

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.21050 of 2008

K.Narayanan

... Petitioner

-Vs-

1.The Director General of Police,
Mylapore, Chennai - 4.

2.The Deputy Inspector General of Police,
Salem Range, Salem.

3.The Superintendent of Police,
Krishnagiri District.
(formerly at Dharmapuri)

... 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 connected with the proceedings issued in D.O.No.1704/2004 C.No.M2/P.R.65/2004 dated 14.12.2004 passed by the 3rd respondent and Rc.No.B2/71/1529/2005 A.P./B1/09/2005 dated 21.03.2005 passed by the 2nd Respondent and Rc.No.777/189819/AP.2(2)/2005 dated 10.12.2005 passed by the 1st Respondent and quash the same and consequently direct the Respondents to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mrs.Thangavadana Balakrishnan
Additional Government Pleader

O R D E R

The petitioner prays to issue a writ of Certiorarified Mandamus, to call for the records connected with the proceedings issued in D.O.No.1704/2004 C.No.M2/P.R.65/2004 dated 14.12.2004 passed by the 3rd respondent and Rc.No.B2/71/1529/2005 A.P./B1/09/2005 dated 21.03.2005 passed by the 2nd Respondent and Rc.No.777/189819/AP.2(2)/2005 dated 10.12.2005 passed by the 1st

Respondent and quash the same and consequently direct the Respondents to reinstate the petitioner into service with all attendant benefits.

2. Heard the learned counsel for the petitioner and learned Additional Government Pleader for respondents and perused the materials available on record.

3. The case of the petitioner is as follows:-

The petitioner had worked as a Police Constable(1261) in Hogenakkal Police Station, Dharmapuri District, Tamilnadu. He joined the service in the year 1985 and promoted as Grade I Police Constable in the year 2002 and he remained in the same post, till he was removed from service.

While he was working as Police Constable in Hogenakkal Police Station, a charge memo was issued under Rule 3 (b) of Tamil Nadu Police Subordinate Service Rules, which relates to desertion of the petitioner in the service of the respondents herein. The Deputy Superintendent of Police was appointed as enquiry officer to enquire about the said charge memo. The said enquiry officer has conducted the enquiry and given a report and based on the said report, the third respondent issued an order dated 14.12.2004 in C.No.M2/P.R.65/2004, by which the petitioner was removed from the service.

4. Aggrieved against the said order of removal, the petitioner preferred an appeal on 04.02.2005 to the Deputy Inspector General of Police, Salem Range and the Deputy General of Police had confirmed the order of the Superintendent of Police, third respondent herein without considering the merits of the case. Hence, the petitioner preferred mercy petition to the Director General of Police, Chennai, and to his shock and surprise, the said Director General of Police also has rejected the mercy petition in R.C.No.777/189819/AP2/(2)/2005 on 10.12.2005 without assigning any reason.

5. The petitioner would further contend that the said orders of the authorities are erroneous in nature and bad in law. The petitioner, having no other alternative, approached this Court against the order of removal from service. Hence, he prayed to quash all the proceedings and to reinstate him into services with all attendant benefits.

6. It would be seen that the petitioner while, he was working as police constable in the said force was issued a charge memo with charges under Rule 3 (b) of Tamil Nadu Police Subordinate Service Rules, 1955, which are as follows.

1. Unbecoming conduct in having absented

himself for 21 days from 12.06.2003 A.N without any prior permission for leave from the authority competent and thereby violated the provision laid in PSO 95 Vol I and he did not appear before the Superintendent of Police, Dharmapuri, within 60 days as per the office D.O.No.59/2003 dated 10.07.2003 and thus violated the provision in PSO 95(2) Vol-I''.

7. It could be seen that the petitioner has acknowledged the copy of the desertion order while he was admitted in the Government Head Quarters Hospital and as per the averments stated in the representation the petitioner would contend that on the said day he was in the Kaveripattinam Hospital for the accident occurred at Kaveripattinam. As the petitioner was bedridden and was not in a position to move from the bed, he could not appear before the Superintendent of Police, Dharmapuri and hence the above desertion order was confirmed as per the provisions of P.S.O.95(2) Vol.I. Based on the said charge memo oral enquiry was conducted by the then Deputy Superintendent of Police, Pennagaram, and the petitioner herein had requested the Enquiry Officer to follow the procedure of 'HEARD IN PERSON' and the Deputy Superintendent of Police, Pennagaram also recorded the statement of the petitioner and had drawn up a minute holding the charges as proved and sent the minute file to the Superintendent of Police, who in turn simply relied upon the findings of the enquiry officer, awarded the Harsh Punishment of 'Removal From Service' for the desertion of delinquency which appears to be too severe and disproportionate.

8. Aggrieved against the said order of the Appellate Authority the petitioner preferred an appeal and unfortunately the Deputy Inspector General of Police, Salem had rejected the appeal by taking into account, about the previous punishments and accumulated everything into one order and ordered removal from services. The petitioner would also contend that the mercy petition filed before the Director General of Police, Chennai was also not considered in a sympathetic manner and not considered on merits and the orders have been passed in a mechanical manner.

9. The learned counsel for the petitioner also point out that there was a circular memorandum issued by the Director General of Police, Chennai in which it has been specifically stated that in a disciplinary proceedings when they followed "Heard in person procedure" and while disposing the petition capital punishment of Removal/Dismissal or compulsory retirement should not be awarded. But in this case on hand the above

circular had was not followed and the same had been violated. The capital punishment of removal from service has been awarded to the petitioner which is in violation of the said circular and having no other remedy the petitioner had approached this Court by way of filing this Writ petition.

10. The learned counsel for the petitioner would also contend that the similarly placed persons have also filed the writ petitions and the orders of the Appellate Authority have been set-aside hence, he prayed that the matter should be remitted back and an opportunity should be afforded to the petitioner by the authorities and orders should be passed only in accordance with the said circular and procedures to be followed while passing the said order.

11. The petitioner would also submit that desertion is not a big offence and it is only due to unavoidable circumstances (i.e) the petitioner had met with an accident and he was not in a position to appear before the concerned officer to seek an extension of leave for which the enquiry officer in his final order has found that the petitioner's explanation was not genuine one, as no medical certificate were produced to establish that the petitioner had chest pain and absented for duty. He was admitted in Government Head Quarters Hospital, Dharmapuri as inpatient due to an accident wherein he sustained fracture. The petitioner would also contend that unfortunately the Enquiry Officer has not given him an opportunity to prove his claim that he was under treatment.

12. The respondents filed their counter wherein the main contention was that the petitioner was issued with the charge memo on 21.03.2005 for his unauthorised absence of 21 days with a direction to report before the Superintendent of Police with proper reasons for his absence before the completion of 60 days on 10.07.2003 A.N. Since, the petitioner had failed to appear before the Superintendent of Police before the specified date he was declared as a deserter as per PSO.95(ii) in District Police Office, C.No.L2/21289/2003, (D.O.807/2003) dated 20.09.2007. They would contend that the departmental enquiry was also in order and the Deputy Superintendent of Police, Pennagaram was nominated as an Enquiry Officer as per Rule 3(b) of TNPSS (D&A) Rules 1955. The petitioner requested only for a "Heard in person process" and not an enquiry. Hence the Enquiry Officer has recorded his statement that he has Chest pain and was also suffering from Jaundice for which he took treatment and due to that he was not able to appear before the Superintendent of police. The explanation given by the petitioner was not accepted by the Enquiry Officer, since no medical records were produced and the Superintendent of Police had gone through the charge sheet, minute, his explanation and

other records had accepted the findings of the Enquiry Officer and awarded him the punishment of 'Removal from Service' on 14.12.2004.

13. The learned counsel for the respondent would also contend that the appellate authority had also reiterated the same and rejected the request stating that he is in the habit of deserting the force on earlier occasions also, and were also seven other defaults including three unauthorized absence from duty. Several chances given to the petitioner to reform himself has failed and continuance of such persons in the police Force is detrimental to the discipline of the force. His mercy petition to the Director General of Police, Chennai was treated as review petition and rejected on the ground that he is a chronic deserter and has not raised any useful points for consideration in his favour, by proceedings C.No.777/189819/AP.2 (2)/2005, dated 10.12.2005. Since, no medical certificates have been produced by the petitioner and also several chances to reform himself was not availed by him, continuance of such persons in the police force is detrimental to the discipline of this force, he was removed from the service.

14. The respondent would further contend that the petitioner has not submitted any genuine records to prove, that he met with an accident and also failed to submit medical reports on this aspect. The reasons put forth by the petitioner that he fell sick is also not reliable as he had not submitted any medical certificate for the treatment under gone. He was further called to give explanations on 22.09.2009 by furnishing a minute copy but, he has not sent any explanation within 15 days. Further, he had been directed through a memo to appear before the Superintendent of Police within 60 days as per D.O.No. 597/2003 dated 10.07.2003 to explain his absence, which he received but, failed to appear. The petitioner himself has admitted in his affidavit that he deserted the force without proper reason and only after examining the entire case, perusal of all connected records the respondent passed orders after applying their mind. The review authority has gone through the records, studied all aspects and passed the order considering his prolonged desertions who had earned 15 punishments (including this) during his service. The petitioner has been rightly dealt with the charge sheet and proper punishment has been awarded.

15. On perusal of the impugned order it could be seen that the Appellate Authority has not disposed of the said mercy petition/appeal. As per the Rule 6(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules 1955, in the appeal against the order imposing punishment specified in Rule

(2), the Appellate Authority shall consider the following aspects:

"(a) Whether the facts on which the order was based have been established.

(b) Whether the facts established afford sufficient ground for taking action and

(c) Whether the penalty is excessive adequate or inadequate and after such consideration, shall pass order:

(i) conforming, enhancing, reducing or setting aside the penalty or

(ii) remitting the case, to the authority which imposed the penalty or to any other authority with such direction, as it may deem fit, in the circumstances of the case;

(a) if the enhanced penalty which the appellate authority proposed to impose is one of the penalties specified in clauses (d), (e) (3), (h) (i) and (j) of Rule 2 and an enquiry under Sub-rule (b) of Rule 3 has not already been held in the case, the appellate authority shall, subject to the provisions, of Sub-rule (c) of Rule 3, itself hold such enquiry or direct that such enquiry be held in accordance with the provisions of sub-rule (b) of Rule 3 and thereafter on consideration of the proceedings of such enquiry and after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during such enquiry, make such order as it may deem fit.

(b) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties, specified in clauses (d) (e) (3), (h), (i) and (j) of Rule 2 and an enquiry under Sub-rule (b) of Rule (3) has already been held in the case, the appellate authority shall, after giving the appellant reasonable opportunity for making representation against the penalty proposed to be imposed on the basis of the evidence adduced during the enquiry, make such order as it may deem fit; and

(c) no order imposing an enhanced penalty shall be passed in any other case unless the appellant has been given a reasonable opportunity as far as may be in accordance with the provisions of sub-rule (b) of Rule 3 of making representation against such enhanced penalty.

16. In view of Rule 6(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules 1955 At the time of awarding the capital punishment, the authorities should give reason for doing so and to comply with the procedures laid down in these rules, which has not been complied with. Hence, it is for the Appellate Authority to reconsider and satisfy whether the findings of the disciplinary authority and the punishment imposed is adequate or adequate and thereafter the officer ought to have pass orders or remit back the case to the authority who imposed the punishment. So, the duty cast upon the Appellate Authority is to consider the appeal based on the relevant Rules. If there is any violation of the said rules, the Court has to interfere with the said order and verify the fact whether the penalty imposed by Appellate Authority is adequate or inadequate. In the facts and circumstances of the present case, it is crystal clear that the petitioner had "only heard in person" and no enquiry has been conducted by the authorities and only "heard in person procedure" was followed. The delinquent petitioner has submitted that he was admitted in the hospital for chest pain and he was not in a position to apply for leave. If the delinquent falls sick, in order to get proper medical aid, he will not in a position to come for duty, and if opportunity has been given, he would have given reasons for the absence and delay. In this case, since the petitioner has not been given an opportunity, now he seeks to provide another opportunity to conduct fresh enquiry and the authorities to consider his case in a sympathetic manner. Hence in the above said circumstances, the impugned orders of the authorities are quashed. The matter is remitted back to first appellate authority for passing fresh orders, within 2 months from the date of receipt of a copy of this order, after giving proper and necessary opportunities to the petitioner.

17. With the above observations this Writ Petition is partly allowed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Director General of Police,
Mylapore, Chennai - 4.

2.The Deputy Inspector General of Police,
Salem Range, Salem.

3.The Superintendent of Police,
Krishnagiri District.
(formerly at Dharmapuri)

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