

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2020

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.33064 of 2013

and W.M.P.No.33881 of 2019

A.Subhan Ali

... Petitioner

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
CISF, South Sector,
Near War Memorial,
Chennai - 600 009.

4.The Deputy Inspector General,
Central Industrial Security Force,
South Zone Head Quarters,
Besant Nagar, Chennai - 600 090.

5.The Group Commandant,
Central Industrial Security Force,
Group Head Quarters,
NISA Complex, Hakimpet,
Hyderabad - 78.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order of the 3rd respondent dated 29.01.2013 in his Order No.V-15014/L&R/SS/Rev/ASA/2013-20 confirming the order of the 4th respondent dated 08.04.2011 in his order No V-11014/80VIVANI/SZ/ 2010 and quash the same and pay all benefits grant all consequential benefits.

For Petitioner : Mr.A.S.Mujibur Rahman
For Respondents : Mr.Venkataswamy Babu for R1 to R5
SPC - GOI

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records relating to the order of the third respondent dated 29.01.2013 in his Order No.V-15014/ L&R/SS/Rev/ASA/2013-20 confirming the order of the fourth respondent dated 08.04.2011 in his order No V-11014/80VIVANI/SZ/ 2010 and to quash the same and to grant all the consequential benefits.

2.The case of the petitioner is that the petitioner was recruited as Constable in the Central Industrial Security Force on 04.07.1991.

The petitioner was posted at HPCL, Visakapattinam on 05.06.2009. The fifth respondent granted leave from 08.04.2010 to 28.04.2010 and the petitioner proceeded to his native place, wherein, he was arrested on 27.04.2010 based on the complaint given by his wife on 13.04.2010 and the same was informed through fax by his father in law on 28.04.2010.

3.It is the further case of the petitioner that the petitioner was issued with charge memo alleging that involvement in criminal case, remaining in judicial custody and not informing to the department about the fact of his arrest and subsequent detention/ judicial custody amounts to an act of gross indiscipline, misconduct, tarnishing the image of the force and unbecoming of a member of an armed force of the union. The petitioner submitted his written statement of defence against the charge, however, the Disciplinary Authority appointed an Enquiry Officer to enquire into the charge and also appointed a Presenting Officer in his behalf to present the article of charge.

4.It is the further case of the petitioner that after completion of the disciplinary proceedings the Disciplinary Authority awarded the punishment of compulsory retirement from service with two third pensionary benefits. Thereafter, the petitioner preferred appeal before the Appellate Authority. The Appellate Authority modified the punishment to that of reduction of pay by three increments from Rs.8,400/- to Rs.7,510/- in the pay band - 1 with grade pay Rs.2,400/- for a period of three years with further direction that during the period of reduction, he will earn increments and on expiry of this period the reduction will not have the effect of postponing his future increments of pay. The period from the date of compulsory

retirement from service to the date of re-instatement into service was proposed to be treated as 'dies non' for the purposes of service as per Rule 55 of CISF Rules, 2001.

5.It is the further case of the petitioner that aggrieved by the same, he preferred revision before the third respondent, however, the said revision was dismissed as time barred by the third respondent on 29.01.2013. Hence, this writ petition.

6.The learned counsel appearing for the petitioner would submit that criminal case was registered against the petitioner due to domestic problem and not due to dereliction of duty or due to the involvement in criminal activity, however, the same was not considered by the respondents. Hence, the punishment imposed on the petitioner is onerous. Further, the period from the date of compulsory retirement from service to the date of re-instatement into service was proposed to be treated as 'dies non', which amounts to double punishment. Accordingly, he prayed for allowing the writ petition.

7.The learned counsel appearing for the respondents would submit that the petitioner during the course of enquiry has stated that he has informed about his arrest to the Unit Commander through communication dated 17.05.2010 i.e., after his release on bail on 05.05.2010. He would further submit that even after issuing two call up notices to the petitioner to report for duty, he rejoined duty only on 30.06.2010, whereas, he should have reported duty on 29.04.2010.

8.The learned counsel appearing for the respondents would further submit that the father in law of the petitioner is no way related to the article of charge levelled against the petitioner and would further submit that the petitioner intentionally overstayed leave. Accordingly, he prayed for dismissal of the writ petition.

9.Heard the arguments advanced on either side and perused the materials available on record.

10.The facts in the present case is not disputed. Originally, the Disciplinary Authority awarded the punishment of compulsory retirement from service with two third pensionary benefits. Thereafter, the petitioner preferred appeal before the Appellate Authority. The Appellate Authority modified the punishment to that of reduction of pay by three increments from Rs.8,400/- to Rs.7,510/- in the pay band - 1 with grade pay Rs.2,400/- for a period of three years with further direction that during the period of reduction, he will earn increments and on expiry of this period the reduction will not have the effect of postponing his future increments of pay. However, the period from the date of compulsory retirement from service to the date

of re-instatement into service was proposed to be treated as 'dies non' which amounts to double punishment. The revision preferred by the petitioner against the punishment was dismissed as time barred by the Revisional Authority.

11.The punishment imposed on the petitioner, in the considered opinion of this Court is highly excessive. Hence, this Court while confirming the punishment of 'reduction of pay by three increments from Rs.8,400/- to Rs.7,510/- in the pay band - 1 with grade pay Rs.2,400/- for a period of three years with further direction that during the period of reduction, he will earn increments and on expiry of this period the reduction will not have the effect of postponing his future increments of pay', directs the respondents to treat the period from the date of compulsory retirement from service to the date of re-instatement into service as 'duty period' for the purpose of pension.

12.The writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar (CS)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary
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Ministry of Home Affairs,
New Delhi.

2.The Director General,
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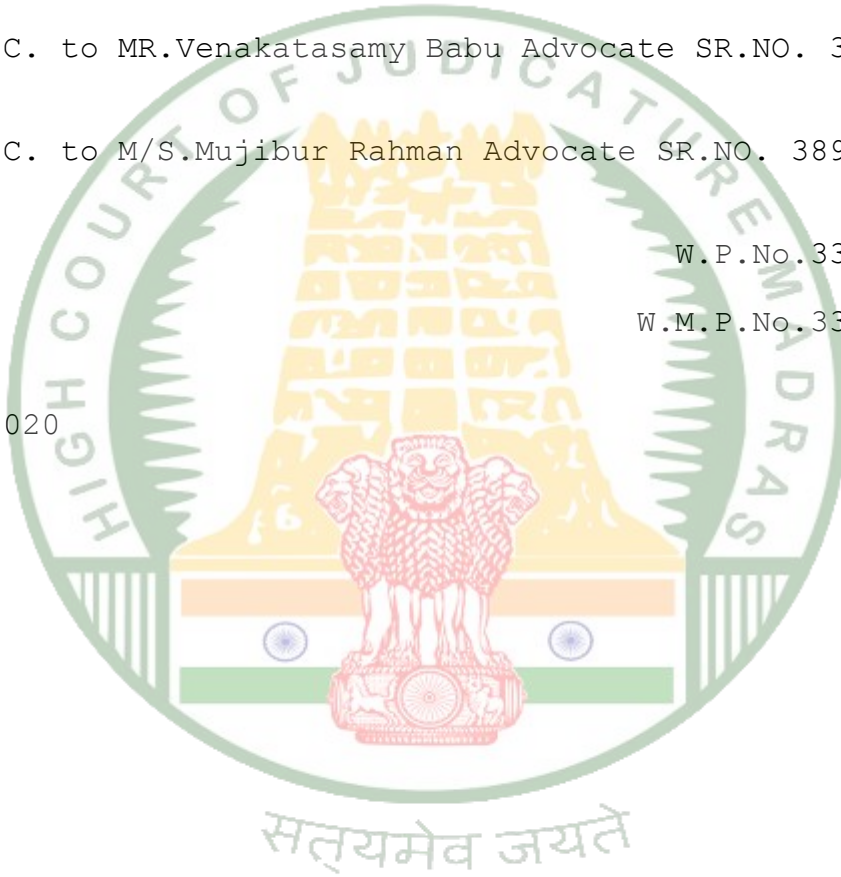
5.The Group Commandant,
Central Industrial Security Force,
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Hyderabad - 78.

+1 C.C. to MR.Venakatasamy Babu Advocate SR.NO. 38836

+1 C.C. to M/S.Mujibur Rahman Advocate SR.NO. 38902

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LN (CO)
VS 19.12.2020



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