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W.P.No.9034 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2024

PRONOUNCED ON : 26.04.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.9034 of 2018
and WMP.No.10887 of 2018

J.Prabhakaran,
rep. by wife, Dayana Malar,
ASI (M), Central Reserve Police Force,
Plot No.27, Udaya Suriyan Street,
Mittnamalli, Avadi, Chennai 600 065.

... Petitioner

Vs.

1. The Deputy Inspector General of Police,
Group Centre, Central Reserve Police Force,
Avadi, Chennai 600 065.
2. The Commandant,
150-Battalion, Central Reserve Police Force,
Dornapal, Sukma, Chattisgarh.
3. The Director General of Police,
Central Reserve Police Force,
CGO Complex, Lodhi Road,
New Delhi 110 003.

... Respondents



PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records in respect of the Office Order No.J.II.01/2016-150-EC-II, dated 25.03.2018, passed by the 2nd respondent and quash the same and consequently direct the respondents to regularize the leave with all attendant benefits including salary, allowances, annual increments, bonus, promotion, continuity of service, fixation of seniority at par with similarly placed personnel, revision in salary as per VII Pay Commission and drop all or any disciplinary proceedings for the period of absence, viz., 13.07.2015 to 03.11.2016.

For Petitioners : Mrs.R.Maheswari

For Respondents : Dr.D.Simon

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus calling for the records in respect of the Office Order No.J.II.01/2016-150-EC-II, dated 25.03.2018, passed by the 2nd respondent and quash the same and consequently direct the respondents to regularize the leave with all attendant benefits including salary, allowances, annual increments, bonus, promotion, continuity of service, fixation of seniority on par with similarly placed personnel, revision in salary as per VII Pay Commission and drop all or any disciplinary proceedings for the period of



absence, viz., 13.07.2015 to 03.11.2016.

2. The case of the petitioner is that he was appointed as Head Constable (M) and joined the services of Central Reserve Police Force on 18.07.2005. After his initial basic training in GC, Guwahati, Assam for three months, he was posted in the same area till 28.11.2007. Subsequently transferred to 151 Battalion, Preet Nagar, Jammu & Kashmir, which is a difficult field area and he worked there for nearly 4 years. After served in far flung areas for a period of over 6 long years without any break, the petitioner was transferred to Group Center, Avadi and he reported duty on 18.01.2012. However, to the shock and surprise of the petitioner, he was transferred to 150 Battalion in Chattisgarh, which is also a hard area. Challenging the order of transfer, he sought relaxation to stay at the static posting for another one year and filed WP.No.27642 of 2015. This Court vide order dated 03.09.2015, granted an order of status quo and thereafter, the interim order was extended on 19.11.2015. The petitioner attended office at GC, CRPF Avadi and signed the attendance register till 09.10.2015.

3. Subsequently, the first respondent made unscrupulous and



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unreasonable allegations against the petitioner that he was intentionally taking medical rest. Though necessary entries have been made in the “Sick Report Register” maintained with the reporting officer of the petitioner and making proper official communication, the petitioner's salary from the month of August 2015 was withheld by GC Avadi based on the communication received from 150 Bn vide Signal No.L.II-1/2015-150-ST dated 05/08/2015, which is an arbitrary exercise of power.

4. The first respondent further by giving misleading and manipulated information to the Commandant of 150 Battalion Chattisgarh caused initiation of criminal proceedings in C.C.No.3 of 2016 on the file of the second respondent, and warrant was issued against the petitioner. The first respondent has also been instrumental in the initiation of departmental proceedings against the petitioner by abusing the power vested with him.

5. The petitioner filed Crl.O.P. against the warrant of arrest issued by second respondent and this Court granted bail with the observation that the submission of the respondents that the petitioner was relieved on 02.07.2015 is unsustainable. The petitioner joined duty at the place of



transfer on 03.11.2016.

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6. Thereafter, the petitioner filed Contempt Petition No.1564 of 2016 for disobeying the orders of this Court in WP.No.27642 of 2015 by not permitting the petitioner to sign attendance register and stopping his salary. Subsequently, the second respondent passed the impugned office order dated 25.03.2018 regularising the period of absence without pay and also initiated departmental proceedings for the period of absence. Aggrieved by the same, the petitioner has filed this Writ Petition for regularization with continuity of service, salary and other promotional benefits and dropping of departmental proceedings.

7. The first respondent has filed counter stating that the on petitioner's transfer from 105 RAF, CRPF, Coimbatore, he had reported duty at Group Centre, CRPF Avadi on 16.01.2012. As the petitioner completed his normal tenure i.e. 3 years and 5 months at the present place of posting/static place, his transfer was ordered to 150 Bn CRPF at Chattisgarh by the Competent Authority i.e. IGP SS Hqr. Hyderabad vide signal/message No.T.IX.41/201-Adm-1 dated 16.04.2015.



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8. It is further stated that knowing about the transfer order, the petitioner had submitted an application at GC CRPF Avadi, T.N. requesting for 45 days Earned Leave which was examined by the Commandant-150 Bn and intimated vide signal No.T.IX-5/2015-150-EC-I, dated 05.07.2015 that he may proceed on leave after reporting at 150 Bn Unit Hqr, Chhattisgarh. Accordingly, the same was conveyed to the petitioner vide GF CRPF, Avadi letter dated 07.07.2015. As no response was received from receiving unit i.e., 150 BN till the end of June 2015, it was proposed to relieve the petitioner on 04.07.2015, but, as per personal request, the petitioner was relieved on transfer to 150 Bn at Chattisgarh on 02.07.2015 itself instead of 04.07.2015 vide GC CRPF, Avadi office order No.T.IX-10/2015-EC-3 dated 02.07.2015, which was also received by the petitioner on 02.07.2015 duly acknowledged by him.

9. It is further stated that the petitioner ought to have reported duty on 12.07.2015, but he did not report and submitted an application dated 15.07.2015 along with a Medical Certificate dated 07.07.2015 advising him for 4 weeks rest issued by the Rajiv Gandhi Govt. General Hospital,



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Chennai, which was effected w.e.f. 07.07.2015 with remarks that absence from duty was absolutely necessary for his health. Further, the petitioner stated in his application that due to physical inability, he was unable to report at 150 Bn CRPF and after declaring his fitness, he will report for duty.

10. It is further averred that the petitioner again reported sick on 03.07.2015 and the treating Doctor advised him to attend "C" for two days and further referred him to Orthopedic Surgeon at RGGGH Chennai for medical opinion / attend 'C'. But, after getting opinion of Orthopedic Surgeon of RGGGH, surprisingly, the petitioner did not report back to Composite Hospital, CRPF Avadi on 04.07.2015. In fact it is the responsibility of the petitioner to report back to the treating Doctor of Composite Hospital, CRPF, Avadi along with opinion of Orthopedic Surgeon of RGGGH, Chennai, but he failed to do so for the reason best known to him. On the contrary, the petitioner sought permission to avail medical rest at his home town from the Competent Authority as per Para 8.25 of CRP Establishment Manual. Even after lapse of more than six months, the petitioner neither reported for duty nor communicated about his



treatment health condition or sought any further extension of leave.

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11. It is further stated that the petitioner was directed at his home/residential address to report for duty immediately vide 150 Bn, CRPF letter No.T.IX.5/2015-150-EC-II, dated 31.08.2015. As the petitioner neither reported for duty nor responded, he was again directed to join his duty immediately in the light of judgment of Hon'ble High Court of Madras and direction of Law Directorate CRPF as well as DIGP, GC, CRPF Avadi vide 150 Bn, CRPF letter dated 13.10.2015 through Regd. Post No.RC1355493618IN dated 19.10.2015. But the petitioner refused to receive above registered letter. The petitioner was again directed (3rd time) vide 150 Bn, CRPF letter dated 20.11.2015 through registered post No.RC135495137IN dated 24.11.2015. But, the petitioner again refused to receive the above registered letter on 07.12.2015.

12. It is further stated in the counter, it is clear that in the light of the above facts and after lapse of more than nine months from the date of his relieving from GC CRPF, Avadi, Chief Judicial Magistrate-cum-Commandant-150 Bn, CRPF issued a warrant of arrest against him to the



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Superintendent of Police, Thiruvallur, State-Tamil Nadu for his apprehension and producing him before Competent Authority vide 150 Bn, CRPF letter No. W.II.03/2016-150-EC-II, dated 15.03.2016. Thereafter, as per the procedure, a Court of Inquiry was also conducted and based on the opinion of Court of Inquiry, the petitioner was declared “Deserter from the Force” w.e.f. 15.07.2015 (FN) vide Commandant-150 Bn, CRPF office order No.IX.13/2016-150-EC-II dated 10.08.2016. Thereafter, a draft memorandum of charges along with original COI file & warrant of arrest file were forwarded to DIGP, Range Hyderabad (the then disciplinary authority) for taking disciplinary action against the petitioner vide 150 Bn, CRPF letter No.P.VIII-8/2016-150-EC-II, dated 10.09.2016.

13. It is further averred in the counter that in the meantime, the petitioner filed WP.No.27642/2015 before the High Court of Madras against his transfer order, which was disposed on 03.09.2015 by this Court directing the respondents to maintain status quo. But in fact the petitioner relieved from GC CRPF Avadi on 02.07.2015, but reported at 150 Bn CRPF at Chattisgarh on 03.11.2016 (AN) in compliance to the order passed by High Court of Madras in Cr.OP.No.17558/2016 filed by him against his



WOA issued by the Commandant 150 Bn, CRPF. Accordingly, Warrant of Arrest issued by Chief Judicial Magistrate-cum-Commandant 150 Bn was cancelled vide Memo No.W.II-03/2016-150-EC-II, dated 04.11.2016.

14. It is so further submitted in the counter that since the petitioner failed to report at 150 Bn, CRPF location timely after relieving from Group Centre, CRPF, Avadi T.N on 13.07.2015, the petitioner's unauthorized/absence period w.e.f. 13.07.2015 to 03.11.2016 total 480 days has been regularized as Leave without pay in accordance with FR-108 vide Commandant-150 Bn, CRPF office order No.J.II-01/2016-150-EC-II, dated 25.03.2018.

15. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents and carefully examined the materials available on record.

16. It is seen that between July 2005 and November 2007, the petitioner served in hard postings at Khatkhathi (Assam) and thereafter between 29.11.2007 and 13.09.2011 at Doda District (Jammu & Kashmir) and between 14.09.2011 and 17.01.2012 worked at Coimbatore and from



18.01.2012 till the year of transfer dated 04.07.2015, he was working at Avadi. Subsequently, he has been transferred to 150 Bn in Chattisgarh, vide office order No.T.I.X-10/2015-EC-3, dated 02.07.2015 passed by the first respondent.

17. The contention of the petitioner is that his mother was suffering from serious heart ailment and there is no one to attend her except the petitioner and his wife was in advance state of pregnancy. It is also the contention of the petitioner that he was suffering from injury on his right shoulder and he has been taking treatment at Rajiv Gandhi Government General Hospital, Chennai.

18. It is also the case of the petitioner that the Deputy Inspector General of Police, CRPF, GC Avadi, Chennai, i.e., the first respondent herein vide his letter dated 25.04.2015 has recommended that the petitioner may be retained at Avadi. Without considering the request of the petitioner or recommendation of the first respondent, the order of transfer was passed. Aggrieved by the same, the petitioner filed Writ Petition No.27642 of 2015 and this Court by order dated 03.09.2015 in MP.No.2 of 2015 in WP.No.27642 of 2015 passed an order of status quo till 09.10.2015. The



said interim order was extended until further orders by the High Court of Madras by its order dated 19th November 2015. In the light of the interim orders of this Court, he continued in the same place.

19. However, the contention of the respondents is that on 16.04.2015, transfer order was issued to the petitioner and he was relieved on 02.07.2015. It is also the contention of the respondents that since the petitioner has not reported duty till 17.03.2016, warrant of arrest has been issued as per Section 10(n) of the Central Reserve Police Force Act. But a perusal of the transfer order reveals that the petitioner was ordered to be relieved on 02.07.2015 instead of 04.07.2015. The sick report filed shows that the petitioner has sustained fracture and he was in Hospital on 03.07.2015 and then he was referred for further treatment. The fitness certificate issued which shows that the petitioner was able to join duty on 30th September 2015. On a perusal of the Official order dated July 2015 would show that the date of relieving is amended to read as 02.07.2015 a.m. instead of 04.07.2015 a.m. due to administrative reasons.

20. Admittedly, the petitioner fell sick and the sick report register



shows that from 03.07.2015 he was under treatment and he became fit to join duty only on 30th September 2015. Hence, the petitioner was unfit to join duty between 03.07.2015 and 29.09.2015. Admittedly, this Court has granted interim order of status quo on 03.09.2015 itself and it was extended until further orders on 19.11.2015.

21. Office of the Commandant, 150 Bn, CRPF, Dornapal, Sukma, Chattisgarh had issued official order dated 25.03.2018 alleging that the petitioner did not report duty and remained absence on his own with effect from 13.07.2015 to 03.11.2016 for a period of 480 days and the said period has been regularised as leave without pay in accordance with FR-108.

22. The learned Standing Counsel for the respondents contends that as per Office Memorandum dated 28.03.2013 issued by the Government of India, Ministry of Personnel, P.G. & Pensions [Department of Personnel and Training] vide reference No.13026/3/2012-Estt [Leave] and as per proviso to FR 17[1], an officer who is absent from duty without any authority, shall not be entitled to any pay and allowances during the period of such absence.



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23. While dealing with the contempt case filed by the petitioner in Cont.P.No.1564 of 2016, which was filed against the respondents herein, the learned Single Judge of this Court has observed as follows:

“15.....It is to be pointed out, at this juncture, non payment of salary and rather, treating the period of absence as leave without pay, has visited the petitioner with grave civil consequences. This Court is of the prima facie view that a fair opportunity ought to have been granted to the petitioner to explain his stand and the proceedings of the Commandant, 150 Bn, CRPF, Donrnopal, Surma, Chattisgarh dated March 2018 in No.J.II.01/2016-150-EC-II, does not disclose that such an opportunity was given.”

24. While expressing such opinion, learned Single Judge of this Court felt that this Court in exercise of the Contempt Jurisdiction cannot go in to the vires of the said order and therefore, petitioner is at liberty to work out his remedy in accordance with law.

25. In the light of the said observation to ventilate his grievances, the petitioner has filed the present Writ Petition against the order dated 25.03.2018 passed by the second respondent.



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26. As per the transfer order dated 02.07.2015, the petitioner has to report at the place posted by 13.07.2015. Admittedly, he reported there on 03.11.2016. Therefore, the respondents issued the impugned proceedings treating those 480 days, the petitioner was remained absence on his own from attending duties and the said 480 days period was regularised as leave without pay. But the materials available on record reveals that the transfer order was issued by the first respondent on 02.07.2015. Thereafter, by an order dated 03.09.2015 in Writ Petition No.27642 of 2015, an interim order of status quo was granted and it was extended until further orders by order dated 19.11.2015. As per the certificate of fitness issued by the concerned Doctor it reveals that the petitioner became fit to attend duty and able to join duty on 30th September 2015.

27. The contention of the petitioner is that the joining report was refused to be accepted and he signed the attendance register admittedly till 09.10.2015. Whether the petitioner attended duties from 1st October 2015 onwards or not would be established from the order in Cont.P.No.1564 of 2016. The relevant portion of the order at paragraph No.11 is extracted



herein under for better appreciation:

“11 A perusal of the Attendance Register maintained by CRPF, Avadi, in the normal course of business, annexed to the main typed set of papers would disclose that the petitioner had signed the said Register for the month of October 2015, i.e., on 1st, 2nd, 5th, 6th, 7th, 8th and 9th October, 2015. The petitioner, challenging the order of transfer, has moved this Court and this Court, after recording the reasons, has granted an interim order of Status Quo on 03.09.2015. The said writ petition along with the miscellaneous petition were listed once again on 19.11.2015 and on that day, the learned Standing counsel appearing for the respondents took time for filing counter and therefore, this Court has extended the interim order of Status Quo until further orders. If the petitioner was really relieved on 02.07.2015, as alleged by the respondents in the counter affidavit, nothing prevented them from giving instructions accordingly to the learned Standing counsel and when the matter was listed on 19.11.2015, only time was sought to file the counter and therefore, this Court has extended the interim order until further orders. ”

28. In view of the above it is clear that in the light of the interim order of status quo passed by this Court in W.P.No.27642 of 2015, the petitioner



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discharged his duties of the first respondent office and thereafter he reported at office of the second respondent on 03.11.2016. As such, the decision of the second respondent in treating the period from 13.07.2015 to 03.11.2016 as the petitioner remained absent and did not report duty, is unreasonable and irrational. Therefore, the impugned order is not sustainable and is liable to be set aside.

29. During the course of hearing, the learned counsel brought to the notice of this Court that though several reliefs are sought in the prayer of this Writ Petition, some of the reliefs were already granted by the respondents and now confined his relief only to seek salary for the period from 13.07.2015 to 03.11.2016.

30. Considering the same, the Writ Petition is disposed of with the following direction:

The order impugned in this Writ Petition is set aside and the respondents are directed to pay salary to the petitioner for the period from 13.07.2015 to 03.11.2016 within a period of six weeks from the date of



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W.P.No.9034 of 20 --

receipt of a copy of this order.

No costs.

Consequently, connected miscellaneous petition is closed.

26.04.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs



W.P.No.9034 of 20 --

To

1. The Deputy Inspector General of Police,
Group Centre, Central Reserve Police Force,
Avadi, Chennai 600 065.
2. The Commandant,
150-Battalion, Central Reserve Police Force,
Dornapal, Sukma, Chattisgarh.
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Central Reserve Police Force,
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W.P.No.9034 of 2018

BATTU DEVANAND.J.,
pvs

Pre-delivery order in

W.P.No.9034 of 2018

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