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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

WRIT APPEAL NO.1048 OF 2021

M.Suresh

... Appellant

.Vs.

1. The Union of India,
Rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi - 110 003.
3. The Inspector General,
Central Industrial Security Force,
Hyderabad.
4. The Deputy Inspector General,
Central Industrial Security Force,
Recruitment Training Centre,
Arakkonam, Suraksha Campus Post,
Vellore District.
5. The Senior Commandant,
Central Industrial Security Force,
Recruitment Training Centre,
Arakkonam, Suraksha Campus Post,
Vellore District.

... Respondents

PRAYER:-

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 27.11.2020 passed by this Court in W.P.No.11774 of 2014.



Prayer in W.P.No.11774 of 2014:-

This Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, Calling for the records relating to the order passed by the 3rd Respondent dated 10.02.2014 in his order No.11014/T.S./Disc.Rev-Suresh/359/2014/769, confirming the order of the 4th Respondent dated 28.10.2013 in his order No.V-15014/CISF/RTC (A) Disc/Maj/S/2013/4634 confirming the order of the 5th Respondent dated 13.09.2013 in his final order No.V-15014/CISF/RTC (A) Disc/Maj/S/2013/4025 and quash the same and to direct the Respondents to pay all benefits.

For Appellant : Mr.R.Thiyagarajan

For Respondents : Mr.J.Madanagopal Rao

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Aggrieved by the order dated 27.11.2020 passed by the learned Single Judge in W.P.No.11774 of 2014, the Writ Petitioner has come up with the present Writ Appeal.

2. The charge against the Appellant/Writ Petitioner is that, while he was performing his duty as a Dry Canteen Salesman in the Central Industrial Security Force from 03.11.2012 to 02.12.2012, he sold Articles by collecting excess amount from the trainees and that, he did not issue Cash Receipts for the sold items, to the trainees. As the act of the Appellant/Writ Petitioner amounts to gross indiscipline and misconduct, which is unbecoming of a member of the Disciplined Force, an enquiry was conducted and the Enquiry Officer held that, the charges against him are proved. The Disciplinary Authority, after affording an opportunity of hearing to the Appellant/Writ Petitioner, passed an order on 13.09.2013, imposing the penalty of 'Compulsory Retirement from the date of issuance of the order'. For better understanding, relevant portion of the said order is extracted below:

"8. I have thoroughly examined entire records available in the case file and the statements recorded during the enquiry. The Statements of PW- 4, 5 and 6 who have purchased the items, are corroborating to establish that the charged official has collected excess rate than the actual rate for the sales on 06.11.2012, 13.11.2012 and



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21.11.2012 during which he was the salesman of the canteen. Version of the charged official that he gave hand-written bills to all the aforesaid trainees, is not sustainable as PW-4, PW-5 and PW-6 have asserted in their statements that they were not given any kind of bills for the purchases on 06.11.2012, 13.11.2012 and 21.11.2012. The argument of the charged official against sustainability of the allegation is also outweighed by the evidence adduced through the statements of PWs - 4,5 &6 that they were not given any kind of bills for the purchases made on above dates. It provides ample evidence to establish that the charged official has deliberately stayed back from giving out bills of any kind with the mischievous intention of misappropriation and to avoid any consequences at later stage. He was ostensibly braved by the fact that the trainees would never dare to make any complaints or ask for the bills to know exact cost of the items. Contention of the charged official that it was a concerted move by PW-4, PW-5 & PW-6 to frame him intentionally also does not hold ground since no previous case of enmity or confrontation in between the charged official and above PWs has ever been reported. Version of the charged official that 06.11.2012 and 13.11.2012 were Tuesdays and during Tuesdays evening, the Dry canteen Kept closed and therefore there was no sale in the evening, has little relevance since PW-2, the Canteen I/C has deposed that for emergency reasons etc, the dry canteen used to be opened during Tuesdays and that he has no exact knowledge about it, since it was the Salesman who kept the key of the Canteen. The Statements of PW-5 & PW-6 do corroborate to the fact that the Dry canteen was opened on Tuesday evening and they have had purchased the Khakhi Anklet on the evening of 06.11.2012 and 13.11.2012. The PW-2 has produced the sales list of 06.11.2012 and 13.11.2012 of Dry canteen, marked as PW-2, Exhibits-1 & 2 in which sale of 02 and 01 Khakhi anklets, respectively is mentioned and it indicates that there was indeed sale of anklet on both days. This also corroborates with the statements of PW-5 & 6. Besides, the day on which PW-4 has purchased the Khakhi Anklet at excess rate, i.e. 21.11.2012 was Wednesday and it is undisputed anywhere by the charged official. Statements of PW-1 and PW-3 are corroborative and



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supportive to the charge leveled against the charged official. Contention of the charged official that it was not possible for him to charge excess rate for sold items as the Canteen I/C was always beside him, has been disproved by the statement of PW-2 Canteen I/C SI/Exe R.K.Ashok that he was not always present in the Dry Canteen to supervise the sale proceedings. Likewise, the plea of the charged official that he did not prepare carbon copy of the sale bill as there was no instruction from the Canteen I/C and that he was ignorant of the rules to run the canteen are not trustworthy and sustainable. One deployed in the canteen and taken over the job of salesman it was his duty to get himself acquainted with the entrusted job. Moreso, the charged official had by then put in service of 07 years and this sort of misconduct was not all expected of him. Therefore, lack of knowledge about the Rules is an afterthought which cannot be accepted.

9. After taking into account all the above aspects, I fully agree with the findings of the enquiry officer and hold the charged member guilty of the charge framed against him. The act committed by the charged official is of grave indiscipline and misconduct which is unbecoming of a member of a disciplined Force. This not only leaves shameful precedence of the affairs but also tarnish the image of an RTC amongst all the trainees which cannot be overlooked and tolerated. Hence the charged official deserves for stringent punishment. I therefore, in exercise of the powers conferred upon me under Rule 32 to be read in conjunction with Rule 34 (iii) of CISF Rules, 2001, impose the penalty of "Compulsory Retirement from the date of issue of this order". The period of suspension in respect of charged official from 11.12.2012 to 10.01.2013 will be treated as Dies-Non only for all purposes.

10. He may prefer an appeal petition against this order, if he desires so, to the Dy. Inspector General, CISF, RTC, Arakkonam within 30 days on receipt of this order."

3. Aggrieved by the said order of the Disciplinary Authority, the Appellant/Writ Petitioner approached the Revisional Authority, who, by an order dated 10.02.2014, confirmed the order of the Disciplinary Authority. Challenging



the same, the Appellant approached this Court in W.P.No.11774 of 2014, and the learned Single Judge, by an order dated 27.11.2020, held that, the punishment imposed on the Appellant by the Disciplinary Authority and affirmed by the Revisional Authority, is just and reasonable, and thereby upheld the order of the Revisional Authority. Relevant portion of the order passed by the learned Single Judge is extracted hereunder:

"11. On an overall consideration of the materials, this Court is in consensus with the order passed by the Disciplinary Authority as confirmed by the Appellate Authority and affirmed by the Reviewing Authority and the punishment imposed on the Petitioner is just and reasonable, considering the nature of delinquency and no sympathy can flow from this Court for such an act. Therefore, the punishment imposed on the Petitioner is in no way shocking the conscience of this Court or disproportionate to the delinquency and, therefore, this Court is not inclined to interfere with the same."

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

5. The Apex Court in the case of Director General of Police, Railway Protection Force vs. Rajendra Kumar Dubey (Civil Appeal No.3820 of 2020, dated 25.11.2020) with reference to its judgment rendered in the case of Union of India vs. P.Gunasekaran, reported in (2015) 2 SCC 610, has held as under:

"In Union of India Vs. P.Gunasekaran, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether: (a) the enquiry is held by the competent authority; (b) the enquiry is held according to the procedure prescribed in that behalf; (c) there is violation of the principles of natural justice in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously failed to



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admit the admissible and material evidence; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the findings; (i) the finding of fact is based on no evidence.

In paragraph 13 of the judgment, the Court held that:

"13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based;

(vi) correct the error of fact, however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

6. In view of the above Apex Court decision, this Court cannot go into the proportionality of punishment unless it shocks its conscience. In a similar circumstance in the case of D.Latha vs. The Director General of Police, Directorate General CRPF, New Delhi (W.A.Nos.244 and 245 of 2020, dated 24.09.2021), we have interfered with the punishment imposed on an employee, who was on continuous leave after the period of authorized absence and the punishment imposed on her was found to be shockingly disproportionate.

7. In the present case on hand, in the light of the observations made by the Apex Court, moreso, in view of the analysis made by the Disciplinary Authority based on the evidence let in by P.Ws.4, 5 and 6, and that of the Revisional Authority, and the analysis of the learned Single Judge, we are of the view that, there is no error apparent on the face of record to interfere with the order of the learned Single Judge. Accordingly, the order dated 27.11.2020 passed by the learned Single Judge in W.P.No.11774 of 2014, is confirmed.



The Writ Appeal fails and stands dismissed. No costs.
Consequently, connected C.M.P.No.6619 of 2021 is closed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

(vm/aeb)

To

1. The Secretary to Government,
Union of India, Ministry of Home Affairs,
New Delhi.
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CGO Complex, Lodhi Road,
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Recruitment Training Centre,
Arakkonam, Suraksha Campus Post,
Vellore District.

+1cc to Mr.R.Thiyagarajan, Advocate, S.R.No.50794

W.A.NO.1048 OF 2021

RSI (CO)
PBS/20/10/2021