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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 09.08.2017

CORAM

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MR.JUSTICE **N.SATHISH KUMAR**

W.A.(MD)No.114 of 2015

and

M.P(MD).No.1 of 2015

against

W.P.(MD)No.3513 of 2010

1. The Union of India,
Rep. by its Secretary to Government,
Department of Home Affairs,
New Delhi.
 2. The Director General,
CISF Head Quarters,
No.13, CGO Complex,
Lodhi Road,
New Delhi
 3. The Deputy Inspector General,
Central Industrial Security Force,
South Zone, Head Quarters,
D.Wing, Rajaji Bhavan,
Chennai-600 090.
 4. The Commandant,
CISF Unit,
Tuticorin Port Trust,
Tuticorin-628 004.
- .. Appellants

Vs.

C.Rajagopal

..Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 16.04.2014 passed in W.P.(MD)No.3513 of 2010 on the filed of this Court.

Prayer in WP(MD). 3513/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS to call for the records relating to the order passed by the 3rd respondent dated 27.01.2010 in his order No. V-11014/ 32/ 2009/ L&R(SZ)/139 modifying the final order passed by the 4th respondent dated 15.09.2009 in his order No. V-15014/CISF/TPT/Disc/MAJ-05/CRG/2009/3971 and quash the same and to



direct the respondents to take the petitioner into the strength of CISF as Head Constable GD, with all monetary benefits.

For Appellants : Mr.G.Rajagopal
Addl. Solicitor General for
Mr.N.Shanmugaselvam

For Respondents : Mr.A.S.Mujibur Rahman

JUDGMENT

[Judgment of the Court was delivered by **M.M.SUNDRESH, J.**]

The Writ Appeal is directed against the order of the learned Single Judge, by which, the punishment imposed by the disciplinary authority was modified on the quantum, though not findings disturbed by the appellate authority were set aside.

2.The respondent/Writ Petitioner joined the services of the appellant department in the year 1986. He was promoted as 'Head Constable' in the year 2008. Charges have been framed against him on the premise that during surprise check made on 09.05.2009, he was found throwing some money at Green Gate (out side). An amount of Rs.350/- was recovered from him, which was actually thrown on seeing the officers. He could not explain the source of money thrown by him. Therefore, he has earned the said amount while on duty, which is tantamount to cross the misconduct, violation and instructions and unbecoming of a member of a disciplined force. The Article of charge is reproduced hereunder:

*"CISF No.864502931 HC/GD C.Rajagopal of CISF Unit TPT Tuticorin was detailed for night shift duty at Green Gate (IN) from 18.00 hrs on 08.05.2009 to 06.00 hrs on 09.05.2009. During a surprise check conducted at the duty post by Shri.P.K.Moorthy, Asstt Commandant and Insp/Exe K.Annamalai at around 05.03 hrs on 09.05.09, HC/GD Rajagopal was found throwing some money at Green gate (outside). An amount of Rs.350 (Rupees three hundred and fifty: denomination being Rs.100*3, 20*1, and Rs.10*3) thrown by HC/GD Rajagopal was recovered by Insp/Exe K.Annamalai in the presence of Const P.C.Thankappan. HC/GD C.rajagopal could not explain the source of money thrown by him. Hence, he earned Rs.350/- while on duty which tantamount to gross misconduct, violation of instructions and unbecoming of a member of a disciplined Force. Hence the charge"*

<https://hcservices.courts.gov.in/hcservices/>
3. A detailed enquiry was conducted and on evidence of P.Ws.1 to 3, the charges were found proved. Accordingly, the



respondent/Writ Petitioner was dismissed from service. The Appellate Authority though found that there is no reason to interfere with the charge, modified the punishment with the following reason:

4. Accordingly, the punishment imposed by the original Authority was modified to that of compulsory retirement with full terminal benefits.

5. The learned Single Judge went into the evidence of P.Ws. 1 to 4 and held that the charges are not proved. The learned Single Judge has also held that there is no finding with respect to misappropriation and one T. Prithiviraj, who also thrown away unaccounted money, was not proceeded with and therefore, there is a violation of Article 14. Accordingly, the orders passed by the disciplinary authority as well as the appellate authority were set aside. Consequently, the respondents were directed to reinstate the writ petitioner with back-wages. Challenging the same, the present appeal has been filed.

6. The learned Additional Solicitor General appearing for the appellants would submit that the power of judicial review over a decision of the disciplinary authority is rather limited. This Court is concerned with the decision making process rather the decision. The learned single Judge has committed an error on that score. The reliance made on the case of Mr. T. Prithiviraj, is not correct. He was found to be skying only Rs. 40/- which was actually accounted by him at the time of entry. The respondent shown Rs. 30/- at the time of entry and thereafter, found to be in possession of Rs. 350/-. Therefore, inference were rightly drawn. The reliance made on the Division Bench Judgement is not correct, as in the said case, there were many persons available near the place. In the case on hand, there is nobody near to the place from which the money was recovered. Hence, the judgment of the learned Single Judge requires interference.

7. The learned counsel appearing for the respondent/writ petitioner would submit that the said Prithiviraj was not proceeded with though he had also thrown the money. There is no finding that the respondent was indulged in corrupt practice. The Judgment of the Division Bench with respect to the lack of corrupt practice has not been proved. Hence, no interference is required.

8. As rightly submitted by the learned Additional Solicitor General, a Writ Court is concerned with a decision making process rather than the decision. Unless a perversity is shown or such a decision is made on no evidence or evidence which is inadmissible, this Court exercising the power of Article 226 of the Constitution of India shall not interfere. This Court cannot act as appellate <https://hccourts.gov.in/web-services> dealing with such a finding rendered by the disciplinary authority.

9. In the case on hand, admittedly, due procedure has been

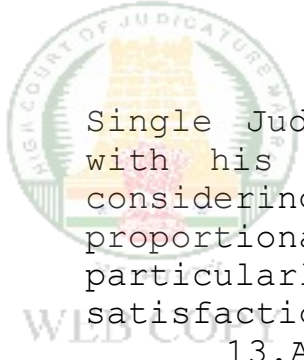


followed. The respondent has been put on notice and afforded all opportunities before the enquiry officer. Even before the disciplinary officer, he was fully heard and so also before the appellate authority. Therefore, we are convinced that there is a procedural compliance at the hands of the appellants.

10. The case of the respondent stands in a different footing than the one involving T.Pridivraj. The said T.Pridivraj, has shown Rs.40/- at the time of entry and he was found to be in possession of Rs.20/-. Therefore, the question as to whether he has also thrown the money outside or not is irrelevant. The charges are not with respect to the throwing of money but with respect to the excess possession of money than the one which has been declared. The throwing of excess money is an incidental act. Therefore, the throwing has to be corroborated with the excess money and not the money which otherwise a delinquent officer is entitled to possess. Further, there cannot be any infringement of Article 14 in a case of illegality. When it is found that the respondent is in possession of excess money, it is for him to explain it. PW.1 narrates the incident. What is required to be seen is that the preponderance of probabilities and not proof beyond reasonable doubt, in a departmental proceedings. Therefore, we are of the view that the reasoning adopted by the learned Single Judge cannot be accepted especially even with respect to the evidence adduced by the departmental witnesses. The statement made by the witnesses will have to be seen as a whole. If that is to be taken into account, they have deposed that it is the respondent who threw the money. He is not known to give any explanation for the money possessed by him, rather it is a case that he did not do the said act.

11. In such view of the matter, we are of the view that the order passed by the learned Single Judge cannot be sustained. Similarly, no specific finding is required for the purpose of involving the corrupt practice, as the charge was to the effect that the delinquent officer was in possession of unaccounted money. Therefore, onus is on him to explain the source of the said amount. Accordingly, the appellants have drawn the adverse inference. It is also not in dispute that the respondent/writ petitioner has declared only a sum of Rs.30/- at the time of entry and he was not supposed to have excess money beyond that. We may note that it is a case of a surprise check conducted. No mala fide was also attributed against the departmental witnesses, who made a surprise check and in any case, it is also not proved.

12. Considering the above, we set aside the order passed by the learned Single Judge. However, we do find that on the facts involved, leniency could be shown. It is a only case of the respondent having found in possession of the money. Therefore, it is case a of inference. No doubt, he is found guilty of having the excess money. As found by the appellate authority, his record isblemishless except some minor punishments. On a quarry put by us, the learned Additional Solicitor General has fairly submitted that even after the order passed by the learned



Single Judge, the respondent is conducting himself inconsonance with his post. Now, three years have elapsed. Therefore, considering the above and applying the principles of proportionality, we deem it fit to modify the punishment, particularly, when the respondent is working as of now to the satisfaction of the appellant.

13. Accordingly, the punishment imposed is modified by confirming the order of the learned single Judge with respect to reinstatement while setting aside the order with respect to backwages alone. The Writ Appeal stands ordered accordingly. For pensionary purpose, all the services of the respondent will be taken into consideration including the period in which he was suspended and till the date of reinstatement. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Department of Home Affairs,
New Delhi.
2. The Director General,
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Lodhi Road, New Delhi
3. The Deputy Inspector General,
Central Industrial Security Force,
South Zone, Head Quarters,
D.Wing, Rajaji Bhavan,
Chennai-600 090.
4. The Commandant,
CISF Unit,
Tuticorin Port Trust,
Tuticorin-628 004.

+1 cc to Mr.N.Shanmuga Selvam , Advocate in SR.No. 71936

+1 cc to Mr.A.S.Mujibur Rahman , Advocate in SR.No. 71864

ta/skn

AE/KP/SAR3/22.09.2017/5P/7C

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