

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.25306 of 2013

Mohammed Saleem

.. Petitioner

Vs.

1. The Senior Commandant,
Office of the Senior Commandant,
Central Industrial Security Force,
Ministry of Home Affairs,
CISF Unit, DAE, Kalpakkam,
Kancheepuram District, Tamil Nadu.
 2. The Deputy Inspector General / DAE,
Office of the Deputy Inspector General,
Central Industrial Security Force,
Ministry of Home Affairs,
CISF DAE, Zonal Head Quarters HQRS,
ECIL Post, Hyderabad, Andhra Pradesh.
 3. The Inspector General / Western Sector,
Office of Inspector General Western Sector,
C.I.S.F., Kaosubh Parisar,
Sector - 35, Kargarh,
Navi Mumbai - 10.
- .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the record in order V-15012/PA KA/V A No/12-6648, dated 27.07.2012, on the file of the third respondent and quash the same as illegal, arbitrary, double jeopardy and against the law and direct the respondents to reinstate the petitioner with backwages.

For Petitioner : Mr.B.Jaganathan
For Respondents : Mr.S.A.Rajan
SCGSC

O R D E R

The writ petition has been filed challenging the order of dismissal from service.

2. The petitioner was working as a Constable in the Central Industrial Security Force (hereinafter referred to as 'CISF'). While he was working at K.K.N.P.P., Kudankulam, a disciplinary proceedings has been initiated against him leveling as many as two charges, which reads as follows:

"Charge - I

That No.974501789 Const.Mohammad Saleem of CISF Unit KKNPP, Kudankulam was detailed for "C" shift duty at Fuel Store on 14.06.2011 from 2100 hrs to 0500 hrs on 15.06.2011. On completion of duty, surprise checking was carried out where in 03 Nos. fire coupling (brass) weighing about 06 kgs was found in his possession. On further frisking by the Insp/Exe P.P.Velu, SI/Exe Geesh Kumar V.V., SI/Exe Surendra Sharma and ASI/Exe S.D. Pandiyan, one fire hose box key hidden inside inner wear was also recovered from Const.Mohammad Saleem. The above act on part of Const.Mohammad Saleem amounts to gross indiscipline and serious misconduct and unbecoming of a member of Armed Force of Union.

Charge - II

That No.974501789 Const.Mohammad Saleem of CISF Unit KKNPP, Kudankulam failed to improve his conduct inspite of being awarded five penalties (one major penalty & four minor penalties) for various misconducts and indiscipline activities on different occasions, which amounts to gross misconduct, indiscipline and unbecoming of a member of an Armed Force of the Union."

3. The allegation against the petitioner was that, on completion of duty on 14.06.2011, while conducting surprise checking, 3 Nos. of fire coupling (brass) weighing about 6 kgs was found in his possession. That apart, he has also kept the fire hose box key inside his inner wear. Hence, the act of the petitioner amounts to gross indiscipline. That apart, he is habitual and he was awarded five punishments for various types of misconduct for indiscipline activities on different occasions, which also amounts to gross misconduct.

4. After issuing the memo of charges and after obtaining his explanation, an enquiry was conducted by the Deputy Commandant of CISF, Kudankulam, wherein, after giving all reasonable opportunities to defend his case, the Enquiry Officer has held that both the charges were proved.

5. Thereafter, the first respondent Disciplinary Authority after furnishing a copy of the Enquiry Officer's report and also obtaining his further explanation, has concurred with the findings of the Enquiry Officer and imposed the punishment of dismissal from service. Challenging the same, the petitioner has filed an appeal before the second respondent, Deputy Inspector General, CISF, and the Appellate Authority also after considering all his objections rejected his appeal and passed a detailed order. Thereafter, the petitioner filed a revision before the Inspector General, CISF, and the Revisionary Authority also after considered the materials on record has dismissed the revision and thereby confirming the order passed by the Disciplinary Authority and the Appellate Authority. Challenging the same the present revision has been filed.

6. The respondents have filed a detailed counter stating that the petitioner was appointed as a Constable in the year 1997, and while he was in service, he was awarded one major and four minor punishments for various misconduct. So far as the present charges are concerned, he was posted in night shift at the Atomic Power Plant, Kudankulam on 14.06.2011, while returning from duty, a polythene bag was recovered from his seat, which contains three fire couplings (brass) and the petitioner has also admitted his mistake in writing stating that he has stolen the fire couplings many times and sold the same at Kanyakumari, the statement was marked as PW-1/Ex P-V during the enquiry.

7. In the disciplinary proceedings, the officers who have conducted the inspection were examined to prove the charges and the petitioner was also given a fair opportunity to defend his case. After following all the mandatory procedures, enquiry was conducted and the Enquiry Officer found the charges proved, which was also confirmed by the Disciplinary Authority, the Appellate Authority as well as the Revisionary Authority.

8. Mr.B.Jaganath, learned counsel appearing for the petitioner would contend that the enquiry was not conducted in a proper manner and there is no material to prove that the goods have been recovered from the petitioner and the respondents proceed only on the presumption that the petitioner has stolen the goods from the nuclear plant. From the evidences of P.Ws.1 to 3, it is very clear that the goods were not recovered from the petitioner, however the Enquiry Officer without any evidence, whatsoever, held that the charges were proved, which has been mechanically accepted by the Disciplinary Authority.

9. According to the learned counsel for the petitioner so far as the second charge is concerned, already a punishment was imposed on the petitioner and once again the petitioner cannot

be charged for the very same irregularity in violation of Article 22 of the Constitution of India. The learned counsel also further submitted that for the very same occurrence, a criminal proceeding has been initiated against the petitioner in C.C.No.127 of 2012 on the file of the learned Judicial Magistrate, Vallioor and by judgement dated 13.04.2018, the trial Court acquitted the petitioner. In the above circumstances, as the petitioner has been acquitted on the very same charges, it is binding on the Disciplinary Authority and the order of dismissal has to be set aside.

10. The learned counsel appearing for the petitioner further submitted that the Appellate Authority as well as the Revisionary Authority also without considering the case in proper perspective has mechanically dismissed the appeal without giving any valid reason. The learned counsel for the petitioner further submitted that the punishment imposed on the petitioner is totally disproportionate to the gravity of the offence.

11. Per contra, Mr.S.A.Rajan, learned counsel appearing for the respondents would contend that the charges are very serious in nature and the petitioner has stolen materials from an Atomic Power Plant, which has been held as proved by the Enquiry Officer. That apart, the petitioner has also admitted the same, he is a habitual offender, already he has been awarded one major and four minor punishments during his short tenure in service.

12. According to the learned counsel, the Enquiry Officer after giving sufficient opportunity to the petitioner based on the evidence, has held that, charges are proved, which has been accepted by the Disciplinary Authority and imposed the punishment of dismissal from service. The order has been confirmed by the Appellate Authority as well as the Revisionary Authority. The petitioner being a member of the Uniformed Force has involved in a theft, that to from a high security atomic plant. Considering all these circumstances, the major punishment of dismissal from service was imposed and hence the punishment is not disproportionate.

13. The learned counsel for the respondents further submitted that merely because the petitioner was acquitted in the criminal case, the said findings of the criminal Court is not binding on the Disciplinary Authority. The nature of both the proceedings are totally different, in a criminal case, the proof is beyond reasonable doubt, whereas, in a disciplinary proceedings, it is sufficient to show that on preponderance of probability that the petitioner was guilty and punishment can be imposed, there is no illegality in it.

14. I have considered the rival submissions.

15. The first charge leveled against the petitioner is that he has illegally carried fire coupling from a high security Kudankulam atomic power plant. In order to prove the same, during the disciplinary proceedings, the concerned officers who recovered the material and searched the petitioner were examined and opportunity was also given to the petitioner to cross examine them, and the Enquiry Officer considering the evidence and other materials available on record has come to a conclusion that the first charge is proved.

16. So far as the second charge is concerned, admittedly the petitioner has been awarded with one major punishment and four minor punishments on previous occasions. The Enquiry Officer came to the conclusion that in a short tenure of service the petitioner committed various irregularities and various punishment was imposed on him, still he failed to reform himself and came to the conclusion that the second charge is also proved.

17. After furnishing a copy of the Enquiry Officer's report further explanation was called for from the petitioner, and the Disciplinary Authority, by a detailed order after considering the entire materials has concurred with the findings of the Enquiry Officer and considering the gravity of the misconduct imposed the punishment of dismissal from service.

18. On appeal filed by the petitioner before the second respondent Appellate Authority, he also elaborately considered the various objections raised by the petitioner and rejected the appeal and thereby confirmed the order of the Disciplinary Authority. Thereafter, a revision has been filed by the petitioner and the same was also rejected by the Revisionary Authority by passing a detailed order.

19. A perusal of the entire materials would show that the Disciplinary Authority as well as the Appellate Authority have considered the entire materials available on record and based on the available evidence have come to a conclusion that the charges are proved.

20. So far as the contention of the petitioner that he has been subsequently acquitted by a criminal Court in respect of the very same charges, it is settled law that acquittal of the criminal Court is not binding on the Disciplinary Authority. The proof in both the proceedings are totally different. In a criminal case prosecution is expected to prove the case beyond any reasonable doubt, whereas in a disciplinary proceedings, it is only on preponderance of probability, punishment can be imposed. Hence, merely because the petitioner was acquitted in a criminal case is not a ground to exonerate the petitioner from the charges.

21. So far as the quantum of punishment is concerned, the learned counsel for the petitioner would submit that considering the facts and circumstances of the case, a lesser punishment may be imposed on the petitioner. The learned counsel appearing for the respondents stoutly opposed the same and submitted that no leniency could be shown to the petitioner. Considering the peculiar facts of the case, that, on a very same occurrence, a criminal prosecution has been launched against the petitioner, almost same witnesses were examined in the Criminal Court, which ultimately ended in acquittal, this Court is of the view that some leniency should be shown to the petitioner and lenient punishment would meet the ends of justice. Therefore, this Court has no hesitation to interfere with the impugned order dated 27.07.2012, by modifying the same into compulsory retirement instead of dismissal from service.

22. In the result, the writ petition is partly allowed and the impugned order dated 27.07.2012, is modified to the extent that the petitioner shall be placed under compulsory retirement as a punishment, and in view of the same, all service benefits for which the petitioner is entitled to, under the relevant rules, shall be given to the petitioner and the needful shall be done within a period of six months from the date of receipt of a copy of this order. No Costs.

Sd/-

Assistant Registrar (AD I MDU)

//True Copy//

Sub Assistant Registrar

kk

To

- सत्यमेव जयते
1. The Senior Commandant,
Office of the Senior Commandant,
Central Industrial Security Force,
Ministry of Home Affairs,
CISF Unit, DAE, Kalpakkam,
Kancheepuram District, Tamil Nadu.
 2. The Deputy Inspector General / DAE,
Office of the Deputy Inspector General,
Central Industrial Security Force,
Ministry of Home Affairs,
CISF DAE, Zonal Head Quarters HQRS,
ECIL Post, Hyderabad, Andhra Pradesh.

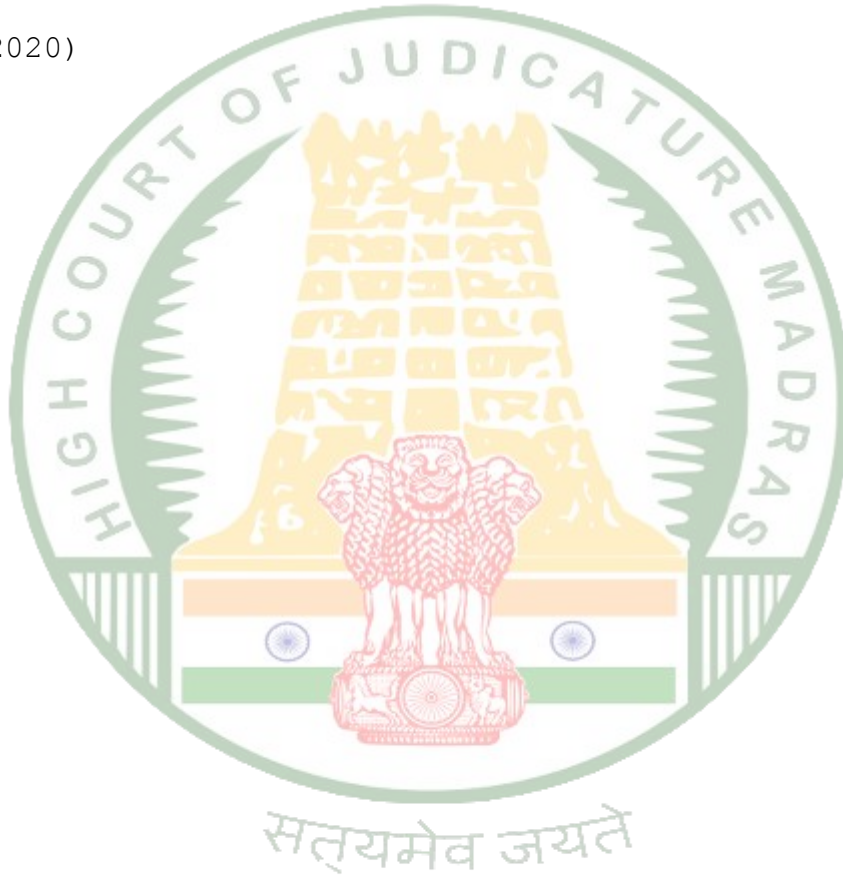
3. The Inspector General / Western Sector,
Office of Inspector General Western Sector,
C.I.S.F., Kaosubh Parisar,
Sector - 35, Kargarh,
Navi Mumbai - 10.

+1cc to Mr.Jaganath, Advocate, S.R.No. 21328

+1cc to Mr.N.Rajan, Advocate, S.R.No. 21298

W.P.No.25306 of 2013

MG (CO)
GN(07/08/2020)



WEB COPY