

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.20526 of 2012

Gurusiddappa

... Petitioner

Vs

1.The Office of the Group Commandant,
Central Industrial Security Force,
Rep by its Group Commandant,
Ministry of Home Affairs, Block 'D',
Rajaji Bhawan, Besant Nagar,
Chennai 600 090.

2.The Office of the Deputy Inspector General,
Central Industrial Security Force,
Rep by its Deputy Inspector General (SZ),
Ministry of Home Affairs, Block 'D',
Rajaji Bhawan, Besant Nagar,
Chennai 600 090.

3.The Office of the Inspector General,
Central Industrial Security Force,
Rep by its Inspector General, Ministry
of Home Affairs, South Sector Headquarters,
Chennai Port Trust Campus, War Memorial,
Chennai 600 009.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the order passed by the third respondent in proceedings No.V-15014/Rev/GS/SS/2010-85 dated 04.02.2011, confirming the order of the second respondent in proceedings No.V-11014/56/2006/L&R (SZ) 6460 dated 17.11.2006, confirming the order of the first respondent in proceedings No.V-15014/GHC/AD.VI/GS/SSP/2005-1978, dated 14.06.2006 of the first respondent and quash the orders passed therein and consequently, direct the respondents to extend all benefits such as promotion, etc., with retrospective effect.

For Petitioner	: Mr.Yogesh Kannadasan
For Respondents	: Mr.S.Janarthanam, Central Government Standing Counsel

O R D E R

Heard Mr.Yogesh Kannadasan, learned counsel for the petitioner and Mr.S.Janarthanam, learned Central Government Standing Counsel appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records of the order passed by the third respondent in proceedings No.V-15014/Rev/GS/SS/2010-85 dated 04.02.2011, confirming the order of the second respondent in proceedings No.V-11014/56/2006/L&R (SZ) 6460 dated 17.11.2006, confirming the order of the first respondent in proceedings No.V-15014/GHC/AD.VI/GS/SSP/2005-1978, dated 14.06.2006 of the first respondent and quash the orders passed therein and consequently, direct the respondents to extend all benefits such as promotion, etc., with retrospective effect."

3. The case of the petitioner is as follows:-

The petitioner was working as Assistant Sub-Inspector in the Central Industrial Security Force (CISF). In the year 2005, the petitioner was charge sheeted for certain acts of misconduct. According to the charge memo, the petitioner had lent money to third party civilians and visited the quarters of one Mr.B.Rajappa who was working as a Teacher in the Government High School and took away his Television set for non-payment of loan and a criminal case was registered in respect of the death of Mr.B.Rajappa and the petitioner was arrested on 20.06.2005 and he failed to inform the Department about his arrest.

4. According to the prosecution, the petitioner was responsible for the death of the said school Teacher and committed offence under Section 306 of the Indian Penal Code. The petitioner on receipt of the charge memo, denied the charges. The petitioner was placed under suspension vide order dated 22.06.2005, immediately after his arrest on 20.06.2005. The petitioner came out on bail after 14 days from the date of his arrest and according to him, he could not inform the employer immediately about his arrest. However, the Department itself had come to know about his arrest and passed an order of suspension within two days of his arrest on 20.06.2005.

5. After the conclusion of the criminal trial, the Criminal Court by its judgment dated 31.03.2006, acquitted the petitioner by observing that the entire case was cooked up story and concluded that the death of the Teacher cannot be attributed to the conduct of the petitioner. On conclusion of the departmental

enquiry, a report was submitted holding the charges proved. On the basis of the report, the disciplinary authority passed an order on 14.06.2006, imposing the punishment of reduction by two stages in the time scale of pay for a period of one year with immediate effect and further directed that the petitioner will not earn any increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay. According to the petitioner, the punishment was treated as continuous one with cumulative effect and even after the punishment period was over on 14.06.2007, the petitioner was not considered for any service benefits like promotion to the post of Sub-Inspector of Police.

6. Against the order passed by the disciplinary authority, an appeal was filed and the same was rejected on 17.11.2006. Further revision was filed in 2010 and the revision petition came to be rejected on the ground that the revision petition was belated, by proceedings dated 04.02.2011. These proceedings are put to challenge in the present writ petition.

7. The learned counsel for the petitioner would submit that the punishment imposed by the disciplinary authority, the first respondent herein, is contrary to the rule position, since the rules do not provide for cumulative effect in such punishments. In fact, this position has been recognised by this Court, wherein, the Hon'ble Division Bench of this Court vide its order dated 21.09.2006, under similar circumstances, ordered deletion of cumulative effect imposed on a similar police personnel attached to the Central Industrial Security Force. The learned counsel would draw the attention of this Court to the order passed by the Hon'ble Division Bench, in W.P.No.23705 of 2001 etc., dated 21.09.2006. The learned counsel would draw the attention of this Court to paragraph Nos.3, 4 and 5, which is reproduced below:-

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3. At the outset, learned counsel appearing for the petitioners by drawing our attention to Rule 31(e) of the Central Industrial Security Force Rules, 1969, contended that as per the said provision, the authority concerned is permitted to impose penalty of withholding of increment or promotion and not withholding of increment with cumulative effect. It is pointed out that in view of the above provision, viz., Rule 31(e) as it stands, the authority/authorities can at the most impose the penalty of withholding of increment or promotion. In addition to the same, the Notification No.V-14013/64/88/L&R/1256 dated 14.10.1992, by the Directorate General, Central Industrial Security Force

(Ministry of Home Affairs, New Delhi), is brought to our notice. After considering the above provision, viz., Rule 31(e) of CISF Rules, 1969 as well as the decision of the Calcutta High Court reported in 1981(2) SLR 807 [Food Corporation of India vs. State of West Bengal and others], wherein, it has directed all the authorities to note that in all the punishment orders, the words "with cumulative effect" have to be deleted. It is the claim of the learned counsel for the petitioners that in view of Rule 31(e) of the Rules, as interpreted by the Directorate General of Industrial Security Force, the penalty of withholding of increment "with cumulative effect" cannot be imposed.

4. Learned Senior Central Government Standing Counsel appearing for the respondents submitted that in view of the provision, viz., Rule 31(e) and the clarification issued in the form of a notification by the Deputy Inspector General, Central Industrial Security Force, the claim of the petitioners has to be accepted.

5. In view of the statutory provisions, as accepted by the Deputy Inspector General in his notification referred above, there is no difficulty in accepting the claim of the petitioner only with regard to imposition of penalty. Accordingly, the impugned orders in all these writ petitions are to be modified as under: the words "with cumulative effect" have to be deleted. In other respects, the orders passed by the original/appellate/revision authorities are confirmed. The writ petitions are ordered accordingly. No costs.

8. The learned counsel would submit that in the instant case, the punishment has been treated as one of cumulative effect and therefore, the petitioner although entitled to be considered for promotion after the punishment period was over in June 2007, yet, has not been considered all these years for promotion on the ground that the punishment which was originally imposed on 14.06.2006, continued all years to come. According to the learned counsel that the effect of postponing his increment as fall out of the punishment, has continuous effect on his service career which is not contemplated in the Rules.

9. Upon notice, learned Central Government Standing Counsel appearing for the respondents, entered appearance and filed a detailed counter affidavit. In the counter affidavit, it is stated that the departmental action is different from the criminal action and the standard of proof is also different. The petitioner was found guilty in the departmental action and therefore, he was rightly imposed with the impugned penalty. The petitioner was given due opportunity to participate in the

enquiry, only thereafter, the disciplinary authority imposed the penalty. Since there was no merit in the appeal, the appellate authority rejected the same and the petitioner having preferred a revision petition after three years, the revisional authority rightly dismissed the same on the ground of delay. Therefore, the learned counsel would submit that the orders passed by the respondents do not call for interference from this Court.

10. At this, learned counsel for the petitioner would submit that the very same incident which was a subject in issue before the Criminal Court, was the subject matter of the charge memo in the departmental action. Once, the Criminal Court has given a clean chit to the petitioner, stating that the entire prosecution case was cooked up story, the charge memo cannot be sustained in law at all. According to the learned counsel that the charge memo is sought to be established on the same set of facts and grounds as in the criminal prosecution and therefore, the enquiry report as against the petitioner cannot be countenanced both in law and on facts.

11. Per contra, learned counsel appearing for the respondents would submit that in any event, as regards the third charge is concerned, the petitioner failed to report about his arrest to the Department. Therefore, he was visited with the impugned penalty. But, the learned counsel for the petitioner would submit that in any event, the Department had come to know about his arrest within two days and placed the petitioner under suspension on 22.06.2005. In any event, the petitioner after coming out on bail after 14 days, had informed the Department and therefore, the said charge cannot give rise to the imposition of impugned penalty as such. Therefore, the learned counsel would submit that the punishment imposed on such finding in the teeth of the clear conclusion by the Criminal Court, has to go lock, stock and barrel.

12. This Court has given its anxious consideration to the submissions made on behalf of the learned counsel for the petitioner as well as the respondents. Firstly, this Court has to see whether the charges are held proved in the departmental enquiry in the teeth of the clear finding given by the Criminal Court stating that the entire prosecution case was a cooked up story. Once the criminal finding has become final, the departmental action proceeded against the petitioner on the same set of facts and circumstances cannot be countenanced in law, as the petitioner was admittedly acquitted not on technicalities but on merits. Once the petitioner has been acquitted on merits, the departmental action in imposing the penalty for the same incident, is completely without any justification. Therefore, this Court is of the considered view that the petitioner has to succeed on this ground alone. Even otherwise, when one side the

criminal Court has given a clear acquittal viz., honourable acquittal to the petitioner, the Department cannot find the petitioner guilty of the same charges which was a subject matter of the criminal prosecution. Such action on the part of the respondents cannot be justified under any circumstances. Since this Court is of the view that the departmental action as proceeded against the petitioner is illegal and cannot be countenanced in law, it refrains from going into the issue of whether the penalty with cumulative effect can be imposed on the petitioner or not under the service rules.

13. In view of the above said narrative and discussion, this Court set aside the impugned proceedings in No.V-15014/Rev/GS/SS/2010-85 dated 04.02.2011, proceedings No.V-11014/56/2006/L&R (SZ) 6460 dated 17.11.2006 and proceedings No.V-15014/GHC/AD.VI/GS/SSP/2005-1978, dated 14.06.2006. This Court is also of the considered view that the petitioner is entitled to be considered for promotion as Sub-Inspector of Police with effect from the date his juniors were considered for such promotion with all attendant and service benefits as admissible to the petitioner. The respondents are directed to implement the direction passed by this Court, within a period of eight weeks from the date of receipt of a copy of this order.

14. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

gsk

To

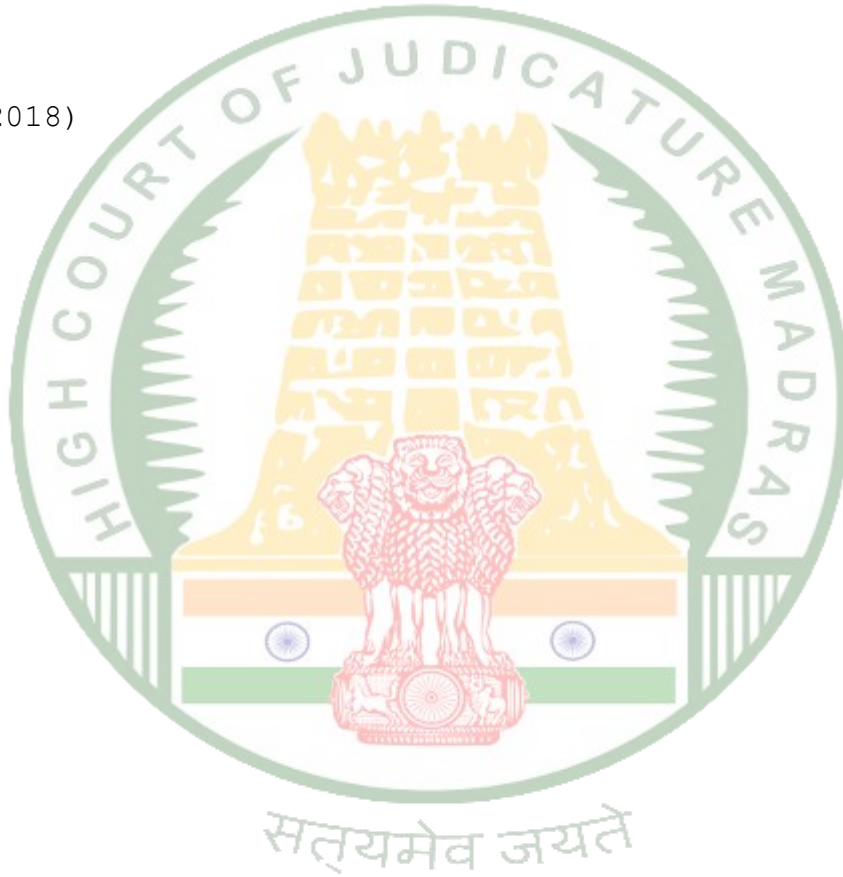
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+1cc to Mr.YOGESH KANNADASAN, Advocate, S.R.No.18686
+1cc to Mr.S.JANARTHANAN, Advocate, S.R.No. 18328

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SKS(CO)
TR(09/04/2018)



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