

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 08-02-2021

JUDGMENT DELIVERED ON : 15-02-2021

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

AND

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

WRIT APPEAL NO. 1521 OF 2019

K.K. Prasad

....Appellant/Petitioner

Versus

1. The Union of India
represented by the Secretary
Ministry of Home Affairs
North Block
New Delhi - 110 001
2. The Inspector General
CISF South Sector Head Quarters
Ch.PT Campus
Chennai - 600 009
3. The Deputy Inspector General
CISF South Zone Head Quarters
'D' Block, I Floor
Rajaji Bhawan, Besant Nagar
Chennai - 600 090
4. The Group Commandant
CISF Group Head Quarters
NISA Campus
Hakimpet
Hyderabad - 78

..Respondents/Respondents

Appeal filed under Clause 15 of Letters Patent against the Order dated 16.11.2018 passed in WP No. 30036 of 2018 on the file of this Court.

WP 30036 of 2018 PRAYER: Writ Petition 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 impugned final order No.V-15014/GHH/Maj (02)12/KKP_STPP(S) /

Ad.4/12/1084, dated 11.07.2012, passed by the 4th respondent, impugned Rejection Order of Appeal No.V-11014(1)/03/Disc/KKP/SZ/2017/1201, dated 10.02.2017, passed by the 3rd respondent and the impugned order of rejection of Revision No.V-15016/CISF/SS/L&R/Rev/KKP/03/2018-183, dated 04.01.2018 passed by the 2nd respondent and to quash the same and to direct the respondents either to modify the punishment as compulsory retirement or to grant Compassionate Allowance under Rule 41 of CCS (Pension) Rules with all consequential benefits.

For appellant : Mr. R. Sankara Subbu

For respondents : Mr. Venkatasamy Babu

JUDGMENT

R.SUBBIAH, J

This appeal has been filed by the appellant, as against the order passed by the learned single Judge in WP No. 30036 of 2018 dated 16.11.2018 dismissing the said writ petition filed by him.

2. The writ petition was filed by the appellant seeking to issue a Writ of Certiorarified Mandamus to quash the order dated 11.07.2012 passed by the fourth respondent, the order of rejection dated 10.12.2017 passed by the third respondent rejecting the statutory appeal and the order dated 04.01.2018 passed by the revisional authority rejecting his revision and to issue a consequential direction to the respondents to modify the punishment of compulsory retirement or to grant compassionate allowance under Rule 41 of CCS (Pension) Rules with all consequential benefits.

3. The case of the appellant before the learned single Judge is that he joined as a Constable in Central Industrial Security Force (in short CISF) in the year 1984 and got promotion as Head Constable in the year 2005. While he was working as Head Constable at NTPC, Simhadri, his wife suffered critical ailment and therefore, he availed 9 days leave to look after his wife. According to the appellant, despite treatment given, his wife passed away on 21.08.2011 leaving behind the appellant, his two daughters and a son. In view of the unexpected and sudden demise of his wife, the appellant could not join duty after expiry of leave. However, when the appellant was about to join duty, his mother suffered neurological problem and she was hospitalised. Therefore, the appellant was constrained to extend his leave for a further period by an application dated 08.11.2011 sent through fax.

While so, on 19.11.2011, the mother of the appellant also passed away, within a period of three months from the date of death of his wife. On account of the death of his wife and mother in quick succession, the appellant suffered severe mental depression and consequently, he could not join duty. The appellant therefore stayed home to take care of his children without joining duty. Further, he was under severe depression and to recover from such mental condition, it took almost five years for him.

4. In the meantime, on account of continued absence of the appellant from duty, the fourth respondent passed an order of removal dated 11.07.2012, removing the appellant from service. After recovering from his mental depression, the appellant came to know about the order of removal dated 11.07.2012 wherein it was stated that he was issued with charge memo No. 01/2-2-2012 dated 02.02.2012 alleging two articles of charges namely (i) he had over stayed from leave with effect from 10.10.2011 without permission from the competent authority and in spite of 4 call up notices issued to him requiring him to report for duty, he did not report for duty in his unit and (ii) he was awarded with as many as 9 penalties for his delinquencies in the past and in spite of the same, he has not improved himself in performing his duties properly. The appellant also came to know that enquiry was conducted by the fourth respondent by appointing an enquiry officer in which he was set exparte and subsequently the order of removal dated 11.07.2012 was passed.

5. On coming to know about the order dated 11.07.2012, the appellant preferred an appeal dated 03.09.2016 to the appellate authority namely third respondent with a petition to condone the delay in filing the appeal. In his appeal dated 03.09.2016 the appellant has stated that he had put in 28 years of service and considering the same, the order of removal may be modified into compulsory retirement or at least to grant him compassionate allowance as contemplated under Rule 41 of CCS (Pension) Rules in the light of the Circular NO. V-11014/1(6)/2015-L&R/347 dated 30.03.2015. However, the appeal was rejected by an order dated 10.02.2017, against which the appellant has preferred a revision dated 29.07.2017 to the Revisional Authority viz., the second respondent for modification of the order of removal into one of compulsory retirement or for payment of compassionate allowance. The Revisional Authority also rejected the revision of the appellant by an order dated 04.01.2018. Challenging the aforesaid orders passed by the respondents 2 to 4, the writ petition was filed before the learned single Judge.

6. The learned single dismissed the writ petition on 16.11.2018 after hearing both sides by observing that the appellant, being a member of para military force, failed to

maintain good conduct and discipline besides he has been found repeating the misconduct time and again for which he was awarded nine penalties in the past. The learned single Judge also observed that if any intervention is shown in reduction of punishment at the instance of the appellant, it will send a wrong signal to others, in that event such dereliction of duty and act of indiscipline will be viewed leniently by the others. Aggrieved by the aforesaid order dated 16.11.2018 of the learned single Judge, the present appeal is filed.

7. We have heard the learned counsel for both sides and perused the materials placed. When the appeal came up before the Division Bench of this Court on 17.06.2019, this Court directed the appellant to submit a comprehensive representation to the Revisional Authority and on receipt of the same, the revisional authority was directed to entertain such representation of the appellant and to consider the matter sympathetically.

8. Today, when the appeal is taken up for hearing, the learned counsel for the respondents produced an affidavit dated 01.02.2021 of the Group Commandant, Office of the Group Commandant, CISF Group, Head Quarters at Hyderabad, wherein it was stated as follows:-

"6. It is respectfully submitted that thereafter, the petitioner was directed to submit the required documents to this office at the earliest for grant of compassionate allowance to him vide this office letter of even No. (4613) dated 27.11.2019, letter of even No. (1943) dated 24.12.2019 and letter of even No. (73) dated 11.01.2020 and on dated 28.01.2020, the petitioner came to the Unit and submitted some of the documents required for grant of Compassionate Allowance and submitted an application to this office intimating that the remaining documents will be submitted by him in due course. Afterward, a letter was sent to his native place vide letter No. (1050) dated 28.05.2020 directing therein to submit the documents duly signed by him and completed in all respect to claim the benefit of compassionate allowance @ Rs.3,500/- w.e.f. 11.07.2012 and on receipt of the same from the individual, all the papers pertaining to grant of compassionate allowance had been sent to DIG/SZ Pension cell, HQr, Chennai vide CISF Unit STPP Simhadri letter No. (1243) dated 23.06.2020 but the same was returned to this office due to some observations vide DIG/SZ HQr. Chennai letter No. (4177) dated 04.08.2020. The observation raised by

the DIG, SZ Hqrs, Chennai was rectified and his case for grant of compassionate allowance was resubmitted to SZ HQR, Chennai vide this office letter No. (2041) dated 18.09.2020 and in turn the same was sent to Sr. Account Officer, RPAO Chennai vide DIG, SZ HQrs, Chennai letter No. (5397) dated 06.10.2020 for further needful action. Further, the case for grant of compassionate allowance to the petitioner is under process at RPAO Chennai and this office has requested Sr. Account Officer, RPAO Chennai to intimate the progress about release of compassionate allowance in respect of the petitioner vide this office message No. (217) dated 25.01.2021 and all out efforts are being made by the Unit administration to release his compassionate allowance at the earliest by making constant liaison with RPAO, Chennai. Further, on receipt of PPO in respect of the petitioner, arrears of compassionate allowance due w.e.f., 11.07.2012 will be paid to him shortly. I submit that I have filed supporting documents in the form of typed set of papers and the same may be treated as part and parcel of this affidavit."

9. Thus, the learned counsel for the respondents submitted that pursuant to the interim direction of this Court dated 17.06.2019 the matter was examined and it was administratively decided to implement the order dated 17.06.2019 by taking a lenient view in imposition of punishment by granting compassionate allowance to the appellant. Such a decision was made by taking into account the long service of the appellant and the future of his children. Such a relief granted to the appellant was in consonance with the prayer made by him before the appellate authority to modify the order of removal into one of compulsory retirement or to award compassionate allowance. Therefore, the learned counsel for the respondents submitted that the writ appeal may be disposed of in terms of the affidavit dated 01.02.2021 filed by the Group Commandant, Office of the Group Commandant, CISF Group, Head Quarters at Hyderabad.

10. At this stage, the learned counsel for the appellant would submit that by way of interim order, the Division Bench of this Court directed the respondents to inform the possibility of modifying the order of removal into one of compulsory retirement, however, the respondents have chosen only to award compassionate allowance to the appellant instead of modifying the order of punishment. Thus, he insisted this Court to allow the writ appeal by directing the respondents to modify the order of removal into one of compulsory retirement.

11. We are not inclined to accept the submission of the learned counsel for the appellant. This Court, by order dated 17.06.2019, has only directed the respondents to consider leniently the representation that would be submitted by the appellant. The Division Bench has never directed the respondents to reduce the punishment imposed on the appellant. Even otherwise, the appellant himself, in the statutory appeal filed before the third respondent and in the revision filed before the second respondent, has categorically sought for modifying the punishment of removal into one of compulsory retirement or to direct the respondents to award compassionate allowance as contemplated under Rule 41 of CCS (Pension) Rules. In fact, pursuant to the direction of the Division Bench of this Court on 17.06.2019, the respondents have taken a lenient view to grant compassionate allowance to the appellant, as sought for by the appellant himself. In such view of the matter, we are not inclined to interfere with the order passed by the learned single Judge. We are only inclined to dispose of this appeal by recording the affidavit dated 01.02.2021 of the Group Commandant, Office of the Group Commandant, CISF Group, Head Quarters at Hyderabad.

12. Accordingly, we dispose of the writ appeal by recording the affidavit dated 01.02.2021 of the Group Commandant, Office of the Group Commandant, CISF Group, Head Quarters at Hyderabad, mentioned supra. No costs.

Sd/-

Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

rsh

To

1. The Union of India
1. The Union of India
represented by the Secretary
Ministry of Home Affairs
North Block
New Delhi - 110 001
2. The Inspector General
CISF South Sector Head Quarters
Ch.PT Campus
Chennai - 600 009

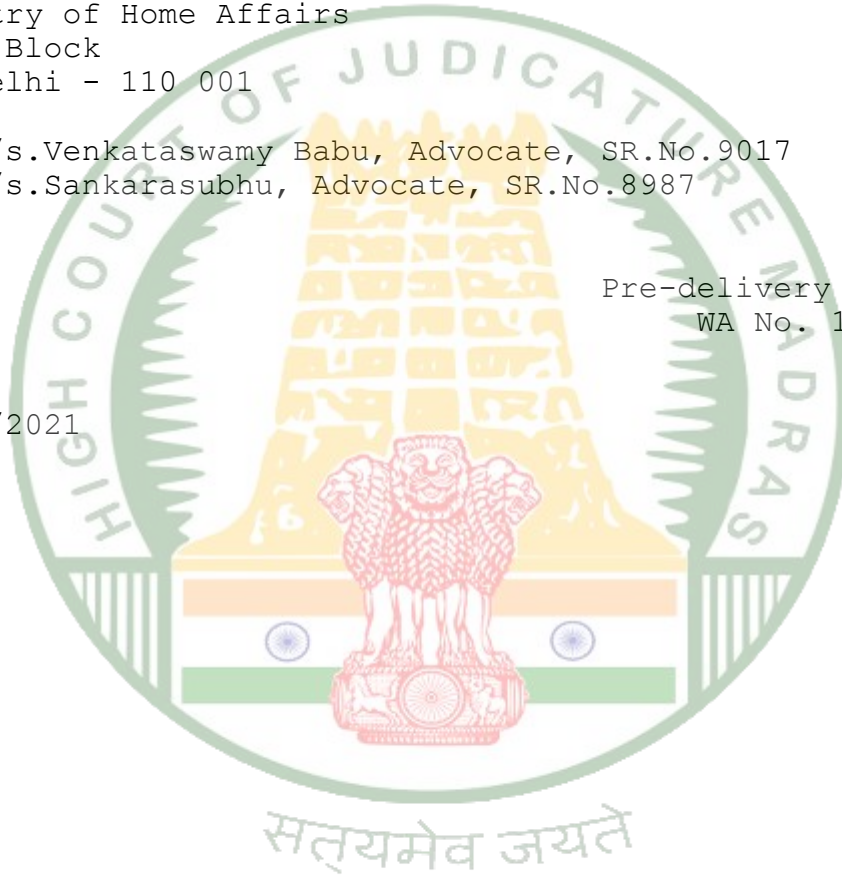
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4. The Group Commandant
CISF Group Head Quarters
NISA Campus
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Hyderabad - 78 resented by the Secretary
Ministry of Home Affairs
North Block
New Delhi - 110 001

+lcc to M/s.Venkataswamy Babu, Advocate, SR.No.9017
+lcc to M/s.Sankarasubhu, Advocate, SR.No.8987

Pre-delivery Judgment in
WA No. 1521 of 2019

VG II (CO)
KKV/24/02/2021



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