



WEB COPY



W.P.No.27732 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/3/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.27732 of 2010

M.S.Prasanna Kumar

...

Petitioner

Vs

1. The Secretary to Government
Home (Police V) Department
Fort St. George
Chennai 600 009.
2. The Director General of Police
Mylapore
Chennai 600 004.
3. The Additional Director General of Police
and Commissioner of Police
Egmore
Chennai 600 008.
4. The Deputy Commissioner of Police
Traffic (North)
Chennai 600 007.

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records connected with proceedings issued in Tha.Pi.26/Tha.Pi.1(Va)/98 PO Ma order



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No.215/98 dated Nil.07.1998 passed by the fourth respondent and Na.Ka.No.16/Me.Mu/Tha.Pi.Po.Va(Va)/2999 dated 28/12/2000 passed by the third respondent and C.No.58334/AP.1(1)/2001 dated 22/6/2001 passed by the second respondent and G.O.2D.No.407 Home (Police.V) Department dated 10/12/2003 passed by the first respondent and quash the same.

For petitioner ... Mr.S.Ilamvaludhi
For respondents ... Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

ORDER

This writ petition is filed seeking to call for the records connected with the proceedings issued in Tha.Pi.26/Tha.Pi.1(Va)/98 PO Ma, order No.215/98, dated Nil.07.1998, passed by the fourth respondent and Na.Ka.No.16/Me.Mu/Tha.Pi.Po.Va(Va)/2999, dated 28/12/2000, passed by the third respondent and C.No.58334/AP.1(1)/2001, dated 22/6/2001 passed by the second respondent and G.O.2D.No.407 Home (Police.V) Department, dated 10/12/2003 passed by the first respondent and quash the same.



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2. The facts in brief as per the records are as follows:-

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The petitioner was appointed as Police Constable on 25/5/1988 and was promoted as Head Constable on 26/6/2006. While he was working as Police Constable at G 3 Kilpauk Traffic Investigation, a charge memo has been issued to him under Rule 3 (b) of the Police Subordinate Service Rules for unauthorized absence. Later, an Enquiry Officer was appointed and after conducting enquiry, Enquiry Officer has issued Proceeding dated Nil 7, 1998 finding him guilty of charges and finally, Deputy Commissioner of Police, Traffic (North) has issued a Proceeding dated Nil.7, 1998, imposing a punishment of reduction by three stages with cumulative effect.

3. The petitioner has preferred an appeal before the Commissioner of Police, Chennai and the same was dismissed, on 28/12/2000. He has also preferred another appeal before the Deputy Commissioner of Police that was also rejected on 26/12/2001. He has filed Review Petition before the Government and the same was rejected vide G.O.Ms.2D.No.407, Home (Police.V) Department dated 10/12/2003. Aggrieved by the same, present writ petition is filed.



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4. The Deputy Commissioner of Police, Traffic North, Chennai, has filed a counter affidavit on behalf of all the respondents, wherein it is stated that the petitioner has never responded to the enquiry, thereby, the Enquiry Officer has concluded the enquiry, basing on the documentary evidence by holding that the petitioner was guilty of the charges. The Disciplinary Authority/Deputy Commissioner of Police (Traffic) has awarded punishment of rejection in pay by three stages for three years with cumulative effect. It is also mentioned that enquiry was conducted in a fair manner, basing on the materials available. The petitioner was found guilty, thereby, punishment imposed is proper and not disproportionate.

5. Heard Mr.S.Ilamvaludhi, learned counsel for the petitioner and Mr.Vadivelu Deenadayalan, learned Additional Government Pleader for the respondents.

6. It is submitted by the learned counsel for the petitioner that his absence was not intentional and on account of his ill health and family circumstances, he could not attend his duty at Thiruvannamalai Deepam



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Bantho bust for about 21 days from 7/12/1997. The petitioner has appeared before the Deputy Commissioner of Police on 27/1/1998 and he was permitted to join duty on 29/1/1998. The Enquiry Officer without examining any witnesses, basing on the records, passed the orders and ultimately, he was punished disproportionately. He submitted further that as per the Commissioner of Police, in R.O.C.No.567/209366/PR-I(4)/90 dated 5/12/1990, the deserters, who rejoins the duty, the charge should be framed under Rule 3 (a) and not under Rule 3 (b) and even if charge has been framed under 3 (b), the punishment has to be imposed under 3 (a), thereby, the punishment imposed on him under 3 (b) is erroneous.

8. Perused the materials available on record. Heard both sides.

9. Though the petitioner has raised certain issues in respect of the manner in which the enquiry was conducted in holding that enquiry is not proper, during the course of submissions, counsel for the petitioner has fairly conceded that the petitioner is not pressing the ground in respect of the manner in which enquiry was conducted.



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10. The main submission of the learned counsel for the petitioner is that the punishment imposed against the petitioner reducing to three stages for three years with cumulative effect is highly disproportionate and very harsh.

11. In the Circular dated 5/12/1990 of the Commissioner of Police, it is stated that all the deserters who have been reinstated into service should be punished only under Rule 3 (a) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, for 'unauthorised absence from duty' and even if any punishment has been imposed under Rule 3 (b) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955, the disciplinary authorities are instructed to impose minor penalties applicable to 3 (a) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules.

12. In the case on hand, the petitioner who was declared as deserter has reported back to the Deputy Superintendent of Police after twenty one days, i.e., before the expiry of sixty days, thereby, as per the Circular of the Director General of Police, the petitioner was reinstated into



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service. Enquiry was conducted in respect of his unauthorised absence, wherein the petitioner was found guilty. As already observed in respect of conducting of enquiry and finding, the petitioner's guilty is concerned, the petitioner is not raising any dispute. In respect of punishment that was inflicted, according to the petitioner, it is highly disproportionate and is in violation of Circular of Deputy General of Police of City Police dated 5/12/1990.

13. According to the petitioner, he was suffering from ill health, thereby, he could not attend the duty at Tiruvannamalai Deepam bando bust and subsequently, appeared before the higher Police Officers and explained the respondents for his absence and thereby, after accepting his explanation, he was permitted to join the duty. Though the petitioner has not challenged the way the enquiry was conducted, it is an admitted fact that Enquiry Officer has not examined any witness. If at all the petitioner has not been co-operating to the enquiry, the Enquiry Officer was expected to examine the Department witnesses and mark the documents prior to giving a finding that the petitioner is guilty of the mis conduct. However, no such exercise was done by the Enquiry Officer. Further, the petitioner was absent for about twenty one days for which the



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punishment imposed by the respondent Department is disproportionate and is on the higher side.

14. Added to it, as rightly submitted by the learned counsel for the petitioner, a Circular Memorandum of the Commissioner of Police dated 5/12/1990, directing the Police personnel to frame the charges under Rule 3 (a) only while initiating disciplinary proceedings in respect of deserters on the ground of unauthorized absence. It is also further stated that even if the charges framed under Rule 3 (b), punishment issued has to be inflicted under Rule 3 (a).

15. Rule 3 (a) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, runs as under:-

“In every case where it is proposed to impose on a member of a Service any other penalties mentioned in clauses (a) (b) © (e) and (f) of Rule 2, he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any shall be taken into consideration



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before order imposing the penalty is passed.”

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16. Considering the fact that punishment imposed is disproportionate to the alleged mis conduct and that violation of Circular issued by the Commissioner of Police, this Court is inclined to modify the punishment imposed on the petitioner, as per Rule 3 (a) of the Rules.

17. In view of the above, writ petition is partly allowed and impugned proceeding passed by the Deputy Commissioner of Police, Traffic (North) dated Nil.7.1998, are modified to the extent that reduction by three stages for three years without cumulative effect instead of reduction by three stages for three years with cumulative effect. No costs.

12/3/2024

mvs.

Index: Yes/No

NCC: Yes/No

Dr.D.NAGARJUN,J
mvs.

To



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