



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NOS.12501 AND 12502 OF 2012

AND

MP NOS.1,1 &2,2 OF 2012

N.C.Bhaumik ... Petitioner in W.P.No.12501 of 2012

R.Jothi Basu ... Petitioner in W.P.No.12502 of 2012

Vs.

1. The Union Of India
Rep.By The Secretary Ministry of
Home Affairs, New Delhi.
- 2 The Director General
Central Industrial Security Force CISF
Headquarters Block No.13 CGO Complex
Lodhi Road New Delhi
- 3 The Inspector General
C.I.S.F South Sector S.S.Headquarters
CHPT Complex Chennai-1.
- 4 The Deputy Inspector General
C.I.S.F. Southern Zone D-Block Rajaji
Bhavan Besant Nagar Chennai-90.
- 5 The Group Commandant
C.I.S.F.Group Head Quarters D-Block Rajaji
Bhavan Besant Nagar Chennai-90.
... Respondents in both cases

PRAYER in W.P.No.12501 of 2012:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the Impugned Order of the third respondent herein in Order No.V-15014/L&R/SS/Rev/NCB/2012/61 dated 16.2.2012 confirming the order of the fourth respondent herein Order V-11014/38/Appeal/SZ/2011/7539 dated 26.9.2011 and the order of fifth respondent in Order No.V-15014/GHC/Ad-VI/NCB/EPL/Maj/2011-2678A dated 28.5.2011 and quash



the same and direct the respondents to grant the petitioner all attendant benefits including restoration of pay and grant of increments.

PRAYER in W.P.No.12502 of 2012:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, To call for the records relating to the Impugned Order of the third respondent herein in Order No.V-15014/L&R/SS/ Rev/RJ/2012/31 dated 28.2.2012 confirming the order of the fourth respondent herein Order V-11014/40/Appeal/SZ/2011/7538 dated 26.9.2011 and the order of fifth respondent in Order No.V-15014/GHC/Ad-VI/RJB/EPL/Maj/2011-2786 dated 03.06.2011 and quash the same and direct the respondents to grant the petitioner all attendant benefits including restoration of pay and grant of increments.

For Petitioners : Mr.R.Thiyagarajan

For Respondents : Mr.J.Madanagopal Rao, SCGSC

COMMON ORDER

The writ petitioner in W.P.No.12501 of 2012 Mr.N.C.Bhaumik, Head Constable and petitioner in W.P.No.12502 of 2012 Mr.R.Jothi Basu, Constable, were posted in access control duty at the main gate of Ennore Port Limited (EPL). A vigilance inspection was conducted on 02.11.2010 at 12.45 hrs, wherein the vigilance team found Rs.230/- wrapped in a handkerchief which was hidden in a carton box near the duty post of Head Constable N.C.Bhaumik. Since, the writ petitioners were near to the cabin a charge memo was issued to them and enquiry was conducted ultimately on the basis of evidence given by the prosecution witnesses, the enquiry officer held the charges proved. On the basis of the findings of the enquiry officer, the Disciplinary authority imposed punishment of reduction of pay by three increments from Rs.9510/- to Rs.8470/- in the pay band-I grade pay of Rs.2800/- for a period of three years with further direction that during the period of reduction will not earn increments of pay for the petitioner in W.P.No.12501 of 2012; and a punishment of reduction of pay by three increments from Rs.8550/- to Rs.7620/- in the pay band-I grade pay of Rs.2400/- for a period of three years with further direction that during the period of reduction will not earn increments of pay for the petitioner in W.P.No.12502 of 2012. Challenging the order of punishment imposed by the Disciplinary authority, petitioners preferred appeal as well as revision, whereas the penalty was confirmed by both the authorities. Aggrieved over the same, the petitioners are before this Court.

2. Learned counsel for the petitioner would vehemently



contend that four persons were posted on duty at EPL main gate on 02.11.2010. Writ petitioners were posted near the main gate, whereas the Sub Inspector of Police was standing near the other gate and another constable was also making entries in the register. Out of these four people, the respondents have chosen only the writ petitioners leaving out the other two. Therefore, picking and choosing the persons and charging them amounts to bias and malafide. Without affording the opportunity, and without any legal evidence, the enquiry officer had found the charges proved against the petitioners and on the basis of the same, the Disciplinary authority has imposed the punishment. The Disciplinary authority has not independently applied his mind as to whether there is preponderance of probability for the petitioners to commit the misconduct and the chances of involvement of the officers in the same. But merely on the basis of enquiry report without application of mind, has imposed the punishment. Therefore, the order is violative of principles of natural justice and illegal for non application of mind.

3. Per contra, the learned Senior Standing counsel appearing for the respondents would contend that the factum that writ petitioners were closer to the main gate on the date of vigilance inspection is not disputed. Equally the vigilance team had found Rs.230/- wrapped in handkerchief which was hidden in a carton box was also not disputed. From the evidence of prosecution witnesses it was clearly proved that both the petitioners were posted 10 feet away from the cabin and preponderance of probability will go to show it is only the petitioners who were responsible for the misconduct.

4. As per CISF rules a person cannot have more than Rs.50/- in his possession, while on in duty. Whereas money found was more than Rs.200/- that too hidden in a carton box that could definitely show that petitioners have violated the rules and thereby are punishable. Since it is a uniformed service, discipline and honesty are of utmost importance. Punishment imposed by the authorities is not unreasonable but valid and seeks dismissal of the writ petition.

5. I considered the rival submissions.

6. It is seen that on 02.11.2010 the petitioners were posted on access control duty at Main gate of Ennore Port between 06.00 hrs and 13.00 hrs. It is relevant to note that there were four persons, one Sub Inspector, one head constable and two constables posted on duty. The vigilance team had conducted an inspection and found Rs.230/- wrapped in a handkerchief which was hidden in a carton box. All the prosecution witnesses would depose as to the fact that the petitioners were posted near to the cabin at the main gate and



the factum of conduct of vigilance inspection and recovery of money wrapped in a handkerchief from a carton box. But, I do not find any material evidence leading to the misconduct of receiving illegal gratification or hiding the same. The fact remains that it was recovered from the cabin. The probability that anyone of the four persons could have placed the money in the cabin is not ruled out. Further, it is admitted that the access control duty is on shift basis. If its is so there are probabilities some other officials, who discharged duties prior to the shift of writ petitioners could have left the money but they were examined as witnesses to prove the probability. Without there being no evidence that the money belonged to the petitioners punishment came to be issued on the ground that the petitioners have not proved their innocence. It is true to state that the officials while posted on duty shall not possess more than Rs.50/- as per the standing orders issued by the respondent institution. But to prove the misconduct possession of excess amount shall be proved and that too by way of illegal gratification for doing an act illegally. Receipt of illegal gratification or that the petitioners were in possession of money more than Rs.50/- was not admitted. In that event it shall be proved by legal evidence, it cannot be presumed that it was kept by them in the cabin as they were posted nearer to the cabin. Therefore, the preponderance of probability may also lead to show that it could have been placed by somebody else or it was already there when the petitioners came for duty. When two or more views of possible, in the absence of proof, the benefit of doubt should be given in favour of the petitioners. Further, when four persons were posted to duty in that place, selecting only two persons and leaving out other two persons amount to discrimination and violative of Art.14 of the Constitution of India and violative of principles of natural justice. It can be only construed that the petitioners and other officers were negligent in not checking the cabin before taking charge. Since there is no concrete proof pointing the petitioners specifically that they have indulged in any misconduct, punishment imposed by the Disciplinary authority, in the considered opinion of the Court is perverse.

7. However, the negligence of the petitioner should be taken note of and they should not go scot free. Remitting the matter for fresh enquiry would not serve any purpose for want of witnesses.

8. Considering the totality of the circumstances, I am of the view that imposing of punishment under Sub Rule (8) of Rule 34 of CISF Rules, 2001 would be reasonable. Therefore, the punishment imposed by the disciplinary authority and confirmed by the appellate and revisional authorities are set aside and modified into one of reduction of time scale of pay by one stage



modified into one of one year without cumulative effect and not adversely affecting the petitioners pension. In view of the modification of the punishment, the petitioners will be entitled to all monetary and attendant benefits due to them.

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With the above direction, this writ petitions are ordered. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Writ)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary, Union Of India
Ministry of Home Affairs
New Delhi.
- 2 The Director General
Central Industrial Security Force CISF
Headquarters Block No.13 CGO Complex
Lodhi Road, New Delhi
- 3 The Inspector General
C.I.S.F South Sector S.S.Headquarters
CHPT Complex Chennai-1.
- 4 The Deputy Inspector General
C.I.S.F. Southern Zone D-Block Rajaji
Bhavan Besant Nagar Chennai-90.
- 5 The Group Commandant
C.I.S.F.Group Head Quarters D-Block Rajaji
Bhavan Besant Nagar Chennai-90.

+2cc to Mr.R.Thiyagarajan, Advocate, S.R.No.14118, 14119

+1cc to Mr.J.Madanagopal Rao, SCGSC, S.R.No.14056

W.P.Nos.12501 and 12502 of 2012

RSK(CO)
CS/08/07/2020