

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No.23987 of 2013

and

M.P.No.1 of 2013

D.Janakiraman
Head Constable/GD
No.053810014,
CISF Unit, CPCL, Manali,
Chennai - 600 068.

...Petitioner

Vs.

1. Deputy Commandant,
Central Industrial Security Force,
Unit, CPCL Manali, Chennai - 600 068.

2. Group Commandant,
CISF, Group Head Quarters,
Block - D, Rajaji Bhavan,
Besant Nagar, Chennai - 600 090.

3. Deputy Inspector General,
CISF, South Zone Head Quarters,
Block - D, Rajaji Bhavan, Besant Nagar,
Chennai - 600 090.

...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, direction to call for the records relating to the order passed by the First respondent in his Final Order No.V-15014/CPCL/DISC/MIN-03/DJR/2013-1641, dated 03.08.2013 received by the petitioner on 12.08.2013 and quash the same and to direct the respondent to pay all the benefits to petitioner.

For Petitioner : Mr.K.Sivakumar

For Respondents : Mr.S.Arockiam
Central Government Standing Counsel

O R D E R

The order impugned in this writ petition is an order of minor punishment imposed on the writ petitioner. The punishment of "withholding of one increment for a period of one year which will not have the effect of postponing the future increments of pay" is the punishment imposed on the writ petitioner by the Assistant Commandant, Central Industrial Security Force ("CISF"), Unit, CPCL Manali, in proceedings dated 3rd August 2013.

2. The writ petitioner was appointed as Head Constable in the "CISF" in the year 2005 and an account of an allegation of misconduct, the disciplinary proceeding were initiated against the writ petitioner. The Article of charge framed against the writ petitioner is as under:

"On 20.06.2013 No.053810014 HC/GD D.Janaki Raman while some work at Quarter Master Office got into heated altercation with the Quarter Master incharge No.962300105 ASI/Exe G.Deivendran and misbehaved with him. This act tantamounts to gross indiscipline, misconduct and the violation of the spirit of uniform Armed Force, which is unbecoming of a member of a discipline force like CISF."

3. On receipt of the explanations submitted by the writ petitioner, the authorities competent imposed the minor punishment as stated supra in proceedings dated 03.08.2013. Challenging the said order, the present writ petition has been filed.

4. The learned counsel appearing on behalf of the writ petitioner strenuously contended that opportunity as contemplated under the rules had not been provided to the writ petitioner by conducting an appropriate enquiry. The disciplinary authority had taken a decision unilaterally without even providing opportunity to the writ petitioner in view of the fact that the principles of natural justice has been violated, while conducting the disciplinary proceedings, the writ petitioner is constrained to move the writ petition directly challenging the order passed by the Assistant Commandant.

5. The learned counsel appearing on behalf of the respondent opposed the contentions by stating that statutory appeal under the provisions of the rules provided is to be preferred before the Deputy Commandant, CISF Unit CPCL Manali, who is the Appellate authority and without even exhausting the statutory appeal provided under rules, the writ petitioner has filed the present writ petition, challenging the original order of punishment imposed by the Assistant Commandant. Thus, the

present writ petition is liable to be rejected.

6. This apart, the learned counsel for the respondents states that the procedures as contemplated under the rules had been followed by the disciplinary authority at the time of conducting the disciplinary proceedings against the writ petitioner.

7. This Court is of an opinion that in normal circumstances, any employee affected from and out of an final order passed by the disciplinary authority is bound to file an appeal before the Appellate authority under the rules in force. It is not as if, the High Court can entertain the writ petition against the original order in all circumstances. Judicial review in such circumstances are to be exercised sporadically and in all other circumstances, the employee aggrieved from and out of the final orders passed by the disciplinary authority is bound to approach the Appellate authority under the rules in force.

8. Institutional respect is to be maintained by all concerned. The Appellate authorities, who all are bound to exercise their powers under the rules must be given an opportunity to exercise their powers in accordance with the procedures contemplated under the rules. By-passing the appeal remedy is always not preferable. If there is a gross injustice or preferring an appeal will be a futile exercise, then alone the High Court can intervene and entertain a writ proceedings under Article 226 of the Constitution of India. Thus, the aggrieved employees are bound to prefer an appeal under the rules in force. The growing practice amongst the employees are that always they are filing an affidavit stating that the Appellate authorities are not functioning properly and there is no opportunities provided to them. Such an attitude of the employees are to be deprecated. The employees are also part and parcel of the institution and they have to first respect the Appellate forum under the rules for the purpose of redressing their grievances in accordance with the rules.

9. Under these circumstances, this Court is of an opinion that the appeal remedy provided under the rules are to be exhausted at the first instance and thereafter the employees are at liberty to approach the Court of Law in the manner prescribed.

10. This being the opinion of the Court, the ground in relation to the violation of principles of natural justice, the non-adherence of procedures by the disciplinary authority are to be raised by way of grounds before the Appellate authority by the writ petitioner and in the event of raising such grounds, the Appellate authority is bound to consider the same on merits and in accordance with law.

11. Accordingly, the writ petitioner is at liberty to prefer an appeal against the order of minor punishment within a period of three weeks from the date of receipt of a copy of this order and in the event of receiving any such appeal from the writ petitioner, the Appellate authority has to consider the same and pass orders on merits and in accordance with law within a period of twelve weeks thereafter.

12. With the above directions, the Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

av/kak

To

1. Deputy Commandant,
Central Industrial Security Force,
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 2. Group Commandant,
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Besant Nagar, Chennai - 600 090.
 3. Deputy Inspector General,
CISF, South Zone Head Quarters,
Block - D, Rajaji Bhavan, Besant Nagar,
Chennai - 600 090.
- +1 CC to Mr.S.Arockiam , Advocate sr 42374.

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SP(12/07/2018)