is proportionate the filing of the Habeas Corpus Petition before the Hon'ble High Court was withdrawn as it was filed without oblique intention. So, it is clear that the departmental enquiry was conducted in Hindi as per the written request made by the Petitioner only. Further, the learned Central Government Advocate has cited the relevant portions of the counter affidavit stating that the departmental enquiry has conducted in accordance with law to meet the ends with natural justice. So, the Petitioner is not entitled to get reinstatement.

6.The learned counsel for the Petitioner would rely on the judgment of Hon'ble Supreme Court reported in 2012 (3) SCC 178



Service Law - Misconduct - Absence from duty/Unauthorized absence/Absenteeism - Willful absence - Proof - Necessity - Appellant unauthorisedly absent from duty during three consecutive periods (36 days, 32 days and 234 days) - Consequent allegations of failure to maintain devotion to duty and conduct unbecoming of government servant and dismissal based thereupon - Sustainability - Held, for sustaining such allegations it must be proved that unauthorized absence was willful - If absence is due to compelling circumstances under which it is not possible to report for or perform duty, such absence cannot be held to be willful and employee guilty of misconduct - In instant case, neither inquiry officer nor appellate authority found absence of appellant willful despite his specific defense that he was prevented from attending duty and was not allowed to sign attendance register - Evidence produced by appellant to substantiate his claim was ignored by authorities concerned and on basis of irrelevant facts and surmises he was held guilty - Impugned order of dismissal passed by disciplinary authority, and affirmed by appellate authority, CAT and High Court, set aside - Considering that appellant had suffered a lot since 1996 when proceedings were initiated against him, matter not remitted to disciplinary authority - Appellant directed to be reinstated and paid 50% back wages - Departmental Enquiry - Judicial review/Validity - Central Civil Services (Conduct) Rules, 1964, Rr.3(1)(ii) & (iii)

Another judgment AIR 1972 Supreme Court 2178, wherein it is held that

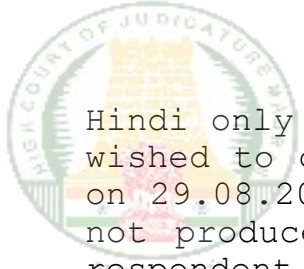
Central Civil Services (Classification, Control and Appeal) Rules (1967), Rule 15(5) - Opportunity to engage a legal practitioner - Government appointing a trained prosecutor to present its case against the government servant - Refusal to permit government servant to engage a legal practitioner vitiates the enquiry.

Another judgment AIR 1972 Supreme Court 2178 Head note

7.I heard Mr.K.K.Ramakrishnan, learned counsel for the petitioner and Mr.M.E.Appan, learned Central Government Counsel for the respondents 1 to 4 and perused the entire records.

8.It is the case of the petitioner that he has suffered with a punishment of dismissal from service by the order of the respondents. His endeavors to get rid of the same before the authorities were ended in failure. All his Appeal, Revision and further revisions were dismissed but according to the petitioners none of the grounds raised by him were taken up for consideration.

9.In the Departmental enquiry his specific plea that he was not conversed with either English or Hindi that vital aspect has not been considered, but all the proceedings were conducted only in Hindi only. However the learned counsel for respondent would submit that the petitioner issued a letter in the form of written statement in



Hindi only and he wished to conduct the enquiry in Hindi only and he wished to conduct the enquiry in Hindi as per the written statement on 29.08.2011 but the said letter that is the written statement has not produced in the form of typed set, so the stand taken by the respondent that the petitioner consented for the conduction of enquiry in Hindi is baseless. Further it is stated in the counter affidavit that one G.Nagarajan and Sylendara Dass, the CRPF personnels handed over their ATM cards to the petitioner for the withdrawal of some amount and the petitioner withdrawn a sum of Rs.31,500/- and 1,000/- Rupees respectively from their accounts and unauthorized absent. However in the counter affidavit it is nowhere stated that those CRPF personnels lodged any complaint to the authority concerned as against the petitioner this would create serious doubt over the route of the case.

10. Apart from that time and again the Hon'ble Supreme Court and the High courts have repeatedly held that for the charge of unauthorized absent from duty the punishment of dismissal from service is not proportionate and thereby the charge memos were set aside. Here also the respondents dismissed the petitioner from service for the charge of unauthorized absents. As discussed above, since there is no proof for the taking money from the accounts of the aforesaid CRPF personnels but the learned central government advocate pointed out the petitioner himself has admitted the swindling of money from the ATM and repaid the same so separate proof is not necessary however in the considered opinion of this court the repayment of money which were already taken from ATM only would not sufficient that the petitioner by admitting the charge repaid the money in the absence of the any complaint from the aggrieved CRPF personnels.

11. It is needless to point out here that when a charge is frame as against a delinquent that must be supported by sufficient materials here though it is alleged that the petitioner taken money from the CRPF employees no where it is stated that at the relevant point of time complains were lodged by concerned aggrieved CRPF personnels. So the taking of money from the concerned accounts of the CRPF personnels is not been proved in the manner known to law. Moreover, it is the duty of the prosecuting authority to prove all the charges beyond reasonable doubt though in proving the charges in the departmental enquiry is not as that of a criminal trail but the basis for prosecution must be proved otherwise it would become mockery of Justice. In the instant case admittedly the main charge as against the petitioner is by taking the money from the accounts of the CRPF personnels, the petitioner was absent from duty unauthorizedly so the genesis of the case commenced from the taking of money from the account of the particular CRPF personnels. Then unless the charge is proved it cannot be held that the petitioner has committed the offence and thereby unauthorized absent from the duty so the reasons adduced for the neither punishment of dismissal from service is not adequate and not proportionate to the charges.

12. In the result:

(a) this writ petition is allowed and the order passed by the 1st respondent in proceedings No.R.XIII-31/2012-SZ-Legal dated 06.02.2013 confirming the order of the 2nd Respondent in his proceedings No.R.XIII.34/12-ADM-7 dated 16.08.2012 confirming the order of the 3rd Respondent in his proceedings No.R.XIII-7/2012-ESTT-III dated 04.04.2012 against the dismissal order passed by the 4th Respondent in his proceedings No.P-VIII-09/11-28-EC.II dated 05.11.2011, are quashed;

(b) the respondents are hereby directed to reinstate the petitioner with all service and monetary benefits to the petitioner;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Additional Director General of Police,
South Zone, CRPF,
Chandrayangutta,
Hyderabad - 05 (AP).

2.The Inspector General,
CRPF, Southern Sector,
Road No.10-C, Jubilee Hills,
Near MLA/MPs Colony,
Hyderabad - 33.

3.The Deputy Inspector General of Police,
Range HQRS,
C.R.P.F., Avadi,
Chennai - 600 065.

4.The Commandant,
28 BN, CRPF, 56 APO.

+1cc to M/S.M.E.Appan, Advocate SR.No. 17667
+1cc to M/S.K.K.Ramakrishnan, Advocate SR.No. 17994
+1cc to Special Government Pleader, SR.No. 18192

order made in
W.P. (MD) No.7033 of 2013
24.03.2017