



WEB COPY

WP No. 23750 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29-01-2026

PRONOUNCED ON : 11-02-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

WP No. 23750 of 2025

P.Irisan

.. Petitioner

Vs.

1. Union of India
Represented by the Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.
2. The Inspector General of Police,
Puducherry Police Department,
Puducherry.
3. The Senior Superintendent of Police (C&D),
Puducherry Police Department,
Puducherry.

..Respondent(s)



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This Writ Petition filed under Article 226 of the Constitution of India, in the nature of Writ of Certiorarified Mandamus, calling for the records relating to call for the records in order dated 28.01.2025 in O.A.No.1905 of 2016 passed by the Central Administrative Tribunal, Chennai Bench and to quash the same and to allow O.A.No.1905 of 2016.

For Petitioner(s): Ms.Y.Kavitha
For M/s.P.V.S.Giridhar & Associates

For Respondent(s): Mr.A.Poornachandran, CGC for R1
Mr.R.Syed Mustafa
Spl. Govt. Pleader for R2 & R3

ORDER

(Order of the Court was made by C.V.Karthikeyan J.)

The petitioner in O.A. No. 1905 of 2016 before the Central Administrative Tribunal, Chennai, has filed this Writ Petition aggrieved by the Order dated 28.01.2025, by which order the Original Application filed by the petitioner was dismissed.

2. The petitioner had filed the Original Application challenging the order dismissing him from service and sought reinstatement.



3. The petitioner had been appointed as Police Constable on 28.08.1987.

He claimed to have applied for medical leave on and from 01.03.2013 for a period of twenty five days. However, he was issued with a charge memo on 08.03.2013 alleging absence from duty and directing reasons to be given. The memo had been affixed at his residence. He was served with another memo on 16.03.2013. A third memo was affixed at his residence on 24.03.2013. He returned to duty on 26.03.2013, but was not permitted to join duty. He continued to remain in absence. He was then declared to be a deserter by order dated 15.04.2013.

4. A charge memo dated 09.07.2013 was then served on the petitioner. He submitted his reply. An Inquiry Officer was appointed. He claimed that he attended the inquiry, but no witnesses were examined. He was also not able to examine any witness on his side. An Inquiry Report dated 11.05.2015 was then served on him. The charges of unauthorised absence was held established. He gave a reply questioning the finding. He was then issued with a show cause notice, indicating that major punishment to dismiss him from service was contemplated. He replied to the show cause notice. However, by order dated 07.03.2016, he was dismissed from service. He preferred an appeal, but that was rejected. Claiming that the inquiry was conducted without following the principles of natural justice and that the punishment imposed was

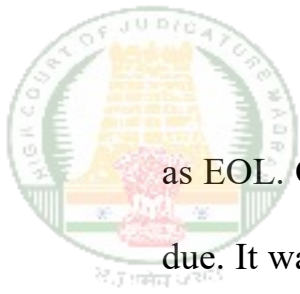


disproportionate to the charges alleged, he filed the Original Application before the Tribunal, which was dismissed by order dated 28.01.2025, necessitating filing of the Writ Petition.

5. Heard arguments.

6. It was contended by Ms. Y. Kavitha, learned counsel for the petitioner that the opportunity was not granted to the petitioner during the inquiry. The learned Counsel argued that the inquiry officer proceeded to accept the documentary evidence. The witnesses were not permitted to be cross examined. The learned counsel further argued that the petitioner was not given the opportunity to examine any witness on his side to explain the reason for his absence. It was further pointed out that the punishment imposed was disproportionate to the charges, which did not deserve the extreme punishment of dismissal from service. The learned counsel strongly argued that the writ petition should be allowed and the petitioner must be reinstated in service.

7. Mr. Syed Mustafa, learned Special Government Pleader for the Union Territory of Puducherry however disputed the said contentions. He pointed out that this was not a story incident of absence from duty. There were three earlier occasions when the petitioner absented himself from duty. He was imposed with punishment on the first occasion. On the second occasion, the leave was treated



as EOL. On the third occasion, the desertion period was treated as leave of kind due. It was contended that the order of dismissal was passed after following due procedure and after reviewing the past conduct of the petitioner. The allegation that principles of natural justice were not followed were denied. The learned Special Government Pleader strongly urged that the writ petition should be dismissed.

8. We have carefully considered the arguments advanced and perused the material records.

9. The writ petitioner was a police constable. He had joined duty on 28.08.1987. It is alleged that he was treated as a deserter on three earlier occasions. The first was by order dated 06.03.2003 when he was imposed with punishment of withholding of three increments with cumulative period and the period of absence was treated as 'not spent on duty'. The second was by order dated 08.11.2006 and the period of absence was treated as 'EOL'. The third was by order dated 22.10.2009 and the period of absence was treated as 'leave of kind due'.

10. The petitioner again went on leave from 01.03.2013 owing to medical grounds. He claimed that he had applied for medical leave from 01.03.2013. However, he was visited with three memos seeking explanation. Finally, a



charge memo dated 09.07.2013 was issued against him alleging unauthorised absence. He submitted a reply on 19.08.2013. Not satisfied with the explanation given, inquiry was ordered. He participated in the inquiry. The main thrust of the arguments of the learned counsel for the petitioner was that the principles of natural justice were violated during inquiry. It was alleged that the petitioner was not afforded opportunity to cross examine the witnesses or to produce witnesses on his side.

11. A perusal of the inquiry report reveals that the inquiry officer examined 5 witnesses and marked 12 documents. None of the witnesses had been cross-examined. It had been stated in the inquiry report that the petitioner had no questions to ask. It is however the contention of the petitioner in his reply dated 25.07.2015 to the inquiry report, that none of the witnesses deposed oral evidence. They submitted their written submissions. He further alleged copies of the depositions were not furnished to him. He specifically alleged that he was denied opportunity to cross examine the witnesses. He further alleged that he was denied opportunity to examine his wife as his witness to establish his stand that he had applied for medical leave.

12. In *Khem Chand vs Union of India*, reported in *AIR1958 SC 300 : 1957 SCC OnLine 6*, a Constitution Bench of the Supreme Court had laid down the principles governing 'reasonable opportunity' during inquiry proceedings.



13. It had been held, considering the mandate of Article 311 (2) of the Constitution as follows :

“Likewise clause (2) protects government servants against being dismissed, or removed or reduced in rank without being given a reasonable opportunity to show cause against the action proposed to be taken in regard to them.”

14. In para 19, the concept of ‘reasonable opportunity’ had been explained as follows :

“19. To summarise : the reasonable opportunity envisaged by the provision under consideration includes—

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.”

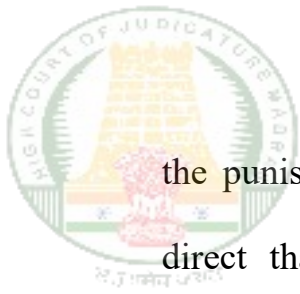


15. In the instant case, in the inquiry report it had been specifically stated that he was offered the assistance of defence, but had declined to avail the same, was asked whether he had questions to put to the witnesses but that he had no questions to ask. He then filed his statement of defence. In these circumstances, we do not uphold the contention that reasonable opportunity was not granted to the petitioner.

16. The learned counsel for the petitioner however made a fervent plea to consider the proportionality of the punishment imposed.

17. In this connection, reference could be made to *Sri Bhagawan Lal Arya vs Commissioner of Police, Delhi and others*, reported in *2004 (4) SCC 560*, wherein, relying on the principle laid down in *B.C. Chaturvedi vs Union of India and others*, reported in *(1995) 6 SCC 749*, the punishment of dismissal from service for absence on medical grounds had been interfered with.

18. While examining the facts of this case, we find that it has been the consistent case of the appellant that he had forwarded a leave application with medical records on 01.03.2013, the date from which he has been considered to have deserted his service. That application had not seen the light of the day. There is thus, at least one fact left unexplained and undetermined. We would therefore, after careful reappraisal of the facts and circumstances interfere with



the punishment imposed of dismissal from service and modify the same and direct that the petitioner be compulsorily retired from service. Necessary benefits in this regard to be settled within a period of two months from this date.

19. The Writ Petition is disposed of accordingly. No order as to costs.

(C.V.K.,J.) (K.B.,J.)
11-02-2026

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No



To

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Ministry of Home Affairs,
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2. The Inspector General of Police,
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**C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.**

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