

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

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THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.2733 of 2013

and

M.P.No.1 of 2014

T.Sivakumar

.. Petitioner

Vs.

1.The Director General of Police,
Directorate General CRPF,
CGO Complex, Lodhi Road,
New Delhi.

2.The Inspector General of Police,
Southern Sector CRPF,
Road No.10C Jubilee Hills,
Near MLA/MPs Colony,
Gayathri Hills,
Hyderabad - 500 033.

3.Deputy Inspector General
of Police,
Range HQr. GC CRPF,
Avadi, Chennai - 65.

4.The Commandant,
42 Bn, CRPF,
Keshogiri Post, Old K.V. School,
Barkas, Hyderabad - 500 005.

5.The Medical Superintendent,
Andhra Pradesh Vaidya Vidhana
Parishad District Hospital,
Rajahmundry, Andhra Pradesh.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus, quashing the order of the fourth respondent herein made in proceedings P.VIII.9/2012.42.EC.2(TSK) dated 23.04.2012 dismissing the petitioner from service and to direct the respondents to reinstate the petitioner as Head Constable into the strength of 42 Bn, CRPF with all monetary benefits and backwages after calling the records and pursuing the same.

For Petitioner .. Ms.R.Gouri
For Respondents .. Mr.R.Veludas,
Central Govt. Standing Counsel
for R1 to R4
R5 - No appearance

ORDER

Challenging the order of dismissal passed by the fourth respondent dated 23.04.2012 and for a direction to the respondents to reinstate the petitioner as Head Constable into the strength of 42 Bn, CRPF with all monetary benefits and backwages, the present writ petition has been filed.

2.The case of the petitioner is that he had joined the Central Reserve Police Force as Constable (General Duty) on 06.04.1988. The petitioner was posted to various places like Punjab, Jammu and Kashmir, Tripura, Manipur, Assam and Andhra Pradesh etc., While working as Constable, the petitioner was chargesheeted for certain acts of misconduct vide charge memo dated 12.09.2011. The substance of the charge is that during the course of his duty, he had consumed alcohol and became unconscious and left his baggage unattended in which nine grenades were stored and also under the influence of liquor, created nuisance in the presence of public at large and the nuisance created by him was widely reported by the local media and published in local news paper. An enquiry was conducted into the charges and on completion of the enquiry, a report was submitted, in and by which, the enquiry officer held that the charges were proved. On the basis of the enquiry report, further opportunity was afforded and thereafter, the disciplinary authority imposed penalty of dismissal from service vide his order dated 23.04.2012. An appeal was preferred against the said punishment and the appellate authority moderated the punishment as that of compulsory retirement instead of dismissal from service with effect from 23.04.2012. A revision was preferred against the appellate order but the same was rejected by the order of the revisional authority dated 07.01.2013.

3.The petitioner would assail the order of punishment of compulsory retirement on various grounds stating that the charges were baseless as at no point of time, he has consumed liquor, being a teetotaler. He would submit that no proper procedure was followed on the basis of clear instructions by the higher ups while transporting arms ammunition and explosives and this point was clearly appreciated by the appellate authority and only because of that factum, the original penalty of dismissal from service came to be modified as one of compulsory

retirement. According to the petitioner, in order to cover up the lapse of the administration, the petitioner had been unjustly punished on the basis of false allegation that he was drunk while discharging his duties as Constable.

4. Ms. Gouri, learned counsel appearing for the petitioner would submit that the petitioner, before reporting for duty to Rajamundhry in which the alleged incident had taken place, was not given rest at all earlier and therefore, he felt giddy and became unconscious and not due to the consumption of alcohol, as alleged in the charge memo. According to her, if only the administration had followed the proper instructions, the bag, which was carried by the petitioner in which the grenades were stored, would not have remained unattended. According to the learned counsel, the petitioner is a teetotalter and the accusation that he consumed alcohol had no factual basis. According to her, there was no proper enquiry conducted and the petitioner was made the victim of circumstances and the punishment imposed on him was also disproportionate to the gravity of the misconduct alleged against him.

5. Upon notice, Mr. R. Veludas, learned Central Government Standing Counsel entered appearance on behalf of respondents 1 to 4 and filed a detailed counter affidavit. The counter affidavit refutes the allegations of the petitioner that he was a teetotalter. According to the counter affidavit, the petitioner is one of the chronic alcohol cases and he was subjected to de-addiction programme at Composite Hospital, Avadi during June, 2009 when he was posted there. In fact, according to the counter affidavit, the petitioner made a request to join the rehabilitation programme being fully aware of his habit. In fact, the counter would further state that the petitioner was earlier awarded two times severe censure on 09.05.2008 and 08.10.2010 for the indiscipline of consuming excessive alcohol and the petitioner had admitted the fact of consuming alcohol at that time. Therefore, the statement of the petitioner that he is a teetotalter completely false and the same has to be rejected outright. Learned counsel appearing for respondents 1 to 4 would submit that since the petitioner is a habitual drunkard not fit to be retained in the Disciplined Armed Force, the punishment of compulsory retirement is commensurate with the gravity of the offence alleged against him. He would further submit that in fact the appellate authority has taken a lenient view in the matter by moderating the penalty from dismissal from service to one of compulsory retirement.

6. Upon consideration of the rival submissions of the learned counsels and upon perusing the relevant materials and pleadings, this Court is of the view that the petitioner's case that he was a teetotalter and therefore the charges were unfounded and baseless cannot be acceptable at all. The counter affidavit has clearly pointed out that the petitioner was in the habit of

consuming excessive alcohol and he was also warned severely twice earlier and the petitioner has also accepted his guilt during that time.

7. Moreover, the petitioner was also admitted to Rehabilitation Programme at Avadi when he was serving there in 2009 which would only go to show that the petitioner was suffering from alcohol addiction and it was not in public interest that such person to be retained in Armed Service. In the instant case, the petitioner was entrusted with the important task of transporting arms and ammunition and he left the bag unattended and fell unconscious due to consumption of alcohol. Such conduct on the part of the petitioner is clearly unacceptable and the submissions of the petitioner were he was feeling giddy at that time and only consuming cool drinks, which does not carry any conviction at all in view of the habitual nature of the petitioner towards consuming excessive liquor, quite frequently.

8. Moreover, it ought to be seen that the administrative lapse in transporting the arms and ammunitions through police personnel has been noticed by the appellate authority and that was the reason the appellate authority has modified the penalty into one of compulsory retirement. Therefore, the petitioner cannot complain against the proportionality of the penalty imposed on him. This Court cannot show any sympathy to such person whose retention in service would be against public interest. In fact, as rightly contended by the learned counsel for respondents 1 to 4, the appellate authority had taken a lenient view in the matter while imposing the penalty of compulsory retirement. The grounds raised in support of the writ petition are devoid of merits and substance and the same have to be brushed aside as legally unsustainable.

9. In view of the above, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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To

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CGO Complex, Lodhi Road,
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Parishad District Hospital,
Rajahmundry, Andhra Pradesh.
- + 1 cc to Mr.R. Veludas, Advocate Sr.49009
+ 1 cc to Dr.N. Gouri, Advocate SR.49064

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CS-V
EU 8.09.17

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