

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
06.11.2019	15.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.933 of 2019

and

C.M.P. (MD) No.8398 of 2019

Against W.P. (MD) No.8883 of 2011

1. The Director General
Central Industrial Security Force
CGO Complex, Lodhi Road
New Delhi
2. The Inspector General
Central Industrial Security Force
South Sector, CHPT Campus
Chennai-09
3. Deputy Inspector General
Central Industrial Security Force
South Zone, Head Quarters
Rajaji Bhavan, Besant Nagar
Chennai-600 090
4. The Commandant
Central Industrial Security Force
Cochin Port Trust
Willingdon Island
Cochin-682 009

... Appellants/ Respondents

-vs-

M.Selvam

... Respondent / Petitioner

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 12.04.2019, passed in W.P.(MD) No.8883 of 2011, on the file of this Court.

Prayer in WP (MD) No.8883 of 2011

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the second respondent in his order No.V-15014/L&R/SS/Rev/MS/2010-8317 dated January 2011 confirming the order passed by the 3rd respondent communicated by the 4th respondent dated 14.06.2010 in his communication No.V-15014/MAJ-02 (MS)/Adm.IV/2009/2396 dated



14.06.2010 modifying the order passed by the fourth respondent in his final order No.V-15014/MAJ-02 (MS)/Adm.IV/2009/713, dated 28.09.2009 and quash the same and to direct the respondents to take the petitioner into the strength of CISF as constable with all monetary benefits.

WEB COPY

For Appellants : Mr.P.Subbiah

For Respondent : Mr.A.S.Mujibur Rahman

J U D G M E N T

T.S.SIVAGNANAM, J.,

The Director General, Central Industrial Security Force and three others, who are the respondents in W.P.(MD) No.8883 of 2011, are the appellants in this writ appeal.

2. The writ petition was filed by the respondent / writ petitioner challenging the order of punishment, dated 28.09.2009, passed by the fourth appellant, as modified by the third appellant, vide order dated 04.06.2010 and confirmed by the second appellant, vide order dated 25.01.2011.

3. The original punishment imposed on the respondent was removal from service from 28.09.2009. This order was modified by the Appellate Authority, vide order dated 04.06.2010, modifying it into one of compulsory retirement from service with full pensionary benefits. This punishment was affirmed by the Revisional Authority, vide order dated 25.01.2011.

4. The respondent challenged the said orders contending that on account of complicated family problems, lodging of criminal complaint by his wife, injuries caused by in-laws etc., he could not report for duty and when such is the situation, the order of removal from service was very harsh and the Appellate Authority, having found that the punishment was disproportionate, ought to have set aside the punishment and reinstated him in service. It is further submitted that the modified order of compulsory retirement is also shockingly disproportionate to the misconduct, which was alleged against the respondent. Further, it is submitted that *ex parte* enquiry was conducted, which vitiates the entire proceedings.

5. The appellants resisted the claim made by the respondent by filing a counter affidavit as to how they are disciplined force and the unauthorised absence of the respondent is a serious misconduct and the modified punishment does not require interference.



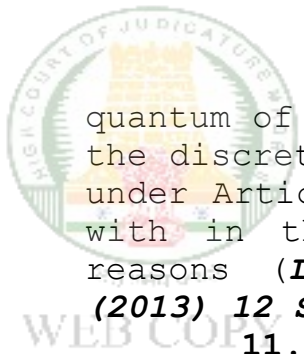
6. These submissions made by the respondent were found favour with the learned Single Bench and the Court allowed the writ petition by the impugned order, dated 12.04.2019.

7. Heard Mr.P.Subbiah, learned counsel appearing for the appellants and Mr.A.S.Mujibur Rahman, learned counsel appearing for the respondent.

8. The respondent / writ petitioner was working as a Constable in the Central Industrial Security Force. He applied for leave, which was sanctioned from 01.01.2009 to 26.01.2009. He was required to report for duty on 27.01.2009, but, stated to have made a representation seeking extension of leave by fifteen days. This request for extension of leave has not been considered by the fourth appellant and no orders have been passed. Thereafter, two call letters were sent to the respondent on 26.02.2009 and 11.03.2009 directing him to report for duty. However, the respondent did not report for duty. This resulted in the charge memo, dated 03.04.2009, being issued. The charge memo, which was sent by registered post, was returned unserved and had to be served on the respondent through special messenger. Even thereafter, the respondent did not file his reply to the charge memo nor reported for duty. An Enquiry Officer was appointed to enquire into the charge, who issued notices, dated 13.07.2009, 20.07.2009 and 25.07.2009. However, the respondent did not appear. Consequently, he was set ex parte and enquiry was conducted and the charge was held proved. Based on the findings of the Enquiry Officer, after following due procedure, order of removal from service was passed on 28.09.2009. It is stated that the respondent submitted a representation on 10.08.2009. However, the question of considering the said representation would not arise, because, by then, the enquiry proceedings were concluded and the matter was seized of by the Disciplinary Authority.

9. The respondent challenged the order of removal from service by filing an appeal before the third appellant. The Appellate Authority, after considering the entire facts, while holding that the charge has been proved, opined that the punishment of removal from service to be harsh and therefore, modified it to one of compulsory retirement with full pensionary benefits. This order was affirmed by the second appellant / Revisional Authority.

10. Though it may appear that the charge framed against the respondent is a simple case of unauthorised absence, the same cannot be evaluated in such a manner, because, he was a member of an Uniformed Service. The yardstick by which the delinquencies have to be tested in respect of Defence Personnel and Paramilitary Force are different from that of the civilian employees. There are long lines of decisions by the Honourable Supreme Court stating that the



quantum of punishment to be imposed on an employee should be left to the discretion of the employer and the Court exercising jurisdiction under Article 226 of the Constitution of India should not interfere with in the quantum of penalty, unless there exists sufficient reasons (***Lucknow K.Gramin Bank vs. Rajendra Singh***, reported in (2013) 12 SCC 372.

11. The conduct of the appellant in not reporting for duty after expiry of the leave period, which was sanctioned, itself is a serious delinquency. Therefore, not reporting for duty in spite of two call letters appear to have been evaded service of the charge memo, which was thereafter served on the respondent by special messenger; not submitting any reply to the charge memo; not responding to the three notices sent by the Enquiry Officer resulted in the enquiry being proceeded *ex parte* and ultimately, ended in the order of removal from service. Considering the factual situation, the Appellate Authority re-appreciated the entire materials and concurred with the Disciplinary Authority and held that the charge is proved, however, exercised his discretion in accordance with the relevant rules and modified the punishment into one of compulsory retirement with full pensionary benefits. In our considered view, this modified punishment cannot be stated to be shockingly disproportionate, especially when the charge has been found proved. Apart from that, the Revisional Authority, namely the second appellant, has re-examined the matter and concurred with the findings of the Appellate Authority by assigning independent reasons. Thus, there is no cause for interfering with the order of punishment and consequently, we have to necessarily hold that the punishment imposed on the respondent should not have been interfered.

12. In the result, the writ appeal is allowed and the order, dated 12.04.2019, passed in W.P.(MD) No.8883 of 2011 is set aside. Consequently, the writ petition is dismissed and the order of modified punishment, dated 04.06.2010, passed by the third appellant as confirmed by the second appellant, vide order dated 25.01.2011, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(cs-II)

/True Copy/

Sub Assistant Registrar

+1cc to Mr.P.Subbiah, Advocate, Sr.No.98872/19

+1cc to Mr.Mohamed Ibrahim Ali, Sr.No.98919/19

sma/krk/02/12/19/4p/3c

JUDGMENT IN

W.A. (MD) No.933 of 2019&CMP(MD) No.8398/19

15.11.2019