



W.P.No.34720 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.34720 of 2016
and
W.M.P.No.29907 of 2016

Mr.Abul Kalam Azad

... Petitioner

Vs.

1.The Director General of Police,
Mylapore,
Chennai – 600 004.

2.The Commissioner,
Office of the Commissioner of Police,
Salem.

3.The Deputy Commissioner of Police (Law and Order),
Salem City,
Salem.

4.The Deputy Commissioner of Police,
Armed Force,
Salem City, Salem.

5.The Assistant Commissioner of Police,
Armed Force,
Salem City, Salem.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 3rd respondent in P.R.No.53/H1/2014 on 17.04.2015 Awarding petitioner the punishment of 'removal from service' based on the order passed by the 2nd respondent dated 26.03.2015 in Appeal No.1 of 2015, thereby confirming the 5th respondent Enquiry Officer's report dated 24.11.2014 in P.R.No.53/H1/2014 and quash the same and issue consequential direction directing the respondents to reinstate the petitioner in the service with all back wages from 20.05.2014.

For Petitioner	: No Appearance
For Respondents	: Mr.S.Rajesh Government Advocate

ORDER

The punishment of removal from service imposed on the writ petitioner is under challenge in the present writ petition.

2. The writ petition was listed for final hearing on 03.11.2022 and none appeared for the petitioner. Again, it was posted under the caption “For Dismissal” and no one appeared for the writ petitioner. Thus, the respondents were heard and orders are passed.



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3. The petitioner is a Ex-Police Constable of Armed Reserve. He was appointed as Police Constable and due to his illness, he could not able to report duty from 03.05.2014 onwards. Thus, the petitioner availed medical leave and sent medical leave letters through registered post. His illness continued and he could not able to report for duty on 10.05.2014. The Commissioner of Police, Salem, placed the writ petitioner under suspension with effect form 20.05.2014. Thereafter, the departmental disciplinary proceedings were initiated vide proceedings dated 15.07.2014 under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955.

4. Having not satisfied with the explanations of the writ petitioner, the Disciplinary Authority appointed an Enquiry Officer, who in turn, conducted an enquiry. The Enquiry Officer conducted an enquiry and submitted his final report and accepting the final report, the Disciplinary Authority provided further opportunity to the writ petitioner to raise his objections if any on the findings of the Enquiry Officer and thereafter, passed final orders, imposing the penalty of removal from service. The petitioner filed an Appeal before the Commissioner of Police, Salem and the said Appeal was also rejected. Thus,



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the petitioner is constrained to move the present writ petition.

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5. The learned counsel for the petitioner mainly contended that the charges framed are vague and the continuous illness of the petitioner was not considered by the competent authorities. The petitioner was not in a position to report for duty on account of his continuous illness and the genuinity involved regarding the reasons stated by the petitioner was not considered. The petitioner stated that he had taken leave for 750 days on medical grounds from 16.02.2006 to 20.02.2013. The petitioner had submitted medical certificates. On earlier occasions, the petitioner was imposed with the punishment of postponement of increment for three years with cumulative effect and thereafter, further charge memo was issued and the major penalty of removal from service was imposed. Thus, the order impugned is liable to be set aside.

6. The learned Government Advocate appearing on behalf of the respondents objected the said contentions by stating that the petitioner was a chronic absentee and was declared as a deserter. The petitioner was issued with sick passport and entered on medical leave for 7 days from 03.05.2014



and he was due for report for duty on 10.05.2014 with Fitness certificate. But he had not reported for duty nor submitted any application or provided information for extension of leave to the Superior Officer. Thus, he remained absent unauthorisedly. His whereabouts were not known to the authorities. Thus, the petitioner was ordered as a deserter, since he remained unauthorisedly absent for more than 21 days continuously. Further, departmental disciplinary proceedings were initiated under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules.

7. The learned Government Advocate appearing on behalf of the respondents states that the petitioner has not attended the duty with devotion. He never bothered about the duty in Police Force and remained unauthorisedly absent habitually on many occasions.

8. It is contended that the petitioner had taken leave on 750 days on medical grounds from 16.02.2006 to 20.02.2013 is incorrect. In fact, he had absented from duties first and thereafter sent medical leave certificates for minor illness. Thus, the genuinity of the leave availed by the petitioner itself was questioned. The petitioner joined in the Police Force on 01.03.2002 and



during his short span of service, he had availed 750 days of medical leave i.e., for more than two years.

9. The petitioner deserted the Force during six occasions in his service, for which, he was dealt with under Rule 3(b) in six PRs and awarded the punishments of 3 pay reduction and 3 postponement of increments. Despite the chance given to him by awarding punishments and was taken back for duty from absence, he had not turned up to revive himself. The unauthorised absence of the petitioner from 10.05.2014 is the 8th time absent and his indiscipline conduct in the Police Force continued on several occasions and thereafter, the authorities competent placed him under suspension and initiated departmental disciplinary proceedings and based on the findings of the Enquiry Officer, holding that the charges are held proved, imposed the punishment of removal from service. Thus, the writ petition is to be rejected.

10. This Court is of the considered opinion that the procedures as contemplated under the Discipline and Appeal Rules, while conducting the disciplinary proceedings were followed by the competent authorities. The charges relating to unauthorised absence was established based on some



evidences and therefore, the findings of the Enquiry Officer are not perverse and based on some evidences. The Rules of natural justice has been complied with and the opportunities as contemplated under the Rules were provided to the writ petitioner.

11. Regarding the quantum of punishment, if the unauthorised absence is on genuine grounds and if it is first time misconduct, then the Disciplinary Authority may take a lenient view. If it is a habitual unauthorised absentee, more so in Police Force, then no such leniency can be shown in the matter of deciding the quantum of punishment. In other words, if the members of the Police service remained unauthorisedly absent for one spell and the explanations submitted by the charged officials are genuine and convincing and submitted records to establish the reasons, then the authorities may take a lenient view and provide one more opportunity to the employee for the purpose of improving his conduct. However, no such leniency could be shown in respect of habitual absentees, who all are frequently remaining unauthorisedly absent in the Uniformed Services. High discipline is to be maintained in Police Forces. They are responsible for maintaining 'Law and Order' in the society. Therefore, through an indiscipline force, discipline



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cannot be enforced in the society.

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12. In the present case, the petitioner remained unauthorisedly absent and deserted the Force on six occasions previously. The competent authorities initiated departmental disciplinary proceedings in six PRs and awarded punishment of 3 pay reduction and 3 postponement of increments. Only on 8th occasion, the major penalty of removal from service was issued. Thus, the petitioner was considered as a chronic unauthorised absentee, neglected the Police duties and declared as deserter, even on previous occasions.

13. This being the continuous misconduct of the unauthorised absent committed by the writ petitioner on several occasions in his short span of service, there is no reason whatsoever to interfere with the order of punishment as the punishment of removal from service is just and proper.

14. Accordingly, the Writ Petition stands dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

07.11.2022

Jeni/Kak
Index : Yes



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Speaking order

To

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- 1.The Director General of Police,
Mylapore,
Chennai – 600 004.
- 2.The Commissioner,
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S.M.SUBRAMANIAM, J.

Jeni/kak

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