

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P. 8736 of 2013

and

M.P. 2 of 2013

M.Dennis

... Petitioner

Vs

1. The Union of India,
rep. by its Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Reserve Police Force,
CGO Complex,
Lodhi Road, New Delhi.
3. The Additional Director General
of Police,
South Zone,
Central Reserve Police Force,
Chandrayan Gutta,
Hyderabad-560 005.
4. The Inspector General of Police,
Southern Sector,
Central Reserve Police Force,
Road No.10C, Jubilee Hills,
Near MLA Mps Colony,
Gayathri Hills,
Hyderabad - 560 033, A.P.
5. The Principal/Deputy Inspector
General of Police,
RTC, CRPF,
Avadi, Chennai-600 065.
6. The Commandant,
RTC, CRPF,
Avadi, Chennai-600 065.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 3rd respondent dated 06.02.2013 in his office order No.R.XIII-49/2012-SZ-Legal by confirming the order passed by the 4th respondent dated 09.07.2012 in his order No.R.XIII.30/12-Adm-7 confirming the order passed by the 5th respondent in his office order No.P.VIII-1/2012-EC-II, dated 07.04.2012 confirming the order passed by the 6th respondent in his order No.P.VIII-1/2012-EC-II, dated 29.02.2012 and quash the same and to direct the the respondents to take the petitioner into the strength of CRPF as Constable Cook and to pay all monetary benefits.

For Petitioner : Mrs.R.Meenakshi

For Respondents : Mr.L.J.Vengatesh for
R1 to R6

O R D E R

This Writ Petition has been filed challenging the order passed by the respondents 3 to 6 imposing punishment of compulsory retirement for the petitioner and to direct the respondents to pay pensionary benefits.

2. The petitioner was working as Constable (Cook) in the Central Reserve Police Force at Avadi. On 22.10.2011, a memorandum of charge was issued against the petitioner leveling three charges, the first charge was that, on 07.09.2011, he did not report to mess of first wing for preparing food for recruits and remained absent without any valid permission or leave of any kind. He also did not obey the orders and directions of the superiors as he was entrusted with the task of preparing food for recruits, which is against the good order and discipline of the Force. The second charge was that, on 07.09.2011 at about 17.00 hours, he was found in a state of intoxication during duty hours, which affected the duties on that day, which is against the good order and discipline of the Force. The third charge was that, during the said period, he was found committed an act of remissness in discharge of duties and disobedience of orders in his capacity as a member of the force, thereby he has become habitual in committing such type of misconduct under Sec.11(1) of Central Reserve Police Force Act (hereinafter called as 'Act'). That apart, already the petitioner was given punishment on six occasions covering the period from 2004 to 2010 with the direction to avoid repeat the act of indiscipline of consuming alcohol while on duty hours, he has become habitual in committing such type of misconduct as narrated under Article of Charges I and II, which is against the good order and discipline of the force.

3. After the memorandum of charge memo was served on to the petitioner, Shri S.C.Ghosh, was appointed as an enquiry officer to enquire into the charges framed against the petitioner. During preliminary examination, the petitioner has pleaded guilty of all the charges leveled against him. The Enquiry Officer has also informed the delinquent of his right to engage a defence assistant to assist him by letter dated 22.11.2011. For which, the petitioner in his reply dated 23.11.2011 has refused to engage a defence assistant. Thereafter, the enquiry officer has proceeded further to conduct the departmental enquiry, and also an opportunity was given to the petitioner by letter dated 16.12.2011 to produce defence witness/documents by 31.12.2011. But, the delinquent did not produce any defence witness or document. However, once again, another letter dated 31.12.2011, the petitioner was directed to produce defence witness or documents. Even thereafter, he did not produce any witness or documents. In the above circumstances, based on the materials available on record, the enquiry officer has held that, the charges framed against the petitioner are proved beyond doubt. The copy of the enquiry report was served on the petitioner by letter dated 30.01.2012 with a direction to submit reply/representation if any against the findings of enquiry officer's report. But, the petitioner did not send any reply for the same. Thereafter, the petitioner was personally called for further hearing, but he did not submit any representation against the findings of Enquiry Officer. The petitioner has pleaded guilty of charges framed against him, and also failed to produce any oral or documentary evidence. Considering the same, the disciplinary authority has held that, the charges are proved, and imposed punishment of compulsory retirement from service with effect from 29.02.2012, and it is further stipulated that, he will get all his pensionary benefits and gratuity admissible to him on the date of his compulsory retirement as per Rule 40 of CCS (Pension) Rules, 1972.

4. Challenging the order passed by disciplinary authority, the petitioner has preferred an appeal before the 5th respondent the Principal/Deputy Inspector General of Police, RTC, CRPF, Avadi, Chennai, wherein he has pleaded for some mercy and sought for lesser punishment. The appellate authority after examining the materials, confirmed the penalty awarded by the disciplinary authority by an order dated 07.04.2012.

5. Challenging the order passed by the appellate authority, the petitioner has filed a further revision before the 4th respondent the Inspector General of Police, Southern Sector, CRPF. The revisional authority also after considering the

materials and also considering the previous punishment awarded against the petitioner, rejected the revision petition filed by the petitioner by an order dated 09.07.2012. Challenging the same, the present Writ Petition has been filed.

6. Mrs.R.Meenakshi, learned counsel appearing for petitioner submitted that, the petitioner has served only for 11 years, and he is having another 24 years of service, he is having big family, and he has to maintain his family. The petitioner is seeking for modification of punishment awarded by the authorities. That apart, the learned counsel appearing for petitioner submitted that, the enquiry was not properly conducted, all the documents were furnished in Hindi, and the copy of vernacular translated version was not furnished to the petitioner. That apart, the petitioner was not given a proper opportunity to defend his case.

7. Mr. L.J. Vengatesh, learned counsel appearing for respondents 1 to 6 has filed a counter affidavit stating that, the petitioner was a habitual drinker, on several occasions, he was in an inebriated condition during duty hours, and he was punished for the same. Despite having been awarded with punishment, the petitioner never gave up the habit of drinking during duty hours. On 07.09.2011, he consumed alcohol and absented himself from duty, thereby violated the provisions contained in Sec.11(1) of CRPF Act. The petitioner has acted in a manner unbecoming of a member of the Force, which is against the good order and discipline of the Force. The disciplinary authority has given ample opportunities to the petitioner to defend his case during the course of entire departmental enquiry proceedings. During departmental enquiry proceedings dated 07.11.2011, the petitioner pleaded guilty of all the charges framed against him, and voluntarily accepted before the Enquiry Officer for conducting the departmental enquiry proceedings in Hindi language. That apart, the petitioner has also not brought any new facts to defend his case. The appellate authority and the revisional authority after considering entire materials rejected the appeal and revision. In the counter affidavit, the punishment imposed on the petitioner from the year 2006 to 2010 was tabulated as follows:-

Sl. No.	Brief of offence	Punishment awarded
1.	On 22.07.2006, he was arreste by GRP at New Delhi Raily Station in alcoholic condition.	Censure
2.	On 14.10.2006 he consumed alcohol and found absent from duty.	Confinement to Quarter Guard for 03 days from 09.10.2006 to 11.10.2006

Sl. No.	Brief of offence	Punishment awarded
3.	On 22.10.2006, he left Group Centre Camp without valid permission and consumed alcohol and found fell down on road side. Further, he misbehaved with Subdar Major using abusive language.	Confinement to Quarter Guard for 07 days from 23.10.2006 to 29.10.2006
4.	On 02.02.2007, he was found under the influence of alcohol during duty hours.	Confinement to Quarter Guard for 14 days from 05.02.2007 to 18.02.2007 with forfeiture of pay and allowances.
5.	On 15.11.2007, he left camp without permission and reported at his own on 16.11.2007. Further, he consumed alcohol and created nuisance in the camp.	Confinement to Quarter Guard for 07 days from 16.11.2007 to 22.11.2007.

It is further stated that, despite giving reasonable opportunity and lenient action taken on earlier occasions, the petitioner did not change his attitude and continued with the habit of consuming alcohol during duty hours. Hence, the plea of petitioner for reinstatement of service does not find any merit and same cannot be accepted.

8. The learned counsel appearing for respondents has further submitted that the petitioner is an habitual offender and even though for the similar offence, he has been imposed with minor punishment on six occasions, he was not relent and continued to commit the same offence. During the enquiry also, he has pleaded guilty of all the charges leveled against him. Despite the same, ample opportunity was given to the petitioner to engage defence assistant and also permitted him to produce witness or documents. Despite the same, he did not come forward to defend his case. However, considering the entire materials available on record, lesser punishment of compulsory punishment was awarded to the petitioner. Even in the appeal, the appellate authority has held that, he did not avail the opportunities granted by the disciplinary authority, he has pleaded only mercy and sought not for lesser punishment. Based on the above findings, both the

appellate and revisional authorities have dismissed the appeal as well as revision petition. Hence, there is no illegality in conducting the enquiry by the disciplinary authority, and the Writ Petition is liable to be dismissed.

9. I have considered the rival submissions made by the learned counsel appearing for the petitioner as well as learned counsel appearing for the respondents and perused the records available on record.

10. The petitioner was working as a Constable Cook in CRPF. Admittedly, for the similar charges, he was given minor punishment for six times from the year 2004 to 2010. Despite the same, once again, he has committed the same misconduct. Hence, charges were framed against the petitioner, and during enquiry, the petitioner has also pleaded guilty of all the charges. On perusal of records, it could be seen that, despite the petitioner has pleaded guilty, an opportunity was given to him to engage a defence assistant to assist him, but he did not accept the same. Thereafter, he was also given an opportunity to produce defence witness or documents. Despite two opportunities were given to the petitioner, he has not come forward to produce any witness or to furnish any documents to defend his case. In the said circumstances, based on the materials available on record, the enquiry officer has come to a conclusion that, all the charges were proved against him. The enquiry report was also served on to him, and he was asked to submit his reply. Despite the same, he did not give any reply. In the above circumstances, on perusal of materials available on record, the disciplinary authority has come to a conclusion that all the charges are proved and imposed punishment of compulsory retirement from service with all pensionary benefits and gratuity admissible to him on the verge of compulsory retirement. Even in the appeal filed by the petitioner, he did not raise any objection regarding any irregularities in the disciplinary proceedings conducted against him, and he has only sought for lesser punishment. The appellate authority after considering entire materials and also considering his previous conduct, dismissed the appeal, and the revision petition filed by the petitioner was also dismissed. I do not find any substantial violation in conducting the disciplinary proceedings and ample opportunity was given to the petitioner to defend his case, but he failed to utilise the opportunities. That apart, he has also pleaded guilty of all the charges. Considering all those circumstances, both authorities have imposed punishment. I find no illegality

or irregularity in the order passed by both authorities, and hence, the Writ Petition is liable to be dismissed. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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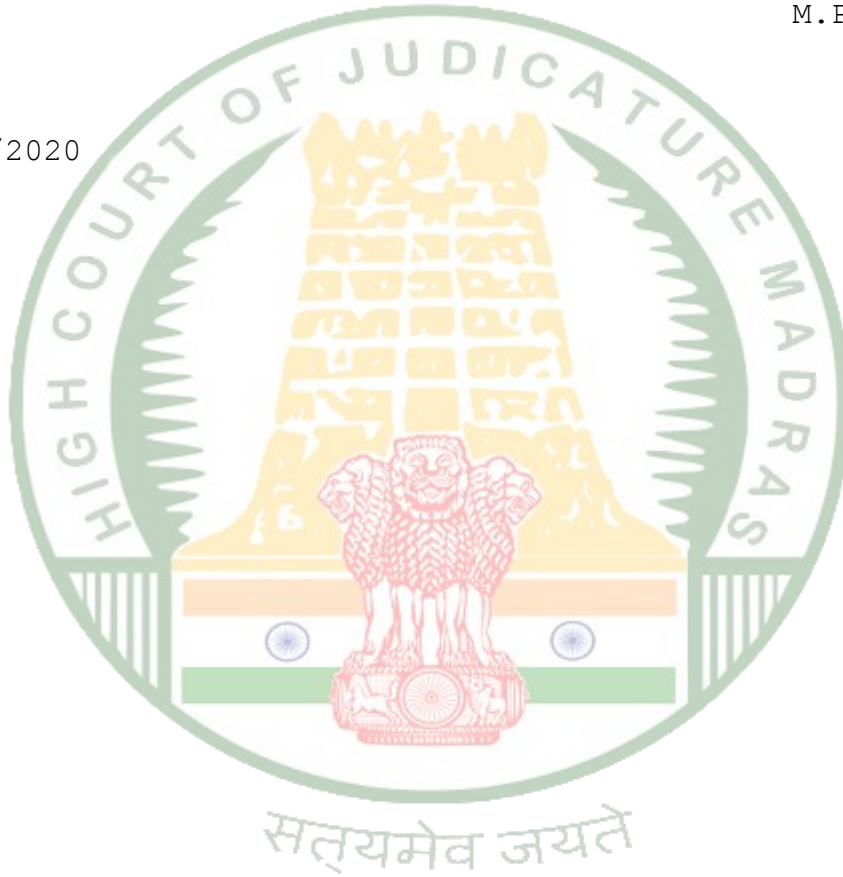
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+1cc to M/s.R.Meenakshi, Advocate Sr.19143

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M.P. 2 of 2013

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