IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:08.01.2019
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2558 of 2018
and
CMP No.20648 of 2018

1.Union of India
Represented by its Secretary
Ministry of Home Affairs
North Block, Central Secretariat
New Delhi - 110 011

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 Industcial Security Force
Unit TPT, Tuticorin - 628 004 ... Appellants

Vs.

N.Subramanian ... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 15.02.2018 made in W.P.No.30695 of 2012.

WP.NO.30695/2012:

Petition filed Under Article 226 of the Constitution of India praying to issuance 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 April 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 Appellants : Mr.T.L.Thirumalaisamy,
Central Govt. Standing Counsel

For Respondent : Mr.Balan Haridoss

J U D G E M E N T

(Judgment of the Court was delivered by S.MANIKUMAR, J)

Challenge in this writ appeal is to an order of the writ court 15.02.2018 made in W.P.No.30695 of 2012, by which, the writ court, quashed the impugned proceedings of the Inspector General/South Sector, Central Industrial Security Force, South Sector, Chennai Port Trust and consequently directed the respondents to pay all pension and arrears of pension etc. on being notionally reinstated in service, as the petitioner had attained the age of superannuation in the year 2014 itself.

2. Short facts leading to the filing of the writ appeal are that, the writ petitioner N.Subramanian joined the service of CISF as Security Guard on 14.7.1976. The post was subsequently reclassified as Constable in the year 1985. In the year 1998, the writ petitioner was promoted as Head Constable.

3. According to the writ petitioner, during his service, a surprise check was conducted on 18.8.2009 and the writ petitioner was found having amount in excess of the amount declared by him in the General Diary as per the rules. According to the officials who conducted inspection, the amounts were unaccounted and therefore, it was presumed that the writ petitioner must have received the unaccounted money by way of illegal gratification from the Truck drivers who were passing through the Check Post.

4. A disciplinary proceedings was initiated against the writ petitioner and another constable Mr.P.Pandian, who was also posted along with him at the same Check Post as per the rules and charge memo dated 15.9.2009 was issued. The writ petitioner filed written statement of defence to the charges. Having not satisfied with his defence statement, an enquriy was conducted. Witnesses were examined including the writ petitioner and documents were marked on both sides. After careful consideration, the enquiry officer found that the charges as proved. Based on the findings of the enquiry officer, the disciplinary authority passed an order dismissing the writ petitioner from service.

5. Writ petitioner preferred an appeal against the punishment imposed and the same was rejected by the appellate authority vide order dated 29.8.2011 as devoid of merit. Being aggrieved with the orders passed by the disciplinary and appellate authorities, the writ petitioner preferred a revision petition which was also rejected on 27.4.2012, as devoid of merit. Aggrieved by the orders of the disciplinary, appellate and revisioning authorities, the writ petitioner filed W.P. No.30695 of 2012.

6. Based on the averments and submission made by the parties, writ court, ordered as hereunder:

> "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.
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> 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 teamed Single Judge as found in paragraph Nos. 51 to 59, are reproduced hereunder:-
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> 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. I f 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 codelinquent 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)100x1	=	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)0.50x1	=	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. I f 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 personnel 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. I f 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/55/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."

7. Being aggrieved by the said order, Union of India, has filed the instant writ appeal on the following grounds:

a. Writ court failed to appreciate that the act committed by the writ petitioner amounts to gross misconduct, indiscipline and violation of orders and he is unbecoming a member of the disciplined paramilitary force;

b. Writ court erred in observing in the order that once the learned Judge of this court has dealt with the similar charge sheet, in the matter of another Ex-Constable P.Pandian in the similar incident and found the charges were not established and quashed the entire disciplinary action against the other constable P.Pandian, this court cannot take a different view".

c. Writ court ought to have decided the present case on independent appreciation of facts, evidence, findings of the enquiry officer and orders passed in the appeal and revision preferred by the writ petitioner which are available on record.

d. Writ court failed to take note of the observation made in para 49 of the order passed in W.P. (MD) No.8885 of 2013 that "In the very same order, the disciplinary authority also, while overlooking the defence taken by the petitioner, has stated that, the Head Constable N.Subramanian has been awarded penalty in this case. Therefore, from the reasoning given by the disciplinary authority, it comes to know that the Head Constable N.Subramanian, against whom in fact recommendation was made to initiate disciplinary action as per the special report submitted by the Assistant Commandant was only given a penalty which is factually incorrect.

e. In this regard, the Writ court failed to appreciate the fact that the Head Constable N.Subramanian, the writ petitioner in the present case was dismissed from service.

f. Writ court failed to consider that the respondent/petitioner of CISF Unit VOCPT, Tuticorin while performing security duties at check post-I of VOCPT, Tuticorin in B shift from 13.00 hrs on 18.8.2009 dishonestly earned a sum of Rs.434.50 by misusing his official capacity which has been exposed during the surprise checking at Check post-1 conducted on 18.8.2009 at 19.45 hrs by Shri.J.M.U.Koya, Asst Commandant and Insp/Exe K.Annamalai. The said act committed by the petitioner amounts to gross misconduct, indiscipline and violation of orders, unbecoming a member of the disciplined para-military force. Hence, the charge sheet has been issued to the petitioner.

g. Writ court failed to consider that there is no contradiction in the statement of Shri J.M.U. Koya, AC (PW1), and Insp/Exe K Annamalai (PW2) as observed in the departmental enquiry and the observations of the court on this count do not appear to be correct.

h. The Writ court failed to consider that, even though Shri J M U Koya, AC had sent a special report recommending suitable disciplinary action against both the individuals and the disciplinary authority in the fitness of things correctly decided to award similar penalty to both the individuals as both were responsible for the incident.

i. The Writ court failed to consider that, even though all the PWs as well as DWs have stated that they did not observe collection of money by the petitioner, fact that a sum of Rs.434.50 was found during the surprise check concealed near the check post, it can fairly be inferred that the excess amount must have been received by him as illegal gratification during his duties.

j. The writ court failed to consider that even though the court has observed that no excess money was recovered from the possession of the petitioner, the fact that the said money was concealed near the check post during the surprise check, the only conclusion that could be drawn was that the petitioner along with Constable P.Pandian had collected the said amount through dishonest means.

k. The order of the learned Judge is also against the settled principles of law laid down by the Apex court that courts while exercising the writ jurisdiction should not reevaluate and reappreciate the evidence which has been done in the instant case. But without considering the same, the learned Judge was pleased to allow the writ petition. Thus it is liable to be set aside.

8. Based on the above grounds, Mr.T.L.Thirumalaisamy, learned Central Government Standing Counsel, made his arguments on behalf of the appellants. Per contra, Mr.Balan Haridoss, learned counsel appearing for the respondent, made counter submissions and also invited the attention of this court to an order passed by the Madurai Bench of this court, in W.A. (MD) No.520 of 2018 preferred by the appellants against the order made in W.P. (MD) No.8885 of 2013 filed by Pandian, Constable, wherein a Hon'ble Division Bench, declined to interfere with the order made in W.P. (MD) No.8885 of 2013 on identical set of facts.

9. We have heard the learned counsel for the parties and perused the materials available on record.

10. Though several grounds have been raised, Mr.T.L.Thirumalaisamy, learned Central Government Standing Counsel, appearing for the appellants, submitted that the evidence adduced in the separate enquiries conducted against Mr.Pandian (No.891401063), Constable and Mr.N.Subramanian (No.763470027), Head Constable, are one and the same, except the variance in the defence version of the delinquents. In the case of Mr.Pandian, Constable, on the allegation of possession of excess amount, Mr.N.Subramanian, Head Constable was DW-II. Conversely in the departmental proceedings initiated against the Head Constable on the very same allegations Mr.Pandian, was DW-IV. Except the above, there is no difference.

11. Mr.T.L.Thirumalaichamy, learned Central Government Standing Counsel for the appellants also submitted that in W.P. (MD) No.8885 of 2013 filed by Pandian, upon perusing the materials on record, evidence adduced, findings recorded by the Enquiry Officer, analysis and penalty imposed by the disciplinary authority and as confirmed by the Appellate Authority, writ court, in W.P. (MD) No.8885/2013 set aside the penalty. Order made in W.P. (MD) No.8885 of 2013 dated 10.11.2017, reads thus:

> 28. I have considered the rival submissions made by both the counsels appearing for the parties and also, have considered the materials placed before this Court for perusal.
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> 29.The sum and substance of the charge made against the petitioner is that a sum of Rs.419.50/- was wrapped in a piece of paper which was seized from the pit near to the duty Check Post; where the petitioner was performing security duty which indicates that the petitioner had dishonestly earned a sum of Rs.419.50/-, while performing security duty through illegal ways from undisclosed sources. The said act on the part of the petitioner amounts to gross misconduct; indiscipline and violation of orders, unbecoming of a member of the disciplined paramilitary force, and accordingly, charge was framed.
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> 30. Before going into the veracity of the charge, as has been rightly pointed out by the learned counsel appearing for the petitioner, the contradiction between the extract of G.D. Entry and the Special Report forwarded by the Assistant Commandant, can be looked into.
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> 31.In the GD Entry extract, which was

prepared on the spot on 18.08.2009 at 20.20 hours, by the Inspector Executive K.Annamalai, it is stated as follows:

"Shri J.M.U.Koya, AC, and myself K.Annamalai carried out checking of sentry post and near by area. Shri J.M.U.Koya, AC, picked up a small bundle of currency notes which was duly wrapped by piece of paper (Emphasis supplied) which was kept near by partition dias by removing piece of stone as weight. The said amount was seized in presence of Ct. P.Pandian. The small bundle was handed over to Ct. P.Pandian for counting the same, who in turn counted and accounted.

The denomination of the currency notes.

(1)100x1	=	100.00
(i)50 x 1	=	50.00
(ii)20 x 1	=	20.00
(iii) 10 x 22	=	220.00
(iv)5 x 4	=	20.00
(v)2 x 3	=	6.00
(vi)1 x 3	=	3.00
(vii)0.50x1	=	0.50
	=	419.50

(Rupees four hundred and nineteen and paise fifty only)

The seizure list was prepared on the spot and made report on the checking register of Check Post-I. During the formal enquiry, HC/GD N.Subramanian and Ct P.Pandian declined to disclose about the source of money seized from the earth and his possession of HC/GD N.Subramanian, a sum of Rs.45/- seized from him.

Lodged for information and action.

Sd./.....

K.Annamalai,

Insp/Exe.

32. Whereas the Assistant Commandant Mr.J.M.U.Koya had sent a Special Report on the surprise checking and seizure of Rs.464.50. In the said Special Report, in Subject portion, it is stated that ?on surprise checking, seizure of Rs.464.50 from the possession of HC/GD N.Subramaniam -reg?.

33. In order to appreciate the said factor, the entire Special Report of the Assistant Commandant Mr.J.M.U.Koya is reproduced hereunder:

The Commandant,
CISF Unit TPT, Tuticorin.

Sub: SPECIAL REPORT ON SURPRISE CHECKING, SEIZURE OF RS.464.50 FROM THE POSSESSION OF HC/GD N.SUBRAMANIAM : REG.

It is to inform that I, Asstt Commandant J.M.U.Koya along with Insp/Exe K.Annamalai carried out surprise checking on 18.08.2009 at about 19.45 hrs at Check Post-I where HC/GD N.Subramanian and Const.P.Pandian were deployed in 'B' Shift duty on 18.08.2009 from 1300 hrs to 2100 hrs. Both the duty personnel were called in the duty room at the Check Post-I and carried out searching on them. While carrying out the searching on Const.P.Pandian, a sum of Rs.17/- was found in his pocket and a sum of Rs.45/- was found in the pocket of HC/GD N.Subramanian. After that checked the surrounding area of Check Post-I and found a wrapped bundle of paper which was concealed under a small piece of stone near the right side of adjacent Room of Check Post-I besides a cement bricks on the road divider. Then the bundle was recovered and asked Const.P.Pandian to open. Accordingly, he opened and found a sum of Rs.419.50. On asking HC/GD N.Subramanian about the source of money which was recovered near his duty post as well as from his pocket; he stated that he had in possession of Rs. 30/- as pocket money while mounting of duty which was already declared by him in the duty register. Further he could not explain about the source of money i.e., Rs.419.50 recovered from adjacent of his duty post. In this connection a GD entry was made vide No. 585 at 2020 hrs dated 18.08.2009 in the Control Room. After that a seizure list has been prepared in presence of HC/GD N.Subramaniam and Const.P.Pandian, and asked them for putting their signature on the seizure list. HC/GD N.Subraamanian declined to sign on seizure memo. Further Const.P.Pandian deposed in his statement that while mounting for duty, he declared Rs.40/- as pocket money, out of which Rs.23/- was spent and the balance amount of Rs.17/- kept in his pocket. On checking of money declaration register, HC/GD N.Subramanian declared a sum of Rs.30/- and Const. P.Pandian declared a sum of Rs.40/- while mounting on 'B' Shift duty.

It is further informed that as per the office order issued vide letter No.E-

42099/CISF/TPT/PA/0.0/2006-1991, dated 12.05.2006 under no circumstances the personnel proceeding for shift duties will not carry more than Rs.10/-.

In view of the above facts, suitable action may please be taken against the HC/GD N.Subramaniam. Statement obtained and extract copy of GD entry as well as money declaration register of 'B' shift duty are enclosed herewith for perusal please.

Submitted please.

ASSTT COMMANDANT CISF UNIT TPT TUTICORIN

34. In fact, in the said Special Report; the Assistant Commandant has recommended to take suitable action only against the Head Constable N.Subramanian. Enabling for such suitable disciplinary action, the Assistant Commandant had forwarded the statements obtained from the Constable P.Pandian (the petitioner herein), Inspector Executive K.Annamalai and Constable M.A.G.S.Velu, seizure memo and extract copy of G.D. Entry as well as the money declaration Register of ?
B? Shift duty as enclosures along with the Special Report.

35.These factors would go to show that what exactly happened on the date of surprise checking conducted by the Assistant Commandant and the Inspector Executive, has been clearly spelt out.

36. The alleged currency notes wrapped in a paper found and recovered form the earth near by the duty area of the petitioner as well as the Head Constable N.Subramanian, were neither recovered from the petitioner nor from the Head Constable N.Subramanian. However, depending upon the circumstances, it was construed by the Assistant Commandant and the Inspector Executive, who conducted the surprise check up that the recovery of money of Rs.464.50 which is unaccounted, has to be vouched by the Head Constable N.Subramanian and therefore, in the Special Report, suitable action was recommended only against the said Head Constable N.Subramanian.

37.However, within a span of 30 days, on 19.09.2009, charge memo was issued against the petitioner, wherein the article of charge, which has already been extracted, would state that the

Inspector Executive K.Annamalai, picked up the currency bundle and counted the same in the presence of P.Pandian, the petitioner herein, and the Head Constable N.Subramanian, and found a sum of Rs.419.50. The charge would further state that the recovery of Rs.419.50 from a pit near to the duty post, where the individual was performing security duty, indicates that the Constable P.Pandian has dishonestly earned Rs.419.50, while performing security duty through illegal ways from undisclosed sources.

38. Before making the charge, the Disciplinary Authority should have definitely gone through the extract of G.D. Entry as well as the Special Report filed by the Assistant Commandant. Neither the extract of G.D. Entry nor the Special Report suggest that the reason attributable for the unaccounted money of Rs.419.50 was because of the alleged dishonest earning on the part of the Constable Pandian, the petitioner herein. From which source and on the basis of which document or prima facie evidence/proof, the Authority came to the conclusion that the charge against the petitioner is proved, is miserably unavailable.

39. Before the Enquiry Officer, three persons were examined as prosecution witnesses and three other persons were examined as defence witnesses. Where the Assistant Commandant Mr.J.M.U.Koya deposed as PW1 has stated that, a bunch of currency notes kept hidden in a pit was recovered by the Inspector Executive P.Annamalai. He also deposed that the Head Constable N.Subramanian declared Rs.30/- and the petitioner Pandian declared Rs.40/- as pocket money at the time of reporting duty. The Constable Pandian informed that he had spent an amount of Rs.23/- for purchase of tiffin and the remaining amount of Rs.17/- was found in his possession and the seizure list was prepared at the spot, however, the Head Constable N.Subramanian refused to sign in the seizure list.

40. During the cross examination, PW1 clarified that he did not see the charged official (petitioner), while collecting money from the Port users and he also did not witness the charged official, while hiding in a pit adjacent to Check Post-1.

41.Like that, the Inspector Executive

P.Annamalai had deposed before the Enquiry Officer, as PW2. He deposed saying that on suspicion, the Assistant Commandant removed the small stone and a bunch of currency notes were kept and he called him and shown the currency notes. Thereafter, he handed over to the Constable Pandian, which is found as Rs.419.50. Thereafter, the seizure list was prepared and the Head Constable N.Subramanian refused to sign in the seizure list. PW1, in his cross examination, has deposed saying that the Assistant Commandant Mr.J.M.U.Koya, had picked up the bundle of currency notes, which was kept hidden near the Check Post-1.

42. On seeing the depositions of PW1 and PW2, who are the actual persons conducted the surprise check up, one can easily finds that there are number of contradictions between the statements of two witnesses. The Assistant Commandant Mr.J.M.U.Koya says that the Inspector Executive K.Annamalai removed a small stone and found a bunch of currency notes kept hidden in a pit and he handed over the paper bundle to the petitioner Pandian. Whereas, PW2, the Inspector Executive K.Annamalai says that the Assistant Commandant Mr.J.M.U.Koya had picked up the bundle of currency notes, which was kept hidden in a pit. As I noticed earlier, from the Extract of GD Entry, which was prepared at 20.20 hours on the said date, by the Inspector Executive K.Annamalai, he has categorically stated that the paper wrapped bundle of currency was picked up by the Assistant Commandant Mr.J.M.U.Koya. Only based on such G.D.Entry, a Special Report was prepared and sent by the Assistant Commandant Mr.J.M.U.Koya, wherein, he has stated that money was recovered from the possession of Head Constable N.Subramanian and therefore, he recommended to take action against the Head Constable N.Subramanian. These contradictions cannot be taken lightly because, except PW1 and PW2, no other persons involved in the surprise check up and no other eye witnesses were availed to vouch or reiterate the stand taken by PW1 and PW2. Even the said PW1 and PW2 have not spoken in unison or in one voice and they have given contradictory statements.

43.It is an admitted case that, no money, not even a single rupee, was recovered from the petitioner. It is also an admitted fact that, at the time of reporting duty on the said date, the petitioner declared Rs.40/- as pocket money. Out of which, he spent Rs.23/- for the purchase of food and therefore, the remaining amount of Rs.17/- kept at his pocket, was recovered by PW1 and PW2. After having accepted the same, the said amount of Rs. 17/- was returned to the petitioner. Only on that basis, a Special Report was prepared by the Assistant Commandant, where recommendation has been made to initiate action against the Head Constable N.Subramanian and the Special Report prepared by the Assistant Commandant Mr.J.M.U.Koya also indicates that a sum of Rs.419.50/- was recovered from the Head Constable N.Subramanian.

44. When that being the position, how charges have been framed against the petitioner and on the basis of which materials, actions have been taken by the respondents, have not been explained by the respondents.

45. Further, before the Enquiry Officer, three defence witnesses were examined and in the depositions of the said three witnesses on the defence side, i.e., DW1, DW2 and DW3, have deposed before the Enquiry Officer. In order to appreciate the said evidences, extract of the statements of defence witnesses, as mentioned by the Enquiry Officer, is reproduced hereunder:

STATEMENTS OF DEFENCE WITNESSES:-

The DW-1: Mr.G.Jeya Kumar an employee of Tuticorin Port Trust stated that, he was performing his duties in Tuticorin Port Trust since 19/11/1992 as an Out Door Clerk. On dated 18/08/09 he was detailed for duty from 1400 hours to 22.00 hours at Pass Section of Check Post-I which was at a distance of 30 feet from CISF Check Post-I. He stood outside the Pass Section during his duty hours for watching the vehicles like Pay loader, Crane and Pull Dozer etc. which were not issued with vehicle pass and also ensure their signature on the registers of the pass section. On that day, HC/GD N.Subramanian and Const/GD P.Pandian were performing their duty at Check Post-I and both the CISF personnel did not receive any bribe money from any port users.

During cross examination by the presenting officer, the DW-1 clarified that he was regularly standing out side the pass section for watching the vehicles which were not issued with the vehicle pass and to get their signature on the register at the pass section. He also clarified that he had been the CISF officers who came at the Check Post-I for surprise checking but he was not aware of the details of money recovered/seized at Check Post-I by the CISF officers. The DW-2: Mr.P.Suresh Kumar stated in his statement that he was performing duties in M/s.Nithyananantham & Company as Supervisor. He was detailed by the company officials to hand over some documents and money to the hired trucks of his company. So he was waiting at the road divider near CISF Check Post-I from 12.00 hours to 17.00 Hrs on 18/08/09. Moreover on that particular day three hired trucks of his company come late due to an accident. During his stay at Check Post-I, he noticed that both the CISF duty personnel were not taking any money illegally from Truck Drivers, Supervisors and other personnel.

During cross examination by the presenting officer, the DW-2 clarified that he remained near road divider at Check Post-I from 1200 to 1700 hrs on 18.08.2009. He further clarified that he was not aware of surprise checking carried out by CISF officers at the Check Post-I on 18.08.2009.

The DW-3: Mr.Ravi has stated that he was performing duties with M/s. Raja Agency as a Supervisor. He was detailed by his company officials to deliver some money to his transport agency trucks for which he was waiting near the Check Post-I from 16.30 hrs to 2000 hrs on 18.08.2009. Moreover, on that particular day, the trucks of his agency were not coming in time. During his stay at Check Post-I, he noticed that both the CISF duty personnel had not taken any money illegally from Truck Drivers, Supervisors and other personnel. Finally the Trucks of his Transport Agency came at around 2000 hrs.

During cross examination by the presenting officer, the DW-3 clarified that he remained near Check Post-I from 16.30 to 19.45 hrs on 18.08.2009. He further clarified that he was not aware of surprise checking carried out by CISF officers at the Check Post-I on 18.08.2009.?

46. When there were specific contradictions between the depositions of PW1 and PW2, even with regard to the picking up of the currency

notes, the Enquiry Officer easily brushed aside the said contradictions and simply stated that the Assistant Commandant and the Inspector have jointly made a surprise check up and recovered the money by both PW1 and PW2. The theory of picking of the recovered amount of Rs.419.50/- allegedly wrapped in a paper found in a pit near the check post, has been completely changed, by introducing the new theory by the Enquiry Officer. The Enquiry Officer either should have accepted the version of PW1 or the other version of PW2. Instead, the Enquiry Officer had given a third version in his enquiry report; to state that both PW1 and PW2 recovered the bundle. These findings itself would make us to come to the safe conclusion that the Enquiry Officer has given his findings, not only on the basis of the material evidences and the depositions made before him, but also based on surmises and by introducing his own theory.

47. Ultimately, the Enquiry Officer, in the penultimate para has stated that, both the charged officials (the Petitioner and the Head Constable N.Subramanian) performed their duty at a particular area on 18.08.2009 and the charged official have also involved in corrupt activity by conniving with the Head Constable N.Subramanian. In order to evaluate the same, the Enquiry Officer's report is reproduced hereunder:

Further, both the charged official and HC/GD N.Subramanian performed duty at a particular duty post on 18.08.2009 and the charged official also involved in corrupt activity by conniving with the HC/GD N.Subramanian. To prove his innocence the charged official should have informed the shift in-charge about the collection of illegal money from the port users as and when the co-duty personnel involved in such corrupt activity, which he failed to do so. Further, it is quite evident from the documents adduced during the course of enquiry, the charged official had dishonestly earned a sum of Rs.419.50 in association with HC/GD N.Subramanian while performing security duties through illegal ways from undisclosed sources. Findings Considering all aspects in view, I the Enquiry Officer found that the Article of charge stands PROVED?

48.However, the Disciplinary Authority,

while considering the report of the Enquiry Officer, has given his own reasoning to come to the conclusion to punish the petitioner. The Disciplinary Authority, in the order of punishment dated 18.08.2012, has stated as follows:

Though the AC has recommended for disciplinary action against HC/GD N.Subramanian only, it doesn't mean that disciplinary authority shall act under the said recommendation only. Since the amount was seized from their area of jurisdiction and if the charged official was not part and parcel of misconduct committed by his co-duty man N.Subramanian, the charged official should have prevented his colleague, and if he could not control him, charged official should have communicated it to any of superiors, but utterly failed. Disciplinary Authority has its own power to assess the each case at his discretion and I found that there is no procedural lapse on this count. ?

49. In the very same order, the Disciplinary Authority also, while overlooking the defence taken by the petitioner, has stated that, the Head Constable N.Subramanian has been awarded penalty in this case. Therefore, from the reasoning given by the Disciplinary Authority, it comes to know that the Head Constable N.Subramanian, against whom in fact recommendation was made to initiate action, as per the Special Report submitted by the Assistant Commandant, was only given a penalty. Whereas, the petitioner against whom no report was submitted by the Assistant Commandant, who conducted the surprise check up, has been charged and has been punished with the maximum punishment of dismissal from service.

50. In spite of this lacuna on the part of the respondents, neither the Disciplinary Authority nor the Appellate Authority has considered these aspects and have mechanically inflicted the maximum punishment of dismissal from service by the Disciplinary Authority and the same was confirmed by the Appellate Authority. When revision was filed before the Revisional Authority, the said authority has accepted the punishment given and further observed that the departmental enquiry has been conducted in a fair manner and due procedure

required has been followed. However, considering the long service rendered by the petitioner, has sympathetically modified the punishment, to that of 'compulsory retirement with full pensionary benefits w.e.f. 19.08.2012'.

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. I f 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)100x1	=	100.00
(viii)50 x 1	=	50.00
(ix)20 x 1	=	20.00
(x)10 x 22	=	220.00
(xi)5 x 4	=	20.00
(xii)2 x 3	=	6.00
(xiii)1 x 3	=	3.00
(xiv) 0.50x1	=	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.

12. Though the appellants filed W.A. No.2558 of 2018 on the very same grounds as raised in the present appeal, Madurai Bench of the Madras High Court did not agree with the department's case and dismissed W.A. (MD) No.520 of 2018 on 30.10.2018 insofar as the matter pertains to Pandian, is concerned.

13. As stated supra, grounds raised in the present appeal, evidence and the materials on record are one and the same, and there cannot be any divergent views. If there is any decision rendered on the same set of facts and law, a Coordinate Bench is bound to follow the same, unless and until there is a strong reason to differ on law, which on the facts and circumstances of the case, does not arise. Therefore, inasmuch as facts pleaded, evidence adduced etc. are one and the same, we are inclined to follow the decision made in W.A. (MD) No.520 of 2018 dated 30.10.2018.

Accordingly, instant writ appeal is dismissed. As the respondent has attained the age of superannuation on 31.07.2014, appellants are directed to notionally reinstate the writ petitioner in 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 judgment. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

asr

To:

1. The Secretary, Union of India
   Ministry of Home Affairs
   North Block, Central Secretariat
   New Delhi - 110 011

2.The Inspector General/South Sector
   Central Industrial Security Force
   South Sector, Chennai Port Trust
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3.The Deputy Inspector General
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4.The Commandant
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+1cc to Mr.T.L.Thirumalaisamy, Advocate sr.no.2583
+1cc to Mr.Balan Haridoss, Advocate sr.no.2166

W.A.No.2558 of 2018
and
CMP No.20648 of 2018

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nr 26/02/2019