



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD)No.6286 of 2011

WEB COPY

Shishpal

... Petitioner

Vs.

1. Inspector General,
Central Industrial Security Force,
Western Sector,
Head Quarters,
Mumbai.

2. Deputy Inspector General,
Central Industrial Security Force,
Department of Atomic Energy,
Zonal Head Quarters,
Electronics Corporation of India Limited Post,
Hyderabad,
Andhra Pradesh.

3. The Commandant,
Central Industrial Security Force Unit,
Nuclear Fuel Complex,
Hyderabad,
Andhra Pradesh.

4. The Unit Commandant,
Central Industrial Security Force Unit,
Kundankulam Nuclear Power Project,
Tirunelveli District,
Tamil Nadu.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the order passed by the third respondent in his order dated 07.10.2009 as confirmed by the second respondent in his order dated 22.01.2010 and the first respondent in his order dated 07.10.2010 respectively and quash the same.

For Petitioner	: Mr.D.Malaichamy
For Respondents	: Mr.C.Nandagopal, Central Government Standing Counsel.



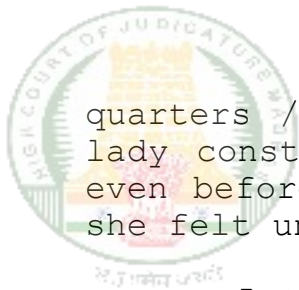
ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari, to call for the records relating to the order passed by the third respondent in his order dated 07.10.2009, as confirmed by the second respondent in his order dated 22.01.2010 and the first respondent in his order dated 07.10.2010 respectively and to quash the same.

2.The learned counsel appearing for the petitioner submitted that the petitioner was working as a constable in the Central Industrial Security Force at Kudankulam Nuclear Power Project under the fourth respondent. While so, on 13.06.2009, the petitioner was placed under suspension, as per Rule 33(1) of CISF Rules, 2011, on the allegation that on 12.06.2009 at about 21.00 hours, he knocked the door of Quarter No.1/7, where lady constables Dimpi Kumari and Nisha Devi were staying and left even before the door was opened by them and caused misconduct, insubordination and involution of lawful instructions. On 26.06.2009, the third respondent issued a memorandum in No.V - 15014/CISF/NFC/MJ-04/2009, directing the petitioner to submit a written statement of defence within 10 days and the petitioner submitted his written statement *inter alia* requesting him to exonerate from the charge and an enquiry was conducted.

3.On 07.10.2009, the third respondent under Rule 32(1) r/w Schedule I and Rule 34 (v) of CISF Rules, 2001, imposed a penalty of reduction of pay to the lowest stage ie., from Rs.7260 to Rs.6460 in the time scale of pay of Rs.5200-20200 + Rs.2000-GP (PB-1) for a period of three years with effect from the date of issue of this order with a further direction 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. As against the same, the petitioner preferred an appeal before the second respondent and the same was dismissed on 22.01.2010. In the meanwhile on 11.02.2010, the third respondent passed a movement order transferring him from the third respondent to the fourth respondent and he had been working under him. As against the dismissal order passed by the second respondent, on 12.08.2010, the petitioner preferred a revision petition to the first respondent. In the said revision, the first respondent issued a show-cause notice dated 17.09.2010 asking him to show cause why the penalty imposed on the petitioner should not be enhanced to the punishment of dismissal. On 04.10.2010, the petitioner appeared before the first respondent and submitted his explanation. However, the first respondent, by order dated 07.10.2010 dismissed the revision by dropping the show-cause notice, dated 17.09.2010. Challenging the same, the petitioner has filed the Writ Petition.

4.The respondents have filed the counter-affidavit and stated that one Dimpi Kumari had made a complaint on 13.06.2009 against the petitioner alleging that he mischievously knocked the doors of her

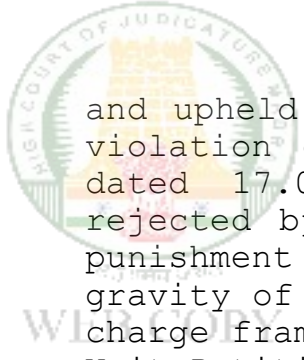


quarters / ladies hostel at about 21.00 hours on 12.06.2009 where lady constables Dimpri Kumari and Nisha Devi were staying and left even before the door was opened by her and she further stated that she felt unsafe and insecure during night hours.

5. On the basis of the complaint, a preliminary enquiry was conducted and the petitioner was placed under suspension vide order dated 13.06.2009 and the enquiry officer submitted his report stating that on 12.06.2009, at about 21.00 hours, the petitioner visited Quarter No.1/7 and mischievously knocked the door allotted to lady constable Dimpri Kumari and Nisha Devi at a ladies hostel and vanished which constitutes an act of gross indiscipline misconduct and as a result of the act of knocking the door, at night hours by the petitioner, Dimpri Kumari felt insecure and sought for help. On hearing the same, the petitioner left the quarters immediately.

6. The explanation of the petitioner was that he purported to visit the quarter of complainant with an intention to inform Nisha Devi to keep her cell phone switched on as one of her relatives was trying to reach her over phone, but finding the cell phone switched off and requested him to convey the message. It is further stated that the petitioner could have conveyed the message through RP gate sentry instead of personally visiting the ladies hostel is in violation of instructions. As such, the petitioner was issued with charge memo dated 26.06.2009.

7. The petitioner submitted his reply to the charge memo on 01.07.2009 denying the allegation made against him and an enquiry officer was appointed. The enquiry officer, after careful consideration of all the materials and evidences available on record, found that the charge has been proved and as such the third respondent awarded the punishment of "Reduction of pay to the lowest stage ie., from Rs.7260 to Rs.6460 in the time scale of pay of Rs.5200-20200 + Rs.2000-GP (PB-1) for a period of three years with effect from the date of issue of the said order with a further direction 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, by order dated 07.10.2009. Being aggrieved over the order passed by the third respondent, the petitioner preferred an appeal before the second respondent on 13.11.2009 and the same was rejected on 22.01.2010. Further, the petitioner preferred a revision on 12.08.2010 and on careful examination of the revision petition, the revisioning authority found that penalty not commensurate to the proven offence and hence, proposed to enhance the punishment of 'dismissal from service' vide show-cause notice dated 17.09.2010 and the petitioner was also given an opportunity to express his pleas in person before the first respondent within 15 days on receipt of the show-cause notice and accordingly, the petitioner appeared in person. On hearing the individual's version, the first respondent felt that the

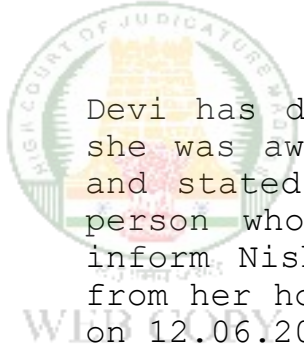


and upheld by the appellate authority is just and commensurate for violation of administrative order and thus, the show-cause notice dated 17.09.2010 was withdrawn and his revision petition was rejected by order dated 07.10.2010. It is further stated that the punishment awarded to the petitioner is quite appropriate to the gravity of his misconduct and there was no ground found to quash the charge framed against the petitioner and prayed for dismissal of the Writ Petition.

8. Heard the learned counsel appearing for the petitioner and the learned Central Government Standing Counsel for the respondents.

9. From the materials available on record it is seen that the petitioner was issued with a charge memo dated 26.03.2009 stating the gross indiscipline, misconduct and insubordination on the part of CISF No.062303136 constable Shispal / the petitioner herein of CISF Unit NFC Hyderabad is that at about 21.00 hours on 21.06.2009 during off-duty hours visited Quarter No.1/7 of ladies hostel of CISF Unit NFC Hyderabad, without any intimation / prior permission to the competent authority, against the lawful instructions. Thus, he violated the lawful instructions. Further, he knocked the door of Quarter No.1/7 of ladies hostel, where Dimpi Kumari and Nisha Devi are staying. As a result of the act of the knocking of the door by the petitioner, in night hours, Dimpi Kumari felt insecure and sought for help. On hearing the same, the petitioner left the quarters immediately. Thus, he generated sense of insecurity and feeling of unsafe upon lady constables amounts to gross indiscipline, misconduct, insubordination and violation of lawful orders.'

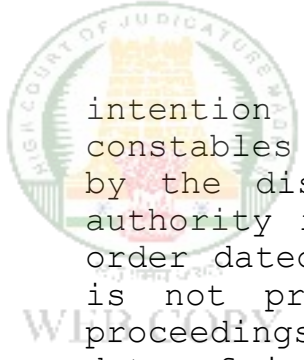
10. It is further seen that on 21.06.2009, during night hours, the petitioner visited the ladies hostel to inform lady constable Nisha Devi to keep her cell phone switched on as one of her relatives was trying to reach her over phone, but finding the cell phone switched off. From the evidence of P.W.1, Nisha Devi herself has stated that on 12.06.2009, at about 21.00 hours, a person knocked the doors of her quarters / hostel. When she questioned as to who knocked the door, nobody replied and when she went to the balcony to see as to who has knocked the door, she saw that someone getting down from the stairs and on her shouting to know the identity of the person, he replied that he is constable Shispal / the petitioner and asked her to inform lady constable Nisha Devi, her room mate to call him over phone. On that, she felt insecure and feeling unsafe and sought help of wife of Head Constable / GD Dharampal. She further stated that none of the personnel except BHM and Sentry deployed at RP Gate have ever visited the quarter. One V.Manikandan / constable has stated that when he was returning from market, he saw the petitioner visiting Block No.1 of CISF family complex by parking his vehicle outside and he immediately informed the same to constable / K.Ramachandran of CISF. As he was deployed for unit line regimental duty. The said Nisha



Devi has deposed in her statement that at the time of occurrence, she was awakened on hearing the door bell of the quarter / hostel and stated that Dimpri Kumari shouted to know the identity of the person who knocked the door, she was told by the petitioner to inform Nisha Devi to switch on her telephone as there was a call from her home. One Chandra Prakash has deposed in his statement that on 12.06.2009 at about 20.40 hours, he along with the petitioner was taking meal in the unit mess and they took the tiffin carriers of other Dog Squad personnel to hand over them. The petitioner asked him to stay at RP Gate saying that he would be back in a short while visiting the Block No.1.

11.Further, it is evident from the statement of C.W.1 that he conveyed the instructions that none of the personnel shall visit the ladies quarters / hostel irrespective of any reasons, if there is any message to communicate, that should be communicated through the sentry deployed at RP Gate. If the charged official had any message to communicate to lady constable / Nisha Devi, he should have asked the RP Gate sentry to communicate the message, instead of visiting the ladies hostel in violation of instructions. Having good relations with the family members of lady constable / Nisha Devi cannot outrightly grant him the permission / authority to visit the ladies hostel that too during night hours. Expression of ignorance of rules and instructions cannot absolve the charged official from the offence.

12.Being a security personnel, he should know the instructions in regard to duty, discipline and security passed through various channels. Therefore, the third respondent imposed the penalty of reduction of pay to the lowest stage ie., from Rs.7260 to Rs.6460 in the time scale of pay of Rs.5200-20200 + Rs.2000-GP (PB-1) for a period of three years with effect from the date of issue of the said order with a further direction 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. Challenging the same, the petitioner preferred an appeal before the second respondent and the same was also dismissed on 22.01.2010. Again the petitioner preferred a revision before the first respondent and the first respondent issued a show-cause notice tentatively proposing the penalty of 'removal from service' and called for enquiry. After detailed enquiry, the first respondent revealed that as the elder sister of Nisha Devi informed the petitioner that their brother was going to be operated upon and she was trying to contact Nisha Devi's cell phone, but it was switched off. Hence, her elder sister called him and inform Nisha Devi to contact her sister. As the evidence of witness would show that he came to inform Nisha Devi to switch on the phone and the petitioner has informed his name when asked by Nisha Devi and not concealed his identity would confirm that he has not got any other intention. That apart, there appears no evil



intention or ill motive in visiting the quarters where lady constables were staying. Therefore, the penalty inflicted upon him by the disciplinary authority which was upheld by the appellate authority is not appropriate and rejected the revision petition by order dated 07.10.2010 by dropping the show-cause notice 17.09.2010 is not proportionate. There was nothing stated in the enquiry proceedings regarding sentry was available at the time of the said date of incident. There was no one, who was on duty as sentry was examined to prove that the petitioner has trespassed inspite of his objection. In the absence of any such evidence, only on emergency the petitioner had gone to the quarters of ladies hostel.

13.As it has already been stated that the charged officials has to obey the orders passed by the higher officials. Since there was an emergency, according to the petitioner, he had gone to the quarters and informed the same. Even though it amounts to misconduct, the punishment awarded for three years is excessive and this Court is of the view that the punishment can be modified to 'reduction of pay to the lowest stage ie., from Rs.7260 to Rs.6460 in the time scale of pay of Rs.5200-20200 + Rs.2000-GP (PB-1) for a period of one year with effect from the date of issue of the said order' and accordingly, the same is modified to that extent. In all other aspects, the penalty remains unaltered.

14.In view of the above, the Writ Petition is partly allowed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Inspector General,
Central Industrial Security Force,
Western Sector,
Head Quarters,
Mumbai.

2. The Deputy Inspector General,
Central Industrial Security Force,
Department of Atomic Energy,
Head Quarters,
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Tirunelveli District,
Tamil Nadu.

+1 CC to M/s.D.MALAICHAMY, Advocate (SR-11246[F])

Order made in
W.P. (MD) No.6286 of 2011
Dated:
11.03.2020

SP (07.05.2020) 7P-6C