

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.635 OF 2012
AND
W.P.NO.11379 OF 2012
AND
M.P.NOS.1 AND 2 OF 2012 AND 1 OF 2012

Manoj Kumar

... Appellant in
W.A.No.635 of 2012
and Petitioner
in W.P.No.11379 of 2012

Vs

1. The Union of India rep. by the
Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Industrial Security Force,
CISF Headquarters,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.
3. The Director,
National Industrial Security
Academy,
Central Industrial Security
Force, CISF Headquarters,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.
4. The Deputy Inspector General,
CISF, NORTH ZONE Headquarters,
Saket, New Delhi - 110 017.

5. The Senior Commandant,
Central Industrial Security Force,
Airport Security Group,
Meenambakkam, Chennai.

6. The Commandant,
Central Industrial Security Force
Unit, Red Fort,
Delhi - 110 006.

7. The Assistant Commandant,
CISF Unit, Samathi Hasthal,
New Delhi.

.. Respondents in
both cases

W.A.No.635 of 2012: Appeal preferred under Clause XV of
Letters Patent against the order dated 08.03.2012 made in
W.P.No.5805 of 2012.

Prayer in W.P.No.5805 of 2012:-

Petition under Article 226 of the Constitution of India,
praying for a Writ of certiorari to call for the records
relating to the show cause notice issued by the 4th respondent
Show Cause Notice No.V-11016/NZ/Disc/Suomotu-Review/2011-12/97
dated 22.02.2012 received by the petitioner on 24.2.2012 and
quash the same.

W.P.No.11379 of 2012:-

Petition filed under Article 226 of The Constitution of
India praying for the issuance of a writ of certiorarified
mandamus to call for the records relating to the show cause
notice issued by the 6th respondent in his letter No.V-
15014/CISF/L.K./Anu/Major 2011-1755 dated 30.08.2011 and quash
the same and direct the respondents to send the petitioner for
training to the post of Sub Inspector.

For Appellant .. Mr.A.S.Mujibur Rahman
and For Petitioner

For Respondents .. Ms.Sunitha Kumari
in W.A.No.635 of 2012
Mr.T.L.Thirumalaisamy,
CGSC in W.P.No.11379
of 2012

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

As the issues are common and overlapping, both the writ petition and writ appeal are taken up together and disposed of by way of common order.

2.Charges have been framed against the petitioner/appellant for alleged misconduct. After due enquiry, punishment was imposed. Notwithstanding the punishment imposed, the power of review was exercised, seeking to enhance it. Challenging the same, W.P.No.5805 of 2012 has been filed. As it was dismissed at the admission stage, W.A.No.635 of 2012 has been filed.

3.Learned counsel appearing for the petitioner/appellant would submit that the order passed requires interference since there is procedural violation, in any case, the order is shockingly disproportionate to the charges framed. Insofar as the writ appeal is concerned, learned counsel submits that there is no power to exercise Rule 54 of CISF Rules as the period of six months mandated therein has expired since no final order was passed.

4.Learned counsel appearing for the respondents would submit that as against the order of the disciplinary authority, revision would lie. Therefore, the writ petition is not maintainable without exhausting the alternative remedy. Rule 54 of CISF Rules, which speaks about the time limit while passing an order for revision has to be interpreted to mean that it would only be applicable for exercising this power by issuing show cause notice and not for final order. As no final order is passed, this appeal will have to be dismissed.

5.Since the writ petition has been filed directly, we are of the view that it would be appropriate for the petitioner to exhaust the revisional remedy. After all, the revisional authority can go into the material available on record whereas this Court can only consider any procedural violation in the decision making process as against the decision itself.

6.In such view of the matter, we permit the petitioner to file a revision within a period of four weeks from the date of receipt of a copy of this order, in which case, the revisional authority shall dispose it of on merit, without rejecting it on the ground of limitation and delay, within a period of six weeks

thereafter. Accordingly, W.P.No. 11739 of 2012 stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

7. Coming to W.A.No.635 of 2012, revisional power is exercised under Rule 54 of CISF Rules, which is extracted at page No.3 of the typed set. The aforesaid Rule makes it clear that the order proposing to revise any other order passed will have to be passed within a period of six months from the date of communication of that order. In the case on hand, the disciplinary authority passed an order on 30.08.2011 which was communicated on 02.09.2011. The show cause notice was issued proposing to revise the punishment imposed by way of enhancement on 22.02.2012, which was received on 24.02.2012. Therefore, there is no difficulty in holding that at the time of issuing show cause notice, the period of limitation is very much available. However, no final order was passed on or before 02.03.2012. The writ petition was filed on 07.03.2012. Admittedly, even at this point of time, no final order has been passed.

8. Learned counsel appearing for the respondents submits that Rule 54 of CISF Rules has to be interpreted to mean that the same is applicable only for initiation by way of issuance of show cause notice and not for passing final order. Learned counsel also wants to stress the word 'may'.

9. We are unable to accept the submission made. Rule 54 (1) (a) to (d) speak of two factors. One is for initiation and another is for passing orders. Clause (a) to (d) of Rule 54(1) of CISF Rules deal with nature of order to be passed. Such an order will have to be passed within a period of six months from the date of communication of the order proposed to be revised. Therefore, we are concerned with the order to be passed by the revisional authority. Admittedly, in the case on hand, no such order has been passed within a period of six months. Though it is contended that no reply was given so as to enable the revisional authority to pass final order, the show cause notice itself gives 15 days time to give a suitable reply. If that 15 days time is taken into consideration, the period of six months gets elapsed. Therefore, looking from any perspective, we are of the view that there is no need for the revisional authority to pass order under Rule 54 of CISF Rules after expiry of 6 months from the date of communication of the order proposed to be revised.

10. In such view of the matter, we are of the view that the order of the learned single Judge requires to be interfered with. Accordingly, the order of the learned single Judge dated 08.03.2012 stands set aside. Accordingly, W.A.No.635 of 2012 stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary, Union of India,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Industrial Security Force,
CISF Headquarters,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.
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7.The Assistant Commandant,
CISF Unit, Samathi Hasthal,
New Delhi.

+1cc to Ms.Sunitha Kumari, Advocate, S.R.No.340
+1cc to Mr.A.S.Mujibur Rahman, Advocate, S.R.No.565

W.A.No.635 of 2012
and W.P.No.11379 of 2012

NRL (CO)
CS/25/03/2019



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