

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

W.A.No.1805 of 2017 and C.M.P.No.22645 of 2017

K.Saravanan

... Appellant

vs

1. The Union of India
rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi-110 003.
3. The Director General,
National Disaster Response Force,
R.K.Puram, CGO Complex,
New Delhi-110 066.
4. The Commandant,
Central Industrial Security Force,
NDRF 4th Battalion, Arakkonam,
Suraksha Campus Post Office,
Vellore District.
5. The Deputy Commandant,
Central Industrial Security Force,
NDRF 4th Battalion, Arakkonam,
Suraksha Campus Post Office,
Vellore District-631 152.

... Respondents

Prayer :

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 30.10.2017 made in W.P.No.22276/2013 by
a learned Single Judge.

W.P.No.22276 of 2013

filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned Notice issued by the 4th respondent dated 7.8.2013 in his Show Cause Notice No.E-24012/ 4BN/ NDRF/ DOC/ SCN/ ks/2013-6333 and quash the same

For Appellant :: Mr.M.Md.Ibrahim Ali
For Respondents :: Mr.J.Madanagopal Rao

JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeal is directed against the Order dated 30.10.2017 made in W.P.No.22276/2013 by a learned Single Judge.

2. The relief sought for in the writ petition is to call for the records pursuant to the Show Cause Notice issued to the Writ Petitioner by the 4th respondent dated 07.08.2013.

3. The case of the petitioner is that he joined in the Central Industrial Security Force as Constable on 19.3.2001 and after having completed the training, he was posted all over India and lastly, transferred to 4th Battalion NDRF Arakkonam under the 4th respondent on 10.4.2008 and he was deployed in Administration Section in this Battalion. While so, after undergoing the FAMEX at Andaman and Nicobar Islands, on 24.1.2013, he deposited the DM equipments in the concerned Company Stores and after relieving by the team Commander, he reported to the Administration Section at about 12.30 hours on the same day for further duties. Since at 16.30 hours, he had developed stomach pain due to kidney stone, he got permission from the Section-in-Charge to proceed to Arakkonam to consult an Urologist Doctor Selvaraj and accordingly proceeded to Arakkonam. In the meanwhile, on information, he has to go to Pattabiram at about 17.10 hours to attend his mother who is a chronic bone cancer patient since 2006. Though, he tried to contact his Section-in-Charge to convey the same to him, he could not do so. Thereafter, while returning from Pattabiram in his Motor Cycle, he with with an accident. Hence, he reported to duty at about 23.00 hours. Then only, he took treatment for his right knee by undergoing a surgery. Thereafter, he submitted an application for medical reimbursement with necessary documents on 4.3.2013 before the 4th respondent. But the same has been rejected by the 4th respondent by order dated 15.6.2013. A Writ Petition has been filed already challenging the said order of

the 4th respondent and the same is pending before this Court. In the meanwhile, the 5th respondent has issued a Charge Memo dated 27.4.2013 that without any prior permission from the competent authority, he has proceeded to the place which is about 50 Kms. away from the Battalion and also met with an accident. Though, the petitioner has submitted his explanation dated 4.5.2013 before the 5th respondent, the 5th respondent has passed the order awarding the penalty of "Fine equal to an amount of seven days pay" and the appeal filed against the same before the 4th respondent is also pending. Under such circumstances, it is the case of the petitioner that the 4th respondent has regularised the treatment period from 25.1.2013 to 3.3.2013 as medical leave and later on, by order dated 17.5.2013, cancelled the same on the ground that the departmental enquiry is pending. Now the grievance of the petitioner is that while the 4th respondent has permitted him to take treatment by granting 3 days medical leave from 25.1.2013 to 27.1.2013 by issuing a Medical Certificate dated 25.1.2013 and the Assistant Commandant with the approval of the 4th respondent has granted 1 month medical leave from 2.2.2013 to 3.3.2013 and he reported to duty on 4.3.2013, it is not known how the 4th respondent has issued a Show Cause Notice dated 7.8.2013, thereby proposing to regularise the period from 25.1.2013 to 3.3.2013 (38 days) as Dies-Non.

4. After hearing the rival submissions made on either side, the learned Single Judge of this Court dismissed the Writ Petition by an Order dated 30.10.2017 and aggrieved over the same, the petitioner/appellant is before this Court again with this Writ Appeal.

5. The matter is listed today under the caption, "for admission".

6. Heard the learned Counsel for the appellant and the learned Standing Counsel appearing for the respondents and we have also gone through the materials placed on record including the order of the learned Single Judge.

7. At the outset, though several grounds have been raised by the appellant before this Court to quash the impugned Show Cause Notice, it is relevant to extract paragraph 10 of the order passed by the learned Single Judge of this Court dated 30.10.2017, while dismissing the writ petition filed by the petitioner hereunder :

"10. No doubt, what is challenged in this writ petition is a show cause notice, issued to the writ petitioner on account of certain allegations. This Court is of the opinion that every institution which

was created under law has to be respected and the competent authorities running the administration of such institutions are to be cautious while exercising the powers of administration. The Courts are also to be cautious while undertaking the power of judicial review while interfering in the proceedings which are subjudice before the competent authorities. In this view of the matter, it is left open to the writ petitioner to submit his detailed explanation pointing out his factual and legal grounds along with the documents and proof to the competent authorities within a period of two weeks from the date of receipt of the copy of this order and on receipt of the same, it is left open to the competent authorities to consider the explanation/objections submitted by the petitioned by affording the opportunity of personal hearing also and thereafter, take a decision and pass final orders in this regard and communicate the same to the writ petitioner as early as possible."

8. When it is clearly held by the learned Single Judge of this Court as above, we find no other reason to differ with the said view taken by the learned Single Judge. However, it is for the appellant to approach the competent respondent authority by giving a detailed representation pointing out his factual and legal grounds along with the documents and proof and thereafter, if the appellant is aggrieved by any of the orders being passed by the competent authority, he can very well approach this Court challenging the same.

9. With the above observations, the Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

tsi

To

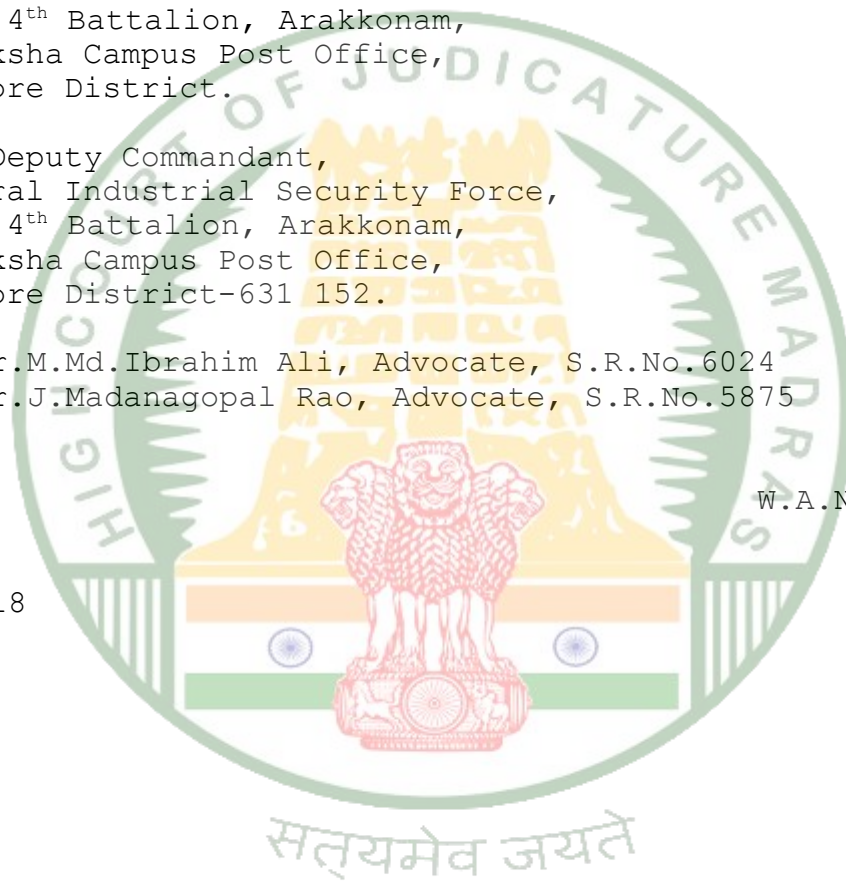
1. The Secretary to Government,
Union of India,
Ministry of Home Affairs,
New Delhi.

2. The Director General,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi-110 003.
3. The Director General,
National Disaster Response Force,
R.K.Puram, CGO Complex,
New Delhi-110 066.
4. The Commandant,
Central Industrial Security Force,
NDRF 4th Battalion, Arakkonam,
Suraksha Campus Post Office,
Vellore District.
5. The Deputy Commandant,
Central Industrial Security Force,
NDRF 4th Battalion, Arakkonam,
Suraksha Campus Post Office,
Vellore District-631 152.

+1cc to Mr.M.Md.Ibrahim Ali, Advocate, S.R.No.6024
+1cc to Mr.J.Madanagopal Rao, Advocate, S.R.No.5875

W.A.No.1805/2017

PA(CO)
CS/01/03/18



WEB COPY