IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.30442 of 2011

P.Thevudu ... Petitioner

Vs.

1.The Director of General,
Central Industrial Security Force,
CISF Headquaters,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.

2.The Inspector of Police,
Central Industrial Security Force,
South Sector, Head quarters,
Chennai Port Trust,
Chennai.

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

4.The Commandant,
Central Industrial Security Force Unit,
Chennai Port Trust,
Chennai – 600 001. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the order passed by the 3rd respondent in his Letter No.V-11014/71/(PT)/ Vivani/S.R/2011/9442, dated 01.12.2011 modifying the order of the 4th respondent No.V-15014/Disc/MAJ-PT/2001-551, dated 28.09.2011 quash the same and to direct the respondents to grant full pension and all retirement benefits with effect from 01.10.2010.

For Petitioner : Mr.A.S.Mujibur Rahman
For Respondents
R1 : Mr.A.K.ManojKumar, CGC
R2 to R4 : No Appearance

ORDER

The petitioner while working as an Assistant Sub Inspector of Police under the respondents visited with a charge memo. The charge was that on 20.07.2011, while was on duty in a surprise inspection, found to be in possession of six Saudi Arabian made Lux Toilet Soaps worth Rs.240/- by the Vigilance team. He had given a statement, that he did not inform his superiors of his possession. On enquiry, he was found guilty and a punishment of compulsory retirement from service with immediate effect with 70% pension and gratuity benefits admissible. The order was confirmed by the Appellate Authority on 01.12.2011. According to the learned counsel for the petitioner, the petitioner did not admit his guilt. There is no violation of Standing Orders. The impugned order is without legal evidence and findings are perverse.

2. The respondents controverted the allegations and the learned counsel would contend that the petitioner had admitted the factum of possession of soaps worth more than Rs.240/- and that he had informed his superiors about the same. Possessing more than Rs.50/- is contrary to the Standing orders. Since the petitioner had admitted the same, a charge memo was issued. After giving ample opportunity in the enquiry, the punishment has been rightly imposed and hence, the order need not to the interfered with.

3. I have gone through the deposition of witnesses. The prosecution witnesses depose to the effect that the petitioner was found to be in possession of six Saudi Arabian made Lux Soaps during the surprise inspection conducted by the vigilance team and he signed the statement accepting the same. Further the deposition would speak about the opportunities given to the petitioner during enquiry and fair procedure adopted therein.

4. On the other hand, the petitioner examined a witness on his who would depose that he purchased and delivered the soaps after receiving payment. He could not deliver the same as requested at his home and delivered at his work place.

5. According to the respondents as per OM.No.IC-15098/CISF/Ch.PT/CIW/MISC/2010-644 dated 25.04.2010 and security standing procedure dated 01.02.2011 no person on duty shall accept any illegal gratification either in cash or in kind at

any post. The standing order is well known to him and that he did not inform his superiors about purchasing of the soaps. The Head Constable posted at the gate also deposed that he had not seen anybody handover the soap to the charged officer. But it was held that once it is admitted by the charged official that he received the goods while on duty, the misconduct is proved. But the petitioner has clearly denied the allegation and would state that he had never indulged in any sort of demanding and receiving illegal gratification, except for possession of six toilet soaps.

6. Unless there is an unambiguous admission of guilt, the burden is on the prosecution to prove the charge. The basis of imposing punishment is that the petitioner found to be in possession of six toilet soaps is contrary to standing orders and that he should not accept cash or kind while on duty. But the charge of receiving illegal gratification was presumed by the respondents without there being any material evidence. I have gone through the entire records, which only shows that possession of soaps worth more than the value of Rs.50/- is contrary to standing orders and possession being proved, guilt is proved. But, I do not find any material evidence proving acceptance of illegal gratification. It is also not the specific case of the respondents that the petitioner received illegal gratification from a particular person for doing a particular illegal act. In the absence of any material evidence, it cannot be presumed that the petitioner was guilty of receiving gratification.

7. The petitioner had let in evidence through a defence witness which discloses a probability that he had paid the money for the purchase of soaps on 05.07.2011 to a neighbour employee, but he could not deliver it at his residence as requested but delivered at his work place. When the prosecution witness depose that he had not seen anybody handing over anything to the petitioner while on duty, gives rise to a doubt that it would have been delivered at the gate to the petitioner before entering. In that event, the case projected by the petitioner is also probable. In such circumstances, it is the duty of the prosecution to prove the preponderance of the probability without doubt. When there are two views are possible, benefit of doubt should be given in favour of the delinquent. I do not find any material evidence to prove acceptance of illegal gratification and it is not the case of the respondents also.

8. If illegal gratification is not the issue, it only remains to analyse as to whether possession of toilet soaps is a misconduct. The office memorandum No.IC-15098/CISF/Ch.PT/CIW/MISC/2010-644 dated 27.04.2010 specifies

that no persons shall carry Rs.50/- as pocket money during the duty hours. The office memorandum reads as under:-

"1. No person shall carry more than Rs.50/- as pocket money during duty hours.

2. Entry regarding the pocket money carried should invariably made in the pocket money register with denominations clearly mentioned and physically checked by the shift I/C and endorsement made in the register to this effect.

3. If any excess money more than the amount mentioned at SL.No.1 is carried, the same should be intimated to the Shift I/C and necessary entry for the same and the reason for having the same should be mentioned in the pocket money register separately duly counter signed by the shift in-charge before mounting duty.

4. If any excess money apart from the one declared in the pocket money register is found during checking from the duty personnel, he shall be liable for strict disciplinary action. In such case the Shift I/C will also be taken to task for improper supervision and failure to exercise proper control and vigil.

5. If any unaccounted money is found in the duty post area and nearby vicinity, all the personnel performing duty at that place shall be liable for disciplinary proceedings, including the Shift I/C.

6. The shift I/C and second I/C are responsible for keeping strict vigil over their subordinates and if any body is found indulging in undesirable activities, such as collection of illegal money either directly or indirectly, all the duty personnel will be taken to task.

7. It is the duty and responsibility of the shift I/C to maintain the pocket money register in proper manner as stated above, which is open for checking any time. Any improper entry or un-initiated correction found, he shall be liable to disciplinary action.

8. The relevant registers in the duty posts are to be maintained properly with reference to entry regarding in and out of the vehicles and materials. Any lapses noticed will attract disciplinary action against the personnel maintaining the same and the Shift in-charges.

9. The duty personnel are liable to maintain good discipline and work order during duty hours and any personnel found indulging untoward activities will be taken to task. The shift I/C and the second in charge are responsible to keep proper control over their sub-ordinates.

10. The Coy Commanders are directed to carry out frequent and surprise check of the areas under their control and endorse necessary certificate to this effect in the GD and the relevant registers that are checked/scrutinized. This exercise should be carried out at least once in a week and report submitted to this office.

11. Proper briefing and de-brifing should be conducted in each shift and the Coy Commanders, where ever possible should also brief their men.

12. No personnel either bachelor or family member should indulge in gambling during on and off duty hours.

13. No personnel should report fro duty in an intoxicated state. If any one is found in such a situation, report should be submitted to the superior immediately in writing by the shift in charge, Coy Commander.

14. No personnel should leave the barracks during odd hours and if situation warrants, he should give necessary information to his superior about the same and shall be liable to prove the same, if he is otherwise reported to be involved in untoward incident to avoid disciplinary action.

15. It is observed that strict procedure for issuing of duty post token is not being followed properly. The token should be issued in queue and immediately after taking out from the bag, entry should be made in the entry duty register. Tokens once taken out from the bag should not be exchanged from the other person. The shift I/C and second I/C and all the duty personnel concerned will be taken the task if any malafide intention is noticed. The Coy Commander should also monitor from time to time.

16.All personnel are liable to maintain strict discipline and good order while on duty and during off duty hours being uniformed Force personnel and should not indulge in activities unbecoming of a member of force, which shall attract disciplinary action.

17. All personnel should wear helmet while riding two wheelers and no one should carry Cell phone and reading materials while on duty."

From a reading of this memorandum, I do not find possession of materials in kind is enumerated as a misconduct.

9. The respondents have not produced any materials contrary to the same. The standing security procedure also states that no employee shall receive illegal gratification in cash or land and

that he shall not be in possession of any amount in excess of Rs.50/- while on duty. It does not prohibit an employee of possessing goods for his personal use.

10. Therefore, punishment imposed on the basis of statements recorded for an unproved charge is shockingly disproportionate to the misconduct committed. A perusal of Rule 34 (a) of Central Industrial Security Force Rules, 2001, specifies Nature of Penalties as follows:

> "Nature of Penalties:
>
> The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an enrolled member of the Force, namely:
>
> Major penalties:
>
> (i) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;
>
> (ii) removal from service which shall not be a disqualification for future employment under the Governmen;
>
> (iii) compulsory retirement;
>
> (iv) reduction to lower time scale of pay, grade, post or service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the enrolled member of the Force during such specified period to the time scale of pay, grade, post or service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period -
>
> (a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and"

11. It is submitted that the petitioner has rendered 35 years of unblemished service. There is no allegation of accepting illegal gratification. The presumption is deduced from irregular and improper possession of six toilet soaps claimed to be purchased on payment for perusal use. Now that the petitioner is 70 years of age. No useful purpose will be solved by remitting the matter. Since, it is found the punishment disproportionate to misconduct, this Court is of the considered opinion of imposing a lesser punishment would serve the interest of justice.

12. Accordingly, the impugned order of punishment in Letter No.V-11014/71/(PT)/Vivani/S.R/2011/9442 dated 01.12.2011 of the 3rd respondent modifying the order of the 4th respondent No.V-15014/Disc/MAJ-PT/2001-551 dated 28.09.2011 is modified as one

of punishment of reduction to the lower stage in the time scale of pay, one stage for the period not exceeding three years with cumulative effect is imposed.

The Writ Petition is ordered accordingly.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Director of General,
Central Industrial Security Force,
CISF Headquaters,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.

2.The Inspector of Police,
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Central Industrial Security Force Unit,
Chennai Port Trust,
Chennai - 600 001.

+1cc to M/s.A.S.Mujibur Rahman, Advocate Sr.12995
+1cc to Mr.A.K.Manojkumar, Advocate Sr.13961

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srg 05/10/2020