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W.P.No.37574 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.37574 of 2016
and
W.M.P.No.32197 of 2016

S.Arumugam

...Petitioner

Vs.

1.The Secretary to Government,
Home (Police V Dept), Fort St.George,
Chennai – 9.

2.The Deputy Commissioner,
Tamil Nadu Special Police 35th Platoon,
'F' Company, Armed Reserve,
Chennai.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned order passed by the 2nd respondent in PR.No.07/3(2)/ 2011 dated 19.08.2011 and confirm by the 1st respondent in GO.2(D).No.365, Home (Police V) Department dated 11.07.2016, quash the same and further direct the respondent to reinstate the petitioner in to service.



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For Petitioner : Mr.T.Dharani
For Respondents : Mr.S.Rajesh
Government Advocate

ORDER

The punishment of removal from service imposed on the writ petitioner and confirmed by the Appellate Authority are under challenge in the present writ petition.

2. The petitioner joined as Grade-II Police Constable. He was upgraded as Grade-I Police Constable. A charge memo under Rule 3 (b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules was issued against the writ petitioner in proceedings dated 20.02.2011. The allegations against the writ petitioner was that he remained unauthorizedly absent and declared as a deserter. An opportunity was provided to the writ petitioner to defend his case. However, the petitioner had not availed the opportunity nor submitted his written statement of defense. The petitioner has not even made any representation, seeking additional time for submitting explanation or otherwise.



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3. Three notices were issued to the charged official, directing him to appear for oral enquiry on 05.04.2011, 15.04.2011 and 20.04.2011 respectively well in advance. All the three notices issued by the Disciplinary Authority were acknowledged by the writ petitioner. But, he did not attend the oral enquiry. Therefore, the Disciplinary Authority had no option, but to proceed with the enquiry. The enquiry officer appointed, conducted an enquiry. Two prosecution witnesses were examined and five documents were filed. The enquiry officer had drawn an exparte minute, holding that the charge against the writ petitioner was proved based on the documents and evidences. Further, an opportunity was provided to the writ petitioner to submit his further objections on the findings of the enquiry officer. The said notice was also acknowledged by the petitioner on 01.06.2011. Despite the fact that another reminder was served on the petitioner on 19.07.2011, the petitioner had not responded to the said notices. Finally, the Disciplinary Authority passed an order, imposing the punishment of removal from service. The petitioner filed an appeal before the first respondent and the said appeal was rejected in G.O.(2D).No.365, Home (Police V) Department dated 11.07.2016. Thus, the present writ petition is filed.

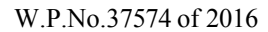


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4. The learned counsel for the petitioner mainly contended that the writ petitioner remained unauthorizedly absent for 21 days and therefore, the punishment of removal from service is excessive and on that ground, the order of penalty is to be set aside. The petitioner had not attended the enquiry proceedings on account of certain family circumstances and he had no intention to remain unauthorizedly absent and thus, the penalty of removal is highly unwarranted. It is further contended that the order of the Appellate Authority is not in conformity with Rule 6 (c) of the Discipline and Appeal Rules. Thus, the punishment of removal from service is to be set aside.

5. The learned Government Advocate appearing on behalf of the respondents objected the said contentions by stating that the petitioner was not a first time deserter. He was a habitual absentee and in his 10 years of service, the petitioner had absented for duty on four occasions and he was imposed with the punishment of a 'Black mark' in all the occasions in PR.No.390/2005 dated 15.02.2006, PR.No.443/2005 dated 21.02.2006, PR.No.169/2006 dated 23.06.2006 and PR.No.543/2008 dated 04.02.2009, apart from PR.No.3/2011 in which the punishment of removal from service

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8. The procedures as contemplated under the Discipline and Appeal Rules were followed in the present case. Thus, the authorities have complied with the rules of natural justice. Regarding various absence, the prosecution submitted all the relevant documents before the enquiry officer, who in turn, considered the said documents and evidences and arrived a conclusion that the charges against the writ petitioner are held proved. Thus, there is no perversity with reference to the findings of the enquiry officer in his report.

9. That apart, the findings are based on the evidences. Regarding the quantum of punishment, if the unauthorized absence is unintentional and the reasons for which unauthorized absence for a shorter period if explained, then the Disciplinary Authority is expected to take a lenient view. In other words, the misconduct of unauthorized absence, if committed on certain genuine reasons, or on compelling circumstances, then the Disciplinary Authority may take a lenient view in the matter of quantum of punishment.

10. In such circumstances, even minor penalty would be sufficient. The intentional unauthorized absence in Uniformed forces cannot be dealt



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with leniently. High Discipline in police force is of paramount importance. If the allegation of unauthorized absence is proved as intentional or without any valid reason, then the authorities are not bound to take a lenient view. That apart, the previous conduct of the charged official also plays a pivotal role. The authorities, while deciding the quantum of punishment, has to consider the previous conduct of the charged official for deciding the quantum of punishment.

11. This being the yardsticks to be adopted, while deciding the quantum of punishment. In the present case, the petitioner was found to be a habitual absentee and even on earlier occasions, he remained unauthorizedly absent on four occasions. On those four previous occasions, the authorities competent took a lenient view and imposed 'Black mark'.

12. In view of the fact that on four previous occasions, the authorities competent took a lenient view in respect of the unauthorized absence, the petitioner again committed the same misconduct and therefore, he was declared as a deserter and the charge under Rule 3 (b) of the Discipline and Appeal Rules was issued. The procedures as contemplated under the



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Discipline and Appeal Rules were followed and the principles of natural justice also had been complied with. Thus, there is no infirmity in respect of the conduct of disciplinary proceedings against the writ petitioner.

13. Regarding the quantum of punishment, the authorities have considered the previous misconducts committed by the writ petitioner and therefore, arrived a conclusion that there is no scope for improving the conduct of the petitioner and accordingly, imposed the penalty of removal from service.

14. Under these circumstances, this Court do not find any reason to interfere with the quantum of punishment as it is just and proper and in consonance with the charges proved. Therefore, the petitioner has not established any acceptable reasons for the purpose of interfering with the quantum of punishment.

15. Accordingly, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is



closed.

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Index : Yes
Speaking order: Yes
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S.M.SUBRAMANIAM, J.

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