

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 6262 of 2012 (G)

PETITIONER:

VIJAYAN.K, S/O. GOPALAKRISHNAN,
AGED 34 YEARS, EX-CONSTABLE OF
CENTRAL INDUSTRIAL SECURITY FORCE UNIT,
THUMBA, RESIDING AT KALATHIL HOUSE,
THIRUVAZHIYODE-POST, PALAKKAD,
KERALA, PIN - 679514.

BY ADV. SRI.BABY MATHEW

RESPONDENT(S):

1. UNION OF INDIA,
REPRESENTED BY SECRETARY,
MINISTRY OF HOME AFFAIRS, NEW DELHI-110001.
2. THE COMMANDANT,
CENTRAL INDUSTRIAL SECURITY FORCE UNIT,
VIKRAM SARABHAI SATALITE CENTRE,
THUMBA-695022.
3. DEPUTY INSPECTOR GENERAL,
CISF, DOS HQRS, ANTARIKSH BHAVAN,
NEW BEL ROAD, BANGALORE-560001.
4. INSPECTOR GENERAL,
CENTRAL INDUSTRIAL SECURITY FORCE,
CISF, SS HQRS, CHENNAI-600001.

*ADDL.R5 IMPEADED

5. THE DIRECTOR GENERAL,
CENTRAL INDUSTRIAL SECURITY FORCE, NEW DELHI.

ADDL. R5 IS SUO MOTU IMPEADED AS PER JUDGMENT
DATED 11.02.2015.

BY SRI.T.SANJAY, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

mbr/

APPENDIX

PETITIONER(S) EXHIBITS:

- EXHIBIT P1: TRUE COPY OF THE MEDICAL TREATMENT.
- EXHIBIT P2: TRUE COPY OF THE EXPLANATION OF THE PETITIONER TO THE ARTICLES OF CHARGES DATED 08-07-2010.
- EXHIBIT P3: TRUE COPY OF THE PRESENTING OFFICER'S WRITTEN BRIEF IN THE DEPARTMENT ENQUIRY DATED 16-07-2010.
- EXHIBIT P4: TRUE COPY OF THE ORDER OF COMMANDANT DATED 06-09-2010.
- EXHIBIT P5: TRUE COPY OF THE ABOVE APPEAL DATED 24-09-2010.
- EXHIBIT P6: TRUE COPY OF THE ORDER OF 3RD RESPONDENT DATED 08-11-2010.
- EXHIBIT P7: TRUE COPY OF THE REVISION DATED 14-12-2010.
- EXHIBIT P8: TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED 28-03-2011.

RESPONDENTS' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

W.P.(C)No.6262 of 2012

Dated this the 11th day of February, 2015

JUDGMENT

The petitioner while working as CISF constable was subjected to disciplinary proceedings. Four articles of charges were imputed against him. The petitioner found guilty of all the charges. Consequent upon the finding in the disciplinary proceedings, the petitioner has been removed from the service. It is challenging these orders, the petitioner has approached this Court.

2. The essence of charges laid against the petitioner is essentially related to absence from duty.

3. The learned counsel for the petitioner referred to various testimonies of the witnesses to point out that the petitioner was suffering from schizophrenic, a mental ailment. The learned counsel for the petitioner also

submitted that without reckoning the petitioner's ailment, the finding that the petitioner is guilty of misconduct or indiscipline for the absence and non-reporting and other related issues on account of the absence is unsustainable. It is further submitted that these are the vital aspects omitted by the enquiry officer and also the authority while imposing punishment. The petitioner also submits that he has also produced the materials and medical records to substantiate his claim that he was suffering from schizophrenic. The petitioner submits that he is the sole bread winner and the mother is a chronic patient and sister is deaf and dumb and therefore, removal from the service has to be set aside. The petitioner further submits that in terms of Rule 91(b) of the Central Industrial Security Force Rules (for short, the 'Rules'), he may be permitted to retire on medical disability.

4. The learned Assistant Solicitor General of India opposed the prayer. It is submitted that the petitioner has

given sufficient opportunity to take part in the disciplinary proceedings and the finding has been rendered after adducing evidence. It is also submitted that if the petitioner has a case that he suffered from any mental ailments, he could have raised this reason before the authority to retire from the service or to place in any other medical category for discharge.

5. The fact remains that the petitioner is suffering from mental ailments. This is also discernible from the testimony of the witnesses as recorded. The mental ailments, in fact, affect one's mind and thought. It requires a sympathetic approach to a person. The Scheme of the Mental Health Act, 1987, Part-III related granting leave for the period of illness. It is a progressive legislation to the aid of mentally ill person. However, at the same time, the discipline of the force is also required to be maintained and any indiscipline or misconduct, at any rate, cannot be condoned. I

am of the view, in such circumstances, the best Judge to decide the petitioner's case requires reconsideration or not is the Director General of CISF who is the authority to take such decision in the matter. In view of the matter, the Director General is not a party and the Director General, Central Industrial Security Force, New Delhi is *suo motu* impleaded as additional 5th respondent.

In such circumstances, the petitioner shall make a detailed representation with relevant medical records to substantiate his claim, including the records relating to relevant time. If the petitioner places such a record and make a request within a period of four weeks from the date of receipt of a copy of this judgment, a decision shall be taken within a further period of four months after receipt of such request. If the records shows about any mental illness at that time, I am sure that the Director General, CISF will take a sympathetic view in this matter as the petitioner's request is

only for retirement on medical ground in terms of Rule 91(b) of the Rules, 2001.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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