

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2020

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P. 20928 of 2013

G.Kashinath

... Petitioner

Vs

1. The Union of India,
rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
 2. The Director General,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi.
 3. The Inspector General,
Central Industrial Security Force,
Training Sector, head Quarters,
NISA, Hakimpet,
Hyderabad.
 4. The Deputy Inspector General,
Central Industrial Security Force,
South Zone, Head Quarters,
Rajaji Bhawan, Besant Nagar,
Chennai-600 090.
 5. The Group Commandant,
CISF Group Head Quarters,
Cochin-37.
- ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, or any other appropriate Writ, order or directions to call for the records relating to the order passed by the 3rd respondent in his order No.V-15014/L&R/SS/Rev/KS/2013-89, dated 22.04.2013 confirming the order passed by the 4th respondent in his order No.V-11014/23/Disc/SZ/2012/6607, dated 08.08.2012 confirming the order passed by the 5th respondent in his final order No.V.15014/KN/MAJ/KIOCL/GHC/AD.V/2012/1396, dated 28.03.2012 and quash the same and direct the respondents to pay all monetary benefits.

For Petitioner : Mr. A.S.Mujibur Rahman

For Respondents : Mr.P.Ayyasamy

O R D E R

This Writ Petition has been filed challenging the order of punishment.

2. The brief facts leading to the filing of this Writ Petition is that, while the petitioner was working as a constable in the Central Industrial Security Force (CISF), in the year 2011, a disciplinary proceedings has been initiated against the petitioner by framing charges under Rule 36 of CISF Rules 2001 on 29.09.2001, which reads as follows :-

ARTICLE OF CHARGE - I

"An act highly prejudicial to the good character, image and discipline of the force in that No.902293324 Const/GD Kashinath of CISF Unit KIOCL, Kudermukh, who was detained for quarter guard duty on 24.08.2011 was given out pass by Guard Commander, HC/GD T.K.Vinod, for two hours from 12.40 hours. Whereas he reported back to quarter guard at about 16.30 hrs. instead of 14.40 hrs. and stayed outside from quarter guard exceeding 02 (two) hours at his own without any information or permission from competent authority, violating the standing order of quarter guard. Thus, the above act on the part of No.902293324 Constable/GD Kashinath of CISF Unit KIOCL, Kudremukh, tantamount to gross misconduct, indiscipline, violation of lawful order and dereliction of duty."

ARTICLE OF CHARGE-II

An Act highly prejudicial to the good order, image and discipline of the force in that No.902293324 Const/GD Kashinath of CISF Unit KIOCL, Kudremukh who was arrested by Kudremukh police on 27.08.2011 at about 18.00 hours for a case registered against him under Section 498A, 504, 324, 506(ii) I.P.C. and he was detained under judicial custody beyond 48 hours. Thus, the above act the part of No.902293324 Const/GD Kashinath of CISF Unit KIOCL, Kudremukh tantamount to gross misconduct, indiscipline, tarnishing the image of the force and an act unbecoming of a member of the force."

The petitioner has submitted his explanation to the charge memo. Thereafter, an enquiry was conducted, and after giving

sufficient opportunity and examining witnesses, the enquiry officer has held that the charges are proved. Thereafter, the copy of the enquiry report was furnished to the petitioner asking for further explanation, and after considering the further explanation given by the petitioner, the disciplinary authority has also held that the charges are proved, and imposed the following punishment:-

"Reduction of pay by one increment from Rs.9,700/- +2800/- (GP) to Rs.9330/-+2800/- (GP) in PB-1 (5200-20200/- + 2800/- (GP) for a period of one year with effect from the date of issue of this order with further direction that he will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay."

3. Challenging the above order, the petitioner has filed an appeal before the appellate authority, the 4th respondent herein, and the appellate authority also, after considering entire materials, has dismissed the appeal, thereby confirmed the order passed by the disciplinary authority. Challenging the above said order, the petitioner has filed a revision petition before the 3rd respondent, and the revision petition also came to be dismissed by the Revisional authority. Challenging the same, the present Writ Petition has been filed.

4. I have heard and considered the rival submissions made by the learned counsel appearing for petitioner as well as learned counsel appearing for respondents and perused the records carefully.

5. The first charge leveled against the petitioner is that, while he was working in CISE Unit, KIOCL, Kundremukh, he was given a outpass for two hours from 12.40 hrs. to 14.40 hrs. However, the petitioner has reported to duty only at 16.30 hours exceeding two hours without any information and permission from the competent authority, thereby violating the standing order of quarter guard. The second charge leveled against the petitioner is that, a case has been registered against him under Sec.498A, 504, 324, 506(ii) I.P.C. and he was detained under judicial custody for more than 48 hours, which amounts to gross misconduct, indiscipline, tarnishing the image of the force and an act unbecoming of a member of the force. The petitioner even though denied all the charges, he has given a detailed explanation for the delay in reporting duty, and a false criminal case has been foisted against him. However, the enquiry officer, after examining the witnesses, including the wife of petitioner, who has made a complaint against the petitioner, and giving an opportunity to the petitioner to cross-examine both

side witnesses, has come to a conclusion that the charges are proved.

6. Thereafter, the enquiry report was served on to the petitioner along with a request to make further explanation for the report of enquiry officer by the disciplinary authority. After considering the enquiry report, and further explanation by an elaborate order, the disciplinary authority has come to a conclusion that the charges framed against the petitioner are very serious in nature, which amounts to gross misconduct, indiscipline, violation of lawful order and also dereliction of duty. That apart, he has also tarnished the image of the force. As such, the petitioner deserves for exemplary punishment to maintain discipline among other force members and to prevent occurrence of such type of act in the force in future, however, taken a lenient view and imposed the punishment of reduction of pay by one increment with cumulative effect. The appeal filed by the petitioner was also elaborately considered by the appellate authority, and after giving opportunity to the petitioner, dismissed the appeal holding that, there is no reason to interfere with the order passed by the disciplinary authority. Subsequently, after considering the entire materials, the further revision filed by the petitioner was also dismissed by the 3rd respondent.

7. Mr.A.S.Mujibur Rahman, learned counsel appearing for petitioner submitted that, the petitioner has properly explained the reason for the delay for reporting duty stating that, he has informed about the delay in reporting duty to the quarters guard. So far as the criminal case is concerned, it is only a false case, has been foisted against the petitioner. The petitioner has already divorced his wife, and only based on a false complaint, the petitioner was arrested and subsequently came out on bail. Hence, based on that false complaint, the punishment cannot be imposed. On perusal of records, it could be seen that, though the petitioner has given explanation for the delay, the enquiry officer as well as disciplinary authority, after considering the evidence of P.W.4 and P.W.5, the concerned official and a Guard Commander held that, they have informed the petitioner over phone and asked him to report to duty immediately, even then, he did not report to duty before the Guard Commander, who has granted time to the petitioner, which is in violation of standing order. So far as the criminal case is concerned, it is an admitted fact that, the petitioner was arrested and remanded to judicial custody from 27.08.2011 to 30.08.2011, thereafter, he came out on bail. The Enquiry Officer after examining his wife and other witnesses, came to a conclusion that, the charges are proved. I have also carefully gone through the records. Considering the nature of charges,

and the petitioner has been given sufficient opportunity to defend his case, and all the formalities are fully complied with by the enquiry officer as well as disciplinary authority, and considering the nature of punishment imposed against the petitioner, I find no reason to interfere with the order passed by the authorities. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Union of India,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
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CGO Complex, Lodhi Road,
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3. The Inspector General,
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Rajaji Bhawan, Besant Nagar,
Chennai-600 090.
5. The Group Commandant,
CISF Group Head Quarters,
Cochin-37.

+1cc to Mr.MMD.Ibrahim Ali, Advocate Sr.20050
+1cc to Mr.P.Ayyaswamy, Advocate Sr.20947

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srg 29/07/2020