



W.A(MD).No.1091 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 25.09.2024

CORAM

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**W.A.(MD)No.1091 of 2018
and
C.M.P(MD)Nos.7811 of 2018 & 9494 of 2019**

- 1.The Additional Director General of Police,
South Zone, CRPF,
Chandrayangutta,
Hyderabad - 05 (AP).
- 2.The Inspector General of Police,
CRPF, Southern Sector,
Road No.10-C, Jubilee Hills,
Near MLA/MPs Colony,
Hyderabad - 33.
- 3.The Deputy Inspector General of Police,
Range HQRS,
C.R.P.F., Avadi,
Chennai - 600 065.



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4.The Commandant,

28 BN, CRPF, 56 APO.

... Appellants/Respondents

Vs.

N.Pandi

...Respondent/Writ Petitioner

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent against the order passed in W.P.(MD)No.7033 of 2013, dated 24.03.2017.

For Appellants : Mr.D.Saravanan

For Respondent : Mr.M.Saravankumar,

for Mr.K.K.Samy

JUDGMENT

The respondents in W.P(MD)No.7033 of 2013 have filed the present Writ Appeal aggrieved by the order of the learned Single Judge dated 24.03.2017, by which order, the learned Single Judge had allowed the writ petition. The learned Single Judge had also issued the following directions:

“12.In the result:

(a) this writ petition is allowed and the order



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passed by the 1st respondent in proceedings No.R.XIII-31/2012-SZ-Legal dated 06.02.2013 confirming the order of the 2nd Respondent in his proceedings No.R.XIII.34/12-ADM-7 dated 16.08.2012 confirming the order of the 3rd Respondent in his proceedings No.R.XIII-7/2012-ESTT-III dated 04.04.2012 against the dismissal order passed by the 4th Respondent in his proceedings No.P-VIII-09/11-28-EC.II dated 05.11.2011, are quashed;

(b) the respondents are hereby directed to reinstate the petitioner with all service and monetary benefits to the petitioner;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.”

2.The writ petition had been filed in the nature of Certiorarified Mandamus seeking records relating to an order passed by the first respondent in the writ petition, Additional Director General of Police, South Zone, CRPF, Hyderabad, in Proceedings, dated 06.02.2013 by which proceedings, the first respondent confirmed an earlier order of the second respondent, Inspector General, CRPF Southern Sector,



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Hyderabad, in proceedings, dated 16.08.2012, which was, in fact, a confirmation of an earlier order of the third respondent, Deputy Inspector General of Police, Range Head Quarters, CRPF, Avadi, Chennai in proceedings dated 04.04.2012, which was passed confirming the order of dismissal passed by the fourth respondent, The Commandant, 28th Battalion, CRPF, 56 APO, dated 05.11.2011 to the disadvantage of the writ petitioner, N.Pandi, and to quash all the aforementioned proceedings/orders and direct the respondents in the writ petition to reinstate the writ petitioner with back-wages and all attendant benefits along with continuity of service.

3. The brief facts of the case are that the writ petitioner was selected by the Deputy Inspector General of Police, Range Head Quarters, CRPF at Avadi as a Water Carrier and joined service in CRPF on 02.06.2003. He was granted permanency in his work. It is stated that he worked in that capacity till 2005 and thereafter, in 2007 was transferred to Manipur. It is stated that various allegations were raised against him. He was unable to attend duty owing to the death of his child soon after birth. On 07.03.2011, when he was working at 28th Battalion,



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CRPF in 56 APO, he went to withdraw money from ATM and according to him, he was taken away by various miscreants but escaped from illegal custody and reached his native place. The fourth respondent had sent a telegram to his wife claiming that he was under unauthorised absence and further claiming that he had misappropriated amounts by withdrawing money using the ATM card of his colleagues. In this connection, a charge memo had been issued on 26.08.2011 and an Enquiry Officer was also appointed.

4. The main grievance of the petitioner was that necessary and proper opportunity was not granted and that the disciplinary proceedings were conducted in English and the documents were in Hindi and he contended that both the languages were alien to him. He was not fully conversant with Hindi and could not understand the nature of the proceedings. However, though he had raised these objections, the disciplinary proceedings continued, leading to the passing of the order by the fourth respondent, the Commandant, 28th Battalion, CRPF, dismissing him from service. Successive appeals to the third, second and the first respondent ended in failure. All the said officials confirmed the order of



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dismissal. Having no other option, the writ petitioner had filed the said writ petition.

5. It was contended on behalf of the appellants herein that the writ petitioner had admitted to the charges to the disciplinary proceedings.

6. The learned Single Judge, however, stated that for the charge of unauthorised absence from duty, punishment of dismissal from service was not proportionate and further found that there was no proof of taking money from the accounts of other CRPF Personnel.

7. The learned Single Judge had, therefore, interfered with all the orders passed against the writ petitioner and had directed that he must be brought into regular service and must be reinstated with all service and monetary benefits.

8. The learned counsel for the writ appellants, however, pointed out that the writ petitioner had admitted to the charges and



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therefore, the order of reinstatement with backwages, seriously prejudicial to the interest of the appellants herein.

9. It is contended by the learned counsel that CRPF is a uniformed service and the Personnel who join such service are expected to maintain utmost discipline and should not cross the red line and commit any act which would invite charges being framed and disciplinary proceedings being initiated. He pointed out that the writ petitioner was absent for a continuous period of time and could therefore be termed as deserted from the force. He also stated that the statements recorded him of withdrawing the money from using the ATM cards of his colleagues.

10. The learned counsel for the first respondent / writ petitioner, however, disputed all these statements and stated that the writ petitioner was employed only as a Water Carrier and pointed out the reason for absence, namely, the death of his child immediately after birth, for which reason, he had come back to his native place.



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11. We have carefully examined the arguments advanced.

12. The following facts have to be given due consideration :

(i) the writ petitioner/first respondent had been appointed only as a Water Carrier;

(ii) the primary reason for him going to his native place was the death of his young child immediately after the birth of the child; and

(iii) the work pressure, when he had been transferred to Manipur, we are of the opinion that the learned Single Judge had correctly opined that for the charge of desertion, the punishment of dismissal from service is disproportionate to the charge. Further, with respect to misappropriation of the amounts by using the ATM card, it is the case of the appellant that the writ petitioner had withdrawn a sum of Rs.31,500/- (Rupees Thirty One Thousand and Five Hundred only) and Rs.1,000/- (Rupees One Thousand only) respectively from the accounts of one G.Nagarajan and Sylendara Dass. The learned Single Judge had also considered the statement made on behalf of the writ petitioner that the amounts had been repaid.



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13. The fact that the amounts had been repaid, had been placed reliance by the learned counsel for the appellants stating that this would also establish that he had actually withdrawn the money. Withdrawal of the money without knowledge and withdrawal of money by consent of the account holders are two separate issues. The fact that he had repaid the money would bring to nought the particular allegation of misappropriation as even if taken, the money had been repaid which would reflect the *bonafide* of the writ petitioner.

14. Taking into consideration all factors into consideration, particularly, that the order of dismissal from service is disproportionate to the primary charge of desertion and also because the documents and disciplinary proceedings were in a language unknown to the petitioner, we would set aside the order of dismissal and confirm the order of the learned Single Judge.

15. However, with respect to back wages, we would restrict grant of back wages to 1/4th of the amount, without affecting continuity



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of service. The period which, he had not actually served, should be counted as being in service and he must be paid 1/4th back wages. Continuity of service must be considered for the purpose of pension and other retirement benefits and for fixation of pay and other allowances.

16. The necessary re-working of the salary must be made by the appellants/respondents. The same directions as issued by the learned Single Judge that reinstatement should be done within a period of eight (8) weeks from the date of copy of this order is also reiterated by us.

17. With the above observations and directions, the Writ Appeal is partly allowed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

18. It is also informed by the learned counsel for the appellant that Mr.Narveer Singh, fourth respondent, the Commandant, 28th Battalion, CRPF, is now posted in Kashmir and had come down to Madurai to give necessary instructions and had also brought all the original files relating to the disciplinary proceedings.



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19. We place our deep appreciation to Mr.Narveer Singh, Commandant, 26th Battalion, CRPF, 56 APO, for paying due respect to the procedures of the Court by coming down to Madurai to give instructions to the learned counsel for the appellants and also in handing over the original files.

(C.V.K., J.) (R.P., J.)
25.09.2024

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AND
R.POORNIMA, J.

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