

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.03.2019

Pronounced on : 28.03.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.20308 & 20309 of 2012

and

W.P.M.P.Nos.2 & 2 of 2012

and

W.P.M.P.Nos.1 & 1 of 2013

A.Venkatesan

...Petitioner

(in both W.P.No.20308
& 20309 of 2012)

Versus

1. The Inspector - General of Police
Armed Reserve,
Trichy.
2. The Deputy Inspector General of Police
Armed Reserve,
Chennai - 600 010.
3. The Commandant
T.S.P. II Battalion Avadi,
Chennai - 600 054.

... Respondents

(in W.P.No.20308 of 2012)

1. The Secretary to Home Departmental
Fort St, George, Chennai - 600 009
2. The Director - General of Police
Mylapore, Chennai - 4
3. The Inspector - General of Police
Armed Reserve,
Trichy.
4. The Deputy Inspector General of Police
Armed Reserve,
Chennai - 600 010.
5. The Commandant
T.S.P. II Battalion Avadi,
Chennai - 600 054.

... Respondents

(in W.P.No.20309 of 2012)

PRAYER in W.P.No.20308 of 2012:Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 2nd respondent issued in R.C.No.C1/1342/2006 dated 12.04.2011 confirming the order of punishment imposed against the petitioner by the 3rd respondent in C.No.F1/PR 16/2002 dated 09.05.2002 and quash the same consequently to direct the 3rd respondent to treat the period of absence with effect from 03.12.2001 to 08.01.2002 as duty for all purposes.

PRAYER in W.P.No.20309 of 2012:Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent issued against the petitioner 1) G.O.(2D) No.365 HOME (POL IX) DEPARTMENT dated 13.10.2011 confirming the orders of 2nd respondent issued in R.C.No.250196/AP 3(1)/2003 dated 03.02.2004, the orders of 3rd respondent issued in R.C.No.Estt.I(2)/13986/IG/2003 dated 31.10.2003, the orders of 4th respondent issued in C.No.B2/14548/2003 dated 26.08.2003 and the orders of 5th respondent issued in P.R.17/2003 U/s 3(b) dated 13.05.2003 and quash the same and consequently to direct the 5th respondent to reinstate the petitioner into service as Grade II Constable with all eligible service and monetary benefits.

For Petitioner :: Mr.A.Thiagarajan
(Senior Counsel)
for Mr.P.I.Thirumoorthy
(for both W.Ps)

For RR1 to 3 :: Mr.P.S.Sivashanmuga Sundaram
(in W.P.No.20308 of 2012) (Special Government Pleader)

For RR1 to 5 :: Mr.P.S.Sivashanmuga Sundaram
(in W.P.No.20309 of 2012) (Special Government Pleader)

COMMON ORDER

These Writ Petitions are a second round of litigation instituted by the writ petitioner who had been appointed as Grade-II Constable on 31.10.1997. He was originally posted as 2nd Battalion in the Office of the Commandant, T.S.P. 2nd Battalion Avadi, Chennai.

2. The petitioner has claimed that he was the Post Graduate and was also a sportsman. He had participated in body building and weightlifting competitions held among the Universities and had also won prizes. He had also participated in the National and International level sports

competitions. The petitioner also claims the credit of being a specialist in cooking. He had also participated in Jungle training and was also awarded with A-Grade certificate. On completion of training he was posted in the office of the Commissioner, Chennai City Police and later re-posted to the canteen section where his specialization in cooking was taken advantage by the authorities concerned. He was also posted to the Economic Offences Wing (II).

3. On 28.11.2001, he met with a motor cycle accident, injuring his legs and head. He sought leave for four days. He was granted casual leave from 29.11.2001 to 02.12.2001. However, he was given medical advise to apply for further leave. According to him, though he applied for further leave it was not properly communicated to the authorities. He reported for duty on 24.12.2001 and attended the duties at the residence of the then Joint Commissioner of Police (South) till 08.01.2002.

4. In the mean while, he was issued with an order dated 26.12.2001, alleging desertion. It was served on his wife. He was charged that being absent from 03.12.2001 to 23.12.2001. He claimed that he had personally met the Superior Officers in this regard. He was then issued a charge memo on 18.02.2002. The charges are as follows:

"(a) Without any information and leave applications, unauthorisedly absented from duty continuously for 21 days exceeding by leaving the camp without reporting and thereby was liable for proceeded under Section 95(1) of Police Standing Order for desertion.

(b) Behaved in an improper manner before the 3rd respondent by not wearing the full inform and giving contradictory statements while approached the 5th respondent on 08.01.2002 seeking for permission for rejoining duty and hence it was a punishable one."

5. Though he decided to face enquiry, the other officers prevailed upon him not to challenge the charges. It was finally held during the enquiry that the charges have been proved and he was awarded with punishment of reduction in time scale of pay by one stage for one year without cumulative effect. This was ordered on 09.05.2002 by the fifth respondent namely, the Commandant, T.S.P. II Battalion Avadi, Chennai.

6. The petitioner was thereafter relieved from deputation and repatriated to the Parent department. He reported for duty on 02.11.2002. He claimed to have worked continuously there. He claimed that he was threatened to

admit that he did not attend duty from the date of relief from deputation till 27.02.2003. He was placed under suspension on 04.03.2003. He was then issued with a charge memo on the following charges:

"(i) Even after the reliever from the economical offences wing on 02.11.2002, instead of reporting duty, deserted the duty authorizedly with effect from 02.11.2002.

(ii) Without reporting duty in the parent unit as well as without attending the work at Foreign Service, obtained the three months salary of November 2002, December 2002 and January 2003 by submitting the written request and thereby it is punishable one in the Police department for receiving the salary without attending the work.

(iii) Without reporting duty as well as without attending the work for the months of November 2002, December 2002 by preparing and submitting the bogus certificates for claiming Travelling Allowance."

7. Again an enquiry was conducted. Finally, by order dated 13.05.2003, he was removed from service. He filed an appeal and a review petition before the concerned authorities. They were both rejected. He also gave a further representation. That was also rejected on 09.05.2005.

8. Challenging the imposition of punishment for unauthorized absence with respect to the first charge memo and the imposition of dismissal of service, with respect to the second charge memo the petitioner had filed W.P.Nos.41335 of 2005 and 41336 of 2005. Both the writ petitions came up for consideration before M.Sathyanarayanan, J. By common order dated 29.10.2010 in both the writ petitions. The following observations were made with respect to W.P.No.41336 of 2005 by the learned Judge:

"17. Even though the petitioner has not submitted any leave application on medical grounds immediately on the expiry of the leave on 02.12.2001, he has appeared before the Inspector of Police (Admn.) E.O.W (II) on 24.12.2001 and submitted medical certificate and fitness certificate issued by the Civil Surgeon, Government Stanley Hospital, Chennai stating that the period of absence in duty from 03.12.2001 to 23.12.2001. The petitioner appeared before the 3rd respondent on 08.01.2002 and

submitted his explanation for his absence and he was also allowed to join on the same day itself.

18. In the considered opinion of the Court, the petitioner has offered proper and sufficient explanation. Officer non-joining the duty from 03.12.2001 to 23.12.2001.

19. As against the order of imposition of punishment of reduction in time scale of pay for one scale for one year without cumulative effect passed by the 3rd respondent, the petitioner preferred an appeal before the 2nd respondent. The appellate authority vide order dated 23.03.2003 after extracting the charges has passed the following order:

"2. The slip order was acknowledged by the delinquent on 14.05.2002. I have gone through the appeal petition, minute and the connected records carefully. The delinquent has not raised any fresh points. The punishment is already lenient for a proven delinquency of desertion. There is no room for interference, the appeal is rejected.

The petitioner filed an application for review before the 3rd respondent, who rejected it on 16.12.2003 that after the orders passed in the appeal, there is no possibility of review in the said order.

20. In considered opinion of the Court, the Appellate Authority except stating that on going through the relevant records, the delinquent raised any fresh points and also taken into consideration, the punishment awarded, has not, recorded reasons for confirming the said order. Since the civil right of the petitioner is involved, it is obligatory on the part of the Appellate Authority, to apply his mind independently to the materials available on record and take an independent decision. However, the said material requirement is absent and therefore the impugned order, which is the subject matter of challenge in W.P.No.41336 of 2005 is liable to be quashed and the matter is to be remitted to the Appellate Authority for

fresh consideration."

9. With respect to the contentions raised in W.P.No.41335 of 2005 which was the writ petition challenging dismissal from service, the observations of the learned Judge are as follows:

"28.The order of removal from service was passed by the 5th respondent on 13.05.2003 and the appeal preferred by the petitioner, challenging the said order was rejected on 26.05.2003 by the fourth respondent. The review petition filed before the 3rd respondent was rejected on 31.10.2003. The petitioner in his petition dated 10.02.2004, has offered explanation with regard to the allegations levelled against him in P.R.No.17/2003. Though the learned Special Government Pleader would contend that the said petition is not in accordance with the proviso to Sub-rule (iv) of Rule 15A of Tamil Nadu Police (Discipline and Appeal) Rules, this Court is of the considered view that the said submission lacks merit.

29.The above said proviso grants right to the members of the constabulary (Police Constables and head Constables) like the petitioner to make one more representation to the Government against the order of dismissal or removal from service after exhausting the right of appeal

30.Admittedly, the petitioner has filed the right of appeal and was unsuccessful and hence, he filed a petition before the 1st respondent praying for appropriate relief. The Government has rejected it vide impugned order dated 09.05.2005 and as per paragraph 3 of the said order, the Government had carefully and independently examined the case with connected records. While doing such an exercise, the Government has taken into consideration of the fact that the petitioner was awarded with two punishments and found that the petition submitted by the petitioner is devoid of merits.

31.In the considered opinion of the Court, the awarding of two punishments also weighed with the mind of the 1st respondent/Government while rejecting the petition dated 10.02.2004 submitted by the petitioner. In all fairness, the petitioner

should have to be put on notice with regard to the awarding of two earlier punishments and his explanation should have been called for in the light of the ratio laid down in the above cited judgment of the Hon'ble Apex Court. However, the same has not been done. Therefore, the impugned order of removal from service is liable to be set aside and the matter is remanded to the 1st respondent for fresh consideration in the light of the findings given above."

10. Finally the learned Judge had concluded as follows:

32. In the result, W.P.No.41335/2005 is allowed and the order dated 09.05.2005 in proceedings G.O.(2D)No.159, HOME (POL IX) DEPARTMENT passed by the 1st respondent is set aside and the 1st respondent is directed to issue notice, incorporating the previous punishment awarded to the petitioner and call for an explanation and thereafter shall dispose of the petition in accordance with law and the said exercise is to be done within a period of three months from the date of receipt of a copy of this order.

33. For the reasons stated in para 20 as above, W.P.No.41336/2005 is allowed and the order of the 2nd respondent in C.No.B2/22816/2002 appeal No.03/2002 dated 23.03.2003 is set aside and the 2nd respondent is directed to consider the appeal afresh and pass orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

11. Thereafter, the second respondent in W.P.No.20308 of 2012 namely, the Deputy Inspector General of Police, Armed Reserve, Chennai - 600 010, passed the impugned order dated 12.04.2011, rejecting the appeal filed by the petitioner in the impugned order. There is no reference to the observation of this Court in Paragraph 18 in the common order dated 29.10.2010 passed in W.P.Nos.41335 of 2005 and 41336 of 2005 which was as follows:

"18. In the considered opinion of the Court, the petitioner has offered proper and sufficient explanation Officer non-joining

the duty from 03.12.2001 to 23.12.2001."

The Court had very clearly observed that the petitioner had offered proper and sufficient explanation for non-joining the duty from 03.12.2001 to 23.12.2001. There is also no indication in the impugned order that the second respondent had applied his mind independently to the materials available on record and that he had taken an independent decision. It was precisely for that reason the writ petition in W.P.No.41336 of 2005 was allowed and the matter was specifically remanded back to the Appellate Authority. Once again in the impugned order, the extract of the earlier available materials had been produced as "cut and paste". The only application of mind of the second respondent as is evident from the impugned order is as follows:

"As the punishment awarded was not an excessive and commensurate to the delinquencies committed by the delinquent, I decline to interfere with the punishment already awarded by the punishing authority and confirm the same punishment of "Reduction in the time scale of pay by one stage for one year and the period of reduction shall not operate to postpone his future increments".

12. It is seen that very specifically, this Court in the earlier proceedings had clearly observed that the petitioner had offered proper and sufficient explanation for non-joining the duty from 03.12.2001 to 23.12.2001. There is also no reference at all in the impugned order with respect to the averment of the petitioner that he had been injured in a motor cycle accident on 28.11.2001 and was given medical advise to avail medical leave. Whether there has been examination of those facts has not been indicated in the impugned order. The second respondent must verify all the facts and thereafter must pass a considered order. Since the impugned order again suffers from non-application of mind and from non-consideration of requisite materials and absence of independent decision, I hold that, the impugned order which is the subject matter in W.P.No.20308 of 2012 is liable to be quashed. The matter is once again remitted back to the second respondent/Appellate Authority for fresh consideration. While considering the entire issue, the second respondent may keep in mind the observation of this Court in Paragraph 18 extracted above and also balance that with the fact that the petitioner claimed that he had suffered a motor cycle accident and injured himself in legs and head on 28.11.2001 and examine that assertion of the petitioner in its proper prospective. The medical records in Rajam Clinic wherein, the petitioner claims that 14 stitches were made over his head and his assertion that he also took treatment in Stanley Hospital may also be independently verified and then a

considered order may be passed by the second respondent.

13. In so far as W.P.No.20309 of 2012 is concerned, this Court had directed the fifth respondent to consider the punishment imposed after putting on notice, the fact of awarding of two earlier punishments and explanation should be called from the petitioner on those aspects.

14. Mr.R.Thiagarajan, learned Senior Counsel for the writ petitioner brought to the notice of this Court, the letter No.4619/Pol.9/2010-10, dated 22.03.2011, by Thiru K. Gnanadesikan, I.A.S., Principal Secretary to Government, to the petitioner, A.Venkatesan which reads as follows:

"3). I am also to state that you have been dealt with in another charge u/r 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1995 in P.R.No.17/2003 for the following delinquency:-

i) Highly indisciplinary conduct in not having reported for duty at Tamil Nadu Special Police II Battalion, Avadi on 02.11.2002 after you were relieved from EOW II where you were on deputation and thereby deserted the force.

ii) Highly reprehensible and misconduct having received monthly salary for the months of 11/2002, 12/2002 and 1/2003 by submitted false petition that you were on OD at EOW II and thereby cheated the Government.

iii) Highly unbecoming conduct having prepared that false documents and submitted T.A Claims for the months of 11/2002, 12/2002 and 1/2003.

4). The Inquiry Officer in his minute dated 21.04.2003 held the charge as proved. The disciplinary authority, the Commandant, Tamil Nadu Special Police II Battalion, Avadi has imposed the punishment of "Removal from service" on you for the proven charges. Your appeal, review and mercy petitions against the said punishment were rejected by the Deputy Inspector General of Police, Armed Police, Chennai, the Inspector General of Police, Armed Police, Trichy and Director General of Police, Chennai respectively. Your petition to the Government in the reference second cited was also rejected in the G.O third cited.

5). The High Court, Madras in its order dated 29.10.2010 in W.P.No.41335 of 2005 filed by you against the orders of Government in the reference fourth cited has passed order and directed interalia as follows:-

32.In the result, W.P.No.41335 of 2005 is allowed and the order dated 09.05.2005 in proceedings G.O(2D) No.159, Home(Pol.9) Department passed by the 1st respondent is setaside and the 1st respondent is directed to issue notice, incorporating the previous punishments awarded to the petitioner and call for an explanation and thereafter shall dispose of the petition in accordance with law and the said exercise is to be done within a period of three months from the date of receipt of a copy of this order".

6). Based on the orders of the High Court, Madras in the reference fourth cited, I am to request you to submit your explanation on the above charges in P.R.No.17/2003 to the Government immediately.

7).I am also to state that if you fail to submit your explanation within 15 days from the date of receipt of this letter, it will be construed that you have no explanation to make and further action will be taken on merits of the case and in accordance with law.

8). The receipt of this letter may be acknowledged immediately."

15. In paragraph 6 of the above letter, the authority had called for an explanation on the above "charges". If explanation is sought to be given for "charges" then an enquiry will have to be conducted. Without conducting such enquiry, straight away, punishment of dismissal from service had been imposed on the petitioner. This Court had directed the authorities to bring to the notice of the petitioner, the earlier punishments imposed and in the light of that call upon him to give an explanation on the punishment to be imposed for the charges on question.

16. On the other hand, the fifth respondent had called for an explanation on the "charges". It is needless to say that a charge is only an allegation. It is based on documents and statements of witnesses. If the charges are denied then an obligation arises on the authorities to prove the charges. For proving the charges they must hold an enquiry and afford full and fair opportunity to the delinquent. Such proceedings were not at all followed in the present case.

17. The Appellate Authority should have examined whether this Court had called upon them to put the petitioner on notice about the "punishment" or whether they were called upon to put the petitioner on notice about the "charges" framed. Consequently, the entire proceedings of the fifth respondent have to be quashed and in view of all these aspects, the writ petition is allowed and impugned order is set aside and quashed.

18. The concerned authorities namely the second respondent in W.P.No.20308 of 2012, the Deputy Inspector General, Armed Police, Chennai - 600 010 and the 5th respondent in W.P.No.20309 of 2012 namely, the Commandant T.S.P. 2nd Battalion, Avadi, Chennai - 600 054, are directed to re-examine the issues afresh after giving sufficient opportunity to the petitioner and in the light of the common order of this Court in W.P.Nos.41335 of 2005 and 41336 of 2005 dated 29.10.2010, pass fresh orders within a period of six months from the date of receipt of a copy of this order.

19. In the result, W.P.No.20308 of 2012 is allowed and the order dated 12.04.2011 in R.C.No.C1/1342/2006 issued by the second respondent confirming the order of punishment imposed against the petitioner by the 3rd respondent in C.No.F1/PR 16/2002 dated 09.05.2002 are quashed and the second respondent in W.P.No.20308 of 2012, the Deputy Inspector General, Armed Reserve, Chennai - 600 010 is directed to re-examine the issue afresh after giving sufficient opportunity to the petitioner in the light of the common Judgement of this Court in W.P.Nos.41335 of 2005 and 41336 of 2005 dated 29.10.2010 and pass fresh orders within a period of six months from the date of receipt of a copy of this order.

20. For the reasons stated above, W.P.No.20309 of 2012 is allowed and the order dated 13.10.2011 in G.O.(2D) No.365 HOME (POL IX) DEPARTMENT issued by the 1st respondent confirming the orders of 2nd respondent issued in R.C.No.250196/AP 3(1)/2003 dated 03.02.2004, the orders of 3rd respondent issued in R.C.No.Estt.I(2)/13986/IG/2003 dated 31.10.2003, the orders of 4th respondent issued in C.No.B2/14548/2003 dated 26.08.2003 and the orders of 5th respondent issued in P.R.17/2003 U/s 3(b) dated 13.05.2003

are quashed and the 5th respondent in W.P.No.20309 of 2012 is directed to re-examine the issue afresh after giving sufficient opportunity to the petitioner in the light of the common order of this Court in W.P.Nos.41335 of 2005 and 41336 of 2005 dated 29.10.2010 and pass fresh orders within a period of six months from the date of receipt of a copy of this order.

21. Consequently, connected miscellaneous petitions are closed.

22. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

smv

To,

1. The Secretary to Home Departmental
Fort St, George, Chennai - 600 009
2. The Director - General of Police
Mylapore, Chennai - 4
3. The Inspector - General of Police
Armed Reserve,
Trichy.
4. The Deputy Inspector General of Police
Armed Reserve,
Chennai - 600 010.
5. The Commandant
T.S.P. II Battalion Avadi,
Chennai - 600 054.

+1cc to Mr.P.I.Thirumoorthy , Advocate SR.No. 30365

+1 cc to Government Pleader SR.NO. 31008

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W.P.No.20308 & 20309 of 2012
and
W.P.M.P.Nos.2 & 2 of 2012
and
W.P.M.P.Nos.1 & 1 of 2013

A.SK(30/04/2019)