

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.16646 of 2007

M.Balachandran

.. Petitioner

-vs-

1. The Director General of Police
Tamil Nadu, Chennai 600 004
 2. The Additional Director General of Police
& Commissioner of Police
Egmore, Chennai 600 008
 3. The Deputy Commissioner of Police
Armed Reserve
Egmore, Chennai 600 008
- .. Respondents

Petition under Article 226 of the Constitution of India, O.A.3971/2003 filed before the Tamil Nadu Administrative Tribunal came to be numbered as Writ Petition praying for the issue of a Writ of Certiorarified Mandamus, to call for the records of the proceedings C.No.982/74602/PR.2(1)/99 - P.R.No.72/99 dated 27.2.2000 passed by the third respondent, R.C.No.Appeal/PR.I(2)/17/2000 dated 26.4.2001 passed by the second respondent herein and C.No.29950/AP.I(1)/2001 dated 13.5.2002 passed by the first respondent herein and set aside the same as against the principles of natural justice and consequently direct the respondents herein to reinstate the petitioner with all service and monetary benefits.

For Petitioner :: Ms.V.Pushpa

For Respondents :: Mr.K.Ravikumar

Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned order of removal from service dated 27.2.2000 passed by the Deputy Commissioner of Police, Armed Reserve, Pudupet, Chennai, which was confirmed in appeal by the Commissioner of Police, Egmore, Chennai, the second respondent herein in order dated 26.4.2000 and further confirmed by the Director General of Police, the first respondent herein on 13.5.2002.

2. Learned counsel for the petitioner, assailing the impugned orders, pleaded that the petitioner joined the Tamil Nadu Special Police Force on 16.3.94 and underwent the six months training at Manimutharu Training Centre. Thereafter, he was posted as Police Constable at Avadi Tamil Nadu Special Police V Battalion and he worked there upto November, 1998. Subsequently, he was transferred to the City Armed Reserve Police with PC No.16544 and reported for duty before the Commissioner office V platoon in the month of November, 1998 and continued his service. While so, he was issued with a charge memo dated 5.7.99 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955 in P.R.No.72 of 1999. As the letter dated 15.4.98 was written by the petitioner anonymously, that was received by the Inspector of Police, B-4 Race Course Police Station inciting policemen to attain their demand by forming an association so as to get their grievances redressed, he was called upon to submit his explanation. Accordingly, the petitioner gave his explanation on 11.8.99. Thereafter, memo dated 18.12.99 and 21.12.99 were issued calling upon the petitioner to attend the oral enquiry. The enquiry officer conducted a detailed enquiry and thereafter submitted a report on 27.12.99 holding the charge levelled against the petitioner was proved and the same was also furnished on 11.1.2000. Thereafter, the petitioner was given a chance to submit his further representation. Accordingly, on 2.2.2000, he submitted his representation. The Deputy Commissioner of Police (Armed Reserve), the third respondent herein, after going through the report of the enquiry officer, charge memo and the explanation offered by the petitioner, came to the conclusion that the petitioner in his anonymous letter incited the policemen to attain their demand by forming an association so as to get their grievances redressed under the caption "to retrieve the Tamil Nadu Police from Slavery - Police Constables outburst". In the meanwhile, a criminal case was also registered against the petitioner in Crime No.255 of 1998 for an offence under Section 3(1)(a)(b)(c), 3(2) and 4 of the Police Force (Restriction of Rights) Act, 1966 and Section 3 of the Police (Incitement to Disaffection) Act, 1952 on the file of B4 Race Course Police Station. Even the Director of Forensic Sciences Department was called upon to send a report to the learned Judicial Magistrate No.III with regard to the signature found in the anonymous letter and accordingly, the Director of Forensic Sciences Department, in his report dated 15.12.98 sent to the learned Judicial Magistrate No.III, stated that after analysis, it was found that the handwriting of Mr.M.Balachandran, the petitioner herein tallied with the handwriting in the letter sent to the Inspector of Police, B4 Police Station. Considering all these materials, the third respondent also passed an order imposing the punishment of removal from service on the petitioner with effect from 27.2.2000.

3. Aggrieved thereby, the petitioner filed an appeal on 27.3.2000 before the Commissioner of Police, who also confirmed the order passed by the Deputy Commissioner of Police (Armed Reserve), holding that the petitioner through his anonymous letter incited the policemen to attain their demand by forming an association so as to get their grievances redressed. Therefore, he has also passed an order on 26.4.2000 dismissing the appeal and thereafter the review application preferred before the Director General of Police, the first respondent herein taking a ground that the penalty of removal from service imposed on him by the Deputy Commissioner of Police (Armed Reserve) was disproportionate, harsh and excessive, in the light of the proposition laid down by the Apex Court in Ranjit Thakur's case, (1987) 4 SCC 611 and therefore, he pleaded for mercy and review of the order. The petitioner also tendered his unconditional apology for the wrong committed by him, it is pleaded. Arguing further, it is stated that since the petitioner submitted his unconditional apology, the first respondent, while considering the nature of charges subsequently proved, for which he was imposed with a major punishment of removal from service, which is disproportionate, harsh and excessive, should have imposed a minor punishment, instead of removal from service. That has not been done. Therefore, the impugned orders passed by all the respondents are liable to be set aside for imposition of a lighter and reasonable punishment.

4. A detailed counter affidavit has been filed by the respondents. The learned Additional Government Pleader for the respondents submitted that the petitioner, having joined the Tamil Nadu Special Police on 16.3.94, should have known that the nature of duties and responsibilities discharged by the members of the Commando Force are quite different. Without appreciating the same, the petitioner, violating the norms and rules, demeaning every member of the Police Force and without maintaining absolute discipline, has written an anonymous letter inciting the members of the Force to form an association so that their grievances can be redressed. As this act is a flagrant violation of Section 3(1)(a)(b)(c), 3(2) and 4 of the Police (Incitement to Disa) Act, 1922, a criminal case was also registered against the petitioner on the file of the B4 Police Station in Crime No.255 of 1998. Although the petitioner was acquitted from the said criminal charge, the Assistant Commandant, Tamil Nadu Special Police V Battalion, Avadi was appointed as an enquiry officer in P.R.No.72 of 1999 and since the petitioner also admitted his guilt, the enquiry officer has drawn a minute holding him guilty. On the proved minute submitted by the Assistant Commandant, Tamil Nadu Special Police V Battalion, Avadi, the Deputy Commissioner of Police (Armed Reserve), the third respondent herein has passed the order of punishment of removal from service, that has been confirmed by

the Commissioner of Police, the appellate authority and the review application filed by the petitioner before the Director General of Police also failed. Therefore, when the original authority, the appellate authority and the reviewing authority have taken note of all the serious charge proved against the petitioner that the petitioner had incited the members of the Tamil Nadu Special Police Force, which is unbecoming of a member of the Force, have passed the order of removal from service. Therefore, the same cannot be questioned on the ground that the respondents have imposed the punishment of removal from service, which is disproportionate, harsh and excessive.

5. Heard learned counsel for the parties.

6. The petitioner, without realising the nature of duties and responsibilities discharged by the members of the Tamil Nadu Special Police Force and the members of the Commando Force, questioned the difference of the special pay of Rs.1,500/- given to the members of the Commando Force. When these facts have been completely analysed and the finding of facts have been reached by the Assistant Commandant, Tamil Nadu Special Police V Battalion, Avadi, which minute has been finally accepted by the Deputy Commissioner of Police (Armed Reserve), Pudupet, Chennai and an order of removal from service was passed and the same have been confirmed by both the appellate authority, the Commissioner of Police, Chennai and the reviewing authority, the Director General of Police, this Court, sitting under Article 226 of the Constitution of India, cannot re-appreciate the evidence and interfere with the punishment of removal from service imposed on the petitioner. Therefore, the writ petition fails and it is dismissed. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

SS

To

1. The Director General of Police
Tamil Nadu, Chennai 600 004

2. The Additional Director General of Police
& Commissioner of Police
Egmore, Chennai 600 008

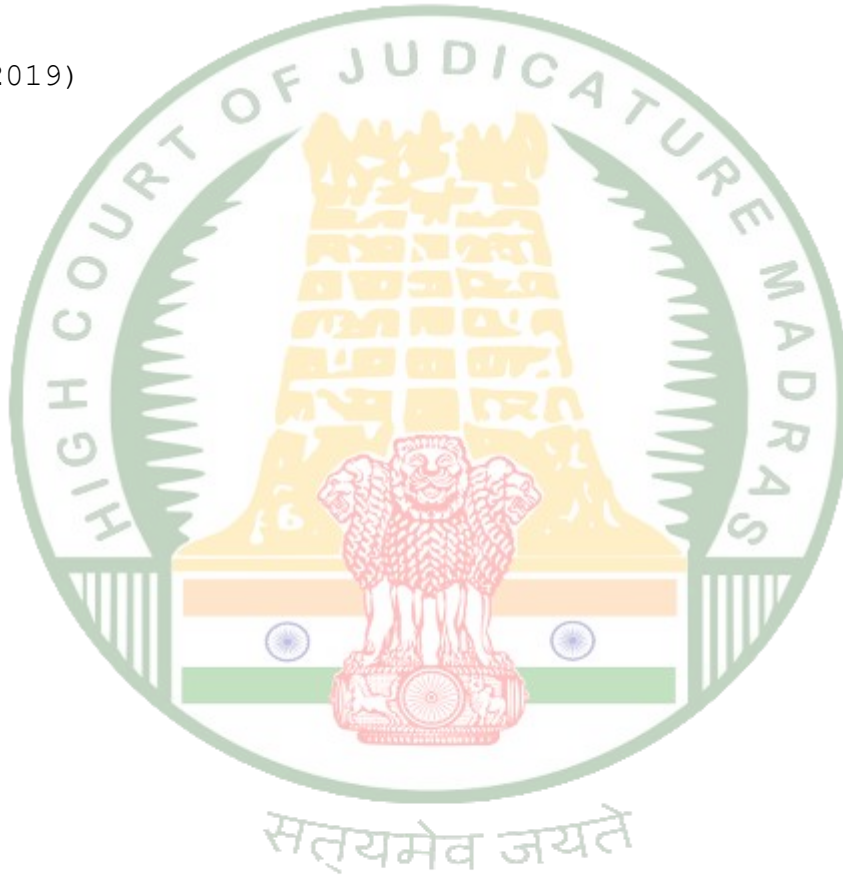
3. The Deputy Commissioner of Police
Armed Reserve
Egmore, Chennai 600 008

+1 CC to Govt. Pleader sr 23610.

+3 Ccs to Ms.V.Pushpa , Advocate sr 22561 & 22718

W.P.No.16646 of 2007

KAN (CO)
SP (12/04/2019)



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