

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 18522 of 2012 (M)

PETITIONER:

**K.T.RANGANATHAN,
NO.814560019 (MIN) CISF UNIT,
NATIONAL THERMAL POWER CORPORATION (NTPC),
KAYAMKULAM.**

**BY ADVS.SRI.G.SHRIKUMAR (SR.)
SRI.SREEJITH S.NAIR
SRI.K.G.JITHU JAGANNATH**

RESPONDENT(S):

- 1. ASSISTANT COMMANDANT CISF UNIT
NTPC, KAYAMKULAM, PIN-690 502.**
- 2. THE GROUP COMMANDANT,
CIST GROUP, HEADQUARTERS, C-2
KENDRIYA BHAVAN,
POST COCHIN SPECIAL ECONOMIC ZONE (CEZ)
COCHIN-682037.**
- 3. THE UNION OF INDIA,
REPRESENTED BY SECRETARY, MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, NEW DELHI-110001.**

BY ADV. SRI.T.SANJAY, CGC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-02-2015, THE COURT ON 20/03/2015 DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONERS EXHIBITS

- EXHIBIT P1- THE TRUE COPY OF THE FINAL ORDER DATED 08/12/2010 PASSED BY THE DISCIPLINARY AUTHORITY.
- EXHIBIT P2- THE TRUE COPY OF THE COMMUNICATION DATED 20/07/2011 ADDRESSED TO THE PETITIONER FROM THE 2ND RESPONDENT.
- EXHIBIT P3- THE TRUE COPY OF THE EXPLANATION DATED 31/10/2011 OF THE PETITIONER.
- EXHIBIT P4- THE TRUE COPY OF THE MEMO OF CHARGES DATED 04/05/2012.
- EXHIBIT P5- THE TRUE COPY OF THE WRITTEN REPLY DATED 04/06/2012.
- EXHIBIT P6- THE TRUE COPY OF THE ORDER DATED 07/06/2012 OF THE 2ND RESPONDENT.
- EXHIBIT P7- THE TRUE COPY OF THE NOTICE ON 13/06/2012 ISSUED BY THE ENQUIRY OFFICER.

RESPONDENTS EXHIBIT

- EXHIBIT R1(A)- TRUE COPY OF THE COMPLAINT DATED 11/07/2009.
- EXHIBIT R1(B)- TRUE COPY OF THE LETTER DATED 25/01/2010.
- EXHIBIT R1(C)- TRUE COPY OF THE LETTER DATED 04/02/2010.
- EXHIBIT R1(D)- TRUE COPY OF THE LETTER DATED 08/03/2010.
- EXHIBIT R1(E)- TRUE COPY OF THE LETTER DATED 05/07/2011.
- EXHIBIT R1(F)- TRUE COPY OF THE ORDER DATED 20/07/2012.

/TRUE COPY/

P.A.TO JUDGE

vmr.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.18522 of 2012

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Dated this the 20th day of March, 2015

JUDGMENT

The short question to be considered in this writ petition is whether the composite misconduct alleged against the petitioner could be split up into different charges and separate disciplinary proceedings be initiated against him one after the other exposing him to double jeopardy.

2. Disciplinary proceedings were initiated against the petitioner, who is a Sub Inspector in the Central Industrial Security Force (CISF), for purchase of properties without the knowledge of the prescribed authorities. The petitioner alleges that he, who hails from an agricultural family, bought agricultural lands with his own savings and other funds mobilised by him by way of pledge/sale of his wife's jewelery and loans from his house friends and relatives.

3. The disciplinary authority found the petitioner guilty of having violated Rule 18(2) of CCS Conduct Rules, which mandates previous knowledge of prescribed authority in the matter of acquisition of property of employees. The petitioner points out that

having regard to his unblemished service records he was awarded punishment of barring of one increment for a period of one year without cumulative effect. According to him, the misconduct alleged against him was a composite one consisting of mobilisation of funds and acquisition of properties without previous knowledge of the prescribed authority. According to him, by examining 9 defence witnesses, the petitioner disclosed the entire source of income for purchasing the properties and the same was discussed and considered detail in the final order.

4. However to the surprise of the petitioner, the respondents have now initiated yet another Disciplinary enquiry against him by splitting the misconduct which was already enquired into in detail. The petitioner is now being proceeded against under Rule 16(4) of CCS Conduct Rules on the charge that he has taken loan from friends and relatives (which was considered and discussed in detail in the previous enquiry proceedings). Therefore, according to the petitioner, the present action of the respondents in holding denovo enquiry despite culmination and award of punishment in the earlier enquiry would be hit by the doctrine of double jeopardy.

5. In the counter affidavit filed by the respondents, they maintained the stand that the conduct of the petitioner constitutes two separate misconducts wherein two separate disciplinary proceedings were initiated. Therefore, they justified their stand in proceeding against him for the second time for violation of Rule 16(4)(1) of the Rules.

6. I have heard the learned senior counsel for the petitioner and the learned standing counsel for the respondents.

7. According to the learned senior counsel for the petitioner as the alleged misconduct against the petitioner is a composite one consisting of availing of loans from various sources and utilisation of the same for the purchase of properties without prior knowledge of the prescribed authorities, the respondents have gone wrong in holding two separate disciplinary proceedings one after other by splitting up the charges and attempting to punish the petitioner twice for the same offence.

8. The petitioner is charged only for violation of Rules 16(4)(1) and 17 of the CCS Conduct Rules which reads as under:-

"Rule 16(4)(1). No Government servant shall, save in the ordinary course of business with a bank

or a public limited company, either himself or through any member of his family or any other person acting on his behalf.-

(a) lend or borrow or deposit money, as a principal or an agent, to, or from or with, any person or firm or private limited company within the local limits of his authority or with whom he is likely to have official dealings or otherwise place himself under any pecuniary obligation to such person or firm or private limited company; or

(b) lend money to any person at interest or in a manner whereby return in money or in kind is charged or paid:

Provided that a Government servant may give to, or accept from, a relative or a personal friend a purely temporary loan of a small amount free of interest, or operate credit account with a bona fide tradesman or make an advance of pay to his private employee:

Rule 17.- A Government servant shall so manage his private affairs as to avoid habitual indebtedness or insolvency. A Government servant against whom any legal proceeding is instituted for the recovery of any debt due from him or for adjudging him as an insolvent, shall forthwith report the full facts of the legal proceedings to the Government."

9. As rightly pointed out by the learned senior counsel for the petitioner Rule 16(4)(1) of CCS Conduct Rules permits the Government servant to accept from a relative or a person, a purely temporary loan of a small amount free of interest. This is an exception to the rule and nothing prevented the Government servant from taking bigger amounts by way of loan in times of his need. It is the definite case of the petitioner that he has not taken amounts by way of loan from any person from any places where he worked.

10. The respondents have no case that he has taken loans from any person with whom he has official dealings. The loan taken by him were from his close relatives and friends from his native village with whom he has no official dealings at all. According to the respondents, the petitioner is alleged to have taken amounts as loan between the year 2002-2007.

11. By issuing a charge sheet on the basis of the borrowings which had already been paid, the matter has already been settled in previous disciplinary proceedings. Therefore, the respondents have exceeded their authority in issuing a second charge, especially when both the transactions of borrowings as well as purchase of

property without prior valuation, forms part of the same transaction. As per the guidelines issued by the Central vigilance Commission, Government of India, a failure to intimate transactions, if not related to assets disproportionate to non source of income, such failure has to be treated as a technical lapse and should ordinarily attract only a censure/administrative warning.

12. Even assuming that the respondents had a case that the petitioner had violated Rules 16(4) and 17 of the CCS Conduct Rules, they ought to have raised additional charge in the first enquiry and awarded punishment to the petitioner, if found guilty. Under any circumstances, the second charge issued against the petitioner is unwarranted on the facts and circumstances of the case. Therefore, this Court is of the view that the petitioner is entitled to succeed.

In the result, the writ petition is allowed. Ext.P4 is quashed. The respondents are directed to accept Ext.P5 written reply of the petitioner and to drop the disciplinary proceedings against him,

sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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