



W.P.(MD)No.17174 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.17174 of 2014

Mathiyazhakan

... Petitioner

Vs.

1.The Commandant,
220 BN, CRPF, PTC,
Sunariya, Rohtak,
Haryana – 124010.

2.Deputy Inspector General of Police,
CRPF, Bhopal,
Madhya Pradesh.

3.Deputy Inspector General of Police,
CRPF, Gwalior,
Madhya Pradesh.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for the records of the order passed by the 1st respondent vide order No.P.8-1/14 Section 2 dated 02.07.2014 and quash the same as illegal & arbitrary and consequently directing the 1st respondent to re-instate the petitioner with all attended benefits and back wages.



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For Petitioner : Mr.S.Muniandi
For Respondents : Mr.P.Subbiah
Central Government Panel Counsel

ORDER

This Writ Petition has been filed to quash the impugned order passed by the first respondent vide order No.P.8-1/14 Section 2, dated 02.07.2014 and seeking for a consequential direction to the first respondent to reinstate the petitioner with all attended benefits and back wages.

2. Heard Mr.S.Muniandi, learned counsel appearing for the petitioner and Mr.P.Subbiah, learned Central Government Panel Counsel appearing for the respondents. Perused the material documents available on record.

3. The petitioner was appointed as Police Constable in the year 2000 in the Central Reserve Police Force and has served 14 years in the said post with unblemished record and his service was appreciated by the respondents. The petitioner with permission from the respondents proceeded to his native place, Mudukulathur, on 30 days leave duly sanctioned from 10.05.2013 to 08.06.2013,



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with permission to avail of one day suffix, Restricted Holiday on 09.06.2013. While he was on leave, on 29.05.2013, he was admitted in Meenakshi Mission Hospital, where he underwent major operation and was discharged on 02.06.2013, with advice to take rest initially for 30 days from 03.06.2013 to 02.07.2013 and also advised for doing only light work for 4 months. Thereafter, a medical fitness certificate was issued by the Meenakshi Mission Hospital to do all kinds of work only from 03.03.2014 onwards and the petitioner reported for duty on 12.03.2014. While, he was recouping from health after major operation, his wife namely Sangeetha working as ASI/Pharmacist in CRPF Training Center at Mudkhed in Maharashtra, on 05.10.2013 lodged a criminal complaint alleging dowry harassment against the petitioner and his parents. Based on the complaint, the petitioner was arrested on 05.10.2013 and remanded to police custody and was enlarged on conditional bail on 11.12.2013, to appear before the Judicial Magistrate Court, Mudukulathur daily at 11.00 a.m., until further orders. A criminal case in Crime No.15 of 2013 was foisted under Sections 498(A), 494, 109 of Indian Penal Code, read with Section 4 of Dowry Prohibition Act. The petitioner was allowed to join duty only on 03.03.2014 and the petitioner reported for duty on 12.03.2014 in the above Battalion.



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4. The contention of the petitioner is that due to the arrest and subsequent remand he was placed under suspension, vide order, dated 29.10.2013, with effect from 05.10.2013. The petitioner submitted a representation, dated 08.01.2013, seeking to revoke the suspension stating his inability to join duty due to criminal case and his operation. Thereafter, vide proceedings, dated 05.04.2013, an enquiry was initiated and Enquiry Officer was appointed and charges were framed vide memo, dated 28.03.2014. The further contention of the petitioner is that, his immediate superior was appointed as enquiry officer and it would vitiate the entire enquiry proceedings and it is violating the principles of natural justice. Since the charges were framed in Hindi the petitioner sought a translated copy. After the enquiry was completed, where charges were held to be proved, the petitioner was finally removed from service, vide order, dated 02.07.2014. Since the petitioner was only 33 years old at the time of removal of service who has completed 14 years of service in CRPF and he has another 27 years of service, the removal of service based on the criminal complaint of the petitioner's wife is affecting his livelihood. The removal of service is solely based on the ground of continuing on leave and criminal case.



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Since the petitioner was continuing his leave due to major operation and coupled with a false dowry harassment case. Hence the petitioner has filed this writ petition seeking to quash the order passed by the respondents and to reinstate the petitioner with attendant benefits.

5. The respondents have filed counter stating, since the petitioner over stayed from leave for a long period, hence a disciplinary proceeding was initiated against the petitioner. Initially the petitioner was sanctioned 30 days earned leave and he was due to report to duty on 09.06.2013. Since he did not report on the duty, but reported to Unit on 12.03.2014 i.e., after the lapse of 276 days of over staying from leave. In this connection, the Unit has written letters, dated 15.07.2013, 17.10.2013, 31.10.2013 and 19.01.2014, the concerned Officer has also directed the petitioner to report to duty, vide letter, dated 30.07.2013 and 17.02.2013 which was sent by registered post to the petitioner's home address. The petitioner was on leave without any medical documents. The petitioner was placed under deemed suspension for a period from 05.10.2013 to 11.10.2013 and it is incorrect to state that he was under suspension beyond 10.11.2013. The deemed suspension order was issued because he was detention of police custody



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for a period exceeding for 48 hours. The enquiry officer was appointed as per existing rules and regulations. Moreover, there is no binding rule to conduct enquiry from some other Battalion from which the delinquent does not belong. Moreover, such claim was not raised, when the enquiry was conducted.

6. As far as seeking translation copy of Tamil or in English, the petitioner nowhere pleaded in writing or orally to serve him the translated copy in Hindi or in English. On 10.04.2014, when asked by the Enquiry officer before conducting the departmental enquiry that in which language the petitioner wants to conduct enquiry and the petitioner replied, “Sir in Hindi”. Therefore, the claim of language is only after thought. Several letters were issued to the petitioner for reporting to the duty. Finally, a warrant of arrest was issued, inspite of warrant the petitioner did not report for the duty, he could be apprehended by the Superintendent of Police, Ramanathapuram District. Thus, the petitioner was over staying without prior permission. Hence the order, dated 25.02.2014 was issued to find out the circumstances under which the petitioner was over staying, so that he can be declared as 'deserted' from the post. In spite of all these efforts by the respondents, the petitioner was not apprehended, finally the petitioner



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reported to duty and he was facing the enquiry proceedings, since the charges were proved he was removed from service for unauthorized absenting for more than 276 days without sanction or permission from the competent authority. The petitioner was granted ample opportunity and the petitioner's plea that the absence from duty is neither willful nor wanton and due to bonafide facts is not acceptable. Since the circumstances were seems to be created by the act and attitude of the petitioner himself as he was involved in a criminal case and did not reported to duty. The contention of the petitioner is denied, as the matter is related to the petitioner's family, however compensate allowance has been sanctioned which does not exceed 2/3 of his pension and gratuity, vide order, dated 02.07.2014. Hence, the respondents pray to dismiss the writ petition.

7. The fact that the petitioner underwent operation is not denied by the respondents. Moreover, the petitioner has enclosed the discharge summary, the emergency medical certificate and the bills for his medical expenses. On perusing the same, it is seen the petitioner was admitted for severe abdominal pain on 29.05.2013, where he underwent emergency laparoscopic procedure. Subsequently, he was discharged on 02.06.2013. Subsequently, on 01.08.2013, he



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was deducted with “(i) *right epididymis Orchitis with right Hydrocele and* (ii).*Left Teste appeared normal*”.

8. In the meanwhile, the petitioner's wife has preferred criminal complaint for dowry harassment and the petitioner was arrested by police and the petitioner was under judicial custody. Hence, he was not able to report to duty, even after his leave was lapsed. The respondents have suspended the petitioner under “deemed suspension”. The petitioner was enlarged on bail on 11.12.2013. After the dust raised in the dowry harassment case was settled finally, the petitioner reported to duty and he was allowed to join duty on 03.03.2014 and he joined duty on 12.03.2014. The petitioner was over stayed from 09.06.2013 to 03.03.2014.

9. This Court is of the considered opinion that because of the petitioner's ailment, the surgery and coupled with the fact of dowry harassment case and his arrest by the police, he was not in a position to report to duty. It is unfortunate the petitioner was arrested by the police in a dowry harassment case. The respondents ought to have considered the case of the petitioner and imposed



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lesser punishment and definitely not the punishment of removal or termination from service. Generally, in a dowry harassment case, the police will immediately arrest the accused, which will have impact on the individual and on his employment. The petitioner's wife is also a CRPF employee knowing fully well it will affect the petitioner's employment, action has been taken by the wife. Because of the dowry harassment case the petitioner was not in a position to report to duty immediately. Since the petitioner is only 33 years at the time of the filing this writ petition, where he has long service and long life to go on. The punishment of removal from service is on higher side.

10. The learned counsel appearing for the respondents submitted that the petitioner should not be shown any sympathy since even after receiving five notices from the respondents the petitioner has not submitted any reply. Only based on the warrant the petitioner had chosen to report for duty. Therefore, the petitioner should not be shown any sympathy at all. This Court is of the considered opinion that the situation of the petitioner forced the petitioner from reporting to duty and it so unfortunate that the petitioner was arrested under



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13. Accordingly, this Court is passing the following Order:

(i). This writ petition is allowed. The impugned order passed by the 1st respondent, vide order No.P. 8-1/14 Section 2 dated 02.07.2014, is hereby quashed.

(ii). The punishment of removal from service is modified as stoppage of increment for two years with cumulative effect.

(iii). The respondents are directed to reinstate the petitioner, within a period of four weeks, from the date of receipt of a copy of the order.

(iv). The suspension period shall be regularized as duty period, however, the petitioner is not entitled to any backwages for the period from 09.06.2013 to 03.03.2014, however, the petitioner is entitled to continuity of service for the said period.

(v) No costs.

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Index : Yes / No
Internet : Yes
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S.SRIMATHY, J

KSA

**Order made in
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