



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
09.09.2019	18.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A. (MD) No.330 of 2017
and
C.M.P. (MD) No.3305 of 2017

M.Selvakumar

... Appellant/Petitioner

-vs-

1.The Inspector General of Police
Central Reserve Police Force - Southern Sector
Road No.10-C, Near MLA/MPs Colony
Gayathri Hills
Jubilee Hills
Hyderabad-500 033
Telangana State

2.The Deputy Inspector General of Police
Central Reserve Police Force - Chennai Range
Avadi
Chennai-600 065

3.The Commandant
42 Bn. - Central Reserve Police Force
District Police Training Centre
Lalacheruvu
Rajahmundry
Andhra Pradesh-533 106

4.M.K.Pandey

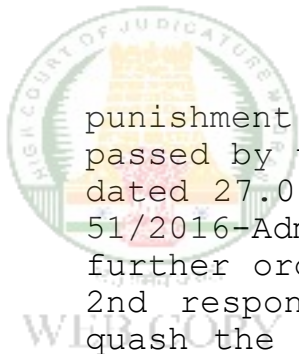
... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 11.11.2016, passed in W.P.(MD) No.21716 of 2016, on the file of this Court.

Prayer in WP(MD) . 21716/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus and call for the records related to the

<https://hcservices.courts.gov.in/hcservices/Mandamus>



punishment order No. P.VIII-1/2015-42-EC.II(MSK) dated 20.07.2015 passed by the 3rd respondent and the order No. R.XIII-10/2015-EC-III dated 27.01.2016 passed by the 2nd respondent and order No. R.XIII-51/2016-Adm-7 dated 13.06.2016 passed by the 1st respondent and further order No.P.I.36/16-17-PBC-42, dated 27.06.2016 passed by the 2nd respondent directing the petitioner to remit Rs.36,023/- and quash the same and consequently direct the respondents to reinstate the petitioner in service and to grant all the service and other monetary benefits to the petitioner as per rules within a time limit to be fixed by this Court.

For Appellant : Mr.T.Sakthi Kumaran
for M/s.Victory Associates
For Respondents : Mr.D.Saravanan

J U D G M E N T

T.S.SIVAGNANAM, J.,

The writ petitioner is the appellant herein and the challenge in this writ appeal is to an order, dated 11.11.2016 in W.P.(MD) No.21716 of 2016.

2. The appellant filed the writ petition challenging the order of punishment passed by the third respondent, dated 20.07.2015, confirmed by the second respondent / Appellate Authority by order dated 27.01.2016 and further confirmed by the first respondent by order dated 27.06.2016.

3. The order impugned in the writ petition was in exercise of the powers conferred on the third respondent under Section 11(1) of Central Reserve Police Force Act, 1949 (hereinafter, referred to as "the Act") read with Rule 27 of Central Reserve Police Force Rules, 1955 (hereinafter, referred to as "the Rules"). The appellant was dismissed from service from the date of issuance of the order passed by the third respondent. By Office Memorandum, dated 13.01.2015, the following charges were framed against the appellant:

"ARTICLE - I

That the said No.045031366 CT/GD M.Selvakumar of F/42 Bn. FRPF, while functioning as CT/GD of 42 Bn, CRPF, committed an act of misconduct in his capacity as a member of the force under section 11(1) of CRPF Act, 1949, in that he deserted from Spl. Train bound for Jharkhand in connection with Jharkhand Assembly Election duty 2014, at Bhilaspur Railway station on 03/11/2014 and reported at his own on 01/01/2015 at 0930 hrs after 59 days of desertion from the important assignment/active duties without any permission of competent authority.



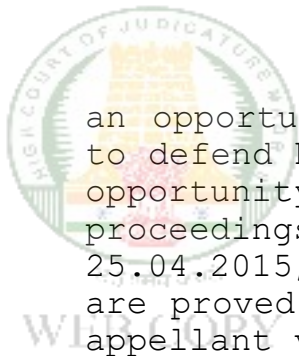
ARTICLE - II

That during the aforesaid period and while functioning in the aforesaid office, the said No.045031366 CT/GD M.Selvakumar of F/42 Bn. CRPF, was guilty of disobedience of orders in his capacity as a member of the force under section 11 (1) of CRPF Act 1949 wherein he disobeyed the orders of his Officer Commanding F/42 Bn. CRPF issued vide letter No.P.VIII-2/2014-F/42 dated 15/11/2014, 26/11/2014 and 01/12/2014 vide which he has been directed to report on duty immediately but he did not comply with the orders of his Superiors and remained as deserter from the force and reported at his own on 01/01/2015 at 0930 hrs after 59 days of desertion from the force."

4. The memorandum of charge along with statement of articles of charge, statement of imputation of misconduct, list of documents and list of witnesses were served on the appellant vide office letter dated 13.01.2015, through registered post to his residential address with a direction to the appellant to submit his reply, if any, within a period of ten days from the date of receipt of the memorandum. The appellant did not submit reply within the time stipulated. In terms of the Rules, an Enquiry Officer was appointed vide office order, dated 04.02.2015, to enquire into the charges framed against the appellant. This order was served on the appellant through the Officer Commanding, F/42 BN.

5. The Enquiry Officer, vide letter dated 18.02.2015, communicated the memorandum of charge along with annexures by registered post to the appellant and directed him to be personally present before him for preliminary enquiry on 07.03.2015 for recording of his statement so that the departmental proceedings could be proceeded with. The said communication was returned with an endorsement that "the addressee is not available in the given address". The Enquiry Officer, vide letter, dated 05.03.2015, again sent the memorandum of charge along with annexures by registered post and directed the appellant to appear before him on 25.03.2015. This letter was also returned as unserved with same endorsement that the addressee is not available in the given address.

6. One more opportunity was granted to the appellant by the Enquiry Officer vide letter dated 27.03.2015, enclosing the copies of all connected documents i.e. evidence, statements etc., and directed the appellant to appear before him for enquiry on 14.04.2015. The appellant was informed that if he fails to turn up for enquiry on the schedule date, the enquiry will be conducted ex parte. The said letter was also returned unserved. Subsequently, the Enquiry Officer proceeded with the departmental enquiry ex parte and recorded the statement of seven prosecution witnesses. Though

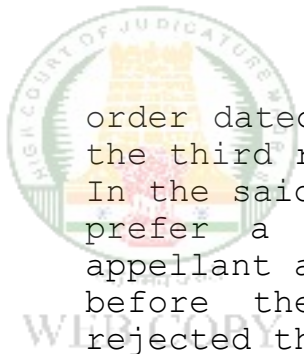


an opportunity was granted by the Enquiry Officer to the appellant to defend himself in the enquiry proceedings, he failed to avail the opportunity. The Enquiry Officer concluded the departmental enquiry proceedings *ex parte* and submitted his report vide letter, dated 25.04.2015, holding that the charges framed against the appellant are proved. The copy of the enquiry report was communicated to the appellant vide letter dated 20.05.2015 by registered post giving him an opportunity to submit his representation, if any, within fifteen days from the date of issuance of the letter. The said communication was also returned with an endorsement "address was out of station and his present address was not known".

7. The Disciplinary Authority / third respondent, after considering the findings rendered by the Enquiry Officer, took note of the charges as well as the fact that during the course of domestic enquiry, the appellant again deserted the service on 04.02.2015 and wilfully absented himself without prior permission / sanction of the competent authority. The Disciplinary Authority noted that though the appellant was directed to report for duty immediately, vide letter dated 05.02.2015, he did not rejoin duty. In accordance with the procedures followed earlier, a warrant of arrest was issued against the appellant under Section 10(m) of the Act. Thus, the Disciplinary Authority noted that in spite of ample opportunity granted to the appellant, he never availed the opportunity and the appellant having deserted from the Special Train bound for Jharkhand in connection with Jharkhand Assembly Election Duty 2014 at Bhilaspur Railway Station on 03.11.2014 and reported for duty on his own volition on 01.01.2015, after 59 days of desertion from the important assignment / active duties and further, the appellant again deserted the service on 04.02.2015 and therefore, concluded that it would not be in the interest of good order and discipline of the Force to let the appellant to continue in the disciplined Force. Thus, the Disciplinary Authority came to the conclusion that the appellant is not a fit person to be retained in service due to such serious indiscipline act committed by him. Therefore, the appellant was dismissed from service and consequential directions were issued.

8. The appellant filed an appeal before the second respondent, vide appeal petition dated 18.10.2015. Before the First Appellate Authority, it was contended by the appellant that he had no intention of deliberately avoiding the enquiry proceedings and that he was not residing in the given address, which will go to show that there was no intention on the part of the appellant to keep away from the enquiry proceedings. Further, it was stated by the appellant that due to domestic and family problems, he absented himself from duty and he was unaware of the enquiry proceedings.

9. The First Appellate Authority considered the appeal petition and after recording independent reasons, by a detailed



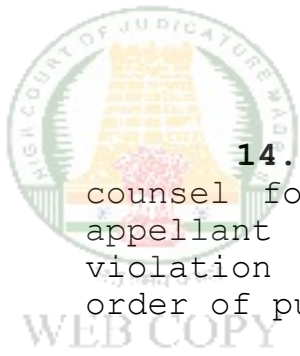
order dated 27.01.2016, confirmed the order of punishment passed by the third respondent and rejected the appeal filed by the appellant. In the said order, the appellant was informed that he has a right to prefer a revision petition before the first respondent. The appellant availed the said opportunity and filed a revision petition before the first respondent, who, by order dated 13.06.2016, rejected the revision petition filed by the appellant largely on the ground that the appellant has not brought out any new facts or material evidence worth consideration. The appellant challenged the said order by filing a writ petition, which was dismissed by the impugned order.

10. Mr.T.Sakthi Kumaran, learned counsel appearing for the appellant contended that in the office memorandum, dated 13.01.2015, there were two articles of charge framed against the appellant. However, the Disciplinary Authority / third respondent, in his order dated 20.07.2015, stated that the appellant had again deserted the service from 04.02.2015. In this regard, the appellant had no opportunity and admittedly, those proceedings were never served upon the appellant.

11. It is further submitted that in the appeal petition, the appellant had specifically stated about his family circumstances, which prevented him from appearing for the enquiry proceedings and participating in the enquiry proceedings. It is the submission of the learned counsel for the appellant that this aspect was noted by the First Appellate Authority, in his order dated 27.01.2016, but non-suited the appellant on the ground that if the appellant had any family problems, he should have projected the same before the Senior Officers of the unit and as he failed to do so, he cannot raise such a contention.

12. It is the submission of the learned counsel for the appellant that the First Appellate Authority, having held so, should have examined under what circumstances, the appellant could not appear for the enquiry proceedings and appreciated the fact that the appellant had no intention to stay away from the enquiry proceedings. Therefore, it is the submission of the learned counsel for the appellant that without even conducting an enquiry on the charge, which was never communicated to the appellant, the order of dismissal from service could not have been passed and the same is in violation of the principles of natural justice.

13. Further, it is contended by the learned counsel for the appellant that the Disciplinary Authority as well as the First Appellate Authority have stated about the non-execution of the warrant of arrest issued to the appellant, but failed to see that the procedure, which is required to be followed before imposing a major punishment of dismissal from service, was not adhered to. Therefore, the entire proceedings are vitiated.



14. The other factual details were referred to by the learned counsel for the appellant to substantiate his arguments that the appellant has been dealt with unfairly and there has been a gross violation of the principles of natural justice and therefore, the order of punishment calls for interference.

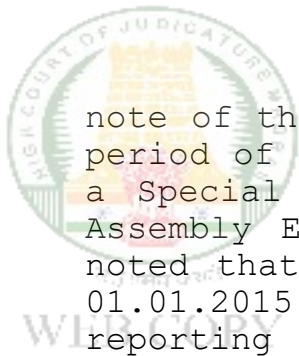
15. In support of his contentions, the learned counsel for the appellant referred to the decision of the Division Bench in ***the General Manager, Home Department vs. The Registrar, Central Administrative Tribunal***, reported in 2002 (4) CTC 476; ***S.Selvam vs. The Commandant and others***, reported in MANU/TN/2281/2002 and the order, dated 05.02.2010 passed in W.P.No.6881 of 2006 [***S.Gajjarajan vs. The Deputy Inspector General of Police and others***].

16. Per contra, Mr.D.Saravanan, learned Standing Counsel appearing for the respondents, elaborately referred to the factual position and has invited the attention of this Court to the counter affidavit filed by the Deputy Inspector General of Police, Group Centre, Central Reserve Police Force, Chennai.

17. The learned Standing Counsel appearing for the respondents submitted that the appellant had no valid reason to commit an act, which is unbecoming of a member of the disciplined Force and the punishment having been imposed for the proven charges may be sustained.

18. We have elaborately heard the learned counsel for the parties and carefully perused the materials placed on record.

19. The sheet anchor of the arguments of Mr.T.Sakthi Kumaran, learned counsel appearing for the appellant, is on the ground that when the Disciplinary Authority passed the order of punishment, dated 20.07.2015, there is a reference to the act of desertion said to have been committed by the appellant on 04.02.2015 and that the appellant was directed to report for duty vide letter dated 05.02.2015 and since did not rejoin duty, proceedings were initiated on 07.02.2015 for issuance of warrant of arrest against the appellant. It is submitted that this aspect of the matter was not an article of charge framed against the appellant vide office memorandum, dated 13.01.2015. Therefore, it is the contention that materials extraneous to the charge proceedings were relied on by the Disciplinary Authority to impose the capital punishment of dismissal from service, without following the principles of natural justice. To examine the correctness of this contention, we have carefully perused the order, dated 20.07.2015, passed by the third respondent and we find that the above submission cannot be sustained, because, the Disciplinary Authority has examined the findings of the Enquiry Officer, who held that all the charges are proved. After examining the report of the Enquiry Officer, the Disciplinary Authority took

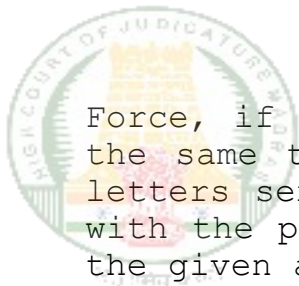


note of the conduct of the appellant in deserting the service for a period of 59 days from 03.11.2014, while the appellant was on board a Special Train bound for Jharkhand in connection with Jharkhand Assembly Election duty 2014. Further, the Disciplinary Authority noted that the appellant on his own volition reported for duty on 01.01.2015 i.e. after 59 days of desertion. Prior to the appellant reporting for duty, in terms of the provisions of the Act, action was initiated against the appellant for issuance of warrant of arrest, which was communicated to the appellant through the Superintendent of Police, Theni, pursuant to the order passed by the Metropolitan Magistrate - Commandant 42 BN, dated 15.12.2014. This proven charge has led to the order of dismissal from service.

20. No doubt, there is a reference to another act of desertion committed by the appellant from 04.02.2015. Once again, the same procedure as followed while the appellant deserted on the earlier occasion, which is the subject matter of the departmental enquiry proceedings, was followed and proceedings were initiated for issuance of warrant of arrest. The reference to the act of desertion from 04.02.2015 is not the substantive reason for imposing the punishment of dismissal from service, but, on account of the proven charge of desertion of 59 days. The chain of events will clearly show that after the warrant of arrest was issued, vide proceedings dated 15.12.2014, the appellant, presumably having come to know about the same, reported for duty on his own volition on 01.01.2015. Thus, in our considered view, reference to the act of desertion of the appellant from 04.02.2015 cannot impinge upon the decision taken by the Disciplinary Authority to dismiss the appellant from service for the proven charges.

21. In the appeal petition dated 18.10.2015, the appellant has not mentioned anything about the subsequent act of desertion from 04.02.2015 and there was no denial of the same. But, the appellant would contend that he had some personal problems, which required to be sorted out and this caused him to leave the Force without any prior permission. In our view, this is a candid admission of misconduct. This fact assumes relevance, because the appellant was a member of the disciplined Force and the act of desertion occurred, when the appellant was assigned a very important duty of Jharkhand Assembly Election 2014. It appears that the appellant was to be on the Train to Jharkhand and abruptly, he left the Train at Bhilaspur Railway Station on 03.11.2014 and reported for duty after 59 days, after the warrant of arrest was issued on 05.12.2014. Therefore, it will be too late for the appellant to now set up a case that he was put to a disadvantageous position on account of the proceedings, which were initiated for the second act of desertion, not communicated to him.

22. The appellant's only plea is that he was not available in the given address. The appellant being a member of the disciplined



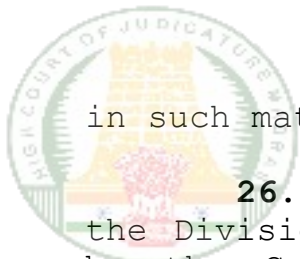
Force, if he changed his residential address, should have intimated the same to his superior officers, but, he failed to do so. The letters sent by the Enquiry Officer, along with annexures, returned with the postal endorsement that the appellant was not available in the given address.

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23. Curious enough when the enquiry report was communicated to the appellant by letter dated 20.05.2015, by registered post, giving the appellant an opportunity to submit a representation, if any, on the findings of the Enquiry Officer, the said letter returned with the postal endorsement that the appellant was out of station and his present address was not known. These facts will clearly demonstrate that the appellant has been avoiding service of notices sent by the Department and only after the warrant of arrest was issued, he reported for duty, on his own volition, on 01.01.2015. Therefore, we find no error in the conclusion arrived at by the Disciplinary Authority. We would state that the case on hand is not one where there has been violation of principles of natural justice. But, it is a case, where the appellant failed to avail the opportunities granted to him and he is precluded from pleading any violation of principles of natural justice.

24. The learned counsel appearing for the appellant pressed into service the family circumstances of the appellant, which made him to leave abruptly from Bhilaspur Railway Station. We do not wish to express anything on the appellant's family circumstances. But, however, as a responsible member of the Central Reserve Police Force, the minimum that is expected from the appellant is to intimate his superior officer, seek permission and then proceed to his native town. On the other hand, the appellant abruptly deserted himself from duties midway from Bhilaspur Railway Station, when he was bound to Jharkhand on a very important assignment. Therefore, the family circumstances pleaded by the appellant cannot be a mitigating factor considering the facts of the case.

25. The First Appellate Authority has independently examined the grounds raised by the appellant and has passed a speaking order confirming the order of punishment. The appellant availed the revisional remedy available under the Act and the Revisional Authority independently examined the grounds raised by the appellant and pointed out that the appellant has not brought out any new facts or material evidence worth consideration and by assigning independent reasons, confirmed the order passed by the Appellate Authority, who had confirmed the order of punishment. Even before the Writ Court, the appellant had pleaded identical grounds as raised before us and pleaded that he, in a spurt of anxiety, had left for his native place in search of his wife and son. We have to bear in mind that the appellant being a member of the Central Reserve Police Force is bound by the rules and regulations of the appointment. Hence, the question of extending sympathetic approach

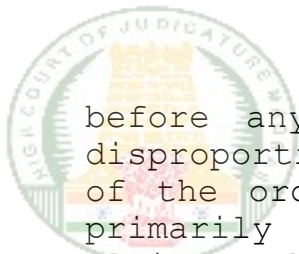


in such matters is beyond our jurisdiction.

26. In the case of **General Manager, Home Department** (supra), the Division Bench was testing the correctness of the order passed by the Central Administrative Tribunal pertaining to a railway employee, who had been issued a charge sheet for his unauthorized absence for different spells. Taking note of the facts of the said case that his wife had deserted him leaving behind two children, he had to immediately rush to Bangalore and the Tribunal, the last fact finding authority, held in favour of the railway employee and directed reinstatement, but, denied backwages. We are of the view that the said decision cannot be applied to the facts and circumstances of the case on hand as we have already pointed out the manner in which the charge of desertion has to be examined and the yardstick to be applied to a member of the disciplined Force is quite different to that of the yardstick to be applied to any civilian employees.

27. The decision in the case of **S.Gajarajan** (supra), rendered by the Single Bench of this Court, was pressed into service with regard to the proportionality of penalty. As pointed out by us earlier, the appellant was dismissed from service for proven charges and the act of desertion was considered to be a serious act of misconduct on the part of the member of the disciplined Force, who abruptly left the important assignment. Therefore, the quantum of penalty to be imposed by the Disciplinary Authority taking note of the nature of the assignment entrusted to a member of the disciplined Force is to be left to the decision of the Disciplinary Authority, unless and until the punishment imposed is so shockingly disproportionate to the proven charges. We find nothing to extend such an approach to the case of the appellant as there is nothing convincing to conclude that the punishment was shockingly disproportionate.

28. The decision in the case of **S.Selvam** (supra), rendered by the Single Bench of this Court, pertains to the charge against a serving member of the Central Reserve Police Force for overstayed leave. In the said case, the Court was convinced that the petitioner therein did not have adequate opportunity, which would under normal circumstances lead to a remand of the matter to the Disciplinary Authority, however, the Court taking into consideration that the writ petition was pending since 1999, opined that that it would be inequitable to remand the matter. Accordingly, modified the punishment by denying backwages. In the said decision, the Court has taken note of the peculiar circumstances and came to the conclusion that the punishment was grossly disproportionate. Even after recording such a finding, the Court held that it is no doubt true that the Central Reserve Police Force is a disciplined force and the employees are required to maintain discipline. As mentioned earlier, on facts, the appellant has not been able to establish



before any of the fact finding authorities with regard to the disproportionality of the punishment. While testing the correctness of the orders passed by the Disciplinary Authority, the Court is primarily concerned about the decision making process and not the ultimate decision itself. When it comes to imposition of penalty, normally, the Court does not interfere unless the punishment is shockingly disproportionate. We do not propose to substitute our views to that of the views recorded by the Disciplinary Authority in its order, dated 20.07.2015, by which the punishment of dismissal from service was imposed on the appellant, after noting the conduct of the appellant in staying away from the enquiry proceedings. Thus, we find that the appellant has not made out any ground to take a different view than what was taken by the learned Single Judge.

29. In the result, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

+1 CC to Mr.A.THIRUMURTHY, Advocate (SR-87434[F] dated 18/09/2019)
+1 CC to Mr.D.SARAVANAN, Advocate (SR-86405[F] dated 12/09/2019)

JUDGMENT IN
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and
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MK (03.10.2019) 10P 3C