



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 08.01.2018
ORDER PRONOUNCED ON : 12.04.2019

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THE HONOURABLE MRS.JUSTICE J.NISHABANU

W.P (MD) No.8883 of 2011

M.Selvam

... Petitioner

Vs.

- 1.The Director General
Central Industrial Security force,
CGO Complex,
Lodhi Road,
New Delhi.
- 2.The Hon'ble Inspector General,
Central Industrial Security Force,
Southern Sector, Chennai.
- 3.The Deputy Inspector General,
Central Industry Security Force,
South Zone, Head quarters,
Rajaji Bhavan,
Besant Nagar,
Chennai-600 090.
- 4.The Commandant,
Central Industrial Security Force,
Cochin Port Trust,
West Irland,
Cochin-682 009.

... Respondents

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.



For Petitioner : Mr.A.S.Mujibur Rahman
For R.1 to 3 : Mr.D.Ayyar
For R.4 : Mr.K.Ashok kumar Ram

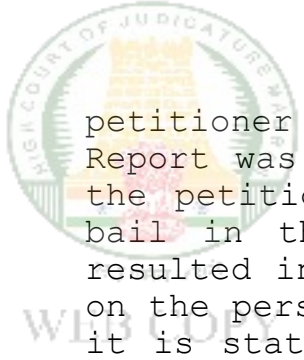
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ORDER

This Writ Petition has been filed 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.

2. The petitioner would aver among other things that he was appointed as Constable in the Central Industrial Security Force on 28.12.1998. While performing his duties, he was transferred to Cochin Port Trust from Tuticorin in the year 2007. The respondent sanctioned HPL and EL with effect from 01.01.2009 to 26.01.2009. It is stated that on 08.01.2009, there was a scuffle between the in-laws of the petitioner in which he was injured and subsequently, he was admitted in the hospital also. As a result, a complaint came to be lodged by the in-laws of the petitioner and a First Information Report had been registered against him. It is averred that the incident was reported to the fourth respondent over phone on 26.01.2009 followed by a fax message on 27.01.2009 along with medical reports by courier requesting the respondents to extend the leave, who in turn, rejected the request of the petitioner and call up notice was sent to the native place address of the petitioner, however, according to him, he was available at the quarters allotted to him in Tuticorin Port Trust. Therefore, he made a detailed representation on 09.06.2009 to the third respondent *inter alia* stating that due to his family problem, his wife left the matrimonial home leaving her daughter who was studying 10th standard. Due to which, the petitioner and his daughter had to face the Court proceedings, Police Station, DSP Office and SP office for enquiry. Eventually, the enquiry officers decided the case as false. Further, the wife of the petitioner filed three cases against the petitioner and he was forced to travel from Cochin to Ramanathapuram Court to attend the court hearings and due to this, he had to face problem departmentally and financially, in addition to the responsibility of his daughter who was studying in 10th Standard. It is further stated that the parents of the petitioner who were aged about 90 and 85 years were also living with him.

3. On 08.01.2009, while returning from the Court, his wife and some rowdies attacked the petitioner in which the



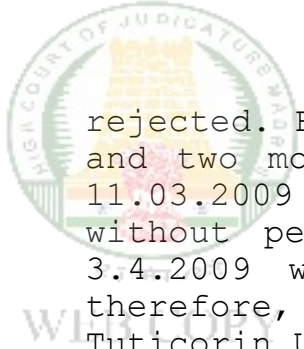
petitioner sustained grievous injuries and an First Information Report was filed against his wife and rowdy elements. The wife of the petitioner went to the extent of filing a forged anticipatory bail in the name of the petitioner without his knowledge which resulted in this Court giving direction to initiate criminal action on the person involved in the forgery. To sort out the family issue, it is stated by the petitioner that, he availed leave for 26 days and could not report for duty on the due date given by the respondents. The petitioner sent a reply to the authorities concerned, along with First Information Report, Medical report, telegram, and fax courier. The 4th respondent had ignored the same and issued the charge memo on 03.04.2009 to the petitioner. Despite the detailed explanation given by the petitioner, by an order, dated 28.09.2009, the fourth respondent awarded the punishment of 'removal from service'. Aggrieved by the same, the petitioner filed an appeal dated 30.11.2009 before the third respondent, who in turn, modified the order dated 28.09.2009 from 'removal of service' to 'compulsory retirement from service' with full pensionary benefits vide his order dated 04.06.2010. The petitioner took up the matter by way of an appeal to the second respondent on 16.09.2010 and the same was rejected vide order dated Nil.01.2011. Therefore, the petitioner is before this Court for the relief stated supra.

4. The learned counsel appearing for the petitioner would submit that despite the proper representation sent to the authorities concerned explaining the circumstances under which the petitioner was placed due to his family problem, the fourth respondent ordered for enquiry and it was conducted ex-parte and hence, the entire enquiry proceedings are vitiated by the respondents. The punishment awarded by the respondents is disproportionate to the alleged misconduct. None of the respondents have properly appreciated the facts and circumstances of the case before passing the punishment to the petitioner. To sum up, he prays for the setting aside the order of the respondents herein and allow this Writ Petition.

4.1. In support of his contention, the learned counsel for the petitioner relied on the following judgments of the Court:-

- (i) **Joginder Singh Vs Union Territory of Chandigarh and others reported in (2015) 2 SCC 377**
- (ii) **Madurai Veeran.A, Ex.Rect (MP) Vs Union of India reported in 2006 (1) CTC 732**

4.2. The first respondent has filed a detailed counter affidavit in which it is stated that originally the petitioner was granted leave from 01.01.2009 to 26.01.2009 due to family problems with Court case and house jabthi from LIC. Thereafter, he was supposed to report for duty on 27.01.2009, but failed to do so. Originally, he submitted for extension of leave from 27.01.2009 stating that on 08.01.2009, he was attacked by one Shanmuganathan and admitted in Govt.Hospital, but the same was considered and

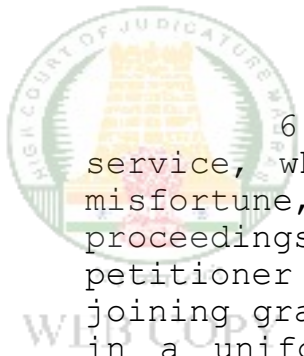


rejected. Furthermore, the petitioner did not respond to the message and two more letters sent to his leave address on 26.02.2009 and 11.03.2009 directing him to report for duty. Since overstaying without permission is a serious misconduct, a charge memo dated 3.4.2009 was issued to him and the same was not received and therefore, it was served on him through a special messenger from Tuticorin Unit, but he did not choose to sent any reply.

4.3. While the matter stood thus, an enquiry officer was appointed to enquire into the charges levelled against the petitioner and accordingly, served notice of enquiry on 30.07.2009 to the petitioner, to which, he submitted his representation on 10.08.2009. Further, he did not appear in person before the Enquiry Officer but again made a representation on 25.09.2009. Upon perusal of the representation, the enquiry officer ordered of removal from service vide his order dated 28.09.2009. The petitioner filed an appeal to the appellate authority, namely, the third respondent, who considered the representation and appeal of the petitioner and modified the order of removal of the petitioner to that of 'compulsory retirement with full pensionary benefits' vide his order, dated 14.06.2010. He preferred a revision petition on 16.09.2010 before the second respondent, which was considered and rejected on 28.01.2011 being devoid of merit.

4.4. Apart from that, all the correspondences to the petitioner on leave can be communicated only to the leave address given by the petitioner in his leave application under the rule of CISF. As such, the pleading that the petitioner was overstaying at Tuticorin Port Trust Quarters and that he was not communicated at the above address is unacceptable, besides false one. Further, the petitioner has not furnished the alleged change of address to the fourth respondent. Hence, the enquiry officer after giving sufficient opportunities for the disciplinary proceedings, conducted the enquiry fairly. The Enquiry Officer's Report was submitted to the fourth respondent, who being disciplinary authority passed the final order after considering the enquiry report. The allegation that the fourth respondent acted as prosecutor and Judge is untenable. The second respondent has considered all the aspects of the petitioner's revision and confirmed the order of the third respondent in which no infirmity could be found. Further, the fourth respondent jurisdiction is in Kerala High Court. Therefore, the disciplinary proceedings could only to be conducted in Cochin. The appellate authority, namely, the third respondent at Chennai is within the Jurisdiction of the Principal Seat of Madras High Court. As such, this Court has no territorial jurisdiction to entertain the Writ Petition and it has to be dismissed on this ground alone. To sum up, he prays for the dismissal of this Writ Petition. To garner support, he relied on the Apex Court Judgment reported in **(2015) 2 SCC 610, Union Of India and others Vs. P.Gunasekaran.**

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents. I have also perused the materials available on record carefully.



6. The petitioner has put in 20 years of unblemished service, which is not disputed by the respondents herein. To his misfortune, he was caught up with family problem and court proceedings. The reason for imposing harsh punishment against the petitioner is that he did not join the duty on the due date for joining granted by the respondents. There is no second opinion that in a uniformed force like the Central Industrial Security Force (CISF), discipline is paramount. However, while awarding major punishment of compulsory retirement from service, the difficult circumstances of the person involved have to be fairly and sympathetically considered by the disciplinary authorities, since it is the livelihood of the person concerned and his immediate dependents. Needless to mention that being a human-being and when the family becomes turbulent, we cannot expect a person to serve the Nation peacefully. If such situation happens to a person especially to the uniformed force, who is protecting our Nation day in and day out very often away from the kith and kin, this Court cannot be very rigid towards the litigant. What this Court expects from the authorities is that while passing such severe punishment, the authorities concerned should have taken into consideration the two decades of unblemished service put up by the petitioner coupled with the fact that he is a M.A. Graduate and got award from D.G. for Karagram in Rising Day at Delhi. Such a sincere man should not have been awarded with a harsh punishment, that too, compulsory retirement from service. If it is a serious allegation, this Court would not have interfered with, that too, in the matter of uniformed service. Even now, his prayer in the Writ Petition is ready to serve our Nation as CISF but circumstances made him otherwise since the situation was beyond his control.

6.1. In the case at hand, the petitioner has pleaded along with supporting documents expressing his inability to join the duty on time since he encountered with family problems. The respondents have not disputed the existence of the problem or disputed the veracity of the supporting documents. In such circumstances, at least the organization is expected to show its empathy. The scanning of the affidavit by this Court would show that the mental trauma undergone by the petitioner due to family feud, septuagenarian father, octogenarian mother and adolescent daughter, studying 10th std, is indescribable. It cannot be denied that he suffered mentally, physically and financially due to the Court and Police proceedings for the purpose of enquiry. All these factors have not been properly analysed by the respondents. Except overstaying, there is no serious allegation by the respondents. Due to his personal problem, his family life is completely ruined and the punishment of compulsory retirement from service would only add to the trauma undergone by him and it will be a great blow to his hopes for the remaining part of his life. I am of the firm view that the punishment awarded by the respondents is disproportionate to the alleged misconduct done by the petitioner. It is on record and not disputed that the alleged misconduct of over stay by the petitioner was not wilful. In the situations, this Court is convinced that the



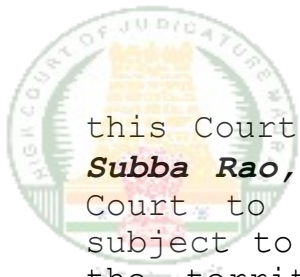
alleged misconduct is unsubstantiated.

6.2. The petitioner has produced medical certificate citing his inability to join the duty. When an application for sick leave is accompanied by a certificate from a registered doctor, the said certificate should generally be accepted as from an expert who is in the position to say whether the employee concerned is in a fit state of health for joining and discharging his duties normally. The respondents have no ground for refusing medical leave which was authorised by a Medical Officer. It is also seen that while filing revision petition before the first respondent, the petitioner sought personal hearing to depose the real fact faced by him. Even that was not provided by the first respondent and he summarily rejected the revision of the petitioner. Normally, this Court is cautious and often reluctant to exercise its powers in the matter of uniformed services. But, this Court, could not close its eyes to the traumatic plight of the petitioner due to his family problem, otherwise, his willingness to serve as Constable in CISF once again will remain an irony unsolved by this Court. Therefore, the orders impugned in this writ petition is liable to be set aside.

6.3. As far as jurisdictional aspects raised by the respondent is concerned, Clause 2 of the Article 226 of the Constitution of the India empowers that the power conferred by Clause(1) to issue directions, orders of writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arise for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. In the case at hand, the petitioner sent a representation on 28.01.2009 regarding his overstay to the fourth respondent from Tuticorin. The call up notice was served by the fourth respondent to the native place address of the petitioner, namely, Ramnad District. The final order passed by the fourth respondent is also sent to the petitioner's native place. These correspondences between the petitioner and some of the respondents clearly indicate that part of the cause of action has definitely arisen within the territory of Madras High Court, within Tamil Nadu as well as within the territory of Madurai Bench of Madras High Court. In my opinion, it cannot be said that no part of the cause of action had arisen within the territorial jurisdiction of this Court.

6.4. On this aspect, I garner support from the decision in **Navinchandra N.Majithia Vs. State of Maharashtra, 2000 (7) SCC 640**. To put it in a nutshell, this Court should not stand on hyper-technical view rather the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Law is to render justice to the needy people. This Court cannot harass and pressurize the litigant on the aspect of territorial jurisdiction, especially, this case falls within the jurisdiction of this Court.

6.5. It is also apt to mention that a Constitution Bench of



this Court has held in ***Election Commission, India Vs. Saka Venkata Subba Rao***, reported in ***AIR 1953 SC 210*** that the power of the High Court to issue writs under Article 226 of the Constitution is subject to the two-fold limitation that such writs cannot run beyond the territories subject to its jurisdiction and the person or authority to whom the High Court is empowered to issue such writs must be amenable to the jurisdiction of the High court either by residence or location within the territories subject to its jurisdiction. **(emphasis supplied)**. Therefore, the respondents contention that this Court lacks jurisdiction is summarily rejected.

6.6. Further, the decision relied on by the respondent reported in ***(2015) 2 SCC 610, Union Of India and others Vs. P. Gunasekaran***, cannot be made applicable on the ground that where the criminal charges against the accused therein are framed under Sections 143, 319 and 420 IPC, 1860 involving cheating and extortion of money. But, here, as earlier pointed out, the petitioner after rendering two decades of unblemished service was caught up in a family feud to which the punishment has been imposed. Therefore, the citation relied on by the respondents has no relevance to the case.

7. Therefore, the impugned orders fail in the test of fairness as well as suffer from the vice of denial of natural justice. In the light of the factual position of the matter coupled with the unblemished past record of service rendered by the petitioner, this Court has no other option but to allow the Writ Petition. The order of the respondents also suffer from legal infirmity inasmuch as personal hearing was refused. Accordingly, this Writ Petition is allowed as prayed for. The respondents are directed to place the petitioner in service within a period of four weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Director General
Central Industrial Security force,
CGO Complex,
Lodhi Road,
New Delhi.



2.The Hon'ble Inspector General,
Central Industrial Security Force,
Southern Sector, Chennai.

3.The Deputy Inspector General,
Central Industry Security Force,
South Zone, Head quarters,
Rajaji Bhavan,
Besant Nagar,
Chennai-600 090.

4.The Commandant,
Central Industrial Security Force,
Cochin Port Trust,
West Island,
Cochin-682 009.

+1 CC to Mr.K.ASOK KUMAR RAM, Senior Panel counsel, (SR-60662[F]
dated 12/04/2019)

+1 CC to Mr.A.S.MUJIBUR RAHMAN, Advocate (SR-60652[F] dated
12/04/2019)

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