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W.P.No.21800 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2023

PRONOUNCED ON : 27.11.2023

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

W.P.No.21800 of 2010

and M.P.No. 1 of 2010

V.Ramesh

... Petitioner

VS

1.The Union of India,
Rep., by its Secretary,
Home Department,
Ministry of Home,
New Delhi.

2.The Director General of Police,
Central Reserve Police Force,
CGO Complex, New Delhi,

3.The Inspector General
Office of the Inspector of General,
Bihar Sector, CRPF, DIGH a Complex,
Patna -25, Bihar.

5.The Commandant,
11 Battalion,
Central Reserve Police Force, BTC.,
Howly, Harpetta, Assam

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
praying for a Writ of Certiorarified Mandamus, to call for the entire records



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connected with the impugned order passed by the third respondent vide No.R-XIII-I (VR) 2009 – EC-3, dated 21.08.2009, confirming the order of the fourth respondent vide office order No.P-VIII-VR(II)/2009 EC-I, dated 24.07.2008, and order of the 5th respondent vide office order No.P-VIII-1/007-EC-II, dated 31.10.2007 and quash the same and direct the respondents to reinstate the petitioner in service, with continuity of service and with all consequential benefits.

For Petitioners : Mr.R.Sankarasubbu

For Respondent : Mr.D.Simon CGSC for RR1 to 5

ORDER

The Writ Petition has been filed challenging the impugned order passed by the 5th respondent and to reinstate the petitioner in service with continuity of service with all other consequential benefits.

2. Heard, Mr.R.Sankarasubbu, learned counsel appearing for the petitioner, and Mr.D.Simon, learned Central Government Standing Counsel appearing on behalf of respondents.

3. Learned counsel for the petitioner submitted that the petitioner joined as a Constable in the Central Reserve Police Force on 28.03.1991, and has an unblemished service for 15 years. In the year 2005 the petitioner



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has also passed the exam of Head Constable and got into the list of promotion for the post of Havildhar. It is submitted that the petitioner has availed 60 days of annual earned leave from 02.01.2006 to 02.03.2006, and during such period there was a family dispute in his native and as a result of the same he had undergone mental disorder with depression, for which the petitioner had taken medical treatment and was not able to join back in the duty after the period of sanctioned leave. The petitioner had given leave letters to the 5th respondent through registered posts on several dates such as on 18.03.2006, 29.03.2006, 05.07.2006, 29.09.2006, 31.11.2006, 20.12.2006, 26.02.2007, 09.04.2007, 06.05.2007 and 21.04.2008, along with medical certificates.

4. He would further submit that the 5th respondent had sent letters to the petitioner dated 12.03.2006, 20.03.2006, 24.04.2006, 08.08.2006 and 07.01.2007 asking him to report for duty and vide letter dated 17.04.2007, the 5th respondent directed the petitioner to report for duty immediately, otherwise disciplinary action will be initiated, even after such a letter the petitioner was not in a good health condition to join back in the duty.

5. He would further submit that the petitioner was served with a show



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cause notice dated 25.09.2007, along with the enquiry findings and minutes of enquiry, which were in Hindi. He would contend that the petitioner was not served with any charge sheet and enquiry notice. The petitioner was not able to furnish his explanation for the action initiated against him as he did not know to read and write Hindi. On 21.11.2007, the wife of the petitioner made a representation to the 5th respondent, stating his readiness to join in duty, it was only on such circumstances the 5th respondent through a letter dated 26.12.2007, had intimated that the petitioner was dismissed from service vide Office order dated 31.10.2007. The petitioner had preferred an appeal to the 4th respondent dated 18.04.2008, claiming that he was not served with the order of dismissal and requested to grant permission to rejoin in the duty, but the same was rejected vide office order No.PVIII-VR(11)/2009 EC-I dated 24.07.2008. Thereafter, the petitioner made a representation dated 29.04.2009 to the 3rd respondent, the same was also dismissed vide No.R-XIII-1 (VR) 2009-EC 3 dated 21.08.2009.

6. He would seek to interfere with the order of dismissal passed by the 5th respondent as confirmed by the respondents 3 and 4, as the petitioner was not given an opportunity and the disciplinary proceedings were conducted holding the petitioner exparte, the notice served was in Hindi, for



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which the petitioner was not able to submit his explanation. In support of his contention he relied upon two judgments of this court in the case of ***P.A.Panneerselvam vs State Bank of India, dated 29.11.2011 and S.Dhanasekaran vs Commandant 42 Bn***, reported in CDJ 2011 MHC 054, and would contend that, this court as well as the Hon'ble Apex court in several occasions has held that conducting of disciplinary proceedings in the language known to the delinquent forms part of the principles of natural justice, viz., the principle of affording proper opportunity in disciplinary proceedings. If such proceedings has been conducted in the language not familiar to the delinquent then such proceedings has to be conducted afresh and that will have to be done only in the language known to such persons against whom such proceedings were taken. Hence, the order of dismissal by the 5th respondent is not justifiable and seeks interference of this court.

7. Countering his arguments the learned Standing Counsel would submit that, the petitioner was sanctioned 60 days earned leave with effect from 02.01.2006 to 02.03.2006, but the petitioner has over stayed and did not report back to duty from 03.03.2006 without any sanction of leave from the competent authorities, as such his unauthorised leave continued for about 20 months till his dismissal from service.



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8. He would submit that, from the office of the 5th respondent several letters were sent to the petitioner despite which he did not report back for duty. Then the competent authorities, as per the law governing the CRPF, made a complaint for issuing a warrant of arrest and the same was lodged by the Office of the 5th respondent before the Chief Judicial Magistrate Cum Commandant of the 29th Battalion, CRPF, accordingly a warrant of Arrest was issued against the petitioner vide LI.No.WII 1/06-29-EC II dated 12.08.2006 and sent to the Superintendent of Police, Vellore, Tamil Nadu, but the Civil Police neither apprehended the petitioner, nor did the petitioner reported back to duty, and thereafter as per the provisions contained in Rule 31 (C) of the CRPF Rules, a Board of Officers was appointed to conduct the Court of Inquiry, and vide orders dated 12.12.2006, the petitioner was declared deserter with effect from 03.03.2006 (FN) vide letter No. 1(1-06-11-EC-11) dated 24.02.2007.

9. He would further submit that, the proceedings initiated against the petitioner was intimated to him through registered post and even after that no response was evoked from the petitioner. The petitioner had over stayed for about 20 months and had kept informing the authorities that he will be



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reporting within 15-20 days but he never reported for duty, and as alleged by the petitioner he had never sent any medical proof of his illness, besides several directions. The petitioner was dismissed from service w.e.f. 31.10.2007, and a copy of the office order was sent to the petitioner, and all such actions were taken only based on the provisions contemplated under CRPF Act, 1949 and CRPF Rules, 1955. He would further submit that the appeal and revision preferred by the petitioner before the 3rd and 4th respondents were rejected considering the gravity of his offence.

10. He would further submit that, the petitioner has an service record for 15 years, but the same cannot be a ground for him to remain absent for about 20 months. As if the alleged defence of family dispute taken by the petitioner was true then he would have approached the nearby CRPF Office/ Unit/Police Station, but the petitioner has not given any such complaint. He would further submit that the order of dismissal against the petitioner was taken after following due procedure of law and sufficient opportunity was also given to the petitioner and it was the petitioner who had chosen not to reply to the authorities, that being so, the proceedings initiated against the petitioner is the cause for his actions for taking unauthorized leave from the duty without any intimation and that the order of dismissal is correct and



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need not be interfered by this Court.

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11. I have heard the submissions made on either side and perused the materials available on record.

12.It is a case of disciplinary proceedings initiated against the petitioner for his unauthorized absence for nearly 20 months. The petitioner had been called upon by the respondents to report back for duty. The petitioner seems to have replied to such communication indicating that extension of time on medical grounds. Since the petitioner had not joined back to duty, a show cause notice had been sent to him on 29.03.2007. According to the petitioner, no such show cause notice was served upon him. He was in receipt of a communication dated 17.04.2007, calling upon him to report duty, failing which disciplinary action would be initiated against him. The said communication was also replied to by the petitioner. The communication dated 17.04.2007, indicates that the show cause notice to the petitioner had been sent to him in Hindi.

13.I had infact directed the respondents to produce the concerned file



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to ascertain as to whether the petitioner was served with the show cause notice. The files had been produced before this Court and I have perused the same. From the file it is seen that along with a charge memo, there is no acknowledgment of the petitioner for receiving the charge memo. On the other hand, a postal cover was pinned along with a said communication with an endorsement by the postal department indicating that the same had been returned to the sender and an endorsement of the postal department was made in Tamil indicating that the addressee was not residing in the said address and had been returned. The respondent pursuant to return of such charge memo, does not seem to have taken any steps to serve the charge memo on the petitioner, but had proceeded to conduct an disciplinary proceedings and seems to have imposed an order of punishment of dismissal, which has also been affirmed by the appellate authority.

14.Since, I have factually found that from the original records that the petitioner had not been served with a charge memo itself, the entire disciplinary proceedings gets vitiated, as being in violation of principles of natural justice. In such view of the matter, I need not proceed any further to the lis as to whether the punishment that had been imposed upon by the respondents on the petitioner is valid on the allegation that the petitioner has



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absented himself from duty.

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15.It is also seen from the records that the charge memo had been sent to the petitioner in Hindi and also the enquiry proceedings had been conducted in Hindi and order of dismissal had also been passed in Hindi. It is the case of the petitioner that he is not well-versed in Hindi to deal with such complicated procedure. He had also relied upon the judgment of this Court which had followed the ruling of the Apex Court to contend that the disciplinary proceedings should be conducted in the language known to the petitioner. I am also in agreement with the ratio laid down in the said judgments in the cases of *P.A.Panneerselvam* and *S.Dhanasekaran* (stated supra).

16.In fine, the Writ Petition is allowed by setting aside the impugned order of punishment imposed by the respondent. Since the charges against the petitioner was that of the unauthorized absence and that he had already been declared as early as in 2006 as a deserter, the petitioner is liable to be proceeded with in the manner known to law. Further the respondents are directed to treat the period between the date of initial order of dismissal of the petitioner till today as period of suspension and the respondents are at



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liberty to proceed against him for the alleged charge of misconduct. Further,

I direct the proceedings to be conducted in English language, since the petitioner had infact communicated to the respondent in the said language. As contended by the learned counsel appearing for the petitioner, the disciplinary proceedings need not be conducted in Tamil for the aforesaid reasons. The respondent shall conduct such disciplinary proceedings within a period of six months from the date of receipt of a copy of this order and the petitioner is directed to cooperate fully with the said proceedings. If the petitioner fails to attend any one of the enquiry, the respondents are at liberty to pass appropriate orders in the manner know to law. However, there shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

27.11.2023

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Index/ Yes/No

Speaking order: Yes/No

Neutral citation: Yes/ No

To

1.The Union of India,
Rep., by its Secretary,



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Ministry of Home,
New Delhi.

- 2.The Director General of Police,
Central Reserve Police Force,
CGO Complex, New Delhi,
- 3.The Inspector General
Office of the Inspector of General,
Bihar Sector, CRPF, DIGH a Complex,
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- 5.The Commandant,
11 Battalion,
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Howly, Harpetta, Assam

K.KUMARESH BABU,J.
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A Pre-delivery order made in

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