

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27843 of 2017
and
W.M.P.Nos.29867 of 2017
and
W.M.P.Nos.2856 of 2018

Sujoy Gupta, Deputy Commandant
Central Industrial Security Force Unit,
Chennai Petroleum Corporation Limited,
Manali, Chennai - 600 068. ...Petitioner

vs

- 1.The Director General,
Central Industrial Security Force,
Block No.13, C.G.O's Complex,
Lodhi Road, New Delhi - 110 003.
- 2.The Assistant Inspector General/Pers
Central Industrial Security Force,
Block No.13, C.G.O's Complex,
Lodhi Road, New Delhi - 110 003.
- 3.The Deputy Inspector General (SZ),
Central Industrial Security Force Campus,
Rajaji Bhavan, Besant Nagar,
Chennai - 90
- 4.The Deputy Inspector General (Legal),
Central Industrial Security Force,
FORCE HEAD QUARTERS,
Block No.13, C.G.O's Complex,
Lodhi Road, New Delhi - 110 003.
- 5.The Group Commandant,
Central Industrial Security Force Campus,
Rajaji Bhavan, Besant Nagar,
Chennai - 90.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the Impugned Memorandum issued under Rule-16 of the CCS (CCA) Rules 1965 by the 4th Respondent in his Memorandum No.V-15014/10/2014/L&R/591 dated 24.05.2017

and quash the same.

For Petitioner : Mr.Sujoy Gupta (party-in-person)
For Respondents: Mr.G.Karthikeyan,
Assistant Solicitor General

O R D E R

The Charge Memorandum issued against the writ petitioner by the Deputy Inspector General (Legal) in proceedings dated 24.05.2017 is under challenge in this writ petition.

2. The writ petitioner, Mr. Sujoy Gupta, Deputy Commandant, Central Industrial Security Force Unit ("CISF") has appeared as party-in-person. The writ petitioner is able to articulate his case in a proper manner. The petitioner contended that the charge memo against him is improper and contrary to the findings of the enquiry report made in this regard. The allegation of Supervisory lapses contended in the charge sheet are false and untenable on the ground that the enquiry report states that the writ petitioner is an innocent officer and unconnected with the crimes committed by certain other personnel working in "CISF". The petitioner is of an opinion that, when the enquiry report states that he is not responsible for any of the allegations, then there is no reason to proceed with the disciplinary proceedings against him. The petitioner has submitted the copy of the enquiry report stating that the findings are in his favour. Further, he contended that the Department is acting against him with a view to harass him. Thus, the charge sheet is liable to be scrapped.

3. The learned Assistant Solicitor General of India appearing on behalf of the respondents opposed the contentions by stating that it is premature to raise all these contentions at this point of time when the department has not in collusion in respect of the charges framed against the writ petitioner. The writ petitioner is a responsible officer working in the cadre of Deputy Commandant and therefore, the Charge Memorandum framed against him in respect of the supervisory lapses committed is to be examined in detail by the enquiry officer and only thereafter, the disciplinary authority will be in a position to take a decision in this regard. Even before forming a complete opinion in respect of such supervisory lapses, the disciplinary authority will not be in a position to arrive at a conclusion whether the writ petitioner is innocent or not. Thus, the writ petition is premature and liable to be rejected in limine.

4. The charges framed against the writ petitioner are extracted hereunder:

"STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR ON WHICH ACTION IS PROPOSED TO BE TAKEN AGAINST SHRI SUJOY GUPTA, DEPUTY COMMANDANT, CISF.

Shri Sujoy Gupta, Dy.Commandant while posted as Assistant Commandant at CISF Unit NTPC Barh during the period from 01.11.2012 to 09.08.2014, failed in his supervisory duties as per the following paras:

(a) In the night of 19.04.2014 at about 2330 hrs, on information, a vehicle (Trailer) bearing Registration No.WB-37-8459 loaded with Iron Rods worth about Rs.10 lakhs was intercepted by Local Police, P.S.Pandarak, Distt.Patna(Bihar)at NH-31 when the said Vehicle was exiting material gate of NTPC Barh for which major disciplinary proceedings were initiated against Coy Commander and Shift In-charge and they were awarded major penalties. Besides, minor penalty proceedings were also initiated against 04 other personnel for allowing the said vehicle without checking or making entry in outgoing material register and they have also been awarded minor penalties.

(b)Shri Sujoy Gupta, despite receipt of information from NTPC General Manager on 20.04.2014 around 0100 hrs that a vehicle was seized at a distance of less than 1 Km away from NTPC on NH-31, he and his staff did not bother to check and verify the facts. Instead, on the pretext of non-availability of transport in the Unit he was roaming inside the Plant on foot with staff and there after he went back to his home. Though he alerted the CIW I/C and the Coy. Commander, none of them responded adequately.

(c)Shri Sujoy Gupta, DC has failed to send intimation about the above incident to the higher informations through Daily Situation Reports(DSR) or any means of communication on 19 & 20.04.2014. It was only on 21.04.2014 after news was flashed in Newspapers, it was mentioned in DSR about the seizure of vehicle. Till such time he was continuously giving 'Nil' report to higher formation. Again on 22.04.2014 vide letter No.(1313) he denied any such report and did not reflect in the Monthly/Quarterly Crime reports of the Unit.

(d) That the said Shri Sujoy Gupta failed to take pro-active action in analyzing the

systematic failure and fix the responsibility for the lapse. He failed to put in place an appropriate system for monitoring the movement of men and material thereby giving scope for illegal activities.

Thereby, this incident exposed lack of proper security arrangements, supervision, proper command and control over the functioning of CIW personnel/duty personnel deployed at material gate on the part of Shri Sujoy Gupta being the only Gazetted Officer available at the time of incident at NTPC Unit i.e. on 19/20.04.2014. He also failed to take immediate and effective steps on receiving information about the seizure of vehicle by the police.

Thus, Shri Sujoy Gupta, Deputy Commandant failed to maintain absolute devotion to duty and acted in a manner unbecoming of an officer of his status and thereby contravened the provision of Rules 3(1) of CCS (conduct) Rules, 1964 and exhibited a conduct unbecoming of an officer in an Armed force of the Union. Hence the charge."

5. On receipt of the charge memo, the writ petitioner had submitted a representation on 08.06.2017 to the authorities concerned to exonerate him from the allegations, as he is not responsible for any of the allegations set out in the charge sheet. The second representation was submitted by the writ petitioner on 25.08.2017, since there was no response from the authorities competent, the writ petitioner is constrained to move this writ petition before this Court, challenging the very charge sheet.

6. This Court is of an opinion that no writ can be entertained against a charge memo in a routine manner. A writ against a charge memo or show cause notice shall be entertained only on exceptional circumstances, wherein the charge memo has been issued by an authority, having no jurisdiction or competency or if an allegation of mala fides is raised or if the same is in violation of the statutory rules in force. Even in case of raising an allegation of mala fides, the authority against whom such an allegation is to be raised to be impleaded as a party respondent in his personal capacity in the writ proceedings. In the absence of any of these legal grounds, no writ proceedings can be entertained against a charge memo.

7. Judicial review against the memorandum of charge is certainly limited. The facts, details of documents, merits and demerits of the allegations set out in the charge memo can never be adjudicated in a writ proceedings at the first instance. The

competent authorities are bound to conduct an enquiry as contemplated under the rules and by providing all opportunities to the delinquent officials and thereafter take a decision on merits and in accordance with law and based on the records available and pass final orders. After passing of the final orders by the disciplinary authority, there is a provision for appeal to the aggrieved persons. The remedy of appeal provided under the rules also to be exhausted by the aggrieved persons. Only thereafter, the writ proceedings can be entertained if the employee is further aggrieved. The provision of appeal is also to be exhausted in normal circumstances. Thus, this Court is of an opinion that the present writ petition filed against the charge memorandum cannot be adjudicated on merits and demerits.

8. Intermittent intervention in departmental disciplinary proceedings are not preferable. The disciplinary proceedings initiated against an employee shall be concluded in all respects within a reasonable period of time. Prolonged pendency of disciplinary proceedings is not preferable. Pendency of disciplinary proceedings will certainly affect the service prospects of an employee. Pending disciplinary proceedings is a bar for promotion and for other benefits.

9. Such being the implications, the disciplinary authorities who initiated the disciplinary proceedings must be conscious that the disciplinary proceedings initiated shall be concluded in all respects within a reasonable period of time. Long pendency of disciplinary proceedings will create an unnecessary frustration in the minds of the Uniformed Forces also. Such administrative delay is to be averted in all such circumstances.

10. However, it is made clear that if the delay is on account of the attitude of the delinquent official, then the authorities competent has to record the reasons for the same. In all circumstances, the unnecessary delay in concluding the disciplinary proceedings also to be recorded in the minutes of the records for the better appreciation of the disciplinary proceedings conducted by the competent authorities.

11. In this view of the matter, there is no infirmity as such in respect of the charge memorandum framed against the writ petitioner. It is left open to the writ petitioner to participate in the disciplinary proceedings by submitting his explanation/objections, if any and defend his case by availing opportunities to be provided by the disciplinary authority in all respects.

12. The Honourable Supreme Court of India in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 and the paragraph 6 which is extracted hereunder:

"6. In the case of charges framed in a disciplinary

inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

13. In the case of Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [Civil Appeal No.2333 of 2007, Decided on May 29, 2012], the Apex Court of India held that normally, a Charge sheet is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge sheet does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge sheet by itself is not

maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

14. In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28], it was held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by quashing a charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

15. Thus, the present writ petition deserves no merit consideration and it is left open to the writ petitioner to participate in the departmental disciplinary proceedings and the disciplinary authority is bound to consider the same on merits and demerits of the matter and take a decision and pass final orders in accordance with law. It is made clear that the disciplinary proceedings initiated against the writ petitioner is to be concluded in all respects as early as possible.

16. Accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

kak
To

1. The Director General,
Central Industrial Security Force,
Block No.13, C.G.O's Complex,
Lodhi Road, New Delhi - 110 003.
2. The Assistant Inspector General/Pers
Central Industrial Security Force,
Block No.13, C.G.O's Complex,
Lodhi Road, New Delhi - 110 003.
3. The Deputy Inspector General (SZ),
Central Industrial Security Force Campus,
Rajaji Bhavan, Besant Nagar,
Chennai -90

4.The Deputy Inspector General (Legal),
Central Industrial Security Force,
FORCE HEAD QUARTERS,
Block No.13, C.G.O's Complex,
Lodhi Road, New Delhi - 110 003.

5.The Group Commandant,
Central Industrial Security Force Campus,
Rajaji Bhavan, Besant Nagar,
Chennai - 90.

+1cc to Mr.G.Karthikeyan, Advocate, sr.42144 (30/07/2018)

W.P.No.27843 of 2017

SP(12/07/2018)



WEB COPY