

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.19788 of 2010

Gulab Singh

.. Petitioner

Vs.

1. The Deputy Inspector General
Central Industrial Security Force
South Zone, Block-D, Rajaji Bavan,
Besant Nagar, Chennai-600 090.

2. The Group Commandant,
Central Industrial Security Force,
Group Head-quarters,
Chennai-600 090.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to 2nd respondent's proceedings made in No.V.15014/GHC/AD VI/GS/EPL/Maj/2010-374 dated 27.01.2010 and as confirmed by the 1st respondent in proceedings No.11014/15/2009/1028 dated 18.06.2010, to quash the same and consequently direct the respondents to revise and re-fix the pension and pensionary benefits arising thereto forthwith.

For Petitioner .. Mr.L.Chandrakumar

For Respondent .. Mr.S.Rathnasabapathy , SPCCG

ORDER

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

"Writ of Certiorarified Mandamus calling for the records relating to 2nd respondent's proceedings made in No.V.15014/GHC/AD VI/GS/EPL/Maj/2010-374 dated 27.01.2010 and as confirmed by the 1st respondent in proceedings No.11014/15/2009/1028 dated 18.06.2010, to quash the same and consequently direct the respondents to revise and re-fix the pension and pensionary benefits arising thereto forthwith. "

2. The petitioner was appointed as a Constable in Central Industrial Security Force on 08.12.1970. He was promoted as Nayak during 1978 and thereafter, he was promoted as Head Constable during 1981 and then he was promoted as Assistant Sub Inspector and finally as Sub Inspector of Police in 1996.

3. While the petitioner was working as Sub Inspector, EPL, Ennore, the petitioner was proceeded under Rule 36 of CISF Rules 2001 alleging certain acts of misconduct. The charge against the petitioner which is extracted below:

"ARTICLE OF CHARGE No.I

"No.702310906, S1/Exe Gulab Singh of CISF Unit EPL Ennore, while deployed as Control Room duty officer and B shift duty I/C on 17.08.09 from 1300 hrs. To 2100 hrs at main gate of EPL Ennore failed to check the illegal gratification collected by duty HC/GD G Velangani from trucks. As a result of which a sum of Rs.1325/- was found in the possession of HC/GD G.Velangani and Rs.100/- was kept in the dustbin of the Control Room at about 2035 hrs on 17.08.09 by SZ Vigilance team. This act of said S1/Exe Gulab Singh tantamount to gross misconduct indiscipline and tarnishing the image of the Force". Hence the charge.

ARTICLE OF CHARGE No.II

"No.702310906, S1/Exe Gulab Singh of CISF Unit EPL Ennore, while deployed as Control Room duty officer and B Shift duty I/C on 17.08.09 from 1300 hrs. To 2100 hrs. At main gate failed to search HC/GD G.Velangani as requested by the said SZ Vigilance team at about 2040 hrs. This act of S1/Exe Gulab Singh tantamount to gross misconduct indiscipline and unbecoming of a member of the Force". Hence, the charge."

4. The petitioner strongly denied the charges that he cannot be held liable for the lapse committed by one of his colleagues and in spite of due diligence exhibited by him, his colleague had been accused of taking illegal gratification.

5. Not satisfied with the explanation offered by the petitioner, an enquiry was conducted and on conclusion of the same, the report was submitted holding the charges proved against the petitioner. Thereafter, the disciplinary authority/the second respondent herein accepted the findings and imposed the punishment of reduction of pay by two stages from Rs.15000/- to Rs.13890/- in the Pay Band -2 of Rs.9300/- -

Rs.34800/- with Grade Pay of Rs.4200/- for a period of one year with cumulative effect and further directed the petitioner that he will not earn increments of pay during the period of reduction and on expiry of this period, the reduction will have the effect of postponing his future increments of pay and it was further directed that the suspension period from 27.08.2009 to 27.01.2010 is treated as non duty for all purposes and he will not get anything more than what he had been paid as subsistence allowance during the period of suspension. The said penalty imposed by the second respondent was appealed by the petitioner vide appeal dated 31.01.2010. On consideration of the appeal, the appellate authority/first respondent rejected the appeal. These orders are put to challenge in the present writ petition.

6. Sri.L.Chandrakumar, the learned counsel appearing for the petitioner would strenuously contend that the punishment imposed by the disciplinary authority which has been confirmed by the appellate authority, would have far reaching monetary implication to the petitioner, in view of the fact that the punishment was imposed only on 27.01.2010 on the eve of his retirement on 31.01.2010. Therefore, the punishment is rather disproportionate to the gravity of the charges framed against the petitioner as the same would have very serious monetary repercussions on the pensionary benefits payable to the petitioner for his lifetime.

7. The learned counsel for the petitioner would further strongly contend that the petitioner had submitted his legitimate explanation explaining the situation in which he was placed during the relevant time when the incident had happened and that such explanation was not properly considered either by the enquiry officer or by the disciplinary authority before the findings were rendered and also when the punishment was imposed by the authorities concerned. He would further submit that the petitioner has rendered admittedly more than 39 years of service without any blemish and only for minor act of negligence, even assuming the same was an act of negligence, he was imposed with such a major penalty having life long monetary consequences.

8. Upon notice, Mr.S.Rathnasabapathy, the learned Standing Counsel entered appearance for the respondents and filed a detailed counter.

9. In the counter affidavit, the learned counsel for the respondents would submit that the petitioner was negligent in discharging his duties and failed to supervise the conduct of his subordinate which resulted in his subordinate's taking illegal gratification. Therefore, he was proceeded with departmental action and was found guilty and for the proved charges, he was imposed with the penalty, which is impugned in the writ petition. Therefore, such action on the part of the respondent cannot be questioned validly before this Court by the petitioner.

10. This Court has given its anxious consideration to the rival submissions of the learned counsels, perused the materials and pleadings placed on record. From the enquiry report and the proceedings of the disciplinary authority dated 27.01.2010, it could be seen that the petitioner had offered a very detailed explanation explaining the situation in which he was deployed at the place in question. The explanation offered by the petitioner has been genuine and legitimate and such explanation ought to have been considered by the enquiry officer in a proper perspective. More over, at least, the disciplinary authority while imposing punishment ought to have taken the explanation offered by the petitioner in right perspective, particularly not considering the fact the petitioner has rendered more than 39 years of service without any blemish. Failure to consider such important factors has resulted in imposition of such disproportionate punishment on the petitioner, which, as rightly contended by the learned counsel for the petitioner, has life long consequences and grave monetary implications.

11. This Court while considering the provisions of the Central Industrial Security Force Act, 1968, has found that a number of punishments have been enumerated which can be imposed on a member of the Force, particularly in discharge of their duties in a careless or negligent manner, one of the punishments that was enumerated in clause - 8 is Censure.

8. Dismissal, removal, etc., of members of the Force.—Subject to the provisions of article 311 of the Constitution and to such rules as the Central Government may make under this Act, any supervisory officer may—

(i) dismiss, 1[remove] 2[, order for compulsory retirement of,] or reduce in rank, any 3[enrolled member] of the Force whom he thinks remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award any one or more of the following punishments to any 3[enrolled member] of the Force who discharges his duty in a careless or negligent manner, to who by any act of his own renders himself unfit for the discharge thereof, namely:—

(a) fine to any amount not exceeding seven days' pay or reduction in pay scale;

(b) drill, extra guard, fatigue or other duty;

(c) removal from any office of distinction or deprivation of any special emolument; 4[(d) withholding of increment of pay with or without cumulative effect;

(e) withholding of promotion;

(f) censure.]

be negligent in discharge of his duties and the same resulted in imposition of impugned penalty, such punishment on the eve of retirement will have far reaching consequences than under the normal times. Such punishment on the eve of the petitioner's retirement, this Court is unable to justify, particularly in regard to the admitted fact that the petitioner has rendered more than 39 years of service without any blemish. Even from the facts and circumstances of the case, it appears that the petitioner's explanation appears to be genuine and valid and unfortunately, all the authorities, right from the enquiry officer and disciplinary authority as well as the appellate authority have not taken into consideration the explanation by the petitioner and appreciated the same in proper perspective. Therefore, this Court is of the considered view that the impugned punishment is without any justification for minor act of misconduct, notwithstanding the guilt of the petitioner has been proved in the disciplinary proceedings. However, considering the over all circumstances of the case, this Court finds that the punishment of censure is the correct and proper punishment to be imposed on the petitioner for the proved act of mere negligence.

13. For the above said reasons, the impugned penalty of the second respondent in No.V.15014/GHC/AD VI/GS/EPL/Maj/2010-374 dated 27.01.2010 and as confirmed by the appellate authority in proceedings No.11014/15/2009/1028 dated 18.06.2010, are hereby set aside and in the place, the punishment of censure is to be substituted in the place of the impugned penalty.

14. The first respondent is directed to pass order imposing a penalty of "Censure" on the petitioner and on such modification of penalty to one of censure, the petitioner is entitled to get consequential monetary benefits which may arise on such event. The respondents are directed to pass the consequential order as directed by this Court, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

15. With the above direction, this Writ Petition stands allowed in part. No costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Deputy Inspector General
Central Industrial Security Force
South Zone, Block-D, Rajaji Bavan,
Besant Nagar, Chennai-600 090.

2. The GroupCommandant,
Central Industrial Security Force,
Group Head-quarters,
Chennai-600 090.

+1cc to Mr.C.Chandrakumar Advocate SR.No.22399

+2cc to Mr.S.Rathnasabapathy Advocate SR.No.19788(19.04.18)

SDR 11.04.2018

W.P.No.19788 of 2010



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