

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 30.11.2018

CORAM :

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 20600 of 2013

V.Jaganathan

... 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,
CGO Complex, Lodhi Road,
New Delhi.
3. The Inspector General,
Central Industrial Security Force,
South Sector, Head Quarters,
Chennai Port Trust Complex,
Near War Memorial, Chennai 600 009.
4. The Deputy Inspector General,
Central Industrial Security Force,
South Sector, Head Quarters,
Rajaji Bhawan, Besant Nagar,
Chennai 600 090.
5. The Senior Commandant,
CISF, Unit, Chennai Port Trust,
Chennai 600 001.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus, call for the records relating to the order passed by the 3rd respondent in his order No.V-15014/L&R/SS/Rev/VJ/2013-146 dated 01.07.2013 confirming the order passed by the 4th respondent in his order No.V-11014/10/Disc/VJ/2013/3082 dated 18.04.2013 confirming the order passed by the 5th respondent in his final order No.V-15014/CISF/ChPT/Disc/Maj-VJ/2012/9767 dated 17.12.2012 and quash the same and direct the respondents to take

the petitioner in to the strength of CISF as Head Constable and to pay all monetary benefits.

For Petitioner : Mr. K.Sivasubramanian

For Respondents: Mr.Venkatasamy Babu

SPC - GOI for R5

None Appeared for R1 to R4

O R D E R

The instant writ petition has been filed to call for the records relating to an order dated 01.07.2013 passed by the 3rd respondent bearing No.V-15014/L&R/SS/Rev/VJ/2013-146, confirming the order dated 18.04.2013 passed by the 4th respondent bearing No.V-11014/10/Disc/VJ/2013/3082, confirming the order dated 17.12.2012 passed by the 5th respondent bearing No.V-15014/CISF/ChPT/Disc/Maj-VJ/2012/9767 and quash the same and direct the respondents to take the petitioner in to the strength of CISF as Head Constable and to pay all monetary benefits.

2. The petitioner joined as a Constable to the Central Industrial Security Force and he was transferred from CISF Unit Vishakapatnam Port Trust to Chennai Port Trust on 27.07.2009. The petitioner was served with the charge sheet on 09.09.2012.

3. The statement of misconduct of the three charges are reads as under:-

ARTICLE OF CHARGE-I

An act prejudicial to the good order and discipline of the Force, in that No.892299465 Head Constable/GD V. Jaganathan of "A" Coy of CISF Unit, ChPT Chennai was deployed in "B" shift duty from 1300 h to 2100 hrs on 03.09.2012 at Gate -IA Complex for out going vehicle checking. As per instruction issued on instruction No. (04) in CISF Unit, Chennai Office Memorandum No. IC15098/CISF/ChPT/CIW/Misc/2010-644 dated 28.04.2011, Administrative instructions (b) of Standing Security Procedure of Gate No-01 issued on 01.02.2011, instruction issued during sainik sammelan for the month of May, under CISF Unit CHPT Chennai letter No.E-42099/CHPT/SS/PE2011/2770 dated 2nd June, 2011, instruction issued during sainik sammelan for the month of July 2011 under CISF Unit CHPT Chennai letter NoE-42099/CISF/CHPT/SS/PA/11/4635 dated 04.08.2011 & instruction issued during sainik sammelan for the month of January, 2012 under CISF Unit, CHPT Chennai letter NoE42099/CHPT/SS/PA/2012/773 dated 1.02..2012,

if any excess money declared in the pocket money register is found during checking from the duty personnel, he shall be liable for strict action. On 03.09.2012 at about 1835 hours, he was called by No.854471298 Inspector/Exe R. Balashanmugam at Control room, Gate 1 complex for checking his pocket money. During the pocket money checking by No.854471298 Inspector/Exe R. Balashanmugam in presence of, No. 1048701583 SI/Exe H.S. Meena and No.844050032 H/GD P. Nagarajan, he took ten rupees note in folded condition from inside his socks with his left hand and hurriedly swallowed the note. As such he did not obey the instructions issued by the competent authority and violated lawful instructions / orders issued by the competent authority. This act on the part of No.892299465 Head Constable/GD V. Jaganathan amounts to violation of lawful orders, gross misconduct and dereliction of duty which is unbecoming of a member of disciplined Force. Hence the charge.

ARTICLE-II

An act prejudicial to the good order and discipline of the Force, in that No-892299465 Head Constable/GD V. Jaganathan of "A" Coy of CISF Unit, ChPT Chennai was deployed in "B" shift duty from 1300 hrs to 2100 hrs on 03.09.2012 at Gate -IA Complex for out going vehicle checking. On following the instruction No.(10) of CISF Unit, CHPT Chennai Office Memorandum No.1C15098/CISF/ChPT/CIW/Misc/2010-644 dated 28-04-2010 on undesirable activities & Instructions No. (c) of Standing Security Procedure of Gate -1 Out Gate of CISF Unit, CHPT Chennai, he was called by No-854471298 Inspector/Exe R. Balashanmugam at Control room, Gate 1 complex for checking his pocket money on 03.09.2012 at about 1835 hours and directed him to remove his shoes in presence of No. 1048701583 SI/Exe H.S. Meena and No.844050032 H/GD P. Nagarajan, but he refused to remove the shoes and later removed his shoes and socks and took out a currency note from his socks and hurriedly swallowed the currency note instead of handing it over to the search officer. This act on the part of No.892299465 Head Constable/GD V. Jaganathan amounts to gross misconduct, disobedience of lawful orders and dereliction of duty which is unbecoming of a member of disciplined Force. Hence the charge.

ARTICLE-III

An act prejudicial to the good order and discipline of the Force, in that No.892299465 Head Constable/GD V.

Jaganathan of "A" Coy of CISF Unit, ChPT Chennai had developed an irresistible and incorrigible attitude of committing acts of misconduct and indiscipline and tailed to change his attitude and not any improvement in his conduct in spite of being charged sheeted and penalized on three(03) earlier occasions during his service as furnished below:-

Sl.No	Offence committed	Penalties awarded by the Disciplinary Authority
(01)	(02)	(03)
01.	For having OSL for 23 days wef 21.06.1994 to 13.07.94.	"Censure" vide DC, CISF Unit, RSP Rourkela final order NO. CISF/RSP/DC (TSP)/VJ/94-374 dated 8th December 1994
02.	For found sleeping flatly on the bus seat at about 0150 hrs on 06.11.1994	"Withholding of next increment for a period of six months without cumulative effect" by DC, CISF unit, RSP Rourkela final order No. CISF/RSP/DC(TSP)/VJ/94-381 dated 15th December 1994
03.	For having misbehaved with senior on 10.01.2001 at about 1030 hrs	"Pay fine equivalent to three days pay" by DC CISF Unit, NALCO Damanjodi Final order No.V-15014/04/NALCO (D)/DISC /2001/994 dated 03.03.2001

The above acts tantamount to gross misconduct and indiscipline on the part of No.892299465 Head Constable/GD V.Jaganathan of "A" Coy of CISF Unit, ChPT Chennai. Hence, the charge."

4. The petitioner gave a reply on 17.09.2012, denying the imputations. The Inspector / EXE(E.O), CISF Unit, Chennai Port Trust, Chennai, was appointed as Enquiry Officer. The Enquiry Officer by his report dated 26.11.2012, found that the charges were completely proved. The Disciplinary Authority, i.e., The Senior Commandant, CISF Unit, Chennai Port Trust, after going through the enquiry report concurred with the findings and awarded the punishment of "compulsory retirement from service with full pensionary and gratuity benefits".

5. The petitioner thereafter filed an appeal to the Deputy Inspector General, CISF, South Zone, Chennai. The Appellate Authority by an order dated 18.04.2013 did not find any infirmity with the order of the Disciplinary Authority and dismissed the appeal. The petitioner thereafter, filed a Revision Petition before the Office of the Inspector General,

CISF. The Revision Authority by an order dated 01.07.2013 has dismissed the Revision Petition. The petitioner has sought to challenge the punishment of "compulsory retirement from service with full pensionary and gratuity benefits", in this instant writ petition.

6. The grounds on which the impugned order challenged are, a) The Disciplinary Authority has dismissed the appeal by a non-speaking order, without analyzing the documents on record and evidence. b) The Enquiry Officer has not taken the statement of PW-4 Constable Mr.Kundan Kumar who was present along with the petitioner. According to the petitioner, PW-4 stated that he do not know the name of the port users from whom the petitioner collecting the illegal gratification during his duty. c) The allegations against the petitioner is that, he swallowed the currency note, but no medical examination or X-ray was conducted to establish whether he swallowed the currency note or something else.

7. d) Out of 4 personnel who were present in the control room, Inspector/Exe S.P.Nainala was not permit to be cross examined by the Enquiry Officer. e) The petitioner was not provided with statements in Tamil / English language. f) Non application of mind by the Disciplinary Authority on the points raised by the petitioner in his reply to the enquiry report.

8. Heard the counsel for both the parties.

9. The learned counsel for the petitioner primarily reiterated the grounds taken by him in the writ petition. A perusal of the enquiry report and the list of dates given in the enquiry proceedings would show that the Enquiry Officer has conducted a very detailed hearing. During the enquiry process, 5 persons were examined on behalf of the respondents. PW-1 Inspector/Exe R.Balashanmugam has clearly stated that on 03.09.2012, the petitioner was deployed for B-shift duty at Gate-1A complex from 1300 hrs to 2100 hrs for checking of outgoing vehicles. PW-1 has stated that, he called HC/GD P.Nagarajan from "A" coy of CISF Unit, to Gate-1 office for checking money of Constable V.Jaganathan (Petitioner herein), in the presence of SI/Exe H.S.Meena. PW-1 ordered the petitioner to remove his shoes, but the petitioner refused to remove the shoes. After repeatedly told to do so, the petitioner removed his shoes and socks. When the petitioner removed his right leg shoe, at the point of time, the petitioner requested that he committed a mistake and he should be forgiven. While removing right leg socks, PW-1 has stated that the petitioner took out a Rs.10/- note from socks in folded condition and put into his mouth and swallowed it.

10. The other witnesses namely PW-2 & PW-3 have also deposed and corroborated the statement of PW-1. PW-4 Mr.Kundan Kumar state that at 1400 hrs he saw HC/GD V.Jagannathan called a tea vender and bought some mixture packets and tea, he gave fifty rupee note to him and took the balance money in return. At about 1830 hrs Coy Commander Insp/Exe R.Balashanmugam, shift In-charge SI/Exe Meena and Coy CHM HC/GD P.Nagarajan came at Gate-1A and called HC/GD V.Jagannathan and all they went towards control room. Further HC/GD V.Jagannathan had took tea and mixture packets at about 1500 hrs and again at about 1600 hrs. HC/GD P Nagarajan was detailed for duty in place of HC/GD V.Jagannathan from 1900 hrs to 2100 hrs. Further during enquiry proceedings charged official HC/GD V.Jagannathan asked him 09 questions which were answered by PW-4 and also replied the questions asked by P.O & E.O.

11. The Enquiry Officer after analyzing the document and oral evidences in respect of charge-1 elaborately discussed the fact with undisputed, facts which are disputed, list of case of the Presenting Officer and the gist of the defence. The findings of the Enquiry Officer is as follows:-

"Findings of Enquiry Officer

On carefully going through the statements, recorded during departmental enquiry proceedings, perused the documents submitted by prosecution witness, dense study of defence statement by charged official, P.O's brief note, reply by the charged official of PO's brief note, question & answer, cross examination of all PW's preliminary hearing, second plea and third plea, disputed points, discussion on disputed points by enquiry officer and available records on the case file. The enquiry officer reached on the findings of the case, and the following facts came to light:-

1. It is fact that, No.892299465 HC/GD V.Jagannathan (CO) of 'A' coy of CISF unit CHPT Chennai was deployed in 'B' shift duty from 1300 hrs to 2100 hrs on 03.09.2012 at Gate-1A complex for outgoing vehicle checking.
2. On getting authentic information from reliable sources Coy commander of A Coy INSP/Exe R Balashanmugam called A Coy CHM HC/GD P Nagarajan and 'B' shift In-charge SI/Exe H S Meena for carrying out pocket money search of HC/GD V.Jagannathan (CO) at about 1800 hrs on 03.09.2012, is a fact.
3. HC/GD V. Jagannathan was called to the control room at about 1830 hours for pocket money search was carried out upon the charged official in the presence of A Coy CHM HC/GD P Nagarajan and 'B' shift In-Charge SI/Exe H S Meena, on 03/09/2012. .

4. On 03-09-2012, in the presence of SI/Exe Hanuman Sahay Meena and Coy CHM HC/GD P nagarajan, PW-I, INSP/Exe, R. Balashanmugam, ordered HC/GD V Jagannathan to remove his shoes but he (C.O.) refused to remove his shoes and requested not to remove his shoes and pardoned sorry for the mistake he committed also requested in folded hands to forgive him, but on asking repeatedly by PW-I, firstly HC/GD V Jagannathan removed his left shoe and socks in which nothing was found, is a fact and shows clear picture of charged official's guilty mind.

5. When PW-I ordered the charged official to remove his right leg shoe & socks, initially he refused to remove the shoe and he requested again and again not to remove the right leg shoe and pray that he done a mistake and to forgive him, is a fact and shows clear picture of charged official's guilty.

6. On checking pocket money register it was found that the charged declared rupees fifty note No.461527 before mounting for 'VB' shift duty at 1300 hrs on 03.09.2012 in the pocket money register. During pocket money search two twenty (i.e two ten rupees notes No. 02K 049784 & 07F 261565) were recovered from his shirts pocket, is a fact.

7. The charged official spent rupees thirty on tea & snacks during duty hours on 03.09.2012 from 1400 hrs to 1800 HG. Stated by PW-4 Const. Kundan Kumar who was on duty along with HC/GD V Jagannathan in B shift from 1300 hrs to 2100 hrs on 03.09.2012. That means the amount Rs.20/- found in the shirts pocket of the charged official, was his personnel balance money from the declared amount Rs.50/-. As said by PW-I, PW-II & PW-III that the charged official swallowed 10/- note was unaccounted with him, which he swallowed to destroy the evidence available at that time against him.

8. When the charged official was repeatedly asked to remove his right leg shoe & socks, he leaned downwards by sitting on the bench to remove his socks, he quickly put his left hand in to the right leg socks and took a ten rupees note in folded condition and put it in to his mouth and swallowed immediately before the search team could react to prevent him doing so, is a fact as stated by PW1, PW-2 & PW-3 in statements clearly.

9. 8.A GD entry was made by pa^t-I about the incident at A' Coy control room gate1 complex vide GD No-32 dated 03.09.2012 and further intimation was given to the higher formations following by a special report on the matter against.

10. The charged official violated the orders of competent authority standing security procedure, orders and instructions passed during various sainik sammelans, by disobeying the order of pocket money search officer, and the charged official swallowed the unaccounted money which was concealed in side right leg socks, instead of handling it over to the search team is a fact.

11. The charged official swallowed the unaccounted money which was concealed in side right leg socks, instead of handling it over to the search team officer Insp/Exe R Balashanmugam, in front of three eye witness viz PW-1, PW-2 & PW-3 why this act was done by charged official? Because, for sure, it was unaccounted money with him that is fearing being caught red handed he swallowed the same to eliminate the evidence against him.

12. By going through the statement of PW-5 and examined the prosecution evidences, produced by PW-5, made clear that the charged official had been awarded three minor punishments during his previous service, which is accepted by charged official also and submitted the appeal petition to the appellate authority after starting this departmental enquiry proceedings against him.

13. Being a disciplined enrolled member of the force the charged official should' have to improve upon him by taking a lesson from the earlier punishments awarded to him by the competent authority but he did not, due to his incorrigible attitude and irresistible thoughts, that means he is habitual of doings things against the discipline and lawful orders.

14. The charged official's version that the article of charge -I at Annexure-I & Annexure-II are not corroborated each other and stands contrary, is not genuine and far from realty.

15. The charged officials statements that his knee was jammed for a few minutes when he was ordered by PW-I to remove his shoe socks that is why he took some time to follow the order, is fabricated, baseless and snobbish to divert the attention of enquiry officer from actual sequence of action happened 03/09/2012, during pocket money search of charged official.

16. It is noticed by the enquiry officer on going through the statement of defense and reply to the PO's brief note submitted by charged official, that the charged official is trying to hide the actual sequence of incident happened on 03.09.2012, (during which the pocket money search was carried out by search team of the charged official in the presence of three eye witness and he swallowed a ten rupees note) by unnecessarily fault finding of the enquiry officer and disciplinary authority, whereas there is no fault or mistake on the part of disciplinary authority or Enquiry authority

17. The charged official plead that he was not provided the documents sought for his defense, the enquiry officer is not agree with this O0int, since it is material evident that he has been provided the document he sought for his defence on 06.10.2012 by enquiry officer in the presence of presenting officer with proper receipt. Please see order sheet dated 06/10/2012 excepted the English version copies of statement recorded during preliminary enquiry.

18. The charged official plea that he was not provided the case file, charged memorandum and USO-PART No. and order of three previous punishments, since the order of previous punishments have already been provided by the then disciplinary authorities where the punishments were awarded to the charged official it is material evident that the punishments details are narrated in his service book.

19. The charged official insisted on the questions that from whom he collected illegal gratification? How much amount he collected as illegal gratification and what was the denomination of money etc. since the actual charge on charged official in that he swallowed the money during money search instead of handing it over to the search team. therefore the questions raised by charged official for his defence does not

help him.

20. The charged official plea that why only he was searched, why officer In-Charge and other constables on duty were not searched. The enquiry officer agreed with the reply of PW-I that he got reliable source information against the charged official only and it was his prerogative.

21. During the Preliminary Enquiry Charged official stated that. to get his pocket searched, he immediately showed the his shirt's pocket and after that Coy Commander started yelling and he sat down on the bench kept there in Control room. Charge not tell that why Coy commander started crying "Pakdo-pakdo" but from PW'S statements that Charged official swallowed the money suddenly and Coy Commander and shift I/C tried to stop him from doing so and that is why Coy Commander shouted "Pakdo-pakdo." The Enquiry office is agree with this point of Presenting officer.

22. The seized amount Rupees Twenty from the charged official has to be returned to the charged official immediately. Since it was not an unaccounted money but it was the charged official's personnel balance money from the declared amount.

23. The charged official's plea that he was not involved in any kind of illegal gratification and was not having unaccounted money with him. Than. why the charged official swallowed a ten rupees note in front of search team by taking it out from his right leg socks. If it was not an unaccounted money then he should have to hand it over to the search team. Further it is clear that it was unaccounted money that is w he kept it in to the socks otherwise he could have kept it in his shirt pocket."

12. On the above said findings, the Enquiry Officer found as under:-

"Final Conclusion:

On carefully going through the statements of prosecution witnesses, perused the documents submitted by prosecution side, dense study of defence statement submitted by charged official, P.O's brief note, reply by the charged official of PO's brief note, question & answer, cross examination of all PW's by P.O, C.O. &

E.O, preliminary hearing, second plea and third plea, disputed facts, discussion on disputed facts by enquiry officer, preliminary enquiry report, findings came to light during enquiry and available records on the case file. I, the departmental Enquiry officer reached on the final conclusion that the article of charge I, II & III mentioned in Charge Memorandum . against the charged official as:-

ARTICLE OF CHARGE-I

An act prejudicial to the good order and discipline of the force, in that No 892299465 Head Constable/GD V. Jagannathan of W coy of CISF Unit CHPT Chennai was deployed in B' shift duty from 13.00 hrs to 21.00 hrs on 03.09-12 at Gate - 1 A complex for outgoing vehicle checking. During the pocket -money checking by No.8544712S8 Insp/E R Balashanmugam in presence of No. 4048701583 SI/Exe H S Meena and No. 844050032 HC/GD P.Nagrajan, he was found having unaccounted money with him. As such he violated instruction No.04 of CISF Unit, CHPT, Chennai memorandum No.1C-15098/CISF/CHPT/CIW/Misc/2010-644 dated 28-04.20--2 on undesirable activities, administrative instructions No.(b) of standing procedure of gate - 1 of CISF unit CHPT Chennai issued on 01.02.2011, issued during Sainik Sammelan for the month of May 2011 under CISF Chennai letter No.E-42099/CISF/CHPT/SS/PA/2011/2770 dated- 2nd, 2012, instruction issued during sainik sammelan for the month of July 2011 under CSF unit Chennai No. E-42E/CISF/CHPT/SS/PA/11/4635 dated 04.08.2011 instruction issued during Sainik Sammelan for the month of January, 2012 under CISF unit, CHPT Chennai letter No. E-42099/CISF/CHPT/SS/PA/2012/773 dated 01.02.2012 respectively. This act on the part of No.892299465 HC/GD V Jagannathan amounts to violation of lawful order, gross misconduct and dereliction of duty which is of a member of disciplined force, hence the charge.

BEING A ENROLLED MEMBER OF THE DISCIPLINED FORCE THE CHARGED OFFICIAL HC/GD V JAGANNATHAN OF CISF UNIT CHPT CHENNAI; SHOULD HAVE TO FOLLOW THE LAWFUL ORDERS OF SEARCH TEAM AND HAVE TO SHOW THE INDIAN CURRENCY WHICH WAS UNACCOUNTED WITH HIM & UNAUTHORISEDLY CONCEALED, IN SIDE HIS RIGHT LEG SOCKS AS STATED BY PW-I, PW-II & PW-111 IN THEIR STATEMENTS. MOREOVER, HE SWALLOWED THE UNACCOUNTED MONEY KEPT INSIDE HIS RIGHT LEG SOCKS TO ELIMINATE THE EVIDENCE AGAINST HIM. HE HAD TO HAND IT OVER TO THE POCKET MONEY SEARCH OFFICER INSTEAD OF SWALLOWING IT, BUT HE DID NOT. WHICH AMMOUNTS TO GROSS

MISCONDUCT, DISOBEDIENCE OF LAWFUL ORDERS AND DERELICTION OF DUTY WHICH IS UNBECOMING OF A MEMBER OF THE DISCIPLINED FORCE.THEREFORE, BY CONSIDERING THE FACTS AND EVIDENCES AVAILABLE ON RECORD IN CASE FILE, MOREOVER HE COULD NOT PRODUCE A SINGLE DEFENCE WITNESS OR DEFENCE EVIDENCE BEFORE ENQUIRY OFFICIER. HENCE, THE ABOVE MENTIONED ARTICLE OF CHARGES - 1, AGAINST HC/GD V JAGNNATHAN, IS FULLY PROVED"

13. Similarly, for charge-2 and 3 also, the Enquiry Officer after analyzing the evidences, came to the conclusion that they have also been completely proved. A copy of the enquiry report was given to the petitioner and explanation was called from him. The petitioner gave a detailed reply.

14. The Disciplinary Authority after considering the charge sheet and reply, concurred the findings of the Enquiry Officer and held as under:-

"I have carefully gone through the charge memorandum, reply to the charge sheet, enquiry report, representation against the enquiry report of the Enquiry Officer, statements of PWs and relevant exhibits adduced during the course of enquiry, statements and all other connected record in the case files. The Enquiry Officer has conducted the Enquiry as per laid down procedures. The charged official participated in the Enquiry proceedings and due opportunities were also afforded to him to defend his case. He was also given opportunities to take the assistance of any force personnel to defend his case under the provision of Rule 36 sub rule 8(a) of CISF Rules 2001 but the charged official did not avail the same. Further the Enquiry Officer has given ample opportunity to the charge official to cross examine all PWs and charged official availed all the opportunities to defend his case.

14. With Regard. to Article of Charge - The Charged Official was deployed in 'B' shift duty from 1300 hrs to 2100 hrs on 03.09.12 at Gate - IA complex for outgoing vehicle checking. On getting information from reliable sources, Insp./Exe R. Balashanmugam (PW-I) called Charged Official on 03.09.2012 at about 1835 hrs. , at Control Room (Gate 1 Complex) for searching. The searching was carried out by PW-I in presence of SI/Exe H.S. Meena, Shift I/C(PW-2) and HC/GD P. Nagrajan, Coy. CHM (PW-3) at inside Control Room, Gate 1 Complex. While searching, PW-I ordered the Charged Official to remove his shoes but the Charged Official disobeyed the orders of PW-I and refused to remove the

same. the same. After repeatedly asking, the Charged Official firstly removed his left shoes and socks. Then PW-I further directed him to remove his right leg shoe also. On this, Charged Official accepted his mistake and pleaded to forgive him. After repeatedly asking by PW-I, the Charged Official removed the right leg shoe. While removing his right leg socks, Charged Official took out ten rupees note in folded condition from his socks with his left hand and hurriedly swallowed the same, before the search team could react to prevent him to do so. PW-I further checked the Charged Official's trousers and shirt pockets and found two ten rupees note (Note No. 02K 049784 and 07F 261565) from his right side pocket. A GD entry vide Sri. No. 32 dated 03.09.2012 was made about the surprise checking at Gate No. 1 Complex Control Room and the same was produced as exhibit PW-I-Exh-P-3 during the course of enquiry. SI/Exe Hanuman Meena (PW-2) also deposed in his statement that when PW-I asked the Charged remove his shoes and socks, he accepted his guilt and pleaded to forgive him. While removing his right leg socks, Charged official took out ten rupees by his left hand from the socks and put into his mouth immediately. They could not react before the charged official swallowed the ten rupees note. No.844050032 HC/GD P.Nagrajan (PW-3) stated in his statement that when PW-I ordered the Charged Official to open/remove his right leg shoe and socks, he requested not to remove his shoes and denied. When PW-I asked him (PW-3) to remove his shoes, then charged official himself removed the shoes and took something out, which was looking like a currency note and put it into his mouth and swallowed immediately. As per Unit Standing Order No. (644) dated 28.04.2010 on the subject of Undesirable activity - Standing Instruction thereon, was clearly stated that every duty personnel is required to declare the money brought at the time of mounting for duty in pocket money register with denomination. If any excess money more than the amount declared in the pocket money register is found in the possession, the concerned shall be liable for strict disciplinary action", produced as PW-I-Exh-PW-7 & PW-8. As per Security Standing Procedure of Gate No. 1 dated 01.02.2011 "No person on duty shall accept any illegal gratification. They shall not be in possession of excess money with them other than the amount within the prescribed limit of Rs. 50/-," produced as PW1, Exh- P 4 & P-5. Besides, time to time briefing have also been made during Sainik Sammelan and minutes circulated thereof

under letter dated 01.06.2011, 04.08.2011 and 01.02.2012 that if any person found indulged in corruption cases, strict disciplinary action shall be taken against him and advised personnel to refrain from such undesirable activities. Copy of the same have been produced by PW-I as Exh. P-9, P-10, Exh. P-11, P-12, 13, Exh. P-14 & 15 during the course of enquiry. The Charged Official was aware about the said Standing instructions/order and therefore at the time of removing his right leg socks, he took out unaccounted money, concealed by him in his right leg socks in folded condition and hurriedly swallowed the same with an intention to eliminate the evidence against him. The argument of the charged official that the name of the person from whom the Charged Official took illegal gratification is not known and hence he did not collect illegal gratification is just an escape route to get away from the charge leveled against him and does not have any merit. If the Charged Official was not in fault why he repeatedly denied for removing his shoes and socks before the search party. Had he not collected the illegal gratification, he would have willingly come forward for search without any hesitation. From the statement of PW-I, PW-2 and PW-3 it is substantiated that the charged official had concealed unaccounted money in his right leg socks and swallowed the same during his search to eliminate the evidence against him. As sub-Article of Charge-I is proved beyond any doubt.

15. With regard to Article of Charge - II. The Charged Official was deployed in 'B' duty from 1300 hrs to 2100 hrs on 03.09.12 at Gate - IA complex for outgoing vehicle checking. On getting information from reliable sources, Insp/Exe R. Balashanmugam (PWI) called Charged Official on 03.09.2012 at about 1835 hrs., at Control Room (Gate Complex) for searching. The searching was carried out by PW-I in presence of SI/Exe H.S. Meena, Shift I/C (PW-2) and HC/GD P. Nagrajan, Coy. CHM (PW-3). While searching, PW-I ordered the Charged Official to remove his shoes but the Charged Official disobeyed the orders of PW-I and refused to remove the same. On asking repeatedly by PW-I, the Charged Official firstly removed his left shoes and socks. Then PW-I further directed him to remove his right leg shoe also. On this, Charged Official accepted his mistake and pleaded to forgive him and did not remove his right leg shoes. After repeatedly asking by PW-I, the Charged Official somehow removed the right leg shoe only and did not remove his socks. Then PW-I ordered PW-3 to remove the

charged official's socks. When PW-3 leaned to remove his socks, Charged Official immediately put his left hand in the socks and took out unaccounted money, concealed by him in his right leg socks in folded condition and hurriedly swallowed the same. From the statement of PW-I, PW-2 and PW-3 it is proved that the Charged Official allegedly violated the bonafide orders of PW-I repeatedly when he was directed to remove his shoes and socks for search. Being ? discipline member of the force, the Charged official should have obeyed the lawful orders of Insp/Exe R. Balashanmugam, Coy. Commander of W' Coy (PW-I) and should have willingly come forward & co-operate with the search team to prove his innocence. But the Charged Official dishonoured the lawful orders of PW-I. As such Article of Charge-II is proved beyond any doubt.

16. With regard to Article of Charge-III. So far allegation under article of charge-III are concerned, PW-5 (In charge of documents Section SI/Stn S Malathi has stated in her statement that the charged official was punished for various misconduct in the past, 3 times during his service. They are as under:-

Sl.No	Offence committed	Penalties awarded by the Disciplinary Authority
(01)	(02)	(03)
01.	For having OSL for 23 days wef 21.06.1994 to 13.07.94.	"Censure" vide DC, CISF Unit, RSP Rourkela final order NO. CISF/RSP/DC (TSP)/VJ/94-374 dated 8th December 1994
02.	For found sleeping flatly on the bus seat at about 0150 hrs on 06.11.1994	"Withholding of next increment for a period of six months without cumulative effect" by DC, CISF unit, RSP Rourkela final order No. CISF/RSP/DC(TSP)/VJ/94-381 dated 15th December 1994
03.	For having misbehaved with senior on 10.01.2001 at about 1030 hrs	"Pay fine equivalent to three days with pay" by DC CISF Unit, NALCO Damanjodi Final order No.V-15014/04/NALCO (D)/DISC /2001/994 dated 03.03.2001

All the punishments awarded by the various disciplinary authorities related to his past misconduct of OSL, found Seeping on duty and misbehaved with seniors . Had he taken lesson from the past punishments, he would not have committed the misconduct again and again. The plea of the charged

official that he was not provided with the case file, charge memorandum, USO part-II of above three punishments is not acceptable. The charged official was provided the copy of final orders of all the above three punishments along with charge memorandum. Hence, his plea is unsustainable. From the statement of PW-5, it is substantiated that the Charged Official was earlier awarded with three punishments by various disciplinary authority for his misconducts and he failed to change his attitude and not shown any improvement in his conduct. As such, Article of charge - III is also proved.

17. The defence plea taken by the charged delinquent that the enquiry officer conducted the enquiry in a biased manner and did not care for his defence, is not factual. I find that the Enquiry Officer has conducted the enquiry in a fair and judicious manner by adopting the laid down procedure and had afforded all reasonable opportunities to the Charged Official to defend his case. The Enquiry officer has clearly discussed about the article of charges by analyzing both side versions and submitted his findings wherein articles of charges I, II & III framed against the charged official has been proved. The charged official was also given ample opportunities by the Enquiry Officer to defend his case and the same was availed by him, thus there is no denial of natural justice to him. There is no evidence produced by the charged official in his favour as such I agree with the findings of Enquiry Officer proving the Article of charge-I, II & III beyond any doubt."

The Disciplinary Authority after considering the enquiry report, awarded the punishment "compulsory retirement from service with full pensionary and gratuity benefits".

15. On appeal to the Deputy Inspector General, CISF, the Appellate Authority after considering all the points raised by the respondent came to the conclusion as follows:-

"I have meticulously examined the case. The appellant has raised almost the same points which he had submitted in his representation against the enquiry report. However, the main points in his appeal petition are discussed hereunder in seriatim with reference to the facts emerged during the course of enquiry:-

a) The disciplinary authority in his final order has not given speaking order against the all points ('a' to 'n') raised by the appellant in his reply to enquiry report. Thereby rendering the impugned order of final order totally

non-speaking one and against the principle.

It is on record that the disciplinary authority after taking into consideration of all relevant points raised by the appellant and other facts held on record, issued the impugned final order. Hence, there is no any violation of principle of natural justice.

b) The enquiry officer has not logically discussed about the article of charges by analyzing both side versions. The enquiry officer has failed to analyze the defence version of the appellant under the framework of rules property, which is obligatory mandate to the enquiry officer in the departmental proceedings. Hence, the biased findings of the enquiry officer in support of the article of charges could not be accepted.

The averment of the appellant is not tenable as the Enquiry Officer had conducted the enquiry in a fair and judicious manner by adopting the laid down procedure. The appellant was also given reasonable opportunities to defend his case which he also availed fully by cross-examining the PWs etc. The enquiry officer had clearly analyzed and discussed both side versions in the enquiry report.

c) Enquiry Officer and Disciplinary Authority intentionally neglected the statement of PW-4 (Constable Kundan Kumar) who performed duty along with the appellant. During the course of enquiry, PW-4 in reply to cross examination, clearly stated that 'he does not know the getting source information, PW-I called PW-2 & PW-3 to carry out search of appellant. Accordingly, PW-I ordered the appellant to remove his shoes in presence of PW-2 & 3 but, he refused to remove the same. On asking repeatedly, he first removed his left shoes and socks, then PW-I directed him to remove his right leg shoe also. Initially, the appellant -refused to remove his right shoe and accepted his mistake and pleaded to forgive him. After repeatedly asking by PW-IT he removed his right leg shoe and took ten rupee note in folded condition from inside his socks with his left hand and hurriedly swallowed the note. Had he not collected illegal gratification, he would have willingly come forward for search without any hesitation But, he intentionally swallowed the currency note to destroy the evidence against him.

g) The discussion of the Enquiry Officer at para-1 & 3 of disputed facts cannot be acceptable the reasons that the appellant was brought to the custody of the search team to a

At a separate place and apart from the search team no any person was available there. Then how can the appellant produce a witness in support of his pleas that his knee was jammed for some time and he did not swallow anything at the time of search. :The search team failed to recover unaccounted money from him and in order to keep clean their service records and avoid disciplinary proceedings against them, they blamed the appellant.

The averment of the appellant is not tenable as on getting reliable information, PW-I directed the appellant to remove his shoes in presence of PW-2 & 3 but, he refused to remove the same. On asking repeatedly, he first removed his left leg shoe and socks, then PW-1 directed him to remove his right leg shoe also. Initially, the appellant refused to remove his right shoe and accepted his mistake and pleaded to forgive him. After repeatedly asking by PW-1, he removed his right leg shoe and took ten rupees note in folded condition from inside his socks with his left hand and hurriedly swallowed the note. The statement of PW-1 is corroborated with the statements of PW-2&3. Rest of the plea is nothing but an afterthought to cover up his misconduct.

h) Standing procedures of Gate-1 dated 01.02.2011, OM No. (644) dated 28.04.2010, minutes of sainik sammelan dated 02.06.2011, dated 04.03.2011 & dated 01.02.2012 which were marked as listed documents. But the authors of above documents were not called for enquiry. The author of the above documents should be listed as one of the PWs, otherwise reliance upon such documents without examining the author violated the principles of natural justice and the concept of reasonable opportunity of the defence.

The averment of the appellant is not acceptable as all the above documents have been provided to the appellant along with charge memo. During the course of enquiry, PW-1 has produced the above documents as prosecution exhibits. The appellant was also given reasonable opportunity to cross examine the PWs etc., which he availed fully. The standing procedure and minutes of sainik sammelan etc, are issued by the unit administration only and there is no dispute about their authenticity. Accordingly, the same were produced by the PW-1 during the course of enquiry and hence, there is no violation of principle of natural justice as contended by the appellant.

i) The enquiry officer in his findings at para-2 stated that on getting authentic information from reliable sources, PW-1 called PW-2 & 3 and carried out pocket money search of the appellant. But, the enquiry officer failed to establish what kinds of authentic information received and who were the reliable sources. name of the port users from whom the appellant collected illegal gratification, time, amount and denomination or any complaint from port users alleging the

appellant. evidence is enough to say that the appellant is innocent in the alleged allegation.

As per the statements of PW-I, 2 & 3, it is clear that the appellant had repeatedly denied to remove his shoes and socks before the search party. Had he not collected illegal gratification, he would have willingly come forward for search without any hesitation. Further, the appellant had concealed unaccounted money in his right leg socks and swallowed the same during search to destroy the evidence against him. Hence, the averment has no merit.

d) Pw-111 (HC/GD P. Nagarajan) stated (hat the appellant took something out, which was looking like currency note but, the search team failed to conduct medical examination / X-Ray to establish whether it was currency note or otherwise. The appellant never objected for conducting medical examination/ X-ray. But, Enquiry Officer without any material evidence proved the charge that the appellant swallowed currency note in presence of search team, which is not acceptable.

The plea of the appellant is not tenable as PW-I, 2 & 3 clearly deposed in their statements that the appellant while removing his shoes/socks took out the currency note and swallowed it hurriedly in the presence of search team. Since it was witnessed by the search team, it was not felt necessary to conduct medical examination. Such evidence is enough to establish the leveled charges..

e) He declared Rs.50/- as pocket money during the shift mounting and during the course of search by search team, a sum of Rs.20/- was recovered from him. If the appellant was involved in illegal gratification as alleged, he can keep the ten rupees note in his pocket and no need to keep the money in his socks. Hence, the above material evidence revealed that the appellant was not having unaccounted money with him as alleged.

It is on record that PW-I ordered the appellant to remove his shoes in presence of PW-2 & 3 but, he refused to remove the same. On asking repeatedly, he firstly removed his left shoes and socks, then PW-I directed him to remove his right leg shoe also. Initially; the appellant refused to remove his right shoe and accepted his mistake and pleaded to forgive him. After repeatedly asking by PW-I, he removed his right leg shoe and took ten rupee note in folded condition from inside his socks with his left hand and hurriedly swallowed the note.=

f) As per Standing Procedure of Gate No.1 and Office 0 M. No.(644) dated 28-4-2010, "shift I/C or 2 WC are responsible for keeping strict vigil over their subordinates and if, anybody is found indulging in undesirable activities such as collection of illegal money either directly or indirectly, all the duty personnel will be taken to task". The appellant performed his duties very close distance with the Gate I/C and all the gates are under surveillance round the clock by Cameras and deployment of INT staff. But, the prosecution side failed produce any evidence i.e images of camera, report of Shift I/C, INT staff on duty etc. Further, no disciplinary action against Shift and INT staff for their failure of supervision and to keep strict vigil over the gate personnel as per Standing Procedure and Office OM, has been taken.

The plea of the appellant is not tenable. It is not necessary to disclose what kind of information/reliable source is received by PW-I. It is clearly envisaged in the OM No.644 dated 28-4-2010 at para-10 that "Coy. Commanders wilt carry out frequent and surprise checking of the areas under their control". Accordingly, PW-I carried out surprise checking in presence of PW-2 & PW-3 and found the appellant swallowed unaccounted money of Rs.10/- recovered from his socks which was witnessed by ail the above 03 PWs.

j) During the course of DE, the appellant cross-examined all the PWs that 'Did you see in your own eyes when the charged official collected illegal gratification from the port users on 03-92012? But, ail the PWs replied that 'No". In another cross-examination that " How much amount charged official collected as illegal gratification from port users on 03-9-2012 as alleged? But, all the PWs replied that they don't know". The replies of the above PWs are material evidence that the appellant is innocent in the allegations and replies not supported the article of charge. Hence, the prosecution side failed to prove the allegation.

It is clear from the statements of PW-I, 2 & 3 that the appellant had repeatedly denied to remove his shoes and socks before the search party. Had he not collected illegal gratification, he would have willingly come forward for search without any hesitation. Further, the. appellant had concealed unaccounted money in his right leg socks and swallowed the same during search to destroy the evidence against him. Hence, the plea of the appellant has no merit.

k) At last, he requested to consider the matter as an issue of livelihood as he has no any other source of income and his family is solely dependent on him and the education of his children will badly be hampered. The present penalty

has not only deprived him but his innocent family also. He also requested to set-aside the penalty.

If he was so worried about his service and family, he would not have committed such misconduct which is not tolerable in a disciplined Force like CISF. His personal grounds do not absolve him from the leveled charges.

4. In view of the foregoing discussion, I am of the view that:-

Corroborative statements of all the eye witnesses [PWs-1, 2 & 31 reveal that the appellant had swallowed currency note appearing to be of Rs.10/- in folded form which clearly exhibits not only his mala-fide intention to destroy the evidence but also puts his integrity in question. Therefore, such personnel cannot have any place in a disciplined force like CISF.

Contention of the appellant that he was falsely implicated in the case by the PWs and he did not swallow any currency note etc. cannot be accepted in the absence of any evidence.

It is very clear from the statements of eye witnesses that during physical search, he suddenly took out folded currency note from his socks and swallowed the same which clearly shows that he was in possession of illegitimate money and destroyed the evidence with mala-fide intension. Hence, he vitiated the clear cut instructions of Unit Commander regarding possession of unaccounted money issued vide OM No.(644) dated 28-4-2010 followed by regular briefings in monthly sainik sammelans etc. Therefore, am unable to accept his contention that there was no need for him to hide Rs.10/- in his socks, when he had entered Rs.50/- in the pocket money register and after having tea and snacks during the duty he was having Rs.20/- only in his when the search was conducted. He was given due opportunity to defend his case which he availed fully but prove his innocence by producing any substantial evidence. The disciplinary authority has rightly judged the misconduct staged by the appellant and decided the case appropriately.

5. In view of the above, I find no cogent reason to interfere with the orders. passed by the disciplinary authority and REJECT the appeal petition being devoid of merit. The appeal petition dated 22-12-2012 submitted by the appellant stands disposed as above.

6. No.892299465 Ex-HC/GO V.Jagannadhan formerly of CISF Unit, CHPT Chennai shall acknowledge receipt of this order."

16. The Revision Authority, i.e., the Inspector General, CISF, before whom the Revision was filed has once again discussed all the points and rejected the petition. The reading

of the three orders would show that the case of the writ petitioner has been considered in detail. Adequate opportunity was given to the petitioner to defend his case. The enquiry report is very detailed one and Enquiry Officer has gone into each and every aspects of the case.

17. The reading of the Appellate Authority and Disciplinary Authority would show that, they have also gone through all the documents, depositions and the points raised by the writ petitioner before concurring with the findings of the Enquiry Officer. I do not find any infirmity in the three orders. The only ground when has to considered is as to whether there was an violation of principle of natural justice, in as much as the petitioner was not provided the document in English / Tamil. The petitioner was in Central Industrial Security Force. The counter affidavit itself specifically mentioned that the petitioner knows Hindi and in any event, it is stated that the charge sheet, etc., had been explained in which language he understands.

18. In view of this, I do not find any violation of the principles of natural justice. When three Authorities have analyzed all facts and details, scope of interference under Article 226 of the Constitution of India is limited, unless it is shown that the enquiry report is completely perverse and is based on nil evidence, which is not the case here. The punishment of "compulsory retirement from service with full pensionary and gratuity benefits" does not require any interference. The writ petition is dismissed. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pkn

To

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

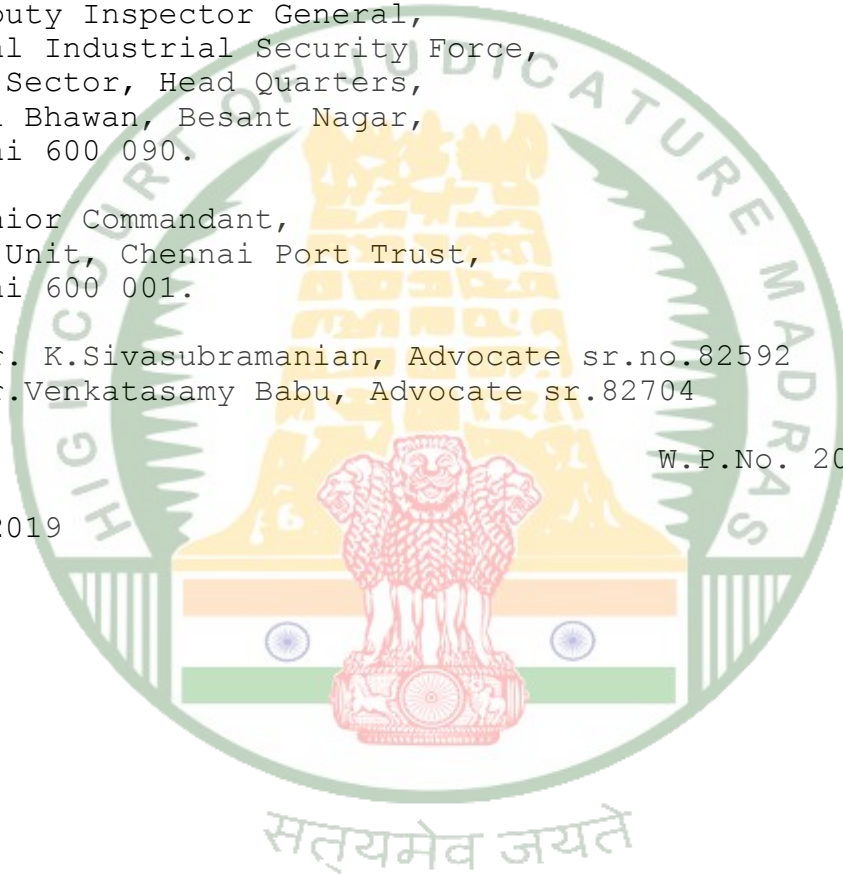
2. The Director General,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi.
3. The Inspector General,
Central Industrial Security Force,
South Sector, Head Quarters,
Chennai Port Trust Complex,
Near War Memorial, Chennai 600 009.
4. The Deputy Inspector General,
Central Industrial Security Force,
South Sector, Head Quarters,
Rajaji Bhawan, Besant Nagar,
Chennai 600 090.
5. The Senior Commandant,
CISF, Unit, Chennai Port Trust,
Chennai 600 001.

+2cc to Mr. K.Sivasubramanian, Advocate sr.no.82592

+1cc to Mr.Venkatasamy Babu, Advocate sr.82704

W.P.No. 20600 of 2013

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