



W.P.(MD)No.4602 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2025

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THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.4602 of 2019

Nagarajan

... Petitioner

Vs.

1.The Director General of Police,
Chennai Fort, Tamil Nadu.

2.The Superintendent of Police,
Virudhunagar & District.

3.The Deputy Superintendent of Police,
Sivakasi Sub Division,
Virudhunagar District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the confirming order of the first respondent in R.C. No.091092/AP.2(3)/2018 dated 22.08.2018 from the order of the second respondent dated 24.07.2015 in P.R.No.27/2014 and quash the same and direct the second respondent to conduct the fresh enquiry and pass the order based on the fresh enquiry.

For Petitioner : Mr.S.Balaji

For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader.



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ORDER

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This writ petition has been filed seeking orders to quash the order of the first respondent in R.C.No.091092/AP.2(3)/2018 dated 22.08.2018 from the order of the second respondent dated 24.07.2015 in P.R.No. 27/2014 and to direct the second respondent to conduct the fresh enquiry and pass the order based on the fresh enquiry.

2.It is stated in the affidavit that the petitioner was charged by the second respondent for his continuous absent for 21 days from 18.09.2013 afternoon onwards. The second respondent instructed the petitioner to appear before him. But the petitioner was not turned up before him. Thereafter, the second respondent ordered the third respondent to conduct enquiry. The third respondent, without issuing any notice, conducted oral enquiry and submitted a report in P.R.No.27/2014 dated 24.07.2015 to the second respondent. Thereafter, the second respondent has passed an order of removal from service with effect from 26.08.2015. The petitioner preferred an appeal before the first respondent dated 01.02.2018 and 15.02.2018 and the same was treated as mercy petition. The first respondent had passed an order vide proceeding in R.C. No. 091092/AP.2(3)/2018 dated 22.08.2018 by modifying the order



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passed by the second respondent that of compulsory retirement from the date of original order. Hence, the writ petition.

3.The learned counsel appearing on behalf of the petitioner would submit that the third respondent had conducted oral enquiry without the presence of the petitioner, which is not in accordance with law and therefore, the petitioner is entitled to participate in the departmental proceedings. He would further submit that there is a clear violation of natural justice and therefore, this Court may direct the second respondent to conduct fresh enquiry by allowing this writ petition.

4.The learned Special Government Pleader appearing for the respondents would submit that the petitioner has not submitted his explanation to the Enquiry Officer as well as the Disciplinary Authority. The petitioner has not utilised the chances given to him to submit his explanation. The petitioner did not preferred any appeal against the punishment imposed on him. The first respondent considered the representation submitted by the petitioner as mercy petition and modified the order of the second respondent as compulsory retirement from the date of original order. The first respondent had carefully gone through



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the Pros and Cons of the disciplinary departmental action initiated against the petitioner and hence, he prayed dismissal of the present petition.

5.Heard the learned counsel on either side and perused the materials on record.

6.It is seen from the records that the petitioner was appointed as Tamil Nadu Special Police in 14th Battalion at Palani on 28.02.2009 and thereafter, the petitioner was transferred to Virudhunagar District, Armed Reserve Force on 17.09.2013. The petitioner attended duty on 17.09.2013 at Armed Reserve Police, Virudhunagar. On the next day, ie., 18.09.2013 afternoon he has to report for duty, but the petitioner did not report for duty. The duty Sub Inspector of Police had sent a report on 24.09.2013 to the Superintendent of Police, Virudhunagar District, stating that the petitioner was absent from 18.09.2013 afternoon till 24.09.2013. Again the Duty Sub Inspector of Police had sent a report stating that the petitioner was absent continuously for 60 days till 08.10.2013. The Superintendent of Police, Virudhunagar District vide his letter dated 09.10.2013 has sent Deserter orders to the petitioner to appear before him. The petitioner had received the same on 11.10.2013,



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however, he did not turn up and did not offer his explanation. The desertion period of 21 days ended on 16.11.2013 and the second respondent passed the confirmation of desertion order and the same was received by the petitioner on 02.01.2014.

7.It is also seen from the records that the Superintendent of Police, Virudhunagar District issued a charge memo on 07.03.2014 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 to the petitioner and the petitioner received the above said charge memo on 16.03.2014. On 05.05.2014, the Superintendent of Police ordered the Assistant Superintendent of Police, Sivakasi to conduct an enquiry. The Assistant Superintendent of Police sent a message to the petitioner through the Inspector of Police, Armed Reserve asking him to attend the enquiry on 30.06.2014. The petitioner received the above said notice on 27.06.2014. But he did not appear for the oral enquiry on 30.06.2014. Again, a memo was sent to him to attend the enquiry on 04.07.2014 and he did not appear. Hence, the Enquiry Officer concluded the enquiry on ex-parte. The petitioner did not submit his further written representation on the basis of the report of the Enquiry Officer. The then Superintendent of Police, Virudhunagar District has passed an order dated 24.07.2015 removing the petitioner from service.



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The petitioner was also informed that he can prefer an appeal to the Deputy Inspector General of Police, Madurai Range, within 30 days.

The petitioner received the said order on 26.08.2015. But he has not preferred any appeal against the punishment to the appellate authority.

The Deputy Inspector General of Police has reviewed the disposal of disciplinary proceedings on *suo moto* and confirmed the punishment awarded by the Superintendent of Police, Virudhunagar District. The petitioner submitted the mercy petition only on 19.02.2018 to the Director General of Police, Tamil Nadu stating his family situation and requested to show mercy on him. The Director General of Police, Tamil Nadu passed orders dated 22.08.2018 and modified the punishment that of compulsory retirement from the date of original order.

8.It is pertinent to mention that in the representation submitted by the petitioner dated 01.02.2018 addressed to the Deputy Inspector General of Police, Madurai Range, it has been stated that he has been absented from 18.09.2013 and also not appeared for enquiry proceedings. Similarly, in the representation submitted by the petitioner dated 15.02.2018 addressed to the Deputy Inspector General, it has been stated that he has not participated in the departmental proceedings. From the above representations, it is revealed that the petitioner himself not



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utilised the opportunities given by the respondents 2 and 3. It is clear that the petitioner has not utilised the chances to submit his explanation, inspite of several opportunities were given to him.

9.It is also pertinent to mention that the members of the Police force are entrusted with an important responsibility of upholding the rule of law, maintenance of public order, prevention and detection of crime, etc,. Such a responsibility expects unstinted loyalty in reporting duty truthfully. The contention of the petitioner that sufficient opportunities were not provided to him is not acceptable one and there is no reason to interfere with the orders passed by the respondents 1 and 2 and there is no necessity warranted to order fresh enquiry. There is no merit in the writ petition and the same is liable to be dismissed.

10.In the result, this writ petition is dismissed. No costs.

NCC : Yes / No
Index : Yes / No
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M.JOTHIRAMAN, J.

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