



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2020

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.7039 of 2011

S.Karunakaran

... Petitioner

vs.

The Superintendent of Police,
Dindigul District,
Dindigul.

... Respondent

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in M.A.No.515/2011 in Na.Ka.No.E2/16677/2011 dated 24.06.2011 issued by the respondent herein removing the petitioner from the post of Area Commander of Dindigul District Home Guard and quash the same and consequently direct the respondent to reinstate the petitioner to the post of Area Commander of Dindigul District Home Guard.

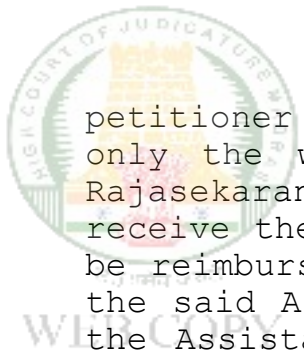
For Petitioner : Mr.M.Michael Bharathi

For Respondent : Mr.S.Dhayalan, Government Advocate

ORDER

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in M.A.No.515/2011 in Na.Ka.No.E2/16677/2011 dated 24.06.2011 issued by the respondent herein removing the petitioner from the post of Area Commander of Dindigul District Home Guard and quash the same and consequently direct the respondent to reinstate the petitioner to the post of Area Commander of Dindigul District Home Guard.

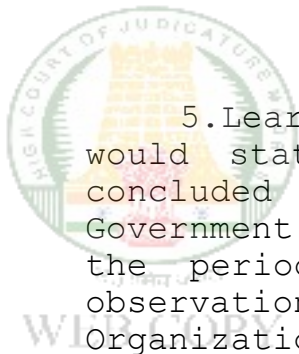
2.The case of the petitioner is that he was appointed as Area Commander of Dindigul District Home Guard with effect from 08.12.2010 by the respondent. While he was discharging his duties, a sum of Rs.14,999/- was allotted to Dindigul Home Guard on 07.02.2011 in order to facilitate the members of Home Guard to participate in the State Level Sports Meet held in Krishnagiri District. As the said amount was already spent by the Assistant Area Commander from her own pocket, the said amount of Rs.14,999/- was reimbursed on 07.02.2011. As the petitioner was the Area Commander at that point of time, the amount was paid to him and the



petitioner did not know the purpose for which it was paid to him and only the writer namely, Alagappan and the Sub Inspector namely, Rajasekaran who brought the said amount asked the petitioner to receive the said amount. As it was informed that the amount was to be reimbursed to the Assistant Area Commander, the petitioner asked the said Alagappan and Rajasekaran to hand over the said amount to the Assistant Area Commander, but both of them again returned the amount to the petitioner stating that the Assistant Area Commander had asked to return back the money to him and the petitioner had contacted the Assistant Area Commander by phone and she had asked the petitioner to retain the amount stating that it would be discussed in the next Home Guard meeting and believing her words, the petitioner had retained the said amount with him.

3. According to the petitioner, the Assistant Area Commander wanted to be the Area Commander and that was the reason as to why she had asked the petitioner to retain the amount. While so, the petitioner was summoned by the Deputy Superintendent of Police for enquiry on an anonymous letter that he failed to reimburse the said amount. The petitioner appeared before the Deputy Superintendent of Police and stated that he sent the said amount to the Assistant Area Commander by Demand Draft on 30.04.2011. However, on 08.06.2011, by a show cause notice, the petitioner was asked to appear for enquiry on 13.06.2011, on which date, the petitioner was informed that as a crime meeting was to be held, the enquiry was postponed to 14.06.2011, on which date, the petitioner received another notice to attend the enquiry on 24.06.2011 and in that notice, it was mentioned that the petitioner failed to appear on 13.06.2011 for enquiry. It is the contention of the petitioner that the enquiry was adjourned from 13.06.2011 to 14.06.2011 citing a crime meeting. On 24.06.2011, the petitioner appeared for enquiry before the respondent and enquiry was conducted and on the same day, impugned order of removal from service was served on him and the petitioner was removed from the post of Area Commander of Dindigul District.

4. The grievance of the petitioner is that he was not given opportunity to put forth his contention in the enquiry. While he specifically stated that he contacted the Assistant Area Commander for returning the money and she had asked him to retain the money, instead of allowing the petitioner to examine the Assistant Area Commander to prove the abovesaid fact, the respondent included the Assistant Area Commander who is in lesser rank than the petitioner, as one of the members in the three members committee constituted for the enquiry and without considering his reply statement and without giving any opportunity to the petitioner to examine the witnesses cited by him in his reply statement, the enquiry committee found the petitioner guilty of the above allegation in the anonymous complaint and based on its report, the respondent passed the impugned order of removal on the same day violating the principles of natural justice. Thus, he would pray for setting aside the said order.



5.Learned Government Advocate appearing for the respondent would state that the enquiry initiated against the petitioner concluded holding that the allegation of non disbursement of Government money to the extent of Rs.14,999/- to the Home Guards for the period from 07.02.2011 to 30.04.2011 was proved with an observation that the petitioner's performance in the Home Guard Organization was not upto the mark and he had no professional skill, administrative ability and control over Home Guards and therefore, it was recommended to replace him by a suitable substitute. On receipt of the enquiry report, the petitioner was called upon to offer his explanation on 13.06.2011, but he did not turn up and sent a telegram stating that his grandfather died and therefore, the enquiry was adjourned to 24.06.2011, on which date, after considering the written explanation by the petitioner, three members committee drew up the enquiry report and found the allegation against the petitioner was proved and therefore, the impugned order of removal from service was passed. He would further state that the cardinal principle namely, honesty, integrity, conduct and performance of the leader of any organization must be above suspicion and exemplary to others, but unfortunately the petitioner in this case proved himself to be unfit to hold the post of Area Commander by his improper act of handling the Government money in illegal manner and therefore, he was rightly removed from service. Thus, he would state that the interference of this Court is not necessary.

6.Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondent.

7.Perusal of record shows that based on anonymous complaint that the petitioner did not disburse the Government money to the extent of Rs.14,999/- allotted for the Home Guards and he had retained the said amount with him, the petitioner was issued show cause notice to appear for enquiry. The petitioner has appeared for the enquiry and submitted his reply statement. When the petitioner has made a specific contention in his reply that he called the Assistant Area Commander over phone and it is she who had asked him to retain the above amount, the respondent did not consider the same and had not allowed the petitioner to examine the Assistant Area Commander as a witness to prove the said contention. Whereas, it is very unfortunate that in the three members committee which enquired the petitioner, the Assistant Area Commander who is in lesser rank than the petitioner was one of the members and based on the enquiry report, straightaway, the impugned punishment order has been passed on the same day. Therefore, the enquiry itself was biased. Further, the reply statement of the petitioner never been taken into consideration and it is only stated that the person who is holding the post of Area Commander did not know the manner in which the amount to be returned. Thus, the impugned order has been passed violating the principles of natural justice and without application of mind. The post held by the petitioner is a Honorary post,



the impugned order would definitely create a stigma against the petitioner and therefore, on the ground of violation of principles of natural justice and non application of mind, I am inclined to interfere with the impugned order.

8. Accordingly, the impugned order in M.A.No.515/2011 in Na.Ka.No.E2/16677/2011 dated 24.06.2011 passed by the respondent is set aside. However, since the post is the Honorary post, the petitioner cannot claim any reinstatement.

With the above observation, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The Superintendent of Police,
Dindigul District,
Dindigul.

+1 CC to SPL.GP (SR-3180[F] dated 27/01/2020)

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MK (07.02.2020) 4P 3C