



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVANW.P(MD) No.5566 of 2017

S.Baskaran

... Petitioner

vs.

1.The Senior Commandant,
Central Industrial Security Force Unit,
Cochin Port Trust, Kerala State.

2.The Deputy Inspector General of Police,
Central Industrial Security Force,
Southern Zone,
Head Quarters,
Rajaji Bhavan, Besant Nagar,
Chennai - 600 090.

3.P.S.Abhaya Kumar
Inspector of Executive,
Central Industrial Security Force Unit,
CSY Cochin.

4.The Inspector General,
Central Industrial Security Force,
South Sector,
Chennai Port Trust Campus,
new War Memorial,
Chennai - 600 009.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 4th respondent in his Revision order No.V-15014/SS/Rev/SB/05/L&R/2017-2372 dated 02.03.2017 confirming the order of the 2nd respondent in connection with the impugned orders passed by him in No.V-15014/CIST/CSY/ Maj-1/SB/2015/1753 dated 18.07.2015 and modifying the order of the 1st respondent in his No.11014(1) (39) Appeal/BB/2015-16/1226 dated 01.03.2016 and quash the same and to direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits, within a reasonable time.

For Petitioner : Mr.M.MD.Ibrahim Ali

<https://hcservices.ecourts.gov.in/hcservices/>

For RI to R4 : Mr.R.Nandakumar

ORDER

Challenging the punishment awarded by the disciplinary authority, which was modified by the appellate authority and the same was confirmed by the revisional authority, the petitioner has come up with this writ petition. A consequential direction has also been sought to the respondents to reinstate the petitioner into service and grant all consequential service and monetary benefits.

2.The case of the petitioner in brief is as follows:

(i)The petitioner, while serving as Head Constable in the CISF Unit at Tuticorin was issued with a charge memo containing three charges, which read as follows:

ARTICLE OF CHARGE - I

That CISF No.854506433 HC/GD S.Baskaran of CISF Unit, CSY Cochin, while serving at CISF Unit VOCPT Tuticorin was detailed for "C" shift duty from 21.00 hrs to 05.00 hrs on 21/22.03.2015 at Check Post No.1 duty post. At about 20.40 hrs on 21.03.2015 during the shift briefing by the shift I/C ASI/Exe Nahar Singh, in the presence of Insp/Exe C.Chinna Kannan (Coy.Commander), he created an unpleasant scene and threatend that he will remain in nude position during the checking of anti-corruption team. He also questioned the authority of anti-corruption checking held at CISF Unit VOCPT, Tuticorin. The said act on the part of No.854506433 HC/GD S.Baskaran tantamount to severe indiscipline, gross misconduct and insubordination and unbecoming a member of disciplined para military Force of the Union".

ARTICLE OF CHARGE - II

"That CISF No.854506433 HC/GD S.Baskaran of CISF Unit, CSY Cochin, while serving at CISF Unit VOCPT, Tuticorin was detailed for "C" shift duty from 21.00 hrs to 05.00 hrs on 21/22.03.2015 at Check Post No.1 duty post. At about 20.40 hrs on 21.03.2015 during the shift briefing by the shift I/C ASI/Exe, Nahar Singh, in the presence of Insp/Exe C.Chinna Kannan (Coy.Commander), he deliberately took a knife from his personal handbag and threatened with dire consequences on the anti-corruption team, by saying that he won't hesitate to go to jail. He, then proceeded for duty along with the knife. The said act on the part of No.854506433 HC/GD S.Baskaran tantamount to gross negligence, severe misconduct and highly unbecoming a member of disciplined paramilitary Force of the Union".

ARTICLE OF CHARGE - III

"That CISF No.854506433 HC/GD S.Baskaran of CISF Unit, CSY Cochin (formerly of CISF Unit VOCPT Tuticorin) is a habitual offender on various types of omission and commissions. He was dealt with departmentally eight times previously and awarded one major penalty and seven minor punishments. Even after giving him repeated



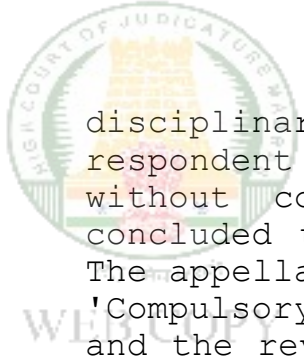
chances to mend his ways, he proved himself that he is incorrigible".

(ii) The petitioner, after receiving the charge memo, submitted his written reply dated 09.04.2015, wherein, he denied the charges and pleaded not guilty. Hence, an Enquiry Officer and a Presenting Officer were appointed to enquire into the charges levelled against the petitioner. After completion of enquiry, the Enquiry Officer submitted his report on 22.06.2015 holding that Article of Charge No.I was 'not proved' due to lack of evidence and Article of Charge Nos.II and III were 'proved'. Aggrieved by the Enquiry Report, the petitioner submitted his written representation on 11.07.2015. The disciplinary authority/first respondent herein, after taking into consideration the representation submitted by the petitioner and also after evaluating all the evidence available on record, awarded the punishment of 'removal from service' against the petitioner, vide order dated 18.07.2015.

(iii) Aggrieved by the order of the disciplinary authority/first respondent, the petitioner preferred an Appeal before the second respondent. The second respondent, on humanitarian grounds, modified the punishment of 'removal from service' into 'Compulsory retirement from service with full pensionary benefits' vide order dated 01.03.2016. Challenging the same, the petitioner had filed a Revision Petition before the fourth respondent. The fourth respondent, had elaborately discussed each and every plea raised by the petitioner and ultimately dismissed the revision, holding that there is no procedural flaw either in the proceedings or in passing orders and the appellate authority had already taken a lenient view to the extent of modifying the punishment into "Compulsory retirement from service with full pensionary benefits" and therefore, no interference is required in the order passed by the appellate authority. Aggrieved by the same, the petitioner is before this Court.

3. The first respondent, Senior Commandant, CISF, Cochin Port Trust, Kerala State, filed a detailed counter affidavit stating that the orders passed by the appellate authority as well as revisional authority are reasoned and speaking orders as per Rule. Further, the disciplinary authority after considering all the material evidence, statements of all the prosecution and defence witnesses and other documents available on record including the representations submitted by the petitioner, passed the impugned order of 'removal from service' against the petitioner, however, the same was subsequently modified by the appellate authority to the effect of 'Compulsory retirement from service with full pensionary benefits' and the same was also confirmed by the revisional authority. Therefore, the orders passed by the authorities concerned cannot be interfered with and ultimately, prayed for dismissal of the writ petition.

4. The learned counsel appearing for the petitioner submitted that the charges levelled against the petitioner are totally false, vague, non speaking and without any basis and hence, the



disciplinary proceedings stand vitiated. Further, the first respondent has simply accepted the report of the Enquiry Officer and without considering the representation of the petitioner, had concluded that the charges are proved, and imposed the punishment. The appellate authority has modified the punishment to the extent of 'Compulsory retirement from service with full pensionary benefits' and the revisional authority also confirmed the same and therefore, the same is liable to be set aside.

5. Per contra, the learned Central Government Standing Counsel appearing for the respondents submitted that the disciplinary authority, on scanning the enquiry report and having accepted it, discussed the available and admissible evidence on the charges, and rightly passed the impugned order and the same does not require any interference. In support of his contention, the learned counsel has relied upon a decision of the Hon'ble Supreme Court reported in **AIR 2015 Supreme Court 545 [Union of India and others Vs. P. Gunasekaran]**, wherein, the Hon'ble Apex Court has held that in disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal. Further, it is observed that the High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence.

6. I have heard the rival submissions made on either side and perused the materials on record.

7. A perusal of the impugned orders would clearly show that the petitioner is a habitual offender and he was dealt with departmentally eight times previously and awarded punishments. The disciplinary authority, after evaluating the entire evidence in its proper perspective, has rightly passed the impugned order of 'removal from service' against the petitioner. The appellate authority/the first respondent, has modified the punishment to the extent of "Compulsory retirement from service with full pensionary benefits" on humanitarian ground. The revisional authority, finding no reasons to interfere with the order of the appellate authority, confirmed the order of the second respondent. Therefore, viewing from any angle, the relief sought in the petition cannot be granted, since this Court finds no points for consideration to interfere with the orders passed by the appellate authority as well as the revisional authority.

8. In the result, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (P AND A)

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+1 CC to M/s.R.NANDA KUMAR, Advocate (SR-55710[F] dated 21/03/2019)

+1 CC to M/s.MOHAMED IBRAHIM ALI, Advocate (SR-55794[F] dated 21/03/2019)

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W.P (MD) No.5566 of 2017

MJ

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