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W.P.No.22024 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

WP.No.22024 of 2018

Humayun Khan

... Petitioner

Vs.

The Union of India
Southern Railways,
Represented by its DIG-cum-
Chief Security Commissioner,
RPF/MAS, Chennai – 600 003.

... Respondent

Writ petition is filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus to call for the records relating to the proceedings No.X/P.227/1731 Chennai dated 16.05.2018 on the file of the respondent herein and to quash the same and to direct respondent to reinstate the petitioner in service as constable with all service monetary benefits, within a time frame as may be fixed by this Court.

For Petitioner : Ms.R.Santhana Ishwarya

For respondent : Mr.M.T.Arunan, ACGSC.



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ORDER

This writ petition has been filed against the proceedings issued by the respondent in proceedings No.X/P.227/1731 Chennai dated 16.05.2018 and for consequential direction to reinstate the petitioner in service as constable with all monetary benefits.

2. Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondent.

3. The case of the petitioner is that he was appointed as constable with the respondent on 25.09.1984. He was suffering from mental disorder and was not able to continue his work. Due to continuous absence he was placed under sick list from 26.10.1994 by the respondent. Subsequently, he was discharged from service for non attendance from 27.10.1994 vide order dated 26.10.1994 and 11.11.1994 respectively, for the unauthorised absence of the petitioner for duty from 27.10.1994. The respondent had framed charges against the petitioner under Rule 153 of RPF Rules 1987 on 06.01.1995. An enquiry officer was appointed, the said enquiry officer had conducted enquiry and submitted his report together with findings to the



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respondent on 25.02.1995 holding that the charges to be beyond doubt. The report of the enquiry officer dated 25.02.1995 was served to the mother of the petitioner on 04.03.1995, during that period the petitioner was in continuous mental sickness and was not aware of the proceedings. Based on the enquiry report, the respondent by an order dated 20.04.1995 imposed penalty of removal from service for unauthorised absence for long period. The said order was also served to the mother of the petitioner on 03.05.1995. The petitioner was taking treatment for more than 20 years for his illness, now his mental condition is stable, but the health condition is pathetic, due to his mental sickness he was unable to take any action against the order of removal from service.

4. The petitioner submitted a mercy petition on 26.12.2017 and 08.01.2018 to the respondent, the same was rejected by an order dated 16.05.2018. Aggrieved against the said order, the present writ petition is filed.

5. The learned counsel contends that due to mental illness, he could not attend duty from 26.10.1994. The enquiry officer conducted an exparte



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enquiry. The report of the enquiry officer dated 25.02.1995 and the order of imposing punishment of removal from service dated 20.04.1995 was served to the mother of the petitioner. The learned counsel submits that as the respondent having observed that the petitioner was not served with an enquiry report and conducted an exparte enquiry, ought to have considered that the petitioner was in service from 25.09.1984. As the enquiry was conducted exparte, still the benefits were not disbursed to the petitioner. The respondent should have considered the appeal filed by the petitioner sympathetically. The learned counsel for the petitioner further submits the respondent having accepted to entertain the petition as an appeal should have offered an opportunity of personal hearing.

6. On the other hand, the learned standing counsel for the respondent contends that the petitioner who was working as Constable was placed under sick list from 26.10.1994 and was subsequently discharged from service for non attendance from 27.10.1994. The petitioner was unauthorisedly absent for duty from 27.10.1994 onwards, without obtaining prior permission from the superior officer.



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7. The learned standing counsel further submits that after framing of charges against the petitioner on 06.01.1995 under Rule 153 of RPF Rules 1987, the respondent appointed an enquiry officer to conduct enquiry. The enquiry was conducted exparte by holding three sittings and examining 2 PWs and 31 exhibits on prosecution side and submitted his report on 25.02.1995 holding the charges proved beyond doubt. The enquiry report was served to the mother of the petitioner on 04.03.1995, since the period of absence was more than 5 months and the petitioner/constable was still continuing his unauthorised absence. The competent authority passed the order of punishment for removal from service.

8. The learned standing counsel further submits that after a lapse of 22years, the petitioner submitted his representation dated 26.12.2017 and 08.01.2018 and the same has been received on 13.03.2018. The respondent treating it as an appeal and after examining the connected records rejected the representation of the petitioner holding that he did not find any valid ground to entertain the appeal and the appeal is found to be heavily time barred. Under these situation, the learned standing counsel sought to dismiss the writ petition.



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9. Having heard the submissions of the learned counsel and upon careful perusal of the entire materials available on record, it is an admitted fact that the petitioner was unauthorisedly absent for duty from 26.10.1994. He was placed under sick list from 26.10.1994 and he was discharged from service from 27.10.1994 and 11.11.1994 by the respondent. After conducting enquiry, based on the enquiry report, the respondent passed an order dated 20.04.1995 imposing punishment of removal from service.

10. It appears from records that all efforts have been made by the enquiry officer to enable the appellant to attend the enquiry, notices to attend enquiry was served to the mother of the petitioner in his absence and she acknowledged the same. Enquiry report was also served to the mother of the petitioner under acknowledgement and also pasted at the door of his residence.

11. The petitioner personally received the punishment order on 03.05.1995. The petitioner submitted his representation after 23 years to the respondent treating it as a mercy petition. However, the respondent has



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considered the representation as an appeal and rejected the same, observing that the petitioner has not enclosed any medical certificate in support of his claim and after 23years of long period of his removal and that too with the mental problem, he claims to have suffered, the competent authority rejected the appeal.

12. It is an undisputed fact though the petitioner personally received the punishment order dated 20.04.1995 on 03.05.1995 and he did not preferred any appeal in time or approached the competent authority in this regard.

13. As the petitioner himself admitted that he suffering with mental illness and he is unauthorisedly absent for duty from 26.10.1994 and submitted his representation only on 26.12.2017, after 23years of imposing punishment, in our considered view, the petitioner is not entitled for the relief sought for in this writ petition, as he failed to make out any case warranting interference of this Court.

14. Accordingly, this writ petition is dismissed.



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15. There shall be no order as to costs.

15.02.2024

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Index : Yes/No

Neutral Citation : Yes/No

To

The Union of India

Southern Railways,

Represented by its DIG-cum-

Chief Security Commissioner,

RPF/MAS, Chennai – 600 003.

BATTU DEVANAND, J.

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