

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.01.2018

Delivered on: 18.01.2018

Coram

The Honourable Mr. Justice V. PARTHIBAN

W.P. No.24618 of 2011 &
MP No.1 of 2013

Vedpal Boora

...Petitioner

versus

1. The Commandant,
Central Industrial Security Force (CISF),
(Disciplinary Authority),
Department of Atomic Energy,
Ministry of Home Affairs,
Kalpakkam-603 102,
Kancheepuram District, Tamil Nadu.
2. The Deputy Inspector General - CISF,
(Appellate Authority),
DAE Head Quarters,
NFC Complex, P.O.,
ECIL-Hyderabad-62.
3. The Inspector General - CISF
(Revision Authority),
Western Sector, Taloja,
Kharghar, Sector-35,
Navi Mumbai-10.
4. The Director General - CISF,
Block No.134, CGO Complex,
Lodin Road, New Delhi-3.
5. The Government of India,
Department of Atomic Energy,
General Services Organization,
Rep. by its Estate Officer,
DAE Township, Kalpakkam-603 102.

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records relating to the dismissal

order bearing No.NIL dated 10.05.2011, issued by the 1st respondent as confirmed by the second respondent by his order No.V-11014/A-12/2011/L&R/DAE/3979 dated 29.06.2011 read with order of the 3rd respondent bearing No.15012/10-7462 dated 16.09.2011, rejecting the petitioner's revision filed and marked as Exhibits - A, B and C respectively, to quash the same.

For Petitioner : Mr.N.G.R.Prasad, Senior Counsel
for M/s.Row and Reddy

For Respondents: Mr.K.Raju, SCGSC

ORDER

The present writ petition has been filed, seeking for the following relief:

"To issue of Writ of Writ of Certiorari, calling for the records relating to the dismissal order bearing No.NIL dated 10.05.2011, issued by the 1st respondent as confirmed by the second respondent by his order No.V-11014/A-12/2011/L&R/DAE/3979 dated 29.06.2011 read with order of the 3rd respondent bearing No.15012/10-7462 dated 16.09.2011, rejecting the petitioner's revision filed and marked as Exhibits - A, B and C respectively, to quash the same.

2. The petitioner joined as Sub-Inspector/Executive on 05.01.1995, in the Central Industrial Security Force [hereinafter referred to as CISF]. He was promoted as Inspector/Executive on 21.07.2008. On 15.05.2009, he was transferred to DAE., Kalpakkam, Tamil Nadu. While working at Kalpakkam, he was allotted with Hero Honda Motor cycle for discharging his official duty. He was also allotted residential quarters.

3. On 08.08.2010, the Hero Honda Motor cycle which was given to him by the Establishment, was found stolen, which according to the petitioner, while it was parked near office of the Establishment. The petitioner lodged a police complaint for loss of the two wheeler. In the complaint, the petitioner had also named his two superiors, viz., S.P.Khिलारे, Assistant Commandant and Kunwar Singh, as he suspected them since on 17.03.2010, one S.P.Khिलारे, Assistant Commandant of CISF abused a lady constable by name Babitha. Since the petitioner was a witness to it during physical exercise classes, he gave a statement to that effect. Therefore, he was brought under pressure by the Assistant Commandant to withdraw his statement,

failing which, he would face consequences.

4. In the above circumstances, the petitioner was transferred to the Northern Sector in Delhi, ostensibly on administrative grounds on 24.08.2010. Simultaneously, the petitioner was also placed under suspension on 24/25.08.2010, for the loss of two wheeler. Subsequently, on 08.09.2010, a charge memo was issued alleging that the negligence on the part of the petitioner for causing loss of the vehicle. The petitioner had approached this Court in W.P.No.21258 of 2010 for quashing the suspension/transfer order dated 24.08.2010. Initially, this Court granted interim stay on 30.09.2010 and thereafter, on 04.11.2010, the first respondent revoked the order of suspension. However, he was posted to Head Quarters at New Delhi. In view of the subsequent development, the writ petition came to be closed on 09.11.2010.

5. On 08.12.2010, the petitioner once again approached this Court in W.P.No.28610 of 2010 inter alia challenging the charge memo dated 08.09.2010, that after transfer to Delhi, the authorities in Chennai had no jurisdiction to issue a charge memo. Thereafter, the respondents in order to proceed with the disciplinary action, passed an order on 31.01.2011 amending the transfer order dated 04.11.2010 to the effect that the petitioner was retained at Kalpakkam itself. In the mean time, it appears that the respondent proceeded with disciplinary action without giving any opportunity to the petitioner and concluded the enquiry ex parte and enquiry report was submitted on 06.12.2010. Subsequently, the writ petition No.28610 of 2010 came for hearing on 18.4.2011 and the learned Judge of this Court dismissed the writ petition. However, while dismissing the writ petition, the learned Judge made an observation to the effect that it was open to the petitioner to seek permission to participate in the enquiry and the authority shall conduct the same in a fair manner after giving him an opportunity to participate in the enquiry and then, proceed with the same and pass final orders. The observation as found in paragraphs 10 and 11, are reproduced below:

"10. In any event, the order of transfer passed against the petitioner has nothing to do with the charge sheet. It is clear that the order dated 24.08.2010 is a posting order of transfer and it is for the authority there is give effect to the order and only thereafter, the transfer order comes into effect and therefore, that is not a ground for the petitioner to refuse to reply to the charges. In such view of the matter, I am of the considered view that the writ petition at this stage is not

maintainable and it is for the petitioner to work out his remedy either after the authority passes final order on the basis of the charge memo and findings of the Enquiry Officer, or it is always open to the petitioner to participate in the enquiry, by giving necessary representation to the respondents to reopen the enquiry so as to given him an opportunity to participate effectively in the enquiry, if in the mean time the authority has not passed final order.

11. In such view of the matter, the writ petition stands dismissed making it clear that the dismissal of the writ petition shall not stand in the way of the competent authority in granting approval for the order of transfer dated 24.08.2010. It is made clear that, if the petitioner desires to participate in the enquiry which is stated to have been completed ex parte by the Enquiry Officer and in the event of the authority not having passed any final order on the charge memo, it is open to the petitioner to make representation to the second respondent, seeking permission to participate in the enquiry and in such event, on such representation having been made by the petitioner, the second respondent shall consider the same in a fair manner and given him opportunity to participate in the enquiry and then, proceed with the same and to pass final orders."

6. In pursuance of the above observations made by this Court, it appears that the petitioner had submitted his representation dated 05.05.2011, seeking permission to participate in the enquiry. However, without giving any opportunity to the petitioner, the petitioner was dismissed from service vide proceedings of the first respondent dated 10.05.2011. On receipt of dismissal order, the petitioner once again submitted a representation on 19.05.2011, to the first respondent to re-open the enquiry and conduct the same afresh after affording an opportunity to him. Since no action was forthcoming, on 23.05.2011, the petitioner preferred an appeal to the second respondent against the dismissal order. In the appeal also, the petitioner had requested to conduct enquiry afresh, after giving opportunity to him to participate in the enquiry. However, by an order dated 29.06.2011, the said appeal

came to be rejected and thereafter, on 18.07.2011, the petitioner filed a revision petition to the third respondent and in the revision petition also, it was requested for grant of adequate opportunity to the petitioner. Once again, the revision petition was rejected by the third respondent on 16.09.2011. Against these orders, the petitioner is before this Court, assailing the same.

7. Although this Court in earlier writ petition, granted the benefit to the petitioner to participate in the enquiry while directing the authorities to afford an opportunity to him, but the fact of the matter was that the enquiry was conducted without due opportunity to the petitioner and concluded against him. In fact, there was a specific observation by this Court while dismissing the writ petition in W.P.No.28610 of 2010 dated 19.09.2011 as found in paragraphs 10 and 11, which were extracted supra and directed the first respondent to conduct enquiry, after giving an opportunity to the petitioner. Although dismissal order came to be passed on 10.05.2011, it appears that the petitioner had made a representation on 05.05.2011 itself, however, without giving any opportunity to the petitioner, the extreme penalty was imposed on him.

8. On the other hand, the learned counsel for the respondent would submit that no such representation was filed by the petitioner on 05.05.2011. However, the fact remains that the respondents were parties in the earlier proceedings in W.P.No.28610 of 2010 and they were very much aware of the categorical observations made by this Court. In any case, in order to comply with the principles of natural justice, the respondents ought to have granted adequate opportunity to the petitioner, no matter whether any specific request is made to that effect or not. Failure to give an opportunity to the petitioner to participate in the enquiry and concluding the same ex parte, would certainly take away the valuable right of the petitioner to participate in the departmental enquiry and establish his innocence. सत्यमेव जयते

9. Mr.N.G.R.Prasad, learned counsel attempted to draw attention of this Court to various materials and evidence let in during ex parte enquiry and would submit that the detailed disciplinary action was motivated and suffered by the vice of mala fides in view of the fact that the petitioner gave a statement against his superior officers for abusive conduct towards lady constable.

10. Learned counsel for the petitioner would also submit that due to mala fide action on the part of the respondents, the petitioner suffered non-employment for more than seven years. He would also submit that charges are very flimsy in nature, which

cannot result in imposition of harsh penalty of dismissal from service. Such order ex facie, is disproportionate to charge of mis-conduct against the petitioner.

11. Upon notice, Mr.K.Raja, learned Senior Central Government standing counsel entered appearance on behalf of the respondents and made his submissions.

12. The learned standing counsel would submit that the petitioner exhibited a conduct of unbecoming of police personnel in the department like CISF, where high degree of standard of discipline is expected to be maintained by every personnel. He would further submit that particularly, the conduct of the petitioner naming his higher officials as suspects for the loss of his two wheeler would itself speak of the mischievous mindset of the petitioner. He would strongly refute the statement made on behalf of the petitioner that a representation was made on 05.05.2011 requesting for conducting enquiry afresh by giving opportunity to the petitioner in the enquiry. According to him, the same was an afterthought and no such representation was received by the Administration. He would submit that the very conduct of the petitioner by not parking the two wheeler in the premises of the administration, but actually parked at in his quarters which led to its loss itself establishes his misconduct. Therefore, the respondents have initiated disciplinary action for negligence of the petitioner and rightly imposed the penalty for dismissal from service, as his retention in service was against public interest.

13. This Court has given its anxious consideration to the submissions of the learned counsel appearing for the parties, perused the relevant materials and pleadings placed on record.

14. Although several statements were made on behalf of the petitioner regarding mala fide action on the part of the first respondent particularly, in initiating disciplinary action, in view of the statement given by the petitioner against the superior officer for his abusing conduct towards a lady constable and also the manner in which, the enquiry was concluded disclosing the predetermined mind set of the authorities, to impose the punishment against the petitioner, this Court has to necessarily see as to whether before imposing the penalty of dismissal from service, an opportunity of being heard was afforded to the petitioner or not. Although, this Court vide its order dated 18.04.2011 in W.P.No.28610 of 2010 had observed that if the petitioner seeks permission to participate in the enquiry and on seeking such permission by the petitioner, the second respondent shall consider the same in a fair manner and give him an opportunity to participate in the enquiry and then, proceed with the same and to pass final

orders, however, it appears that the first respondent had clearly ignored the observation and concluded the enquiry ex parte and also failed to re-open the enquiry by affording adequate opportunity to the petitioner. Such conclusion of the ex parte enquiry, despite a specific request made in this regard by the petitioner, does not speak well of the conduct of the authorities in concluding the enquiry without providing an opportunity to the petitioner to participate in the enquiry. It only shows prima facie the attitude of the authorities biased mind set towards petitioner.

15. However, be that as it may, the fact of the matter is that the petitioner on his part, in response to the charge memo gave the names of the superior officials as suspects behind the loss of the vehicle, which obviously prompted the authority to issue charge memo against the petitioner. Such conduct on the part of the petitioner also cannot be appreciated by this Court unless the petitioner was sure and believe it to be so of his statement against his superior officers and not playing any game of one upmanship against the officers. In any event, ultimately, the petitioner came to be dismissed from service without giving any opportunity to him by conducting ex parte enquiry, by which, the petitioner was made to suffer non-employment for more than seven years.

16. Although specific request which has been made by the petitioner in his appeal and revision for conducting of enquiry afresh by giving him an opportunity, the respondents have ignored the request of the petitioner, without giving valid reasons and inflicted the dismissal order passed against the petitioner. Such conduct of both the Appellate Authority and Revision Authority cannot be appreciated in deciding the matters in a fair manner while dealing with the employees of the CISF. When a punishment of dismissal from service is to be imposed on the employee, a due care and caution must be taken before such punishment is imposed by the authorities, since the cause of punishment would result in loss of livelihood of the employee and denial of future employment in Government service and such extreme action has to be effected by following the principles of natural justice in compliance of the service rules and regulations in the strict sense and non-compliance of the same, cannot be appreciated or countenanced in law.

17. In view of the above narrative and discussion, this Court has no hesitation in allowing the writ petition. Therefore, the impugned orders viz., the dismissal order bearing No.NIL dated 10.05.2011, issued by the 1st respondent as confirmed by the second respondent by his order No.V-11014/A-12/2011/L&R/DAE/3979 dated 29.06.2011 read with order of the 3rd respondent bearing No.15012/10-7462 dated 16.09.2011, rejecting the petitioner's

revision filed and marked as Exhibits - A, B and C, are hereby set aside. The first respondent is directed to conduct a fresh enquiry against the petitioner by giving him adequate and fair opportunity to the petitioner to participate in the enquiry and pass orders on the basis of the report being submitted by the enquiry officer. Since the petitioner did not work for the period from the date of dismissal of service till date, he is not entitled to backwages on the principle of 'no work no pay'. The petitioner is deemed to have been kept under suspension and the petitioner is entitled to subsistence allowance, as per service regulations of the CISF, which shall be continued till the final orders passed in this regard. The respondents are directed to complete the exercise, within a period of six months from the date of receipt of a copy of this order.

18. With the above direction, this writ petition stands partially allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS IX)

True Copy

Sub-Assistant Registrar

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To

1. The Commandant,
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Ministry of Home Affairs,
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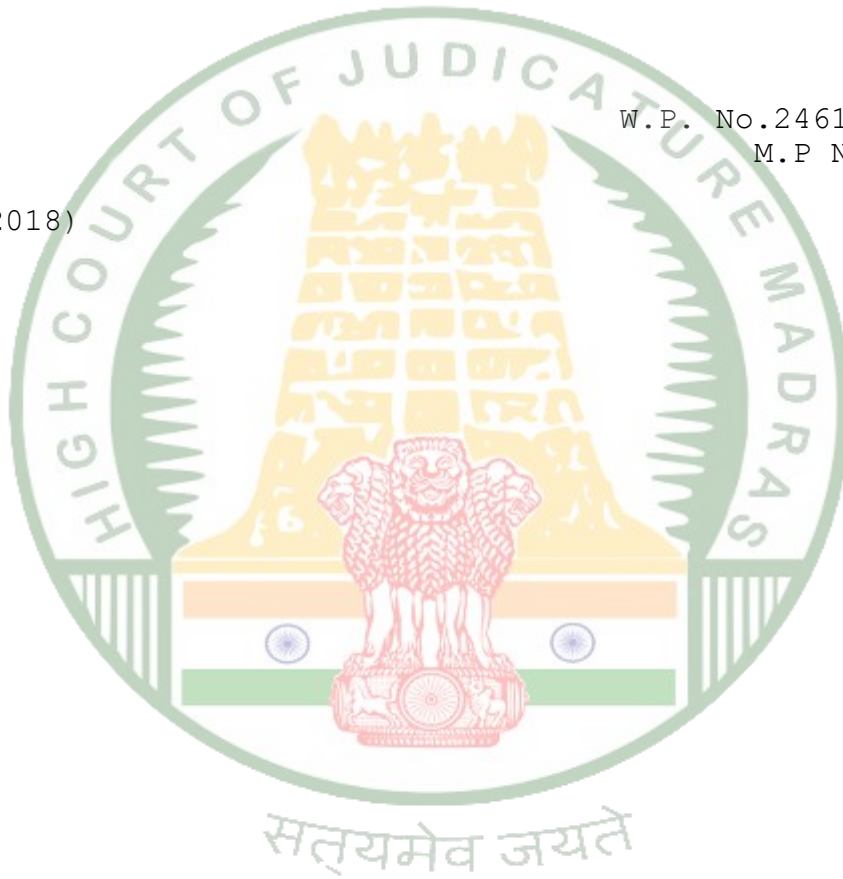
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+2 Ccs to Mr.K. Raju, Advocate sr 4170, 784.
+1 CC to Row and Reddy, Advocate sr 3847.

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SP(08/02/2018)



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