

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.10.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22276 of 2013

and

M.P.No.1 of 2013 & M.P.No.1 of 2014

K.Saravanan

.. Petitioner

vs

1.The Union of India,
Rep.by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.

2.The Director General,
Central Industrial Security Force,
Lodhi Road, CGO Complex,
New Delhi - 110 003.

3.The Director General,
National Disaster Response Force,
R.K.Puram, CGO Complex,
New Delhi - 110 066.

4.The Commandant,
Central Industrial Security Force,
NDRF 4th Battalion,
Arakkonam,
Suraksha Campus Post Office,
Vellore District - 631 152.

5.The Deputy Commandant,
Central Industrial Security Force,
NDRF 4th Battalion,
Arakkonam,
Suraksha Campus Post Office,
Vellore District - 631 152.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned notice issued by the 4th respondent dated 07.08.2013 in his Show Cause Notice No.E-24012/4BN/NDRF/DOC/SCN/ks/2013-6333 and quash the same.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mrs.Sunita Kumari
Central Government Standing
Counsel (CGSC)

O R D E R

The relief sought for in this writ petition is to call for the records pursuant to the show cause notice issued to the writ petitioner by the 4th respondent dated 07.08.2013.

2. On a perusal of the copy of the show cause notice enclosed in page No.18 of the typed set of papers filed along with the writ petition, this Court is of the opinion that the writ petitioner was informed that a charge sheet under Rule 37 of Central Industrial Security Force [hereinafter referred to as "CISF"] Rules 2001 was issued against the writ petitioner for unauthorized absence as he left station without any intimation or permission from the competent authority, which he got injured and availed 38 days medical leave from 25.01.2013 to 03.03.2013. On finalization of the case, he was awarded the penalty of "FINE EQUAL TO AN AMOUNT OF SEVEN DAY PAY" vide Final Order No.V-15014/4Bn. NDRF(A)/Disc/CHOTI-5/2013-1073 dated 20.06.2013. Under these circumstances, the competent authorities proposed to regularize the unauthorized absent period of the writ petitioner from 25.01.2013 to 03.03.2013 under Rule 25(3)(iii) of Central Civil Service [hereinafter referred to as "CCS" Rules] Leave Rules 1972. In this regard, an explanation is sought for from the writ petitioner, granting seven days time.

3. At the outset, the order impugned in this writ petition is a show cause notice issued to the writ petitioner, directing him to submit his explanation within a period of seven days from the date of receipt of copy of the show cause notice. Before responding to the show cause notice issued to the writ petitioner, the writ petitioner has chosen to move this writ petition under Article 226 of the Constitution of India, challenging the same on the ground that the show cause notice issued under Rule 55 of the "CISF" Rules 2001 is untenable. Further, the learned counsel appearing on behalf of the writ petitioner states that the period of alleged absence was regularized by the Commandant in proceedings dated 28.03.2013. However, the said proceedings was cancelled again in proceedings dated 17.05.2013. Thus, there cannot be any cause for reopening of the case in view of the fact that the respondent had already regularized the leave period and thereafter, reopened the same. In view of the unclear decision taken by the respondent, the show cause notice cannot be sustained.

4.The learned counsel in this regard, urged this Court by showing Rule 55 of the "CISF" Rules 2001 which deals with Dies-non, and Rule 55 reads as under:

"55.Dies-non:Notwithstanding anything contained in these rules a disciplinary authority while passing final order to impose a penalty upon an enrolled member of the Force or an appellate authority or a revising authority may, on reinstatement of an enrolled member of the Force in service after setting aside a penalty of dismissal, removal or compulsory retirement without exonerating such enrolled member of the Force of the charges which resulted in any of these penalties, after giving an opportunity to the enrolled member of the Force concerned to show cause against such action and for reasons to be recorded in writing, order that the intervening period between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement be treated as dies-non for purposes of service."

5.Rule 55 is applicable only in the event of imposing the penalty of dismissal, removal or compulsory retirement and in respect of the writ petitioner, no such punishment was imposed and in fact the punishment of fine equal to an amount of seven day pay alone was imposed on the writ petitioner and thereafter, the leave period cannot be regulated as Dies-non under Rule 55 of the "CISF" Rules 2001. Thus, the respondents have proposed to pass orders based on the show cause notice under the wrong provision of Rules. Under these grounds also, the show cause notice is to be scrapped.

6.The learned counsel appearing on behalf of the respondents opposed the contentions raised on behalf of the petitioner, by stating that the writ petitioner has cited the wrong Rule and in fact the show cause notice was issued to the writ petitioner under Rule 25(3)(iii) of the "CCS" Leave Rules 1972. Rule 25 of the said Rules deals with absence after expiry of leave and it reads as under:

"(iii)If a Government servant absents himself abruptly or applies for leave which is refused in the exigencies of service and still he happens to absent himself from duty, he should be told of the consequences viz., that the entire period of absence would be treated as unauthorized entailing loss of pay for the period in question under proviso to Fundamental Rule 17, thereby resulting in break in service. If, however he reports for duty before or after initiation of disciplinary proceedings he may be taken back for duty because he has not been placed under suspension. The disciplinary

action may be concluded and the period of absence treated as unauthorized resulting in loss in pay and allowances for the period of absence under provision to FR 17(1) and thus a break in service. The question whether the break should be condoned or not and treated as dies non should be considered only after conclusion of the disciplinary proceedings and that too after the Government servant represents in this regard."

7. This apart, the learned counsel appearing on behalf of the respondents submits that the provision relating to leave are enumerated in Rule 63 of the "CISF" Rules 2001 which is extracted hereunder:

"63. Leave: The supervisory officers and [enrolled members of the Force] shall be governed by the Leave Rules as are applicable to employees of the Central Government, excepting that they shall be entitled to fifteen days Casual Leave in a calendar year in respect of field formation where no specific working hours in a day or working weeks are prescribed and entitlement of Casual leave in static formation like Force Head Quarters, Sector Head Quarters, etc., of Central Industrial Security Force will be 8 days in a calendar year as per Ministry of Home Affairs' Office Memorandum No. 27012/6/98/PF.I/419, dated 7-7-2000. The Regularisation of leave will be subject to orders issued by Central Government from time to time."

8. At the outset, the learned counsel for the respondents contended that the show cause notice contains the correct provision of rules and there is no infirmity in the show cause notice. Thus, it is for the writ petitioner to submit his explanation/objections in this regard and the authority competent has to consider the facts, circumstances and the rules applicable in this regard and take a decision and pass final orders.

9. This Court is of the view that a writ petition against a show cause notice can be entertained only on limited grounds and on exceptional circumstances. No writ can be entertained against a show cause notice when the proceedings are sub-judice before the competent authority. Intermittent interventions in such proceedings are not preferable in view of the fact that the competent authorities shall be allowed to complete the proceedings in all respects and take a final decision and communicate the same. The cause will arise to the aggrieved persons only on receipt of the final order in this regard. A writ against the show cause notice can be entertained only if the same was issued by an incompetent authority having no jurisdiction or an allegation of mala fides is raised or if the

same is in violation of the statutory rules. Even in case of raising allegation of mala fides against the authority, it is necessary that such an authority against whom allegations are raised is to be impleaded as a party in the writ proceedings in his personal capacity. In the absence of any one of the legal grounds, no writ can be entertained and judicial review in this regard is limited. The Constitutional Courts are to be cautious while undertaking the process of judicial review against the show cause notice. Thus, this Court is of the view that intermittent interventions in these kind of matters are not certainly preferable and the institutional responsibilities are to be considered in this regard by the Courts also.

10.No doubt, what is challenged in this writ petition is a show cause notice, issued to the writ petitioner on account of certain allegations. This Court is of the opinion that every institution which was created under law has to be respected and the competent authorities running the administration of such institutions are to be cautious while exercising the powers of administration. The Courts are also to be cautious while undertaking the power of judicial review while interfering in the proceedings which are subjudice before the competent authorities. In this view of the matter, it is left open to the writ petitioner to submit his detailed explanation pointing out his factual and legal grounds along with the documents and proof to the competent authorities within a period of two weeks from the date of receipt of the copy of this order and on receipt of the same, it is left open to the competent authorities to consider the explanation/objections submitted by the petitioner by affording the opportunity of personal hearing also and thereafter, take a decision and pass final orders in this regard and communicate the same to the writ petitioner as early as possible.

11.Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Kak

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

1.The Secretary to Government,
The Union of India,
Ministry of Home Affairs,
New Delhi.

2.The Director General,
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Lodhi Road, CGO Complex,
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Arakkonam,
Suraksha Campus Post Office,
Vellore District - 631 152.

+1CC to Mr.A.S.Mujibur Rahman Advocate SR.NO.76640

+1CC to Mrs.Sunita Kumari Advocate SR.NO.76455

W.P.No.22276 of 2013

[CO]

MK:29/11/2017

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