

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.23074 OF 2013

S.Eknath Ghole

.. Petitioner

- Vs -

1. The Special Director General/
Airport Sector
Central Industrial Security Force
(Ministry of Home Affairs)
Block No13, CGO Complex
Lodhi Road, New Delhi - 03.
2. The Deputy Inspector General/AP-SZ
Central Industrial Security Force
(Ministry of Home Affairs)
2nd Floor, D Block
Rajaji Bhavan, Beasant Nagar
Chennai 600 090.
3. The Senior Commandant
Central Industrial Security Force
(Ministry of Home Affairs)
CISF, ASG, Chennai.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records relating to the impugned order passed by the 3rd respondent in order V.15014/CISF/ASG(CH)Maj-02/EKG/Disc/ 12/6065 dated 3.8.12 in appeal order passed by the 2nd respondent in order No.V-15019/L&R/AP-SZ/Apl-10/2012/6524 dated 21.11.12 and in order passed by 1st respondent in review order No.V-11014/APS/04/EG/LC/2013/3344 dated 9.4.13 and quash the same.

For Petitioner : No Appearance

For Respondents: Mr.N.Rajan, SCGSC

ORDER

It is the case of the petitioner that he joined the respondent on 23.3.88 as Constable and his nature of work was to advance information of malpractice and collection of regimental

information. While working thus, on 30.12.11, the petitioner overheard a conversation in the bus between two fellow members of the force about a quarrel between two lady constables. On hearing the conversation and in order to confirm the authenticity of the true fact, the petitioner enquired with the lady constable. However, on 12.1.12, a complaint was lodged by one lady constable, viz., Tilothama against the petitioner alleging that the petitioner offered the lady constable to go on outing with him. On 19.1.12, the petitioner was served with a charge memo containing two Article of charges. After receiving explanation from him, not satisfied with the said explanation, enquiry was conducted, which resulted in the submission of the enquiry report in which the petitioner was absolved of the first charge, while the second charge was held proved. On the basis of the said enquiry report, the disciplinary authority imposed the punishment of reduction by one stage from Rs.10260 (B)) + 2800 GP to Rs.9880 (BP) + 2800 GP in the pay band of Rs.5200-20200 (PB-I) for a period of two years with effect from the date of issue of this order and further ordered that he will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction of pay will have the effect of postponing his future increments of pay vide order dated 3.8.12. Against the said order of punishment, the petitioner preferred appeal to the appellate authority, which was rejected confirming the order passed by the disciplinary authority, vide order dated 21.11.12. Aggrieved by the rejection, the petitioner preferred revision before the Special Director General, and the said authority also confirmed the order passed by the authorities below. Aggrieved by the same, the present writ petition has been filed.

2. Though this petition has been repeatedly listed, however, there was no representation for the petitioner during the past occasions and even today there is no representation. In view of the fact that the writ petition pertains to the year 2013 and almost seven years have passed since the filing of the petition, this Court is inclined to take up the case and dispose of the same on merits.

3. A perusal of the grounds raised by the petitioner reveals that he has not been provided with the defence assistant as provided under the rules and that the disciplinary authority has not independently applied his mind to the materials while imposing the punishment. It is further contended that the enquiry authority has not adverted to the materials available before him to give a subjective finding. The petitioner has also questioned the act of the enquiry officer in the conduct of the enquiry and also contended that the enquiry officer has not appreciated the rules empowering the petitioner to collect information.

4. Per contra, learned senior central government standing counsel appearing for the respondents while denying all the averments raised by the petitioner in the grounds submitted that the authorities below, on appreciation of the materials available before them, have applied their mind independently and have concurred with the findings and accepted the punishment imposed on the petitioner. It is further submitted that the Court shall not ordinarily interfere with the punishment imposed by the authorities unless it feels that it is so very shocking to the conscience and disproportionate to the charges made out against the petitioner. In the present case, the authorities have imposed just and reasonable punishment which does not require any interference at the hands of this Court.

5. This Court bestowed its best attention to the grounds raised by the petitioner and also the contention advanced by the learned counsel for the respondents and perused the materials available on record.

6. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.

7. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment

(whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

8. True it is that the records reveal that the respondents have followed the procedure contemplated for proceeding with the disciplinary enquiry by serving the petitioner duly and even the petitioner has no quarrel with the process of enquiry. On completion of enquiry and submission of report, the disciplinary authority, on independent application of mind has imposed the punishment, which has been confirmed by the appellate and revisional authorities.

9. However, one crucial aspect has been lost sight of by the respondents. While two charges have been framed against the petitioner, the enquiry officer found the petitioner guilty under only one of the charge while absolving him of the other charge. However, the punishment imposed on the petitioner by the disciplinary authority is two-fold. The disciplinary authority, while ordered reduction by one stage from Rs.10260 (B) + 2800 GP to Rs.9880 (BP) + 2800 GP in the pay band of Rs.5200-20200 (PB-I) for a period of two years with effect from the date of issue of this order and further ordered that he will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction of pay will have the effect of postponing his future increments. In effect, twin punishments have been awarded by the disciplinary authority for a single article of charge. Further the punishment cumulatively means that on the ending of one punishment, the next punishment comes into play. This punishment imposed on the petitioner is nothing but punishing the petitioner twice for the same offence, which is nothing but double jeopardy, which cannot be allowed to stand. A delinquent has to suffer for a delinquency only once

and a repeat is impermissible. However, the punishment imposed on the petitioner is nothing but repeating the punishment after the currency of the first punishment. The above punishment, ordered by the disciplinary authority and confirmed by the appellate and revisional authorities definitely is disproportionate to the temerity of the charge levelled against the petitioner, which deserves interference at the hands of this Court.

10. The delinquency committed by the petitioner, which has been proved in the enquiry, definitely warrants punishment, but the above dual punishment is impermissible. In such circumstances, this Court is of the considered view that the punishment imposed on the petitioner should be modified. The first part of the punishment imposed on the petitioner to the effect of reduction by one stage from Rs.10260 (B)) + 2800 GP to Rs.9880 (BP) + 2800 GP in the pay band of Rs.5200-20200 (PB-I) for a period of two years with effect from the date of issue of this order deserves to be confirmed, however, the further punishment that the petitioner will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction of pay will have the effect of postponing his future increments, deserves to be quashed.

11. For the reasons aforesaid, this writ petition is allowed in part, modifying the punishment imposed on the petitioner to reduction by one stage from Rs.10260 (B)) + 2800 GP to Rs.9880 (BP) + 2800 GP in the pay band of Rs.5200-20200 (PB-I) for a period of two years with effect from the date of issue of this order. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Special Director General/
Airport Sector
Central Industrial Security Force
(Ministry of Home Affairs)
Block No13, CGO Complex
Lodhi Road, New Delhi - 03.

2. The Deputy Inspector General/AP-SZ
Central Industrial Security Force
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2nd Floor, D Block
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AJS (CO)
CS/02/11/2020



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