

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No.31785 of 2014

R. Subramaniam,

... Petitioner

Vs.

- 1.The Union of India,  
Represented by its Secretary to Government,  
Ministry of Home Affairs, New Delhi.
- 2.The Inspector General,  
Central Industrial Security Force,  
South Sector, Head Quarters,  
Chennai Port Trust Campus, Chennai - 600 009.
- 3.The Deputy Inspector General,  
CISF, South Zone, Head Quarters,  
Rajaji Bhavan, Besant Nagar, Chennai-600 090.
- 4.The Senior Commandant,  
CISF Unit, SCCL, Singerani,  
Andhra Pradesh.

... 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 second respondent in his order No.V-15014/L&R/SS/Rev/RS/2014-233, dated 25.10.2014 confirming the order of the third respondent dated 04.04.2014 in his Order No.V-11014/(1)/13/RS/Disc/SZ/2014/2512 confirming the Final Order No.V-15014/Disc/SCCL/Major-16/RS/2013-9067, dated 17.12.2013 and quash the same and to direct the respondents to take the petitioner into the strength of CISF as Constable with all monetary benefits.

For Petitioner : Mr.R. Thiyaga Rajan

For RR 1 to 4 : Mr.G.Karthikeyan  
Assistant Solicitor General

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O R D E R

This writ petition has been filed by the petitioner seeking to call for the records relating to the order passed

by the second respondent in his order No.V-15014/L&R/SS/Rev/RS/2014-233, dated 25.10.2014, confirming the order of the third respondent dated 04.04.2014 in his Order No.V-11014/(1)/13/RS/Disc/SZ/2014/2512, confirming the Final Order No.V-15014/Disc/SCCL/Major-16/RS/2013-9067, dated 17.12.2013 and quash the same and to direct the respondents to take the petitioner into the strength of CISF as Constable with all monetary benefits.

2. According to the petitioner, he joined as a Constable in the Central Industrial Security Force (CISF) on 09.08.1993. He was transferred to Andhra Pradesh under the fourth respondent/Senior Commandant and he has been issued with a charge-memo dated 28.10.2013 under Rule 37 of the Central Industrial Security Force Rules, 2001 on 11.12.2012. The petitioner was issued with the said charge-memo dated 28.10.2013 containing five Articles of Charges and Article-V of the charge has been subsequently deleted. It is the defence of the petitioner is that he is still undergoing medical treatment and taking medicine for General Anxiety Disorder (GAD) due to which he could not read and understand the enquiry report to submit his representation and hence, he sought for time to submit his detailed reply. The aforesaid charge-memo has been served to the writ petitioner on 04.11.2013. Thereafter, he submitted a detailed representation denying the article of charges levelled against him. But the fourth respondent, without considering the representation, had passed the order on 10.01.2013, awarding the punishment of withholding of one increment for a period of one year. Aggrieved by the order passed by the fourth respondent, he preferred an appeal before the third respondent on 06.02.2013. In the appeal grounds, a specific request to conduct the enquiry with respect to the alleged charges, was prayed for. But, the third respondent without conducting any enquiry and without issuing any Show Cause Notice, has enhanced the punishment of withholding of one increment for a period of two years. The learned counsel for the petitioner further submitted that the Charge No.V was deleted by the disciplinary authority and accordingly, he was issued with a corrigendum order, vide letter No.7902, dated 04.11.2013 and thereafter, the petitioner submitted an application on 07.11.2013 requesting to grant time of 30 days for filing written statement of defence against the charge-memo, but the time was not granted and therefore, an appeal to the Deputy Inspector General was submitted on 09.11.2013 through proper channel, but the same was rejected by the disciplinary authority. The enquiry was proceeded by the disciplinary authority. The preliminary enquiry was again fixed and the petitioner appeared before the Enquiry Officer, requesting to stop the enquiry till the order received from the DIG, but the Enquiry Officer has set him ex-parte. The disciplinary authority denied the request of the petitioner and appointed Enquiry Officer to enquire into the article of charges and

also appointed Presiding Officer in his behalf to present the Articles of Charges. After receiving the order of the Enquiry Officer, the petitioner attended preliminary hearing and submitted an application stating that the petitioner was suffering from General Anxiety Disorder and requesting to stop enquiry proceedings till the restoration of his illness. But his request was also denied by the disciplinary authority and the Enquiry Officer conducted the enquiry ex-parte, without giving reasonable opportunity of hearing to the petitioner and awarded the punishment of "Dismissal from service with immediate effect". Thereafter, the petitioner preferred revision before the second respondent and the second respondent, on 25.10.2014, has rejected the revision filed by the petitioner. Thereafter, an ex-parte enquiry was conducted by the respondents and subsequently, the enquiry was posted on 12.11.2013, but the Enquiry Officer has submitted the ex-parte enquiry report to the Disciplinary Authority. Further, the writ petitioner has also made an application to the Enquiry Officer requesting him not to proceed with the Enquiry till reply is received from the application made on 14.11.2013. Thereafter, the enquiry report along with his findings were submitted by the respondents on 12.12.2013 and the same were served to the writ petitioner. Again, the writ petitioner has made an application to the Disciplinary Authority to grant 15 days time to submit his reply and the same was rejected. Challenging the aforesaid final order, the writ petitioner has come forward with the present writ petition before this Court.

3. The learned counsel appearing for the writ petitioner had urged before this Court that the respondents have not afforded an opportunity of hearing to the writ petitioner to submit his explanation in order to disprove the charges framed against him. Thereafter, the second respondent has simply rejected the claim of the writ petitioner for granting 30 days time by submitting his reply due to some illness and family problem on 07.11.2013. The fourth respondent has issued a corrigendum with respect to the Article of Charge-V of charge-memo dated 04.11.2013. The learned counsel for the petitioner further submitted that the petitioner was not heard in the aforesaid enquiry proceedings and therefore, the respondents have not followed the procedures of fullfledged enquiry while passing the impugned order.

4. Mr.G.Karthikeyan, learned Assistant Solicitor General appearing for the respondents 1 to 4 submitted that the main charge alleged against the petitioner is that he did not intimate about the medical rests w.e.f. 30.09.2013 to 16.10.2013 and he did not obtain any prior permission from the Competent Authority and he pleaded knee pain. Thus, he was mainly charged for gross misconduct, grave acts of indiscipline, disobedience of lawful orders and unbecoming being a member of CISF, a disciplined Armed Force of the Union. The aforesaid submission of the writ petitioner that

he had not been afforded an opportunity for submitting his explanation on or before 09.11.2013 in the writ petition is not sustainable and the writ petitioner has not co-operated for the enquiry and he has purposely and notionally delayed the enquiry proceedings. Therefore, the second respondent has rejected the claim of the petitioner and the conduct of the petitioner and the subsequent events show that the petitioner had not co-operated for the enquiry proceedings and it has been maintained by the Enquiry Officer as well as Disciplinary Authority and therefore, in the impugned orders passed by the respondents are perfectly in consonance with the Rules in force.

5. Heard the learned counsel for the parties and carefully perused the materials available on record.

6. The point for consideration is as to whether an opportunity of hearing was granted to the writ petitioner for submitting his explanation during the enquiry proceedings before the Enquiry Officer. The fourth respondent has issued charge memo and one of the Articles of Charge No.5 was deleted by the respondents and after deletion of the charge, the said copy of the charge memo was received by the writ petitioner on 04.11.2013 and on 07.11.2013. The writ petitioner has requested for granting 30 days time to submit his reply on the ground of his sickness and family problem.

7. The respondents have rejected the claim of the writ petitioner on 08.11.2013 for granting time to submit his reply on or before 09.11.2013. Hence, the writ petitioner has also approached the Deputy Inspector General, CISF, South Zone Head Quarters, Rajaji Bhavan, Chennai-600 090, seeking time for 30 days to submit his reply on 09.11.2013 and the aforesaid application was rejected on 09.11.2013. Therefore, from the aforesaid facts, it is clear that the writ petitioner has sought time to submit his reply or explanation before the Enquiry Officer for a period of 30 days and the same was rejected by the Enquiry Officer. Therefore, the contention of the writ petitioner is that sufficient opportunities were not granted to the writ petitioner to submit his explanation.

8. Further, the details furnished by the parties found in the records in the writ petition shows that he had sought time to appear before the Enquiry Officer and the said record was also rejected by the Enquiry Officer and also by the Disciplinary Authority.

9. The learned counsel for the petitioner sought time for 15 days to file his reply and the same was also rejected. Therefore, this Court is of the view that the respondents have not provided any sufficient opportunity of hearing to the writ petitioner. Therefore, the impugned orders passed by the second respondent/Inspector General is violation of principles of natural justice and it is not in consonance with the legal

maxim "audi alteram partem" i.e., opportunity of hearing should be given before passing any order. Therefore, the impugned orders passed by the respondent are liable to be set aside and after affording opportunities to the writ petitioner, the respondents shall proceed with the enquiry and pass appropriate orders, on merits and in accordance with law as expeditiously as possible, within a period of three months. Thus, this Court is inclined to pass the following order:-

(i) The impugned order passed by the second respondent No.V-15014/L&R/SS/Rev/RS/2014-233 dated 25.10.2014 is hereby quashed.

(ii) The third respondent is directed to serve notice on the petitioner for submitting his explanation within a period of three weeks from the date of receipt of a copy of this order. On receipt of such notice, the writ petitioner has to submit his explanation within a period of two weeks from the date of receipt of a copy of such notice.

(iii) On receipt of such explanation from the writ petitioner, the third respondent shall proceed with the enquiry in accordance with law and pass appropriate orders, on merits and in accordance with law as expeditiously as possible within a period of three months therefrom.

(iv) The writ petitioner has also undertaken to co-operate for enquiry proceedings before the Enquiry Officer. The reinstatement of the petitioner will be subject to the outcome of the final order that will be passed by the Department.

10. Accordingly, the writ petition is allowed to the extent indicated above.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

msm

To

1.The Secretary to Government,  
Union of India, Ministry of Home Affairs, New Delhi.

2.The Inspector General,  
Central Industrial Security Force, South Sector, Head

Quarters,

<https://hcservices.ecourts.gov.in/hcservices/>

Chennai Port Trust Campus, Chennai - 600 009.

3.The Deputy Inspector General,  
CISF, South Zone, Head Quarters, Rajaji Bhavan,  
Besant Nagar, Chennai-600 090.

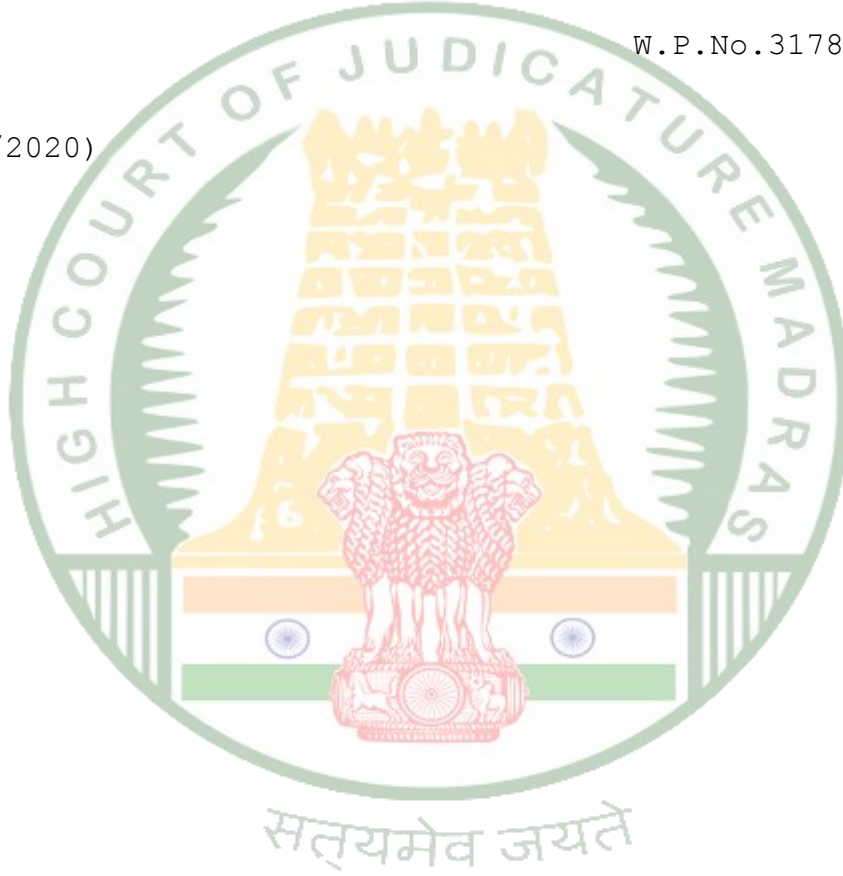
4.The Senior Commandant,  
CISF Unit, SCCL, Singerani, Andhra Pradesh.

+1cc to Mr.R.Thiyagarajan, Advocate, S.R.No.14888

+1cc to Mr.G.Karthikeyan, Advocate, S.R.No.14894

W.P.No.31785 of 2014

MP (CO)  
RSI (21/05/2020)



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