

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.30695 of 2012

N.Subramanian

... Petitioner

Vs

1. Union of India,
Rep by its Secretary,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi-110 001.
2. The Inspector General/South Sector,
Central Industrial Security Force,
South Sector, Chennai Port Trust,
No.1, Rajaji Salai, Chennai-600 001.
3. The Deputy Inspector General,
South Zone,
Central Industrial Security Force,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.
4. The Commandant,
Central Industrial Security Force,
Unit TPT, Tuticorin-628 004.

... 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 2nd respondent, made in reference No.V-15014/L&R/SS/Rev/NS/2012-133, dated 27.04.2012 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant service benefits, along with back wages and continuity of service.

For Petitioner : Mr.Balan Haridas and
Mr.R.Kamatchi Sundaresan for
Ms.S.Geetha

For Respondents : Mr.T.L.Thirumalaisamy
Central Government Standing Counsel

O R D E R

Heard Mr.Balan Haridas and Mr.R.Kamatchi Sundaresan, learned counsel for the petitioner and Mr.T.L.Thirumalaisamy, 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 2nd respondent, made in reference No.V-15014/L&R/SS/Rev/NS/2012-133, dated 27.04.2012 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant service benefits, along with back wages and continuity of service."

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

The petitioner joined the service of Central Industrial Security Force (CISF) as a Security Guard on 14.07.1976. The post was subsequently reclassified as Constable in the year 1985. In 1998, he was promoted as Head Constable. According to the petitioner, he was due for promotion as Assistant Sub-Inspector in 2010.

4. The petitioner was posted as Head Constable at Central Industrial Security Force unit TPT - Tuticorin and he was to perform the security duties at check Post-I of TPT - Tuticorin in "B" Shift duty from 13.00 hrs to 21.00 hrs on 18.08.2009. On that day, a surprise check was conducted at 19.45 hours by superior officers and the petitioner was found having in his possession Rs.15/- in excess of the amount declared by him in the General Diary as required by the rules and also the amount of Rs.419/- retrieved from the pit near the Check Post where the petitioner was assigned duty. According to the inspecting officials, the amounts were unaccounted and therefore, it was presumed that the petitioner must have received the unaccounted money by way of illegal gratification from the Truck drivers who were passing through the Check Post.

5. In the above said circumstances, a disciplinary proceedings was initiated against the petitioner and other Constable viz., Mr.P.Pandian, who is also posted along with him at the same Check Post, under Rule 36 of the CISF Conduct Rules vide charge memo dated 15.09.2009. In response to the charge memo, the petitioner submitted his written statement of defence on 22.09.2009, denying the allegations contained in the charge memo. However, not satisfied with the defence statement, an enquiry was ordered into the charges. In the enquiry, the petitioner participated and several witnesses were examined and

documents marked both on prosecution as well as on the defence side. The case of the prosecution was that the petitioner along with other constable had dishonestly earned Rs.434.50/-, by misusing their official capacity.

6. The case of the defence was that the Rs.419.50/-, which was recovered from the pit near the Check Post, cannot said to be the money earned dishonestly by the petitioner, since he was not aware of the money lying in the pit. As regards the possession of Rs.15/- in excess of what he had declared in the General Diary before entering the duty, the petitioner's explanation was that the other Constable had given him Rs.20/- to buy tiffin and he was only having the balance amount after getting some refreshment for the other Constable. Moreover, the defence was that there was no direct evidence to establish that the money which was lying in the pit had been illegally earned. The entire prosecution was on the basis of presumption against both the petitioner and other Constable viz., P.Pandian.

7. While matter stood thus, on conclusion of the enquiry, enquiry report was submitted holding the charge proved. On the basis of the enquiry finding, the Disciplinary Authority passed an order on 23.03.2011, dismissing the petitioner from service. Against which, an appeal was preferred by the petitioner to the third respondent, the Appellate Authority on 23.04.2011. The Appellate Authority rejected the appeal vide proceedings dated 29.08.2011. Against which, further revision was filed before the second respondent on 18.02.2012, and the same was also rejected by the second respondent, the Revisional Authority on 27.04.2012. The order passed by the Revisional Authority dated 27.04.2012, is put to challenge in the present writ petition.

8. Upon notice, learned Central Government Standing Counsel appearing for the respondents has entered appearance and filed a detailed counter affidavit.

9. The learned counsel for the petitioner would submit that merely on the basis of the presumption, one cannot said to be guilty of the charge of illegal gratification as there was no direct evidence let in, in the enquiry for establishing the charges against the petitioner. The inspecting authorities had without any materials, concluded that the money which was lying in the pit must have been earned by dishonest means by the petitioner and the excess cash of Rs.15/-, found in the possession of the petitioner was also earned dishonestly.

10. According to the learned counsel for the petitioner, the explanation given by the petitioner was not properly appreciated. According to him, the enquiry report was flawed for the reason that the ultimate findings were not supported by

proper materials and evidence. He would therefore submit that the action of the Disciplinary, Appellate and Revisional Authorities in dismissing the petitioner from service and confirmed the same, therefore, cannot be countenanced both in law and on facts.

11. Per contra, learned Central Government Standing Counsel appearing for the respondents would submit that the petitioner was given full opportunity to part take in the enquiry proceedings and the petitioner failed to convince the Enquiry Officer of his innocence. On the other hand, there was a strong circumstantial evidence that the money which was lying in the pit was meant for the petitioner which was nothing but dishonest earning on his part. Moreover, the explanation offered by the petitioner in regard to the excess money of Rs.15/- found in his possession was hardly convincing and the statement was unsupported by any witness. Therefore, the Enquiry Officer has rightly concluded that the charges were made out against the petitioner. Since the charges were very serious in nature of getting illegal gratification, the respondents have imposed a penalty of dismissal from service on the petitioner. Such action cannot be faulted at all by this Court.

12. During the course of the argument, learned counsel for the petitioner produced an order passed by the learned Single Judge of this Court in W.P.(MD).No.8885 of 2013 dated 10.11.2017, wherein, the learned Judge of this Court was dealing with the challenge to the disciplinary action initiated against the other Constable P.Pandian, as he was also charge sheeted for the same incident. The said Mr.P.Pandian, the Constable, was also posted in the same Check Post and he was also accused of taking illegal gratification like the petitioner herein, in respect of the same money which was lying in the pit.

13. The learned Single Judge after considering all the relevant materials, ultimately quashed the disciplinary action against the said P.Pandian, stating that the charges were not established. The learned Judge in fact, went into the factual aspects of the matter and found that there was no material to establish that the money which was lying in the pit was illegal gratification meant for the said Constable. The observations and ultimate conclusion of the learned Single Judge as found in paragraph Nos.51 to 59, are reproduced hereunder:-

51. In fact, a similar issue came up for hearing before me as against the very same CISF Unit at Tuticorin Port Trust, where also almost on similar fact, the said security personnel had been removed from service. In the said case, in W.P.(MD).No.1009 of 2010 in G.Ramasamy (died) S.R.Gowri substituted for the deceased sole petitioner v. Union of India represented

by its Secretary to the Government Department of Home Affairs, New Delhi, by Judgment dated 25.01.2017, I have considered two decisions i.e., W.P.No.1365 of 2017 and W.P.No.(MD).3513 of 2010, which have been again cited herein by the learned counsel appearing for the petitioner.

52. In the said case in W.P.No.(MD).1009 of 2010 cited supra, somewhat it was slightly better case from the side of the prosecution. In that case, two security personnels were on duty at the time of surprise check up and one security personnel threw the currency note wrapped with rubber band. Based on which, charge has been framed against another security personnel also on the ground that the said bunch of currency notes said to have been found on the earth and the same was handed over by the other security personnel, who was the petitioner in that Writ Petition and when the same was kept by other security personnel, he had thrown it at the time of surprise check up. Even in the said case, the personnel, who thrown the wrapped up currency notes, was given lesser punishment and the said security personnel, who was the petitioner in W.P.No.(MD).1009 of 2010, was given the maximum punishment of dismissal from service. While dealing with the said matter, I have given my reasonings to set aside the said punishment at Paras 18 to 21, which are extracted hereunder:

"18. In this regard, this Court, when raised a question that if the theory of the department that at the time of surprise inspection, a bundle of currency was thrown suddenly by the said Sadashiv and on recovering the same, when it was questioned both the petitioner herein and the said Sadashiv had given a statement, which in fact, lead to frame charges against them, then, certainly, money, if it is a ill gotten money must be for the benefit of both the petitioner as well as the said Constable Sadashiv. Assuming that the said Sadashiv is an innocent and he had been with the possession of the money, only because it was given by the said Ramasamy ie., the petitioner herein and therefore, the said Sadashiv could be an innocent one, than the Sadashiv could not have been given a punishment, even a minimum punishment of stoppage of increment. If the money was thrown only by the said Sadashiv, then,

either the petitioner can have the joint responsibility with the said Sadashiv or the petitioner can claim innocence, as from whom no money was recovered or the petitioner had not thrown any money, at the time of surprise inspection, in that case, the petitioner should not have been inflicted with the maximum punishment of removal of service. Moreover, none of the eye witnesses, as has been claimed by the department, has deposed before the Enquiry Officer that they saw the incident of throwing the bundle of currency by the said Sadashiv. What they merely said is that at 13 hours when they were near to the blue gate, these team of officers came up for inspection and immediately, when the duty time was over, they left the spot or what had happened in the blue gate were not known to them. Moreover, there is no complaint from the container/lorry owners about the demand of any illegal gratification by the petitioner and other Constable, at any rate no such recovery of money has been made from the possession of the petitioner.

19. Therefore, viewing from any angle, fixing connection with the petitioner along with the said incident and based on which, inflicting the maximum punishment of removal of service on the petitioner while giving a minimum punishment to the co-delinquent ie., Constable Sadashiv is not acceptable one, because there is no proof or evidence to show that the money was recovered from the petitioner.

20. The alternative theory submitted as defence by the petitioner that actually the bundle of currency contains of 2 - 100 rupee note and one - 50 rupee note was taken from the floor along side the gate and it was handed over to Sadashiv for enabling them to hand it over to the concerned official at the time of completion of the duty, to some extent, may be acceptable, because normally this kind of gratification received by the members of the uniformed services may not be by way of bundle wrapped with rubber band and this kind of keeping some minimum money by wrapping it as a bundle, is the usual

customary practice to be adopted by the Drivers of the vehicle. Therefore, even there is no chance of arriving a preponderance of probability in this case.

21. Moreover, there is absolutely no nexus with the punishment inflicted on the petitioner and the other co delinquent namely Constable Sadashiv, in spite of the fact that the money was thrown only by the said Sadashiv. Therefore, for all these reasons, and for the principles, as has been applied, by this Court, in the said judgments cited by the learned counsel for the petitioner, it can be easily concluded that the petitioner cannot be said to be involved in the alleged action of illegal gratification, as absolutely, there is no direct or indirect evidences connecting the petitioner for such an alleged violation and therefore, in that view of the matter, this Court is of the considered view that the order of punishment of removal of service is liable to be interfered with."

53. When compared the said facts with the said case cited supra, this Court feels that, the petitioner is in far better position than the said case referred to above. In the case referred to above, it was the allegation that at the time of check up, one security personnel thrown the bunch of currency notes wrapped in the rubber band, whereas, here it is the case of the Department that the currency note was wrapped up in a paper, was found and recovered from the earth. Even based on that, it was a recommendation of the Assistant Commandant, who conducted the surprise check up that, the said money of Rs.419.50 was recovered from the Head Constable N.Subramanian and therefore, the action was recommended against him. Whereas, the petitioner, who gave full vouch for the remaining pocket money found in his pocket, has been charged by the Department stating that he was responsible for the said illegal gratification of Rs.419.40/- and if at all, he was not involved in the said illegal gratification, he should have reported the illegal gratification on the part of the Head Constable N.Subramanian and since he has not reported, it should be presumed that he is also, with the connivance of the Head Constable indulged in illegal activity. This kind of reasonings given to make charge against the petitioner is absolutely arbitrary

and unjustifiable. Moreover, it is a great contradiction between PW1 and PW2, who are not only the eye witness, but also the actual persons, who conducted the surprise check up.

54.From the beginning till end, the contradictions continue, as PW2 says that the wrapped up currency notes was picked up by PW1 and whereas PW1 says it was picked by PW2. Though the Enquiry Officer stated that it was picked up by both PW1 and PW2, this Court is at loss to understand on what basis the Enquiry Officer has given the said reasonings. It is the case of the Department that a sum of Rs.419.50 was found in the denomination of the Currency notes, which has been mentioned as follows:

"The denomination of the currency notes.

(1)	100	x	1	=	100.00
(2)	50	x	1	=	50.00
(3)	20	x	1	=	20.00
(4)	10	x	22	=	220.00
(5)	5	x	4	=	20.00
(6)	2	x	3	=	6.00
(7)	1	x	3	=	3.00
(8)	0.50	x	1	=	0.50

					= 419.50

(Rupees four hundred and nineteen and paise fifty only)"

55.It is not only the currency notes of Rs.100/-, Rs.50/-, Rs.20/- and Rs.5, but also a currency notes of Rs.1/- (3 Nos) and 1 No. of 50 paise coin.

56.If at all, any illegal gratification is received by the security personnel, it cannot be said that they would have received Rs.1/- and one number of 50 paise coin. Only, in this context, my reasoning given in the earlier order in W.P.No.(MD).1009 of 2010 referred to above, can be pressed into service. In the said order, I have stated that this kind of keeping some minimum sum by wrapping it as a bundle is the usual customary practice to be adopted by the drivers of the vehicle. Here in the case in hand, still, currency notes of various denominations from Rs.100/- to Rs.1/- were part of the bundle and Rs.1/- and 50 paise coin also, and definitely, this denomination would not be an illegal gratification given by the drivers of the vehicles. Moreover, it was specifically

deposed by both PW1 and PW2 that they did not witness or see that those money was received by the petitioner or the other security personnel and they also deposed that they did not see whether the wrapped up bundle of currency notes was kept by the security personnels or not. In the absence of any of the ingredient, it cannot be construed that the petitioner was responsible for the said alleged illegal gratification.

57. Moreover, from the beginning, the finger of the prosecution was showing only towards the Head Constable N.Subramanian as against whom only recommendation was made by the Assistant Commandant to initiate action. It is the further fact that the said Head Constable N.Subramanian, has been imposed only penalty, whereas, the petitioner, against whom no direct or indirect evidence available to the prosecution, has been inflicted with the maximum punishment of dismissal from service, which has been subsequently modified to compulsory retirement. This action on the part of the respondents, in the opinion of this Court, on the basis of the aforesaid facts and circumstances, is absolutely unjustifiable and unlawful and therefore, this Court has no hesitation to hold that the said punishment and modification is duly unjustifiable, arbitrary and without any sound basis and hence, this Court has no other option except to interfere with the said order of punishment, as modified by the Revisional Authority.

58. In the result, the impugned orders of punishment of dismissal of service inflicted against the petitioner by the Disciplinary Authority as confirmed by the Appellate Authority, and modified by the Revisional Authority into compulsory retirement with eligibility of full pensionary benefits, are hereby set aside.

59. The petitioner shall be reinstated into service with all consequential service and monetary benefits including back wages, increment, if any, arrears of pay benefits, etc., The aforesaid action of reinstatement and payment of monetary benefits shall be made by the respondents within a period of two months from the date of receipt of a copy of this order."

The learned counsel for the petitioner would further submit that the case of the petitioner herein also covered by the orders passed by the learned Single Judge, in respect of other Constable Mr.P.Pandian.

14. This Court after considering the order passed by the learned Single Judge in the aforementioned matter, is in agreement with the submission made by the learned counsel for the petitioner that once the learned Judge of this Court has dealt with the similar charge sheet, in respect of the same incident and found the charges were not established and quashed the entire disciplinary action against the other Constable, this Court cannot take a different view. This is more so, when the learned Judge of this Court had appreciated all the factual materials and held that the charges were not proved. If that conclusion holds good for the other Constable Mr.P.Pandian, the same will have to hold good for the petitioner herein also.

15. This Court is therefore of the considered view that the petitioner herein has to succeed in full and this Court is also of the considered view that once the other Constable is fully exonerated by this Court of the charges and it is not for this Court to take any different view in the matter except to follow the same conclusion. Moreover, this Court also finds independently that the authorities have framed the charges against the petitioner herein only on the basis of the presumption that the money which was lying in the pit and the money which was found in possession of the petitioner, was earned by dishonest means. A mere presumption cannot give rise to the charge memo, unless the same is supported and corroborated by material evidence.

16. This Court also finds that there is absence of direct evidence and also absence of corroboration for holding the charges proved against the petitioner. In fact, the learned Judge has given an elaborate reasoning as to how the money which was lying in the pit, not meant for the constable by way of illegal gratification. In fact, the learned Judge concluded that there are no charges to appreciate the preponderance of probability. In this case, such categoric and definite findings of the learned Judge will also hold good for the petitioner herein.

17. For the above circumstances, this Court has no hesitation in allowing the writ petition. The impugned order passed by the second respondent by proceedings made in reference No.V-15014/L&R/SS/Rev/NS/2012-133, dated 27.04.2012, is hereby quashed. It is represented by the learned counsel for the petitioner that the petitioner had already attained the age of superannuation in July 2014. In the said circumstances, there shall be a consequential direction to the respondents to pay all the benefits as admissible to the petitioner like back wages, pension and arrears of pension etc., on being notionally reinstated in service.

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

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Secretary,
Union of India,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi-110 001.
2. The Inspector General/South Sector,
Central Industrial Security Force,
South Sector, Chennai Port Trust,
No.1, Rajaji Salai, Chennai-600 001.
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+1cc to Mr.Balan Haridas, Advocate, S.R.No.11569

+1cc to Mr.T.L.Thirumalaisamy, Advocate, S.R.No.11469

W.P.No.30695 of 2012

LRS (CO)
CS/27/03/18

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