

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.33857 of 2013

and

MP No.1 of 2013

R.Srinivasan

... Petitioner

Vs

1. CASO and Commandant,
CISF-ASG Mangalore
Office of the CASO and Commandant,
Central Industrial Security Force,
Mangalore Airport,
PO : BAJPE - 574 142.

2. Deputy Inspector General / AP-SZ,
Office of the Deputy Inspector General / AP-SZ,
Central Industrial Security Force,
Rajaji Bhawan,
Bezant Nagar,
Chennai - 600 090.

3. Inspector General / Airport Sector,
Office of the Special Director General / Airport Sector,
Central Industrial Security Force,
Block No.13,
CGO Complex,
Lodhi Road,
New Delhi - 03.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the records of the 1st respondent in order No.V-15014/CISF/ASG(M)/Disc.Major/R S12-1927 dated 13.6.2012 and order of the 2nd respondent in Order No.V-15019/AP-SZ (Rev-11/12) 2013/884 dated 11.2.2013 and order of the 3rd respondent in No.V-11014/APS/10/RS/LC/2013-5299 dated 11.06.2013 and quash the same as illegal, arbitrary unreasonable and non est in law and consequently direct the respondent to pay arrears of pay, increments, Grade pay and all other service benefits and monetary benefits, with effect from the year 2012.

For Petitioner : Mr.B.Vijay
For Respondents : Mr.A.Murugan
CGC for R1 to R3

ORDER

Petitioner has come up with the present Writ Petition challenging the order dated 13.06.2012 passed by the 1st Respondent; order dated 11.02.2013 passed by the 2nd Respondent and the order dated 11.06.2013 passed by the 3rd Respondent and for a consequential direction to the Respondents to pay arrears of pay, increments, Grade pay and all other service benefits and monetary benefits, to him, from the year 2012.

2. According to the Petitioner, he was appointed as a Constable in the year 1991 in Central Industrial Security Force Department under the Ministry of Home Affairs, Government of India. In the year 2012, disciplinary proceedings were initiated against the Petitioner and he was issued with a Charge Memo dated 21.05.2012 under Rule 26 of CISF Rules, 2001 containing two charges, that, he mishandled the weapon in his possession and that, he unauthorizedly entered the Control Room without permission from the competent Authority. The Enquiry Officer, after completion of the enquiry, submitted the Enquiry Report on 07.06.2012 and held that, the charges levelled against the Petitioner, as proved.

3. Aggrieved by the same, the Petitioner made a representation to the Disciplinary Authority on 08.06.2012. However, the Disciplinary Authority, i.e. the Commandant, CISF Unit, ASG, Mangalore, passed an order dated 12.06.2012 awarding the penalty of "reduction to the lowest stage (i.e. minimum scale of pay) in the time scale of pay for a further period of three years with immediate effect. It was further stated that, the Petitioner will not earn increments of pay during the period of reduction and that, on expiry of the period, the reduction will have the effect of postponing his future increments of pay.

4. Thereafter, the Disciplinary Authority modified the first part of the punishment imposed on the Petitioner vide order dated 13.06.2012 to the effect that, the pay of the Petitioner be reduced from Rs.9110/- + GP Rs.2400/- to Rs.7510/- + GP Rs.2400/- (i.e. Minimum stage of pay) in the pay band of Rs.5200-Rs.20,200 + GP Rs.2400/- for a period of three years with immediate effect.

5. Aggrieved by the punishment imposed by the Disciplinary Authority, the Petitioner preferred an Appeal Petition dated 17.01.2013 to the DIG, CISF, AP-SZ Hqrs, Chennai, being the Appellate Authority. The Appellate Authority rejected the Petitioner's Appeal Petition vide order dated 11.02.2013 on the ground that, it is time-barred. Challenging the same, the Petitioner filed a Revision Petition dated 25.03.2013 before the 3rd Respondent to set aside the order of punishment. The 3rd Respondent, being the Revisional Authority, after considering the case of the Petitioner, modified the punishment imposed on him, to the following effect:

"Reduction of pay one stage from Rs.9110/- + GP 2400/- to Rs.8770/- + GP 2400/- for a period of three (03) years in the pay band of Rs.5200-20200 + GP Rs.2400/- with further order that, he will not earn increments of pay during the period of reduction and that, on expiry of this period, the reduction will have the effect of postponing his future increments of pay."

6. It is the case of the Petitioner that, though the original punishment of reduction of pay to the lowest stage was modified by the Disciplinary Authority, even the subsequent modification of punishment to reduction of pay by one stage and the cut in increments, would certainly affect his entitlement of terminal benefits. Hence, challenging the orders impugned, Petitioner has come up with the present Writ Petition.

7. The primary contention of the learned counsel for the Petitioner is that, the punishment imposed by the Respondents on the Petitioner cannot be construed as a punishment commensurate with the gravity of the misconduct and such penalty is disproportionate to the charges alleged against him and is violative of Article 14 of the Constitution of India, and it would have serious impact on his entire service.

8. Learned Central Government Standing Counsel appearing for the Respondents submitted that, the Petitioner himself has admitted that, he accidentally fired one round from his AK-47 duty rifle in the Control Room of CISF ASG, Mangalore, which amounts to gross misconduct, indiscipline and dereliction of duty. Hence, according to him, the punishment imposed on him requires no interference and he prayed for dismissal of the Writ Petition.

9. Heard the learned counsel on either side and perused the material documents available on record.

10. Facts of the case are not in dispute. The grievance of the Petitioner is that, the punishment imposed on him is disproportionate to the gravity of the charges framed against him. In his explanation, the Petitioner has stated that, he noticed that, oil was leaking from his duty rifle and only to clean the same, he entered the Control Room. At the time of cleaning the rifle, he had inadvertently cocked the rifle and pressed the trigger, in which, suddenly one round was fired on air.

11. As the charges levelled against the Petitioner have been held to be proved, the Disciplinary Authority initially imposed the penalty of reduction of time scale of pay for a period of three years with a further punishment that, he shall not earn increments of pay during the period of reduction. Thereafter, the Disciplinary Authority himself modified the first part of the punishment to the effect that, the pay of the Petitioner be reduced from Rs.9110/- + GP Rs.2400/- to Rs.7510/- + GP Rs.2400/- (i.e. Minimum stage of pay) in the pay band of Rs.5200-Rs.20,200 + GP Rs.2400/- for a period of three years with immediate effect. Though, the Appellate Authority rejected the Appeal preferred by the Petitioner on the ground that, it is time barred, the Revisional Authority modified the punishment imposed on the Petitioner. However, even after modification of the punishment imposed on the Petitioner, the fact remains that, there are two punishments running parallel against the Petitioner.

12. Imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority. At this stage, it is appropriate to mention that, the Supreme Court has time and again held that, the Court can interfere where the penalty imposed is arbitrary or grossly excessive or out of all proportion to the offence committed.

13. Though, according to the Petitioner, the act of firing of weapon had occurred due to his inadvertence, the punishment was imposed with a view to improve his professional skill towards handling of weapon and not to repeat such act of indiscipline. Hence, in such view of the case, the Petitioner cannot expect rainbow of mercy from the Authorities.

14. Thus, in view of the foregoing, this Court upholds the first part of the punishment confirmed by the Revisional Authority, i.e. reduction of pay of one stage from Rs.9110/- + GP 2400/- to Rs.8770/- + GP 2400/- for a period of three (03) years in the pay band of Rs.5200-20200 + GP Rs.2400/-. The second part of the punishment to the effect that, the Petitioner will not earn increments of pay during the period of reduction and that, on expiry of that period, the reduction will have the effect of postponing his future increments of pay, is set aside.

15. On account of setting aside the second part of the punishment imposed on the Petitioner, the 1st Respondent/Disciplinary Authority is directed to pay the amount towards cut in increments of pay during the period of reduction of pay, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

This Writ Petition is partly allowed with the above direction. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

(vsi2/aeb)

To:

1. CASO and Commandant,
CISF-ASG Mangalore
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Block No.13,
CGO Complex,
Lodhi Road,
New Delhi - 03.

+2 CC to Mr. B.Vijay, Advocate Sr.No.38377/20
+1 CC to Mr. A.Murugan, Advocate Sr.No.38739/20

W.P.No.33857 of 2013

GP(CO)
cs 19/12/2020