

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 31132 of 2012 (N)

PETITIONER :

**RAJESH.K.R., AGED 39 YEARS,
S/O. RAMAKRISHNAN, (NO.921403649, CONSTABLE (EX)
CENTRAL INDUSTRIAL SECURITY FORCE, ASG, TRIVANDRUM)
RESIDING AT "RAKESHMA", MELEPPAT, RAMAPURAM
ANGADIPURAM (VIA), MALAPPURAM DISTRICT, PIN-679 321.**

**BY ADVS.SRI.T.C.GOVINDA SWAMY
SRI.G.SHYAM RAJ**

RESPONDENTS :

- 1. SPECIAL DIRECTOR GENERAL
AIRPORT SECTOR, CENTRAL INDUSTRY SECURITY FORCE,
MINISTRY OF HOME AFFAIRS, BLOCK NO.13, CGO COMPLEX
LODHI ROAD, NEW DELHI-110 003.**
- 2. THE DEPUTY INSPECTOR GENERAL
CENTRAL INDUSTRIAL SECURITY FORCE,
MINISTRY OF HOME AFFAIRS, AP SZ HQ, 2ND FLOOR,
D BLOCK, RAJAJI BHAVAN, BESANT NAGAR
CHENNAI-600 090.**
- 3. THE COMMANDANT
CENTRAL INDUSTRIAL SECURITY FORCE,
MINISTRY OF HOME AFFAIRS, CISF UNIT, ASG TRIVANDRUM,
POST VALLAKKADAVU, THIRUVANANTHAPURAM-08.**
- 4. UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS, NEW DELHI-110 001.**

R1 TO R4 BY ADV. SRI.N.NAGARESH,

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30/03/2015, THE COURT ON 26-05-2015 DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S) EXHIBITS

- P1 :** COPY OF BY AN ORDER OF THE 3RD RESPONDENT, THE DISCIPLINARY AUTHORITY BEARING NO.IV-15014/ASG(TVM) DISCIPLINARY AUTHORITY BEARING NO.IV-15014/ASG (TVM) DISC/MAJ/2010/7830 DTD.23.12.2010.
- P2 :** COPY OF THE ORDER OF THE 2ND RESPONDENT, APPELLATE AUTHORITY BEARING NO.V-15019/L&R/AP-SZ/APL-04/2011/1331 DTD.14.3.2011.
- P3 :** COPY OF THE ORDER OF THE 1ST RESPONDENT REVISIONAL AUTHORITY BEARING NO.V-11014/APS/RKR/41/LS/2011/3082 DTD.29/30TH MARCH, 2012.
- P4 :** COPY OF A CHARGE MEMORANDUM NO;V-15014/CISF/ASG(TVM)/ DISC/MAJ/2010/4957 DTD.28.8.2010.
- P5 :** COPY OF THE WRITTEN STATEMENT SUBMITTED BY THE PETITIONER IN SEPTEMBER, 2010 TO THE 3RD RESPONDENT.
- P6 :** COPY OF THE REQUEST FOR PROVIDING DOCUMENT DATED NIL SEPTEMBER, 2010.
- P7 :** COPY OF THE DEFENCE STATEMENT DTD.11.11.2010.
- P8 :** COPY OF THE INQUIRY REPORT SUBMITTED BY THE ENQUIRY OFFICER DTD.30.11.2010.
- P9 :** COPY OF THE REPRESENTATION DATED NIL/12/2010 SUBMITTED BY THE PETITIONER.
- P10:** COPY OF THAT APPEAL DTD.2.1.2011 SUBMITTED BY THE PETITIONER.
- P11:** COPY OF THE REVISION PETITION DTD.24.7.2011.
- P12:** THE SPECIAL REPORT OF SHRI. PRASAD KUMAR K., INSPECTOR/EXE-1/CCIW DTD.7.7.2010.

RESPONDENTS' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 31132 of 2012

Dated this the 26th day of May, 2015

J U D G M E N T

The petitioner, who is an Ex-Constable of CISF Unit, Thiruvananthapuram, is challenging Ext.P1 order of the 3rd respondent disciplinary authority, which imposed a penalty of 'compulsory retirement from service' on the petitioner and Ext.P2 appellate order, by which the 2nd respondent has rejected the appeal against Ext.P1 and also, Ext.P3, by which the 1st respondent, the revisional authority, has dismissed the revision petition filed by the petitioner.

2. The petitioner, while working as Constable in CISF Unit at Thiruvananthapuram, was issued with a memo of charges by the 3rd respondent proposing to hold an enquiry against him under Rule 36 of CISF Rules, 2001. He was asked to submit a written statement of defence before the 3rd respondent within 10 days.

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Accordingly, the petitioner submitted a statement of defence denying the charges. The disciplinary committee appointed Mr.T.C.Chandrasenan, Inspector/Executive, CISF Unit, ASG, Thiruvananthapuram, as enquiry officer. The petitioner alleges that as per Ext.P6, he requested the enquiry officer to provide some additional documents so as to enable him to defend his case. The enquiry officer has proceeded with hearing and examination of witnesses, and submitted Ext.P8 enquiry report concluding that all the charges levelled against the petitioner stood proved. The petitioner submitted Ext.P9 representation against the enquiry report. Thereafter, the disciplinary authority has passed Ext.P1 order dated 23.12.2010 imposing penalty of compulsory retirement from service. This was confirmed in Ext.P10 appeal vide Ex.P2 order dated 14.03.2011 and in Ext.P11 revision petition vide Ext.P3 order. It is with this background, the petitioner has come up before this Court.

3. In the detailed counter affidavit filed by the respondents, it was contended that the petitioner was arrested on 06.07.2010 by the Vanchiyoore Police while he

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was riding a motor cycle in a drunken condition and without wearing helmet. The petitioner did not inform anyone that he was involved in the case and was arrested by the Police. However, the respondents got confidential information about the arrest of the petitioner. After release on bail, the petitioner had taken one day medical leave on 06.07.2010. He did not inform any authority regarding his medical leave extension on 07.07.2010 as required. On 08.07.2010 and 10.07.2010, the petitioner telephonically informed his Company Commander that his sick period has been extended. Though he was directed to submit supporting medical documents for sick extension, he failed to do so. On a perusal of the medical certificate issued from the hospital for one day rest on 06.07.2010, it was seen that the date of issue of the medical certificate was not mentioned. They would contend that all the allegations levelled against the petitioner was found true by the enquiry officer; and accordingly, he was imposed with the punishment of compulsory retirement after affording him an opportunity of being heard.

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4. Arguments have been heard.
5. The following are the charges levelled against the petitioner;

Article of Charge -I

On 06.07.2010 at about 18.45 hrs. CISF No.921403649 Constable Rajesh K.R. of CISF Unit ASG Trivandrum was arrested by Vanchiyur Police for riding motorcycle in a drunken condition in a reckless and negligence manner. The Vanchiyur Police registered a case against him vide crime No.531/2010 under section 279 IPC & 185 Motor Vehicle Act and later released him on bail on the same day. He also did not bring details of this case to the notice of his superiors. It came to the knowledge of his seniors through CIW. The above unbecoming act on the part of Constable Rajesh K.R. amounts to grave misconduct of unbecoming conduct in public bringing bad image to the Force and dereliction from duty. Hence was the charge. The charge has been proved.

Article of Charge - II

CISF No.921403649 Constable Rajesh K.R. of CISF Unit ASG Trivandrum willfully absented from duty beyond one (01) day medical rest on 06.07.2010. Neither did he turn up for duty at Airport with effect from 07/07/2010 nor produce any supporting medical documents in spite of instructions to that effect by his superiors and remained himself absent from duty unauthorizedly without any intimation to the Competent authority. The above act on the part of Constable No.921403649 Constable Rajesh K.R. amounts to gross indiscipline, serious dereliction of duty and an act unbecoming of an enrolled member of a disciplined Force. Hence was the charge. The charge has been proved.

Article of Charge - III

CISF No.921403649 Constable Rajesh K.R. of

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CISF Unit ASG Trivandrum vacated his local residential house i.e., C/o.Rajasekharan (Proprietor), Vadakathil House, Near Rly. Over Bridge, Chakkai, Pettah, Trivandrum where he has been permitted to reside with his family members with living out permission with HRA since 01.12.2007 without information, while continuously claims HRA. Firstly, he deliberately failed to intimate about vacating his declared family residential address immediately to the competent authority. Secondly, he has been deceitfully drawing HRA even after vacating the house and shifting his family from the declared residential address. The above act on the part of No.921403649 Constable Rajesh K.R. of CISF ASG Unit Trivandrum amounts to misconduct, deceitfulness and dereliction from duty. Hence was the charge. The charge has been proved.

Article of charge - IV

During the short span of service since 03.07.1992 in CISF, No.921403649 Constable Rajesh K.R. of CISF Unit ASG Trivandrum has been awarded with 01-Major and 10-minor penalties under CISF Rules - 2001 on various offence committed by him. He was given sufficient/reasonable opportunities to mend his ways to become a disciplined member of the Force. However, No.921403649 Constable Rejesh K.R. has not shown any improvement in his conduct to become a good member of the Force. The incorrigible act on the part of No.921403649 Constable Rajesh K.R. amounts to serious violation of Force discipline and dereliction of duty and an act of highly unbecoming of an enrolled member of the Force. Hence, was the charge. The charge has been proved.

6. It appears from record that the petitioner was given an opportunity to defend himself in the enquiry proceedings. That being so, this Court in exercise of powers conferred under Article 226 of the Constitution of

India cannot sit in appeal on the findings of the enquiry officer.

7. Though various grounds have been stated in the writ petition, the petitioner could not substantiate that the enquiry proceedings were initiated in any manner. The copy of the enquiry report was given to the petitioner and he was given an opportunity to offer his comments. Only thereafter, he submitted Ext.P9 representation. Subsequently, Ext.P1 order was issued imposing penalty of compulsory retirement from service.

8. It is crucial to note that before proposing the punishment as provided in Ext.P1, the petitioner was not given notice regarding the penalty proposed to be imposed upon him. This is a serious flaw. Moreover, though the conduct of the petitioner amounts to violation of discipline that is expected of a Constable under the CISF Unit, it may not fit into the category of gross violation of discipline. Therefore, this Court is of the definite view that the punishment imposed upon the petitioner is disproportionate to the gravity of the misconduct proved. Therefore, on that

ground also, the matter requires a reconsideration.

In the result, the writ petition is allowed.

- Exts.P1, P2 & P3 are quashed.
- The matter is remitted back to the respondents for fresh consideration from the stage, at which the respondents have received Ext.P9 representation from the petitioner.
- The respondent concerned shall issue a notice proposing the punishment, which is proportionate to the alleged misconduct; and only after affording the petitioner an opportunity of being heard on the proposed punishment, further action shall be taken.
- The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-