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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.14248 of 2007

S.Murugan

...Petitioner

Vs.

1.The Deputy Inspector General of Police,
Armed Reserve,
Chennai-10.

2.The Commandant,
Vth Battalion,
Vaisnavi Nagar,
Avadi, Chennai-109.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records pertaining to the order in P.R.No.5/03 dt. 9.4.03 and C.No.B2/9065/2003, dt. 18.06.2003 passed by the 2nd and 1st Respondent respectively and to quash the same and to direct the Respondents to reinstate the applicant in service.

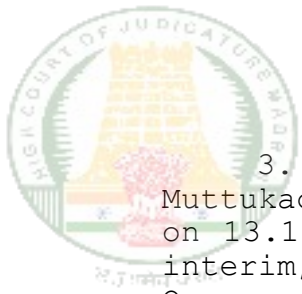
For Petitioner : Mr.R.Prem Narayanan

For Respondents : Mr.S.John J.Raja Singh
Government Advocate

O R D E R

This writ petition was initially filed as an Original Application under Section 19 of the Administrative Tribunals Act, 1985. With the abolition of the Tamil Nadu Administrative Tribunal (Tribunal) in 2004, the Original Application has come to be transferred to the file of this Court, re-numbered as WP.No.14248 of 2007.

2. The petitioner was enlisted as a Police Constable in the Tamil Nadu Special Police in the year 1989 at Veerapuram as part of the VIII Battalion. He was thereafter promoted through the ranks, finally promoted as Havildhar in the year 1999. While posted as aforesaid, he was posted to the Ernavoor Police Check Post on 30.09.2002 and directed to join Guard duty at Muttukadu.



3. Admittedly, the petitioner did not report for duty at Muttukadu on the date stipulated but reported only much later, on 13.11.2002 after having absented himself for 45 days. In the interim, he was served with a notice of desertion on 05.11.2002. On account of the aforesaid dereliction of duty, he was served with a charge memo on 30.01.2003 and enquiry was conducted, in the course of which he was heard. An order of punishment of removal from service was passed on 09.04.2003, as against which the petitioner preferred an appeal, which came to be rejected by the Deputy Inspector General of Police, Armed Reserve, arrayed as R1.

4. Mr.R.Prem Narayanan, learned counsel appearing for the petitioner would state that the order of the respondent is disproportionate to the offence committed and has also been passed without taking into account the submissions made by the petitioner. There is no recording in the order itself as to whether the punishment was commensurate with the offence and this, according to him, vitiates the order in full.

5. According to the learned counsel for the petitioner, the fact that the respondent has issued a notice of desertion to which the petitioner had responded by reporting duty on 13.11.2002 itself makes it clear that there is no cause for any further punishment or action to be initiated as against the petitioner.

6. He would rely on decisions of two learned Single Judges of this Court in W.P.Nos.35231 of 2006 and 27930 of 2006 dated 07.01.2010 and 04.01.2007 respectively. In W.P.No. 27930 of 2006, this Court considered the case of the petitioner therein, who had been removed from service for desertion. The argument there was similar to the one advanced before me that, removal from service was disproportionate to the offence of desertion.

7. Reliance was placed by the petitioner therein on a Circular issued by the Commissioner of Police, Chennai dated 05.12.1990 in terms of Rule 3(a) of the Tamil Nadu Police Subordinate (Discipline and Appeal) Rules that stated that in cases of deserters, who had been reinstated in service after they appeared before the officer, the Deputy Commissioner of Police may within the stipulated time limit of 60 days, impose minor punishment in terms of Rule 3 (a) of the Rules and not major punishment in terms of Rule 3(b) of the Rules.

8. In W.P.No.35231 of 2006, a learned Single Judge of this Court quashed the order imposing compulsory retirement upon a police constable for desertion, referring inter alia, to a Circular issued by the Inspector General of Police Commissioner of Police dated 30.10.90 to the effect that in cases where



9. Paragraph 3 of Circular dated 30.10.1990 has been extracted, which reads as follows:

'While disposing of appeals/reviews from Head Constables of Police Constables, I noticed that the Superintendent of Police are awarding the maximum penalty of dismissal or removal from service in desertion cases, after taking them for duty. This is unfair and cannot be justified.

Hence, the impugned order of compulsory retirement is bad in view of the said circular of the Inspector General of Police.'

11. Learned counsel for the petitioner would state that the concerned Deputy Commissioner ought to have taken note of the position that the petitioner had appeared in response to the



desertion notice and reported for duty and hence his absence should not have resulted in dismissal from service.

12. Reliance in this context is made on a judgment of the Division Bench of this Court in W.A.No.552 of 2019 in the case of The Government of Tamil Nadu and Others Vs. R.Pugalenth, which, again concerned a challenge to the quantum of punishment imposed on the writ petitioner on the ground that it was not commensurate with the offence committed.

13. In that case, the Bench makes reference to a judgment of the Supreme Court in the case of Mohd. Yunus Khan Vs. State of U.P. [(2010) 10 SCC 539] wherein at para 34 the Hon'ble Supreme Court noted that the statutory authorities has failed to appreciate, that if disciplinary authority wants to consider the past conduct of the employee in imposing punishment, the delinquent is entitled to notice thereof and the charge-sheet should must contain a reference to, or information of the same, at the stage of show cause notice prior to such imposition.

14. The State counsel, on a query posed by the Court, has set out the instances of dereliction in duty committed by the petitioner. There have been three black marks issued to this petitioner for absenting himself from check post duty on 26.03.1999, 04.04.1999 and 21.06.1999, vide proceedings dated 14.01.2000, 09.08.1999 and 06.04.2000. A deferred black mark for being absent from duty on 26.10.1999 was suo motu reviewed and enhanced to postponement of next increment for a period of one year without cumulative effect by the Commandant of the force vide proceedings dated 19.01.2000.

15. On 12.03.2000, the petitioner had deserted the force for more than 21 days without prior information and suffered a punishment of postponement of next increment for a period of one year with cumulative effect. This is the track record of the petitioner before me. However, in the present case, the charge did not contain reference to either previous or subsequent conduct and therefore the authorities concerned have apparently proceeded on the basis of incident in question alone.

16. Now we come to the incident in question. On 30.09.2002, the petitioner did not report for duty and deserted the force for 45 days without any information about his whereabouts. As per the applicable provisions, a notice of desertion was issued on 05.11.2002 and the petitioner reported for duty finally on 27.11.2002. He was reinstated on his reporting for duty, however, without prejudice to the initiation of disciplinary action. A charge memo was issued on 06.01.2003 and after due enquiry, the impugned order of dismissal came to be passed on 09.04.2003.



17. Incidentally, even pending enquiry in regard to the incident in question, the petitioner had sought casual leave from 01.12.2002 to 07.12.2002. However, he did not report for duty on 08.12.2002 and deserted the force for more than 21 days without any prior notice or information. The counter filed by the respondent would reveal that though a charge memo was issued on 26.03.2003 in respect of the offence committed in December 2002, the charge memo was not pursued on account of the dismissal of the petitioner on 09.04.2003, and has been kept in abeyance.

18. No doubt, in order to determine the appropriate punishment to be imposed, what has to be borne in mind by the authority is the particular incident alone in regard to which the charge memo relates. If at all the authority intended to press into service incidents of dereliction, both prior and subsequent to the incident in question, a candidate must be informed accordingly and be put to notice about the detail of the charges under enquiry.

19. In the present case, the officer has caused the enquiry into the charge framed in regard to the incident in question alone, coming to the conclusion that the charge called for removal from service. Learned counsel for the petitioner would argue that that there is no specific finding in regard to whether the punishment imposed was appropriate or not. In imposing the punishment for charges that stand proven, it is the authority concerned who has to exercise his discretion. The charge in question is desertion of the force for 45 days without any prior notice and in the opinion of the authority, such an offence justified the imposition of the punishment of dismissal. I am loathe to interfere in the same seeing as the petitioner is part of the police force, engaged in, and responsible for the maintenance of law and order. 20. This writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Inspector General of Police,
Armed Reserve,
Chennai-10.



2.The Commandant,
Vth Battalion,
Vaisnavi Nagar,
Avadi, Chennai-109.

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+1 cc to Mr.Sundararajan, Advocate Sr.NO. 43953

+1 cc to Government Pleader Sr.NO. 43928

W.P. No.14248 of 2007

MG CO

A.SK(11.10.2021)