

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.21947 of 2014 &

W.M.P.No.3353 of 2016

M.Gowthaman

... Petitioner

Vs.

1.The Principal Secretary to Government,
Home (Pol.V A) Department,
Secretariat, Chennai- 600 009.

2.The Director General of Police,
Kamarajar Salai, Chennai.

3.The Commissioner of Police,
Veppery,
Chennai.

4.The Deputy Commissioner of Police,
Armed Reserved, Puthupattai,
Chennai - 2.

...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records in proceedings in P.R.No.242/P.R. 4(2)/2010, dated 04.11.2010, on the file of the fourth respondent and the consequential orders in proceedings in PR.No.242/Appeal/IV(2)/2010, dated 28.01.2011, on the file of the third respondent and Rc.No.20477/AP.3(2)/2011, dated 30.12.2012, on the file of the second respondent and quash the same as illegal, incompetent and unconstitutional and further direct the respondents to reinstate the petitioner in service with consequential benefits.

For Petitioner : Ms.K.S.Kaviarasu

For Respondents : Mr.V.Shanmugasundar
Special Government Pleader

O R D E R

According to the petitioner, he served as Police Constable in the Armed Reserve 63rd Batch and was discharging duties for the past 11 years in the Police Department. While so, the petitioner's mother died on 09.04.2010 and he was not attending the duty for 21 days and thereafter, he received a desertion notice on 30.04.2010 by the fourth respondent. Thereafter, the petitioner submitted his explanation on 18.08.2018 and an enquiry was conducted. The fourth respondent had framed charges under Section 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 on the ground of desertion of duty by absenting himself without leave or prior permission for more than 21 days from 07.04.2010 and declared as a deserter. Hence, the Assistant Commissioner was appointed as an Enquiry Officer and he filed his report on 29.09.2010, alleging that the charges were proved. Following the said order, the fourth respondent, vide an order dated 04.11.2010, awarded the punishment of removal from service of the petitioner from the date of desertion i.e., with effect from 07.04.2010. Challenging the said order dated 07.04.2010, the petitioner preferred an appeal before the Appellate Authority, viz., the third respondent on 16.11.2010. The third respondent, vide proceedings dated 28.01.2011 dismissed the appeal without giving any reasons and the petitioner also filed a revision petition before the second respondent and the said revision was also dismissed on 30.12.2012. Hence, the petitioner is before this Court.

2. The learned counsel for the petitioner would submit that the main ground on which he seeks to quash the impugned order is that the third respondent, being an appellate Authority, passed the impugned order without assigning any reason and rejected the appeal, which was also confirmed by the second respondent in the revision.

3. The learned Special Government Pleader appearing for the respondents would submit that the petitioner was served in the Armed force. The fourth respondent has passed the detailed order by considering the previous record of the petitioner and guilty of desertion on 7 occasions in his short service and was unauthorizedly absent on 14 other occasions. In the present case, the charge was made against the petitioner for his unauthorized absent for more than 21 days and no explanation has been received, even after receiving the desertion notice by the petitioner. Therefore, the second and third respondents, by incorporating the order passed by the fourth respondent, passed the impugned order and hence, it is perfectly valid.

4. Heard both sides and perused the materials available on record.

5. It is not in dispute that the petitioner was appointed as Police Constable on 24.05.1999, in the Armed Reserve 63rd Batch. It is also not in dispute that while he was on duty, he received a telegram regarding serious illness of his mother's health condition and thereafter, his mother died on 09.04.2010. Due to sudden death of his mother, he was shock and it had created very mental depression and therefore, he could not report for duty immediately after funeral of his mother. The charge against the petitioner is that "he was deserted from the force in absenting himself without leave or prior permission for more than 21 days from 07.04.2010". Thereafter, he received a deserted notice on 30.04.2010 by the fourth respondent and after enquiry, he was removed from service. As against the removal, he preferred an appeal before the third respondent and the third respondent, vide order dated 28.01.2011, confirmed the order of the fourth respondent and the revision filed by the petitioner was also dismissed by the second respondent.

6. The main contention of the learned counsel for the petitioner is that the third respondent, being an Appellate Authority, has not dealt with the facts of the case and dismissed the petition by incorporating the order passed by the fourth respondent, which was also confirmed by the second respondent in the revision. To that extent, the learned counsel for the petitioner has relied upon the following decisions:-

(i) (2008) 6 MLJ 266 [G.Ramakrishnan HC 262 vs. Superintendent of Police, Virudhunagar and others]

"29. ... As the appellate authority is the final fact finding authority under the rules, and considering the limited scope of judicial review, he ought to examine the important factors to be considered in Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline and Appeal Rules) 1955. The discretion exercised by the appellate authority should be reflected in the order. Mere making a statement that he had gone through the findings and minutes in the appeal petition and agreed with the finding does not satisfy the requirements of exercise of appeal jurisdiction. Therefore, in view of the above, I am of the considered view that there is a procedural irregularity as well as perversity in the finding arrived at by the authorities in concluding the guilt of the petitioner. Hence the writ petition is allowed. No costs."

(ii) (2008 Writ L.R.86) [The Joint Commissioner of Police, Traffic Zone, Vepery and another v. Anandan, PC 12163]

"9. The contention of the learned counsel for

the respondent is that the appellate authority has not passed speaking order by following the above said rule. For proper appreciation, the order of the appellate authority is extracted hereunder:

'PROCEEDINGS OF THE JOINT COMM. OF
POLICE, TRAFFIC ZONE, VEPERY, CHENNAI-7
Present: Thiru Sunil Kumar, IPS.

C.No.5/AP/TR.PR(N)/2006 Dated: 12.08.06

Short Title: Traffic zone - Appeal
 petition of Ex.PC.12163
 Anandan, Traffic planning
 against the orders of
 removal from service in
 SRP/PR.No.15/99 u/r.3(b)
 of the TNPSS(D&A) Rules,
 1955, by DC/Traffic
 (North) - Orders - Issued.

Read : His appeal petition dt.24.7.06.

ORDERS:-

I have gone through the representation of the appellant, the minute and the order passed by the punishment authority.

2) I feel the punishment awarded is not excessive and matches the delinquency committed by the delinquent. Hence, I would not like to interfere with the punishment already awarded and would allow the punishment awarded as suggested by the punishing authority.

Sd/-

Joint Commr.of Police, Traffic Zone."

From the perusal of the above order we could see that the appellate authority has not disposed of the appeal in terms of Rule 6(1) extracted above. As per the said rule, the appellate authority shall give a finding while considering the appeal as to whether the facts on which the order is based have been established, among other things. No such finding is given by the appellate authority, except by stating

that he has gone through the representation of the appellant, minutes and the order passed by the punishing authority. Hence we are unable to confirm the order of the appellate authority as it is not a speaking order passed in terms of [section 6\(1\)](#) of the Rules.

7. In the present case also, the third respondent being an Appellate Authority has not gone into the merits of the case and rejected the claim of the petitioner, by incorporating the order passed by the fourth respondent, dismissed the appeal, which was also confirmed by the second respondent in the revision.

8. However, considering the facts and circumstances of the case, the second respondent, being an Appellate Authority, should have gone into the entire facts of the case and passed an order in terms of Rule 6(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. Likewise, Mercy Petition / Revision also was dismissed by the second respondent, by stating unauthorized absent and adverse remarks against the petitioner as earlier occasion, without providing opportunity to him. Further, the petitioner after receipt of desertion order, submitted his explanation and this aspect was not considered by the Appellate Authority, viz., third respondent as well as the fourth respondent.

9. In the light of the above, this Court has no hesitation to quash the impugned proceedings. Therefore, the impugned proceedings are quashed and the second respondent is directed to consider the matter afresh in the light of Rule 6(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, as expeditiously as possible, within a period of four months from the date of receipt of a copy of this order, after providing opportunity to the petitioner. It is made clear that till such time, the petitioner is not entitled for any relief of reinstatement or back-wages, if any.

10. Accordingly, the Writ Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

r n s

To

1.The Principal Secretary to Government,
Home (Pol.V A) Department,
Secretariat, Chennai- 600 009.

2.The Director General of Police,
Kamarajar Salai, Chennai.

3.The Commissioner of Police,
Veppery, Chennai.

4.The Deputy Commissioner of Police,
Armed Reserved, Puthupattai,
Chennai - 2.

+1cc to Mr.K.S.Kaviarasu, Advocate, S.R.No.20430
+1cc to the Government Pleader, S.R.No.20933

W.P.No.21947 of 2014 &
W.M.P.No.3353 of 2016

PM(CO)

RRS (30/04/2019)