



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**  
**DATED : 18.02.2022**  
**CORAM**

WEB COPY

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

W.P.(MD) No.14221 of 2019 and  
W.M.P.(MD).Nos.10693 & 10694 of 2019 and 2852 of 2020

K.Thangapandi

... Petitioner

Vs.

1.The Commandant,  
No.116, Battalion,  
Central Reserve Police Force,  
at Mamal, Pahalgam, Jammu Tawi.

2.The DIGP,  
Office of the DIGP,  
Group Centre, Central Reserve Police Force,  
Avadi, Chennai-65.

3.The Superintendent of Police,  
Madurai District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the impugned letter in D.O.No.A1-1/17-18-116-AC-I dated 23.01.2018 issued by the first respondent for recovery of wrong payment made to the petitioner and quash the same.

For Petitioner : Mr.M.Gnanagurunathan

For Respondent : Mr.H.Lakshmi Shankar

for RR1 & 2

Mr.M.Ramesh

Government Advocate for R3

O R D E R

The order of recovery which is impugned is sought to be assailed in the writ petition.

2. The writ petitioner was recruited as Constable in Central Reserve Police Force by Group Centre CRPF, Avadi on 01.04.2010 and he was sent to Recruit Training Centre CRPF, Neemuch (M.P) for basic training from GC CRPF, Avadi. During the training, due to his health condition, the petitioner deserted the job and returned back to his native place, even before completion of the training period. The petitioner states that he took treatment for his medical stress. However, the first respondent had credited the salary in his bank account upto September 2017. The petitioner states that he belongs to poor family and he is now working as Agricultural Coolie. Under



these circumstances, he is not in a position to pay such huge amount which received by the petitioner.

3. The learned counsel appearing for the petitioner reiterated that no doubt, the petitioner had received the salary, even after desertion and he has paid a sum of Rs.2,50,000/- already to the Central Reserve Police Force. In respect of balance amount, he is not in a position to pay back and further, he has not committed any default in making any claim for salary. When it is the mistake committed by the Establishment of the Central Reserve Police Force, the petitioner cannot be penalized after several years.

4. The learned counsel appearing for the petitioner made a submission that it is the mistake committed by the officials of the Establishment Section and they should be responsible and accountable for the same. The petitioner being a pauper, cannot be penalised after several years.

5. The learned Standing Counsel appearing for the respondents objected the said contention by stating that it is not as if the petitioner was not aware of this fact. He deserted the Central Reserve Police force. The Competent Authority declared him as deserter and terminated his services. Thereafter, the salary was credited in his bank account during every month. The petitioner has meticulously withdrawn the salary credited by the Establishment of the Central Reserve Police Force, without providing any scope for the Authorities to recover the salary. Till September 2017, the salary was credited in the bank account of the petitioner. Therefore, the petitioner intentionally utilised the public funds, knowing the fact that he was already terminated from service. Thus, he has illegally retained the public money, with the knowledge of the fact that he is not entitled for the salary as he was terminated from service. Therefore, the writ petition is to be rejected.

6. This Court is of the considered opinion that the public money is to be disbursed in accordance with law. The Authorities, at no circumstances, provide any scope for unjust enrichment by any person including employees. In the present case, there is no serious dispute between the parties in respect of the facts. The petitioner was recruited as Constable in Central Reserve Police Force. He was sent for training and on account of certain personal reasons, the petitioner left the training Centre and thereafter, he was declared as deserter and an order of termination was passed. He has not challenged the termination during the relevant point of time. While so, the Establishment, by mistake, sent the order of termination to another Centre at Bihar and therefore, the Authorities, at Avadi, were not aware of the order of termination, which resulted in crediting the salary in the bank account of the petitioner. Therefore, it is purely an administrative mistake committed on account of miscommunication and there is no fault on the part of the Authorities. Communication was sent to the State of Bihar and it was



not sent to the proper Authority.

7. In this regard, this Court is of the considered opinion that the Authorities have committed an act of negligence and lapses. Service of every such communication of termination order must be ensured by the Establishment. Central Reserve Police Force is a Disciplined Force and Establishment. If at all an order of termination is communicated to the concerned Authorities, the Authorities, who sent such communication, must ensure that it is acknowledged by the proper Authorities. This being the administrative requirement or procedures to be followed, no doubt, in the present case, the Authority, who communicated the order of termination to the State of Bihar, has committed not only an error, but also lapses and negligence.

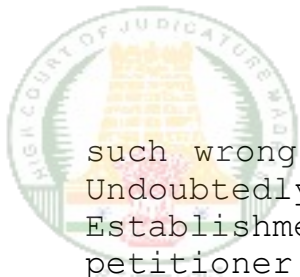
8. For instance, an order of termination is communicated to the Headquarters by the Authority from one State, through which, a constable was sent for training. After sending the order of termination, the acknowledgment must be properly verified and such acknowledgement must be made available in the original records. In the present case, it is not made clear, whether the order of termination was acknowledged by the proper authority or not. This being the lapses committed by the Authorities concerned, the Administration has to take action as against all officials, who are accountable and responsible.

9. As far as the writ petitioner is concerned, no doubt, he was aware of the fact that an order of termination was issued. He had not attended the training nor approached the competent authorities. But, he was going on drawing the salary without performing the duties. Thus, the act of the petitioner is also undoubtedly intentional and knowing the fact that the salary is wrongly credited in his bank account, he was drawing the said amount and spending the same. Thus, the writ petitioner is also equally responsible.

10. The competent authority conducted an enquiry in this regard at that point of time and the petitioner repaid a sum of Rs.2,50,000/-. The balance amount is yet to be paid. Under these circumstances, the Authorities have passed the order of recovery directing the petitioner to pay the balance amount.

11. The learned counsel for the petitioner states that the petitioner is now working as coolie and he will not be in a position to repay such huge amount.

12. Beyond all these facts and circumstances, once an employee is terminated from service, the respondents may not have competency in all circumstances to issue an order of recovery. In the present case, the respondents are also equally responsible for



such wrong credit of salary in the bank account of the petitioner. Undoubtedly, a mistake had been initially committed by the Establishment of the Central Reserve Police Force and equally, the petitioner also with the knowledge withdrawn the amount credited in his account by the Central Reserve Police Force, for which, he is not legally entitled. Thus, it is an unjust enrichment on the part of the petitioner. Under these circumstances, this Court has to adopt a balancing approach, by considering the contributory negligence committed by the petitioner and the respondent, and also the plight of the petitioner as the petitioner states that he is working as a Coolie and not in a position to pay such a huge amount.

13. Considering the facts and circumstances, the petitioner is granted with a liberty to approach the Authorities setting out his present position and the grievances. The Authorities are bound to conduct enquiry in respect of lapses and negligence committed by their own Establishment. After conducting an enquiry, the liability to repay the public money shall be fixed proportionality, taking into consideration the negligence or lapses committed by the Establishment and also the unjust enrichment of public money by the petitioner. The respondents are bound to verify the financial condition of the petitioner, if necessary by conducting local enquiries. If it is found that the petitioner is in penurious circumstances, then appropriate decisions may be taken. At the outset, all these mitigating factors are to be considered including negligence, lapses committed by the Establishment of the Central Reserve Police Force and the liability is to be fixed on the Officials, who have committed such mistakes in disbursing the public money. In this regard, the petitioner is at liberty to put forth all his grievances along with relevant documents within a period of two weeks from the date of receipt of a copy of this Order to the second respondent. The second respondent shall consider all such circumstances and official records afresh and take a decision, considering the issues involved. Such a decision is directed to be taken as expeditiously as possible and till such time, the second respondent is directed not to initiate any coercive action against the petitioner.

14. Accordingly, the Writ Petition stands disposed of. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar (CS)



To  
1.The Commandant,  
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+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate ( SR-7302[F] dated  
21/02/2022 )

+1 CC to M/s.M.GNANAGURUNATHAN, Advocate ( SR-7218[F] dated  
18/02/2022 )

+1 CC to M/s.SPL GP ( SR-7522[F] dated 21/02/2022 )

W.P. (MD) No.14221 of 2019

18.02.2022

SAR(CO)  
KB(03.03.2022) 5P 7C