



W.A.No.1848 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.No.1848 of 2022
and
C.M.P.No.13496 of 2022**

1.The Director General of Police,
No.1, Kamarajar Salai,
Mylapore,
Chennai - 600 004.

2.The Commandant,
Tamil Nadu Special Police,
7th Battalion,
Pochampalli,
Krishnagiri District.

3.The Assistant Commandant-II,
Tamil Nadu Special Police,
7th Battalion,
Pochampalli,
Krishnagiri District.

... Appellants

Vs.

S.Velu

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 07.01.2022 passed by the learned Judge in W.P.No.33011 of 2018.



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For Appellants : Mr.P.Kumaresan
Additional Advocate General
assisted by Mr.J.Daniel
Government Advocate

For Respondent : Mr.M.Gnanasekar

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

The present appeal has been filed by the Department as against the order of the learned Judge passed in W.P.No.33011 of 2018 on 07.01.2022. The writ petitioner is the respondent herein.

2.The short facts, which are necessary to dispose of the present Writ Appeal, are as follows:

2.1. The respondent was appointed as Grade-II Police Constable on 01.02.2011. While serving in the Tamil Nadu Special Police VII Battalion in Pochampali, Krishnagiri District, he was absent from duty for more than 21 days from 07.12.2015. As per PSO-95(1) (Police Standing Order, Volume-I, Edition-1999), the prolonged absence amounts to desertion from service. By order dated 28.12.2015, the Commandant, TSP VII Battalion, Pochampalli / second appellant declared the respondent as 'Deserter' and the same was acknowledged by the respondent on 30.12.2015. Further, in the said order dated 28.12.2015, the respondent was directed to be present before the Commandant with proper



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explanation for his absence within 60 days from the date of absence, however, he did not do so. Subsequently, the respondent was issued with a charge memo on 15.03.2016, to which he did not submit any explanation within the stipulated period. Hence, the Assistant Commandant-III, Tamil Nadu Special Police VII Battalion, Pochampalli / 3rd appellant was nominated as Enquiry Officer and after conducting enquiry, he submitted his report stating that the charges were held to be proved. Based on the same, by order dated 10.05.2016, the second appellant dismissed the respondent from service, which was confirmed by the Deputy Inspector General of Police, Armed Police, Chennai, by order dated 15.06.2016. Challenging the same, the respondent preferred a mercy petition, which was also dismissed by the first appellant *vide* order dated 26.08.2017. Feeling aggrieved, the respondent filed W.P.No.33011 of 2018.

2.2. The learned Judge, relying upon the Circular dated 06.12.2007 issued by the Director General of Police, Chennai, wherein, it was stated that in desertion cases, the punishment of removal/dismissal from service or compulsory retirement should not be imposed, as well as the decisions of the Hon'ble Apex Court, has set aside the orders passed by the appellant authorities dated 10.05.2016 and 26.08.2017 and also directed them to reinstate the respondent in service with effect from 03.08.2015, along with continuity of service and other consequential benefits, within a period of two weeks, as if he had never been



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dismissed from his services. However, it was clarified by the learned Judge that the respondent shall not be entitled to backwages during his period of non-employment.

2.3. Aggrieved by the aforesaid order of the learned Judge, the appellants have filed this writ appeal.

3.The learned Additional Advocate General appearing for the appellants would contend that the Circular issued by the Director General of Police on 06.12.2007 applies only to the deserters, who appear before the Superintendent of Police and furnish a valid explanation for their absence. Whereas, in the present case, the respondent did not respond to the order dated 28.12.2015 which directed him to appear before the Commandant and submit a proper explanation for his absence within 60 days, for the purpose of reinstatement. That apart, he did not submit any explanation to the charge memo dated 15.03.2016 within the given period. Continuing further, the learned Additional Advocate General submitted that the third appellant / Enquiry Officer commenced the oral inquiry on 01.04.2016 and completed the same on 06.04.2016, during the course of which, three witnesses were examined, and ultimately, he concluded that the charges framed against the respondent were proved; and he submitted his report (proved minute) on 11.04.2016, to which, the respondent submitted his



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representation on 26.04.2016, admitting his guilt. Thereafter, the respondent was imposed with a punishment of "removal from service" by order dated 10.05.2016.

Pointing out that the respondent had deserted the force on multiple occasions, for which, he suffered minor punishments in the past, the learned Additional Advocate General submitted that the respondent's habitual absenteeism and lackadaisical attitude resulted in he being declared as a 'Deserter', thereby making him trapped in the clutches of law.

4.It is also submitted by the learned Additional Advocate General appearing for the appellants that the respondent was absent from duty without any authorization for a total period of 602 days on several occasions, which is a clear violation of the discipline and decorum expected from a police officer and hence, the order of punishment passed against him is perfectly correct. To substantiate his contention, the learned Additional Advocate General relied upon a judgment of the Apex Court in Civil Appeal No. 3095 of 2017 dated 03.11.2019, wherein, an Army Officer was absent without authorization for 302 days, and the Armed Forces Tribunal held that dismissal was disproportionate. However, in the appeal filed by the Union of India, the Apex Court set aside the findings of the Arms Forces Tribunal. The relevant paragraph of the judgment would run thus:

"Insofar as the second submission is concerned, it is evident from the statement, which was extracted earlier, that the respondent had admitted his absence for 302 days without leave. The statement contains a justification for the absence. From the record, it is evident



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that the respondent did not make any effort to apply for extension of his leave. Absence of 302 days from his duty by a member of the Armed Force could not be condoned. We are clearly of the view that the Armed Forces Tribunal was in error in coming to the conclusion that the punishment which was imposed was harsh. The only basis for the finding was that the respondent had put in twelve years of service. This was all the more a reason why any responsible member of the Armed Force should not have absented from service without permission. The Tribunal clearly misdirected itself in law in coming to the conclusion that the punishment of dismissal from service was harsh and disproportionate. We accordingly allow the appeal and set aside the impugned judgment and order of the Armed Forces Tribunal dated 21 August 2015. In consequence, OA 483 of 2012 filed by the respondent shall stand dismissed. However, there shall be no order as to costs."

5.Adding further, the learned Additional Advocate General appearing for the appellants would submit that the respondent ought to have submitted documentary evidence and obtained proper permission before taking leave, if he had a legitimate reason, since Police force is a disciplined force and the police personnel are expected to maintain decorum and discipline. The Apex Court had consistently held in several decisions that the Court's jurisdiction to review the validity of proportionality is limited and that, a well-reasoned order of the departmental authority cannot be interfered with on the basis of sympathy and sentiment. Once the procedural formalities have been complied with by the authorities, the Courts should not typically interfere with the penalty. If it is interfered, it would give a negative message to the members of the police force, who are otherwise working hard and maintaining good conduct. Stating so, the learned Additional Advocate General prayed to allow this appeal by setting aside



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the order passed by the learned Judge.

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6.On the other hand, the learned counsel appearing for the respondent submitted that due to ill-health of his wife and no one was available to take care of her, the respondent was absent from duty. However, he was imposed with a punishment of removal from service, which is highly excessive and disproportionate to the charges framed against him. The learned counsel further submitted that in similar circumstances, the orders passed by the writ court in various cases viz. W.P.No.7927 of 2015, W.P.No.11854 of 2016, and W.P.No.14901 of 2014, have been confirmed by the Appellate court, against which, no appeals have been filed by the department. Furthermore, the order passed in W.P.No.7927 of 2015 has also been implemented by the appellant authorities. On the other hand, in the instant case, the appellants have preferred this appeal against the order passed by the writ court. Thus, according to the learned counsel, the learned Judge has taken note of the facts and circumstances of the case in proper perspective and has passed the impugned order and hence, the same does not require any interference by this Court.

7.We have considered the submissions of the learned counsel for the parties and also perused the materials available on record carefully and meticulously.

8.Before we proceed to consider the rival submissions, it would be relevant



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to look into the reasons given by the writ court for allowing the writ petition filed by the respondent, which read as under:

"3. The original order of dismissal by the 3rd respondent, as well as the order of the Director General of Police is in clear violation of the Circular issued by the Director General of Police. Likewise, the Director General of Police himself had violated his own proceedings by confirming the original punishment into one of the Compulsory Retirement. These kind of Circulars would be binding on all the authorities of the Government when it is issued from the highest authority of the department. As such, the very original punishment itself cannot be sustained. Consequently, it requires to be held that both the original punishment, as well as the modified punishment, are not only disproportionate to the impugned charges, but also violative of the procedure contemplated for imposing punishments in the aforesaid circulars.

4. On the issue of disproportionality of a punishment is concerned, the same has been dealt in various decisions of this Court, as well as the Hon'ble Supreme Court to the effect that the ultimate punishment requires to be in conformity with the gravity of the charges. In one such decision of a learned Single Judge of this Court of this Court in R.Jayakumar Vs. The Deputy Commissioner of Police and another in W.P.No.26072 of 2004, dated 08.08.2008, the High Court had placed reliance on three decisions of the Hon'ble Supreme Court and interfered with the punishment of dismissal for the period of unauthorised absence of 21 days and directed the delinquent therein to be reinstated into services without benefit of pay for the period of absence.

5. The relevant portion of the order reads as follows:-

"11. Next point to be considered is proportionality of punishment. For the absence of 21 days, Petitioner was awarded punishment of dismissal from service. Placing reliance upon AIR 1994 SC 215 (Union of India and others v. Giriraj Sharma); (1996) 7 SCC 634 (Malkiat Singh v. State of Punjab and others); (1999) 9 SCC 86 (Syed Zaheer Hussain v. Union of India and others) and (2006) 4 MLJ 1008 (J.Patric v. Government of Tamil Nadu, rep. by its Secretary, Home (Pol.VI) Department, Chennai and others), learned counsel for the Petitioner contended that in cases where the punishment imposed is disproportionate to the charge, court can set aside the same or modify the punishment based on the facts and circumstances of the case.

12. On the other hand, learned Government Advocate would submit that as far as the Petitioner is concerned, it was not an isolated case of desertion for 21 days. But he was in the habit of deserting



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habitually and therefore, punishment of dismissal from service came to be passed.

13. According to the Petitioner, he was unwell and hospitalised and his family members could not inform the higher officials about his illness and his absence was not deliberate. Charges framed for absence for 21 days.

14. In AIR 1996 SC 484:1995 (6) SCC 634 (B.C.Chaturvedi v. Union of India and others), the Hon-ble Supreme Court has decided the question as to whether Tribunal was justified in interfering with the punishment imposed by the disciplinary authority by referring to various Judgments to the effect that it is for the disciplinary authority who has to imposed penalty and normally Tribunal or High Court should not interfere. Supreme Court has further held that in cases where punishment shocks the conscience of the High Court or Tribunal, the High Court or Tribunal can either direct the disciplinary authority to reconsider the penalty or to shorten the litigation in exceptional cases and in rare cases imposed an appropriate punishment."

15. In this aspect, Hon-ble Supreme Court has laid down the law as follows:-

"..... A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

16. In AIR 1994 SC 215 (Union of India and others v. Giriraj Sharma), Government Servant over stayed the leave period subsequent to the order of rejection of application for explanation of leave. Observing that there was no wilful intention to flout the order that the punishment of dismissal merely on the ground of over-staying leave period was held to be harsh and disproportionate and the Supreme Court has ordered reinstatement with all monetary and service benefits granted with liberty to visit minor punishment.

17. In (1999) 9 SCC 86 (Syed Zaheer Hussain v. Union of India and others) the delinquent Government servant was dismissed from service on the ground of unauthorised absence for 7 days. Observing that dismissal was too harsh, Supreme Court directed the Appellant to reinstate with continuity in service with all other benefits but limiting the back wages to 50% only for the period between dismissal to the date of passing of the order by the Court. In the present case, Petitioner was absent for 21 days. It is one of the clear instance where



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the punishment of dismissal from service is disproportionate to the charge.

18. In the result, the impugned Orders are set aside and this Writ petition is allowed. Petitioner is ordered to be reinstated into service within a period of eight weeks from the date of receipt of copy of this order. Absence period and the period after dismissal are directed to be taken as 'leave on loss of pay'. However, the said period shall be taken into account for continuity of service and other benefits.

6. The aforesaid extract is self-explanatory. When the circular of the Director General of Police clearly indicates that neither the punishment of -dismissal from services- nor -Compulsory Retirement- should be imposed on a delinquent for charges of desertion, the punishment imposed itself is deemed to be disproportionate to the charges, as held by the Hon-ble Supreme Court and which was relied on by this Court in the aforesaid decision.

7. However, the charge of unauthorised absence cannot be left unnoticed. By taking into account, the ratio laid down in the aforesaid decision, this Court is of the view that if the petitioner-s wages for the period of his absence is withheld, without affecting the continuity of his service, as well as other service benefits, the ends of the justice would be secured.

8. In the result, the impugned order passed by the 2nd respondent dated 10.06.2016 in Na.Ka.No.E1/PR:16/2016 u/r 3(a) which was confirmed by the order of the first respondent dated 26.08.2017 made in Rc.No.135049/AP 3(1)/2016 are quashed. Consequently, there shall be a direction to the 1st respondent herein to pass appropriate orders, reinstating the petitioner into services from 03.08.2015 onwards, together with continuity of service and other service benefits, within a period of 2 weeks, as if the petitioner was never dismissed from his services. However, the petitioner shall not be entitled for the backwages during his period of Non-employment. This Writ Petition is allowed, accordingly. No costs."

From the above, it is clear that the learned Judge has set aside the orders passed by the appellants 1 and 2 placing reliance on the circular dated 06.12.2007 issued by the Director General of Police, Chennai, to the effect that in desertion cases,



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the punishment of removal/dismissal from service or compulsory retirement should not be imposed, and also the decisions of the Hon'ble Apex Court, wherein, it was categorically held that *'the punishment of dismissal merely on the ground of over-staying leave period, was harsh and disproportionate'*.

9. According to the appellants, the Circular issued by the Director General of Police on 06.12.2007 applies only to deserters, who appear before the Superintendent of Police and provide a valid explanation for their absence, but the respondent herein, did not make any representation and hence, the said Circular will not apply to his case. At this juncture, it would be useful to refer to the circular dated 06.12.2007:

Rc.No.235355/AP-IV(2)/2007

Police

*Office of the
Director General of*

Chennai -600 004

Dated: 06.12.2007

CIRCULAR MEMORANDUM

Sub: Police -Desertion cases - Head constables and Police Constables - Taking delinquents on duty - Major punishment awarded - Instructions issued - Regarding.

Ref: Circular Memo in C.No.243881/AP-1(1)/1990, dated: 30.10.1990.

The attention of the Unit Officers is invited to the Chief Office Circular Memorandum cited.

2) In the above Circular Memorandum, clear instructions were already



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issued that while taking Head Constables and Police Constables for duty in desertion cases and disposing of P.Rs emanated from the delinquency of desertion, penalty such as removal/dismissal from service or Compulsory Retirement should not be given. Any other punishment can be imposed and this guideline should be kept in view, while dealing with desertion cases.

3) While disposing of review/mercy petitions of the subordinate police personnel, I noticed that scant regard is shown to the earlier Chief Office instructions and the Superintendents of Police are still in the habit of awarding the maximum penalty of dismissal or removal from service in desertion cases after taking them for duty. This action is unfair, cannot be justified and consequently cannot be accepted.

*4) Hence, it is reiterated that when a Head Constable/Police Constable is struck off as a deserter, notice is to be issued directing the delinquent to appear before the Superintendent of Police within two months. **When he appears, Superintendent of Police should make up his mind whether the absence is on valid grounds and whether the period of absence is covered by a valid medical certificate. If Superintendent of Police is not satisfied, the delinquent should not be taken for duty. If on the other hand, Superintendent of Police is satisfied, he can be taken for duty. In such cases while disposing of P.Rs punishment of removal/dismissal from service or Compulsory Retirement should not be given. Any other punishment can be imposed and these guidelines should be strictly followed while dealing with desertion cases.***

5) The above instructions should be scrupulously followed and there should not be any violation. If any deviation is found it will be viewed adversely.

6) The receipt of the Chief Office Memo should be acknowledged forthwith."

10. It is also pointed out on the side of the appellants that the respondent was absent on multiple occasions, while serving as Police Constable in TSP VII Battalion, Pochampalli, and was subjected to punishment on several times. In support of the same, the appellants produced the defaulter sheet pertaining to the respondent, the contents of which are reproduced below for ready reference:



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Sl. No.	Brief Description of the offence	No. of days	P.R.No. & Date of order	By whom ordered & date of order
1	Desertion from force w.e.f 20.11.2013 to 30.12.2013 PSO 95(1)	42 days	PR:16/2014, u/r 3(b) Dt:14.05.2014	"Postponment of next increment for one year without cumulative effect" by the Commandant, TSP VII Bn., Pochampalli.
2	Absent duty from 17.02.2014 to 25.02.2014 PSO 95(1)	9 days	PR: 35/2014, u/r 3(a) Dt:02.08.2014	"Black Mark" by the Assistant Commandant-II, TSP VII Bn., Pochampalli.
3	Absent duty from 26.03.2014 to 06.04.2014 PSO 95 (1)	11 days	PR:36/2014, u/r 3(a) Dt:02.08.2014	"Black Mark" by the Assistant Commandant, TSPVII Bn., Pochampalli.
4	Absent duty from 14.04.2014 to 23.04.2014 PSO 95(1)	10 days	PR:37/2014, u/r3(a) Dt:02.08.2014	"Black Mark" by the Assistant Commandant-II, TSPVII Bn., Pochampalli.
5	Desertion form force w.e.f. 07.06.2014 to 04.11.2014, PSO 95(2)	151 days	PR:65/2014, u/r 3(b) Dt:07.06.2014	"Postpoinment of next increment for one year with cumulative effect" and taken back for duty by the Commandant, TSP VII Bn., Pochampalli.
6	Desertion form force w.e.f. 08.12.2014 to 19.01.2015. PSO 95(1)	43 days	PR:12/2015, u/4 3(b) Dt:15.05.2015	"Postponment of next increment for two years with cumulative effect" by the Commandant, TSP VII Bn., Pochampalli.
7	Desertion from force w.e.f 09.04.2015 to 05.10.2015 PSO 95(2)	180 days	PR:66/2015, u/r 3(b) Dt:27.07.2015	"Removal from service" by the Commandant, TSP VII Bn., Pochampalli. On his appeal petition, the DIG, AP, CNI-10, in his proceedings in C.No.C1/16426/2015, dated 29.09.2015 modified the above punishment into that of <u>"Postponment of next increment for two years"</u>



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<i>Sl. No.</i>	<i>Brief Description of the offence</i>	<i>No. of days</i>	<i>P.R.No. & Date of order</i>	<i>By whom ordered & date of order</i>
				<u>with cumulative effect" and taken back for duty.</u>
8	Desertion from force w.e.f 07.12.2015 to 10.05.2016, PSO 95 (2)	156 days	PR:16/2016, u/r 3(b) Dt:10.05.2016	"Removal from service" by the Commandant, TSP VII Bn., Pochampalli.
Total No. of days absent for duty		602 days		

It is further alleged by the appellants that the respondent neither made any representation to the Commandant as against the directions issued on 28.12.2015 for explaining his unauthorized absence nor submitted any explanation to the charge memo dated 15.03.2016, within the time stipulated and therefore, he was inflicted with the punishment of removal from service. However, the learned Judge has erroneously passed the order impugned in this appeal by setting aside the orders passed by the appellant authorities and directing them to reinstate the respondent in service with consequential benefits.

11. Concededly, it is a case of desertion. A reading of the circular as referred to above, particularly, clause 4, would make it clear that in desertion cases, when the delinquent appears, the Superintendent of Police should make up his mind, whether the absence is on valid grounds and whether the period of absence is covered by a valid medical certificate; and if the Superintendent of Police is satisfied, he can be taken for duty. It is also categorically stated in the said circular that in such cases, while disposing of P.Rs punishment of removal/



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dismissal from service or compulsory retirement should not be given and any other punishment can be imposed and these guidelines should be strictly followed, while dealing with desertion cases. Thus, powers have been delegated to the Superintendent of Police to take a decision in the desertion cases, upon his satisfaction. Admittedly, the respondent herein, who was said to have been declared as 'Deserter', did not appear before the Superintendent of Police and submit any representation along with documentary evidence for his absence. It may be true that the respondent had already been inflicted with the punishment for the same offence of desertion from force and he had not given any explanation to the charge memo dated 15.03.2016 issued against him. That itself would not preclude him from availing the benefit provided in the aforesaid circular. At the same time, without submitting any explanation for his unauthorised absence, the respondent cannot be ordered to be reinstated in service, based on the aforesaid circular issued by the authority concerned, as done by the learned Judge. At this juncture, it is brought to the notice of this court by the learned counsel for the appellant that the appellant filed an undertaking affidavit dated 06.01.2023 to the effect that *"he will not repeat the acts of unauthorised absence in future and he may be granted one chance to serve the police department"*.



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12. Therefore, taking note of the benefit provided in the circular and the same has not been availed by the respondent, before slapping the punishment of removal from service, and also considering the undertaking affidavit filed by the respondent, this court is inclined to grant an opportunity to the respondent to defend his case with documentary evidence before the authority concerned. Accordingly, the order passed by the learned Judge, which is impugned herein, is modified in the following terms:

"The orders impugned in the writ petition are set aside and the respondent is directed to appear before the Superintendent of Police and submit his representation along with documentary evidence, explaining the reasons for his unauthorised absence from duty, within a period of two weeks from the date of receipt of a copy of this judgment. On such appearance, the Superintendent of Police, shall consider the same independently and pass appropriate orders, within a period of eight weeks therefrom. While so, the undertaking affidavit filed by the respondent shall also be taken into consideration."

13. The writ appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
08.06.2023

r n s
Speaking Order / Non-speaking order
Internet : Yes
Index : Yes /No



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To

- 1.The Director General of Police,
No.1, Kamarajar Salai,
Mylapore,
Chennai - 600 004.
- 2.The Commandant,
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7th Battalion,
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Krishnagiri District.
- 3.The Assistant Commandant-II,
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R. MAHADEVAN, J.
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