

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.15989 of 2014

and

M.P.No.1 of 2014

M.Murugan

... Petitioner

Vs.

1. The Deputy Inspector General of Police,
Villupuram Range, Villupuram.

2. The Superintendent of Police,
Cuddalore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the proceedings issued in D.O.1139/2013 C.No.D2/PR 110/2013 dated 24.12.2013 passed by the 2nd respondent and C.No.B3/Appeal 05/2014 dated 14.02.2014 passed by the 1st respondent and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Ms.S.Anitha
Special Government Pleader

ORDER

The order of punishment of compulsory retirement from service imposed on the writ petitioner by the 2nd respondent, which was confirmed by the 1st respondent in an appeal are under challenge in the present writ petition.

2. The writ petitioner joined as a Police Constable in the year 1994 and he was promoted to the post of Grade-I Police Constable. The petitioner states that he was forced to apply leave on 29.06.2013, while he was working as Police Constable in Neyveli Town Police Station. The petitioner states that he suffered jaundice and could not able to resume duty immediately. He states that he intimated the same to the Inspector of Police, Neyveli Town Police Station, but the Inspector of Police has not

taken into account and thereafter, the Superintendent of Police, Cuddalore District, issued a memo on 06.11.2013 in PR.No.110 of 2013 under Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules. The petitioner has submitted his explanation to the charges and an Enquiry Officer was appointed. The Enquiry Officer submitted his report and the Superintendent of Police issued an order on 19.08.2013, declaring the writ petitioner as deserter. Thereafter, in proceedings dated 30.08.2013, the order of desertion was confirmed by the Superintendent of Police. Subsequently, a show cause notice was issued to the writ petitioner, asking him to submit the objections, if any, within a period of 7 days. The petitioner had submitted his reply and thereafter, the punishment of compulsory retirement from service was issued by the Disciplinary Authority on 24.12.2013. The petitioner preferred an appeal before the 1st respondent, who in turn, rejected the appeal in proceedings dated 14.02.2014. Thus, the petitioner is constrained to move the present writ petition.

3. The learned counsel for the petitioner mainly contended that the petitioner went on leave on medical grounds. He suffered jaundice during the relevant point of time and therefore, he could not able to report for duty immediately. Though he informed the fact to the Inspector of Police, he has not taken note of the same and thereafter, the charge memo was issued, which resulted in the punishment of compulsory retirement. The Enquiry Officer has not conducted the enquiry properly. He has taken a decision without even considering the explanations submitted by the petitioner. The Appellate Authority also failed to consider the genuinity of the medical grounds placed by the petitioner and therefore, the order of punishment is to be set aside.

4. In respect of the said contentions, the learned counsel for the petitioner relied on the judgment of Hon'ble Division Bench dated 19.09.2007 in W.A.No.668 of 2007, wherein, the Hon'ble Division Bench made an observation as follows:

"8. It is not in dispute that the respondent absented from duty from 03.11.1998 and was permitted to join duty by the Superintendent of Police on the 59th day i.e., on 31.12.1998, after accepting the medical certificate produced by the respondent. The charge against the respondent is unauthorised absence without any leave or permission and deserted the post with effect from 03.11.1998 at 13.00 hours. The past conduct of the respondent even though is mentioned in the counter affidavit, the same is not reflected in the order of dismissal. The contention of the learned counsel for the respondent that the

circular issued in the year 1990 alone is applicable to deal with the charge framed in the year 1999 cannot be sustained in view of the pendency of the proceeding during issuance of the circular on 02.11.2005. The fact remains that the respondent filed appeal before the first respondent under rule 5 of the Tamil Nadu Police Subordinative Service (Discipline & Appeal) Rules, 1995.

12. It is also the fact that on the 59th day the respondent appeared before the Superintendent of Police with medical certificate and he was permitted to join duty. We are not expressing any opinion about the said factual aspect in this appeal and we leave it open to the appellate authority to consider the same while passing fresh orders in the appeal."

5. The learned counsel for the petitioner reiterated that the punishment of compulsory retirement from service is excess and not in proportionate with the gravity of the allegations. The petitioner availed leave on medical grounds and in spite of the fact that he has submitted all the facts and circumstances, the same was not considered by the Disciplinary Authority as well as by the Appellate Authority and therefore, the punishment is to be set aside on the grounds of disproportionality.

6. The learned Special Government Pleader appearing on behalf of the respondents objected the said contentions of the writ petitioner by stating that the petitioner was working as Grade-I Police Constable. He was passported on 29.06.2013 with instructions to report before the Deputy Superintendent of Police, District Crime Record Bureau, Cuddalore. But he had failed to report before the Deputy Superintendent of Police, District Crime Records Bureau and remained absent for more than 21 days and committed an offence of desertion. Thus, PR.No.110 of 2013 under Rule 3(b) was issued. In view of the fact that the petitioner remained absent for more than 21 days, he was treated as deserter and as per the orders, the petitioner failed to report the before the Superintendent of Police within 60 days from the date of desertion. Therefore, the petitioner had no intention to report for duty, even after declaring him as derserter, he was not reported for duty within a period of 60 days before the Superintendent of Police. Thus, the desertion was confirmed and the disciplinary action was initiated under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules.

7. The Deputy Superintendent of Police, Neyveli Sub-Division was appointed as an Enquiry Officer, who in turn, conducted an enquiry by affording opportunity to the writ

petitioner and by considering the explanation submitted by him. The petitioner has made an incorrect and contradictory statements and the Enquiry Officer submitted his report and based on the report the Disciplinary Authority imposed the punishment of compulsory retirement from service.

8. The counter states that writ petitioner / Mr.M.Murugan is a habitual and chronic deserter. Apart from other two punishments imposed to him for some other offences, he has been punished on eight occasions for desertion. The present offence is the 8th time offence and he has deserted the Force from the year 2009 on his own accord. In view of the fact that there was no improvement in the conduct of the writ petitioner and he continued as deserter on several occasions, more specifically, for more than seven times, finally, the Disciplinary Authority imposed the major punishment of compulsory retirement from service and there is no infirmity in respect of the punishment imposed.

9. The arguments advanced on behalf of the petitioner that the punishment is disproportionate, which is untenable. In view of the fact the petitioner was a chronic deserter and deserted the job on eight previous occasions right from the year 2009 onwards.

10. Considering the arguments, this Court is of the considered opinion that the public servants in the event of desertion as a first offence and if the documents and explanations given by the deserter are convincing, then the Authorities may take a lenient view. In other words, on genuine circumstances, if an employee is unable to report for duty and remained absent and thereafter, submitted all the documents and able to prove that he had not deserted the duty intentionally, then the Disciplinary Authority may take a lenient view, while imposing the punishment, but not otherwise. Thus, the principles of disproportionality is to be applied in a case, where, the delinquent official established the genuinity of his absence for not reporting duty. However, regarding repeated offences of desertion in Uniformed Services, there cannot be any leniency. Habitual or chronic deserter cannot be considered as fit to continue in Uniformed Services.

11. In the present case, the petitioner remained absent on eight occasions and finally, the major penalty of compulsory retirement was imposed. On earlier occasions, lenient view was taken by the Disciplinary Authority. The departmental enquiry was conducted by following the procedures as contemplated and there is no procedural violations. The petitioner was afforded with an opportunity and he has submitted his explanations and raised an objection on the Enquiry Report, which was also

considered by the Disciplinary Authority.

12. No doubt, the Courts have to consider the proportionality of the punishment imposed with reference to the charges proved. In other words, the punishment imposed must be in commensuration with the gravity of the charges proved against the delinquent officials.

13. Thus, there cannot be any straitjacket formula regarding the imposition of punishment. The competent disciplinary authority is empowered to decide the quantum of punishment to be imposed. But, if the punishment imposed is shockingly disproportionate or not in commensuration with the gravity of the proved charges, then the Courts would be interfering with the quantum of punishment, but not otherwise.

14. The power of judicial review under Article 226 of the Constitution of India is to scrutinize the processes, through which, a decision is taken by the competent authorities in consonance with the Statutes and Rules in force, but not the decision itself. Therefore, the case relied on by the petitioner may not have any straight application with reference to the facts and circumstances. In disciplinary matters, the facts are to be considered independently to form an opinion, whether the punishment imposed is grossly disproportionate with the gravity of the allegations proved against the delinquent officials.

15. The Courts have broadly considered such disciplinary matters that:

- (1) Fair and Transparent procedure in enquiry has been adopted
- (2) The principles of natural justice are followed
- (3) The intention of the Delinquent with reference to the charges established.
- (4) The punishment is out of proportion to the misconduct committed.
- (5) The nature of services and the position held by the delinquent employee.
- (6) The period of absence cause / explanations for absence.
- (7) Is the employee guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.
- (8) The disciplinary authority is required to prove the absence is willful.

16. No doubt, certain personal circumstances of an employee that he himself is suffering from any ill-health, accident or hospitalization. In such circumstances, the authorities are bound to take lenient view in respect of the unauthorized absence. However, in all such cases, the intention of the employee must also be ascertained by the competent authority,

while inflicting punishment.

17. Question arises, whether the continued misconduct indicate incorrigibility and complete unfitness for Police services in the present case. The petitioner remained unauthorizedly absent and declared as deserter. On previous occasions, for several times, he remained unauthorizedly absent. On earlier occasions, the Authorities had taken a lenient view. However, there was no improvement in the conduct of the petitioner and thereafter, also he remained unauthorizedly absent and thus, he was declared as deserter and Rule 3(b) charges were issued and the authorities have finally imposed the punishment of compulsory retirement from service and thus, the said punishment imposed cannot be said to be disproportionate or excess.

18. As far as the judgment relied on by the petitioner is concerned, in the said case before the Hon'ble Division Bench, the deserter therein reported for duty on the 59th day before the Superintendent of Police and therefore, he expressed his intention to continue his service and thus, the facts and circumstance of the case decided by the Hon'ble Division Bench of this Court cannot be compared with the present case.

19. In view of the facts and circumstances, the petitioner has not established any acceptable ground for the purpose of considering the relief and consequently, the Writ Petition stands dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Jeni/Kak

To

1. The Deputy Inspector General of Police,
Villupuram Range, Villupuram.
2. The Superintendent of Police,
Cuddalore District.

W.P.No.15989 of 2014

SSD(CO)
CT/18/07/2022