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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.9976 of 2022
and
W.M.P.No.9687 of 2022

S.Mahalingam,
Ex.Inspector (M),
Force No.800652034, D/No.G1, E-Block, Plot No.2,
AB Rose Garden,
Railway Station Road, Sivasakthi Nagar,
Annanur, Chennai-600 062.

... Petitioner

Vs.

1. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110069.
2. The Director General of Police,
Directorate General, CRPF,
CGO Complex, Lodi Road,
New Delhi-110 003.
3. The Inspector General of Police,
Kerala & Karnataka Sector,
Group Centre Campus, CRPF
Yelahanka, Bengaluru-560 064.
4. The Deputy Inspector General of Police,
Range Hqr., CRPF, Yelahanka, Bengaluru-560 064.
5. The Deputy Inspector General of Police,
Group Centre, CRPF, Yelahanka,
Bengaluru-560 064.
6. The Commandant,
77 Battalion CRPF,
Karaianchavadi,
Chennai-600 086.

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the Ex Parte Department Enquiry Proceedings dated 03.07.2020 in proceeding No.P.VIII.1/2018-(77)-EC.3(R/BLR) drawn against the petitioner by the 4th Respondent and the subsequent advice of the 1st Respondent Union Public Service Commission letter dated 08.02.2022 in proceedings No.3/127/2021-SI imposing a penalty of withholding of 100% Pension and gratuity on permanent basis on the petitioner, which is forwarded by the 2nd Respondent to the petitioner on 24.03.2022 and quash the same and direct the respondents to conduct a fresh enquiry by giving reasonable opportunities to the petitioner.

For Petitioner : Mr.V.P.Sengottuvel
For Ms.R.Meenakshi

For R1 : Mr.M.Loganathan,
Standing Counsel

For R2 to R6 : Mr.S.N.Parthasarathi
Senior Panel Counsel

O R D E R

The relief sought for in the present writ petition is to call for the records relating to the Ex Parte Department Enquiry Proceedings dated 03.07.2020 in proceeding No.P.VIII.1/2018-(77)-EC.3(R/BLR) drawn against the petitioner by the 4th Respondent and the subsequent advice of the 1st Respondent Union Public Service Commission letter dated 08.02.2022 in proceedings No.3/127/2021-SI imposing a penalty of withholding of 100% Pension and gratuity on permanent basis on the petitioner, which is forwarded by the 2nd Respondent to the petitioner on 24.03.2022 and to quash the same and direct the respondents to conduct a fresh enquiry by giving reasonable opportunities to the petitioner.

2.Brief facts of the case:

On 18.10.1980, the petitioner joined service as Constable (General Duty) in Central Reserve Police Force, Arunachal Pradesh and subsequently, he was promoted as Assistant Commandant (M). At the verge of his retirement, unfortunately, he was not promoted as he was inflicted in a departmental enquiry of six alleged charges for receiving bribe from jawans and others. The departmental enquiry proceedings were completed without giving any opportunity to the petitioner and final order on the departmental enquiry proceedings was yet to be issued. In this regard, the petitioner has given a representation before



the respondents requesting to provide some documents as required by the petitioner to defend the enquiry and the same was not considered by the respondents. Challenging the same, the petitioner had filed the Writ Petitions in W.P.Nos.15572 & 15573 of 2018, which are now pending before this Court. Subsequently, he had filed another Writ Petition in W.P.No.32212 of 2019 to grant monthly pension provisionally and accordingly, the petitioner has got monthly provisional pension. In the meantime, on 02.04.2022, the 2nd respondent issued a letter No.R.XIII -1/2019(08).DA-11, dated 24.03.2022, to the petitioner through the 6th respondent along with a copy of advice tendered by UPSC vide letter No.3/127/2021-SI dated 08.02.2022 with a direction to submit his representation on the advice of UPSC within 15 days from the receipt of the letter. As per the letter, he had submitted representation on the advice of UPSC on 16.04.2022 but the respondents stopped his pension. Challenging the same, the present writ petition has been filed.

3.The learned counsel for the petitioner would submit that the writ petitioner is challenging the enquiry report and the recommendation made by the first respondent commission on the ground that the respondent has not provided the sufficient opportunity to the petitioner to appear for the enquiry proceedings. Further, the petitioner also furnished all the documents to the respondents to allow him to appear in the enquiry, but he was not allowed and set ex-parte and the said action of the respondents is in violation of the principles of natural justice. Further, he would submit that pursuant to the show cause notice issued by the second respondent, dated 24.03.2022, the writ petitioner has submitted his explanations to the respondents on 16.04.2022 and it is still pending. Hence, he seeks indulgence of this Court.

4.The learned standing counsel appearing for the first respondent would submit that the petitioner has given his detailed explanation and it is for the disciplinary authority to consider and take appropriate decision on merits and in accordance with law. Therefore, the said writ petition is not maintainable and the same is liable to be rejected.

5.Heard the learned counsel on either side and perused the materials placed on record.

6.On considering the above said facts and circumstances of the case and considering the submissions made by the learned counsels, it is seen that the petitioner has submitted his explanation to the respondents on 16.04.2022 and such explanation is pending, before the second respondent and so far no final decision is taken by the respondents, based on the enquiry officer report as well as the recommendation made by the



Public Service Commission. The petitioner has raised a specific allegation that the enquiry officer has not conducted enquiry, as contemplated under the rules and the said explanation is pending with the respondents, for passing final orders. Therefore, this Court is inclined to direct the disciplinary authority to consider the explanation of the petitioner dated 16.04.2022 and to take appropriate decision in accordance with law, after providing opportunity to the petitioner, as early as possible. Till final decision is taken, the respondents shall continue to pay monthly pension amount to the petitioner.

7. With the above directions this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110069.
2. The Director General of Police,
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3. The Inspector General of Police,
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4. The Deputy Inspector General of Police,
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5. The Deputy Inspector General of Police,
Group Centre, CRPF,
Yelahanka, Bengaluru-560 064.



6. The Commandant,
77 Battalion CRPF,
Karaianchavadi, Chennai-600 086.

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+1cc to M/s.R.Meenakshi, Advocate, S.R.No.29773
+1cc to Mr.M.Loganathan, Advocate, S.R.No.30144
+1cc to Mr.S.N.Parthasarathi, Advocate, S.R.No.29771

W.P.No.9976 of 2022
and
W.M.P.No.9687 of 2022

MT[co]
NSK/16/06/2022