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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.24752 of 2009
and
M.P. No.2 of 2009

Rajesh Kumar

... Petitioner

Vs

1. The Director General of Police,
C.R.P.F. C.G.O Complex, New Delhi.
2. The Inspector General of Police,
Eastern Sector, C.R.P.F.,
F.C. BLOCK Sector 3, Calcutta.
3. The Inspector General of C.R.P.F.
Bhubaneshwar.
4. Additional D.I.G. (Personnel)
G.C, C.R.P.F., Bhubaneshwar.
5. The Commandant,
O/o.The Deputy Inspector General of Police,
R.T.C.-II, Central Reserve Police Force,
Avadi, Chennai-65.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus To call for the records related to the termination of the service of the petitioner passed by the fourth respondent in order No.D-11-1/2007-E.C.V. dt.17.11.2007 and the order passed by the second respondent in No.R.XIII-1/2008-ES-ES H-111 dt.17.4.2009 and quash the same and consequently reinstate the petitioner into service along with all the consequential benefits arising out of the same along with continuity of service.

For Petitioner : Mr.S.Jayakumar

For Respondents: Dr.D.Simon,
Central Government Standing Counsel



O R D E R

The petitioner has challenged orders dated 17.11.2007 and 17.4.2009, both passed by the Inspector General of Police, Eastern Sector, C.R.P.F./R2.

2. The case of the petitioner is that he was serving as a Group Centre in the Central Reserve Police Force, Bhubaneswar (CRPF). While undergoing training, he was sent to Avadi on 13.06.2007 to undergo basic training with the CRPF, R.T.C. While there, he had fallen ill and had undergone treatment at the Composite Hospital, CRPF, Avadi between the period 26.06.2007 and 02.07.2007. He was advised medical rest and proceeded to avail sanctioned leave from 03.07.2007 to 01.08.2007, resuming duty on 02.08.2007 after being declared fit and producing a certificate of medical fitness.

3. According to the petitioner, his mother fell ill soon after, and he thus proceeded to go on leave again with effect from 03.08.2007 to 07.08.2007. He would insist that his leave as aforesaid had been regularised, but this is disputed by the respondents. On 20.08.2007, he had been referred to the Mental Hospital on emergency basis and was admitted there between 23.08.2007 and 13.09.2007.

4. Thereafter, he had gone on leave which was, again unsanctioned, leading to a notice being issued on 17.10.2007 by the respondents to the effect that his service stood terminated after a notice period of one month as per Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 (in short 'CCS Rules'). In line therewith, order dated 17.11.2007 is stated to have been issued to him terminating his services upon completion of one month.

5. Though the petitioner disputes receipt of the notice of termination dated 17.10.2007, he states, at paragraph 11 of the affidavit filed in support of the Writ Petition, that he had received a letter from the respondents directing him to report to duty as soon as possible. However, there is no letter that is placed on record by him to this effect. Even the counter filed by the respondents does not refer to any letter that has been issued to the petitioner in or around that time. The only letter that appears to have been sent is the notice of termination, dated 17.10.2007. He goes on to state that upon receipt of the aforesaid letter dated 17.10.2007, he reported to the Training Centre at Avadi on 23.10.2007, but was denied entry, in view of the fact that his services had been terminated.

6. Rule 5(1) of the CCS Rules reads as follows:



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5. Termination of temporary service.

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month.

Provided that the services of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.

NOTE:- The following procedure shall be adopted by the appointing authority while serving notice on such Government servant under clause (a).

(i) The notice shall be delivered or tendered to the Government servant in person.

(ii) Where personal service is not practicable, the notice shall be served on such Government servant by registered post, acknowledgement due at the address of the Government servant available with the appointing authority.

(iii) If the notice sent by registered post is returned unserved it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette.

7. The Rule stipulates that dereliction or desertion from duty would result straightaway in termination of service with a months' notice. Thus there is no infirmity in the issuance of notice dated 17.11.2007, in view of the officer having deserted his post.

8. The specific ground raised by the petitioner in regard to non-service of notice dated 17.10.2007 thus does not appear correct and is rejected. I had, in order to ascertain the facts, called for the records. Records are however stated to be unavailable and the explanation tendered by counsel for respondents duly supported by records is that the records have been destroyed on 31.12.2009 as per the prevailing Rules. In my view, it would have been prudent for the respondents to have retained the records till the conclusion of the litigation.



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9. However, the petitioner's affidavit comes to the rescue of the respondents, as in my view, it clinches the fact that the petitioner has well received the notice of termination dated 17.10.2007, prompting the petitioner to report at the Training Centre, Avadi on 23.10.2007.

10. As regards the service of order dated 17.11.2007, though there is a tentative attempt to disavow receipt of the order as well, since the petitioner has approached the appellate authority for redressal, he was evidently fully aware of the same. No other infirmity is pointed out in the impugned orders which reflect concurrent findings of fact.

11. This Writ Petition is thus dismissed. No costs. Connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Director General of Police,
C.R.P.F. C.G.O Complex, New Delhi.
2. The Inspector General of Police,
Eastern Sector, C.R.P.F.,
F.C. BLOCK Sector 3, Calcutta.
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5. The Commandant,
O/o.The Deputy Inspector General of Police,
R.T.C.-II, Central Reserve Police Force,
Avadi, Chennai-65.

+1cc to Mr.Dr.D.Simon, Advocate, S.R.No.53284

W.P. No.24752 of 2009
and M.P. No.2 of 2009

KV(CO)
SU(17/11/2021)