



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD) No.1776 of 2012

B.Radhakrishnan

... 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,
Southern Sector, Head Quarters,
Chennai 600 009.

3.The Deputy Inspector General,
Central Industrial Security Force Unit,
Neyveli Lignite Corporation,
Neyveli, Cuddalore District.

4.The Senior Commandant,
Central Industrial Security Force Unit,
Neyveli Lignite Corporation,
Neyveli, Cuddalore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent dated 25.01.2012 in his order No.V-15014/L&R/SS/Rev/YVR/2011-39, confirming the order passed by the third respondent, dated 31.10.2011 in his order No.V-15014/NLC/Disc/Maj/Appeal/BR/2011/9474 and confirming the final order passed by the fourth respondent dated 13.09.2011 in his final order No.V-15014/CISF/NLC/Disc/Maj-BR/2011/8093 and quash the same and to direct the respondent to take the petitioner into the strength of CISF as constable with all monetary benefits.

For petitioner : Ms.Chamundi Bose

For respondents : Mr.S.Jeyasingh
Standing Counsel

O R D E R

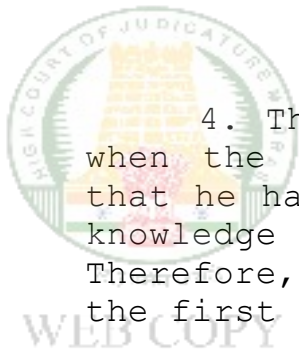
This Writ Petition has been by the filed by the petitioner challenging the order of dismissal from service passed by the 4th respondent and confirmed by the 3rd respondent in the appeal and by the 2nd respondent in the revision, and for a direction to the



respondents to take the petitioner into the strength of CISF as Constable with all monetary benefits.

2.The learned counsel for the petitioner submitted that the petitioner, while working as CISF Constable, took Earned Leave for the period 28.01.2011 to 27.02.2011 and he ought to have been returned to duty on 28.02.2011, but he overstayed and not attended duty about four months. Thereafter, on 18.06.2011, the fourth respondent issued a charge memo alleging that by the act of overstaying the leave with effect from 28.02.2011 (FN) till date without having any permission or leave from the competent authority, he has committed gross misconduct, indiscipline, willful withdrawal of duties and highly unbecoming of a member of an Armed Force of the Union ie., CISF. On 15.07.2011, the petitioner made a representation to the fourth respondent stating that due to domestic problem, he could not able to attend the duty and for this reason, he was unable to receive the three call up notices. Not satisfied with the explanation submitted by the petitioner, the fourth respondent has appointed an Enquiry Officer. After enquiry, the Enquiry Officer submitted his report stating that the charges against the petitioner are proved. The fourth respondent, by his impugned order dated 13.09.2011, passed an order of punishment of removal from service. Thereafter, an appeal has been filed by the petitioner before the third respondent on 27.09.2011. In the appeal, he has stated that he could not join duty on the particular date, due to severe domestic problem and hence, he was mentally depressed. Except the above reason, he has not stated any further reason at that point of time. Holding that the said reason is unsatisfactory, the appeal was dismissed by the third respondent on 31.10.2011. Thereafter, the petitioner filed a revision petition before the second respondent on 09.11.2011 and the same was also dismissed on 25.01.2012, against which, the present writ petition has been filed.

3.The learned counsel for the petitioner further submitted that the main reason on which the petitioner could not join duty is that his wife left him and his children, and stayed separately. This was a great shock to the petitioner. Due to her separation, the petitioner was unable to report back duty in time. The petitioner felt shame to say this reason to the respondents. Now, he has no other option except to say this before the Court. The petitioner has also filed an affidavit before this Court to that effect. The petitioner joined service on 01.08.1999 and he has unblemished record of twelve years of service. Only due to above said problem, he was not able to join the duty. Hence, this Court may set aside the impugned orders and to reinstate him in service. Thus, he prayed to allow this Writ petition.



4. The learned counsel for the respondents would submit that when the enquiry was conducted, the petitioner had only stated that he had severe domestic problem and he had not brought to the knowledge of the Enquiry Officer what was his personal problem. Therefore, if the matter is remanded back for fresh consideration, the first respondent will pass orders on merits.

5. Heard the learned counsel appearing for the petitioner as well as the respondents.

6. A perusal of record shows that the petitioner has failed to rejoin duty on 28.02.2011 and overstayed the leave without getting any permission or leave from the competent authority. It is seen that three call up notices sent to the address of the petitioner returned with an endorsement "refused". But, according to the petitioner, he was not in his home town, whereas the said notices were erroneously returned with an endorsement "refused". The only reason stated by the petitioner for overstaying even after completion of leave period is that he was under depression due to his heavy domestic problem and that he cannot join duty as he was afraid that he may lose his concentration. The petitioner did not disclose the problem due to which he overstayed and he was under depression, to any one, that too even before the appellate and revisional authorities. It is seen that the petitioner in his reply dated 05.09.2011 against the report of the Enquiry Officer, has stated that "he would not share his personal problems with others and with the department he will accept any kind of action." According to the petitioner, he felt shy to say the reason before the respondents, as it would lead to a ridiculous talk before his batch mates. Even before this Court, in the affidavit filed in support of the petition, the petitioner did not disclose the reason. But, subsequently, he filed an affidavit stating that his wife left him and children and that was a great shock to him and that he tried to convince her and bring her back to the family, but she refused to reconcile. Due to her separation, he went to mental depression and hence, he could not report back to duty. Now, he is living with his wife and children. Therefore, he requested to reconsider the matter.

7. Of-course, it is true that the conduct of the petitioner in not reporting for duty after expiry of the leave period, which was sanctioned, itself is a serious delinquency. However, it is not so serious than the commission of crime, forgery, misappropriation, etc. If a charged official has a satisfactory explanation for such misconduct, it could be reasonably considered and the punishment can be imposed according to the same. In this case, as stated earlier, the petitioner did not disclose the reason for his misconduct, except stating that he was under depression due to domestic problem. But, now, he come forward to



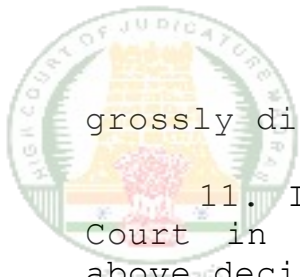
say the reason for his depression. Further, it cannot be disputed that a person can do his job normally when there is no smooth functioning of his family by understanding. Maintaining a balance between work life and family life is a difficult one. If a person cannot maintain the balance, it will lead to depression and impact in both the life. Hence, this Court is of the view that the reason stated by the petitioner seems to be a reasonable one. However, as it is disclosed for the first time before this Court, this Court is inclined to remit the matter back to the file of the disciplinary authority to reconsider the matter, in the light of the above submission of the petitioner and after giving an opportunity of personal hearing to the petitioner.

8. A three Judge Bench of the Hon'ble Supreme Court in **B.C.Chaturvedi v. Union of India & others**, reported in AIR 1996 SC 484, has held as under:

"18. A review of the above legal position would establish that the Disciplinary Authority, and on appeal the Appellate Authority, being fact finding authorities, have exclusive power to consider the evidence with a view to maintain discipline. There are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty. If the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the High Court / Tribunal, it would appropriately mould the relief, either directing the Disciplinary/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

9. In similar circumstances, the Hon'ble Supreme Court in the case of **Union of India and others v. Giriraj Sharma**, reported in **1994 (1) LLJ 604**, has set aside the order of dismissal from service holding that the punishment of dismissal for overstaying the leave in the facts and circumstances of the case was very severe.

10. A Division Bench of this Court in the decision reported in **D.Sainson v. the Chief Security Commissioner, Railway Protection Force and Others**, reported in **1997 WLR 626**, wherein an employee under the Railway Protection Force had been dismissed for remaining on unauthorised absence for 45 days was found to be



grossly disproportionate.

11. In similar circumstances, a learned Single Judge of this Court in W.P.No.21343 of 2001, dated 07.10.2003, following the above decisions, has held in paragraph No.10 as follows:

" 10.It is true that in the present case the period of overstaying was much longer, but keeping in view the peculiar facts and circumstances of the case, more particularly the fact that the mother of the petitioner was seriously ill, in the interest of justice, I deem it proper to quash the order of punishment and direct that the petitioner should be reinstated in service within a period of one month from the date of receipt of this order."

12. In the light of the above decisions and in view of the peculiar facts and circumstances of the case and also considering the submission made by the learned counsel for the respondents, the impugned order passed by the respondents are set aside and the matter is remitted to the file of the fourth respondent for fresh consideration in the light of the submission of the petitioner about the reason of his overstaying and to pass appropriate order, after giving an opportunity of personal hearing to the petitioner. The petitioner is permitted to file an affidavit stating the reasons for his non joining duty before the fourth respondent on the date of his appearance before the fourth respondent for personal hearing. The above said exercise shall be completed by the fourth respondent within a period of two months from the date of receipt of a copy of this order.

13.This Writ Petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

msa/gcg

To

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

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



2.The Inspector General,
Central Industrial Security Force,
Southern Sector, Head Quarters,
Chennai.

3.The Deputy Inspector General,
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Neyveli, Cuddalore District.

4.The Senior Commandant,
Central Industrial Security Force Unit,
Neyveli Lignite Corporation,
Neyveli, Cuddalore District.

+1 CC to M/s.CHAMUNDI BOSE, Advocate (SR-3092[F] dated 27/01/2020)

+1 CC to MR.S.JEYASINGH, Advocate (SR-3234[F] dated 27/01/2020)

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