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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.A.No.2307 of 2021 &
C.M.P.No.14642 of 2021
(Heard through VC)

Vedpal Boora

... Appellant

Versus

- 1.The Director General,
Central Industrial Security Force,
Block No.13, C.G.O.Complex,
Lodhi Road, New Delhi - 110 003.
- 2.The Inspector General,
Central Industrial Security Force,
DAE & DOS, Head Quarters,
Block No.13, C.G.O.Complex,
Lodhi Road, New Delhi - 110 003.
- 3.The Deputy Inspector General,
DAE Zonal Head Quarter, NFC Complex,
Post-ECIL,
Hyderabad - 500 062.
- 4.The Commandant,
CISF DAE Unit, Kalpakkam,
Chengalpattu District,
Tamil Nadu - 603 102.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the Order dated 05.02.2021 in W.P.No.2396 of 2021.

Prayer in W.P.No.2396 of 2021:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st Respondent dated 31.12.2019 in his order No. V - 11014 / 51 / 2019 / L and R / 1128 confirming the order of the 2nd



respondent dated 20.05.2019 in his order No. V - 15015 / CISF / DAE and DOS / L and R / Appl / SI - VPB / 2019 - 1514 confirming the order of 3rd respondent dated 02.11.2018 in his order No. V - 15014 / Legal / DAE / VB / 2018 / 084 and quash the same and direct the respondents to take the Petitioner into the strength of the CISF with all consequential service cum monetary benefits.

For Appellant : Mr.R.Thiyagarajan

For respondents : Mr.S.Diwakar, CGSC

JUDGMENT

K.KALYANASUNDARAM, J.,

This Writ Appeal is preferred assailing the order passed in W.P.No.2396 of 2021, wherein the learned Single Judge has confirmed the order of dismissal of the appellant from service.

2. The appellant joined as Sub Inspector / Executive in the Central Industrial Security Force [hereinafter referred as "CISF"] on 05.01.1995. He was promoted as Inspector / Executive on 21.07.2008. While working at Kalpakkam, he was issued with a charge memo dated 08.08.2010 under Rule 36 of CISF Rules, 2001 for various misconducts. An Enquiry Officer was appointed. It appears the appellant did not participate in the enquiry and the Enquiry Officer found charges have been proved. The disciplinary authority, the fourth respondent on the basis of the report of the Enquiry Officer, imposed a punishment of dismissal from service on 10.05.2011.

3. W.P.No.24618 of 2011 was filed challenging the order of dismissal. This Court having found that the appellant was not given opportunity and the order of dismissal was passed against the principles of natural justice, allowed the Writ Petition on 18.01.2018 and the matter was remanded back with a direction to the first respondent to conduct enquiry afresh. A further direction was given to pay subsistence allowance.

4. As per the direction of this Court in W.P.No.24618 of 2011, a fresh enquiry was conducted and he was also participated in the enquiry on 23.04.2018 and the Disciplinary Authority found the charges against the appellant was proved and awarded a punishment of dismissal from service on 02.11.2018. Questioning the finding of the Disciplinary Authority, the appellant preferred an Appeal before the Appellate Authority and a Revision before the Revisional Authority. Both of them have confirmed the order of dismissal. The present Writ Petition was filed to set aside the orders of the respondents 1 to 3.



5. The learned Single Judge while dismissing the Writ
Petition has observed as follows:-

"7. It appears that the charges are serious in nature, as there was a loss of motor cycle and the petitioner was paid Rs.20,00,000/~ towards subsistence allowance. Without getting any work from the petitioner, the Department has paid the said sum from the money of taxpayers. It is pertinent to note that the Revisional authority has given the following findings in the Revision Petition, while confirming the order of dismissal:

"Other pleas taken by the petitioner are baseless and not tenable as Inspector Exe) kanwar Singh deposed that on receiving information about the missing of official Motor Cycle a search was conducted but it could not be found. The recovery of the cost of official vehicle does not mean that he is not liable for disciplinary action. Disciplinary action against the petitioner has been taken not only for the loss of Motor Cycle but also for other charges including the fact that he had lodged the Police complaint alleging involvement of Assistant Commandant and Inspectors as suspects without any evidence or justification and Sr.Commandant had also deposed that he had never written any letter in favour of the petitioner to the CGSC."

6. The learned counsel appearing for the appellant Mr.R.Thiyagarajan would urge that the punishment imposed on the appellant is highly disproportionate, very harsh and excessive. It is further contended that the appellant has not involved in any kind of grave misconduct, misappropriation or moral turpitude and the punishment was imposed with mala fide intention.

7. We are unable to agree with the submission of the learned counsel for the appellant. In the instant case, a perusal of the records would show that the charges are grave in nature.

8. According to the learned counsel for the appellant, the punishment of dismissal is disproportionate to the act complained of. We have considered the argument sympathetically and gone through the records.



9. Mere statement that punishment is disproportionate is not adequate. In this case, the appellant himself stolen the two wheeler and gave a false complaint against the higher authority. While giving a complaint for missing of Departmental Motorcycle-Hero Honda Splendar Plus bearing Registration No.TN-19-4268, he deliberately gave a compliant against Khillare S.P., Assistant Commandant; Kunwar Singh, Inspector / Executive and one M.K.Dhyani, Inspector / Executive, before the Kalpakkam Police Station on 09.08.2010, which was registered vide F.I.R./P.S.Case No.186/2010, besides, he committed other misconduct. Such type of misconduct should be treated with iron hand in cases where a person deals with highest degree of integrity. The appellant being an employee of disciplinary force, he should maintain highest degree of integrity. The aggrieved person belongs to a disciplinary force and the members of such a force are required to maintain discipline and act in befitting manner in public. Instead of that, he was misbehaved as mentioned in Charge Nos.I to V.

10. The Hon'ble Apex Court in Chennai Metropolitan Water Supply and Sewerage Board Vs. T.T.Murali Babu [AIR 2014 SC 1141] stated the principles of applicability of doctrine of proportionality, in which, the Hon'ble Apex Court held as follow:-

"The doctrine of proportionality in the context of imposition of punishment in service law gets attracted when the Court on the analysis of material brought on record comes to the conclusion that the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court. It was held that punishment of dismissal was not disproportionate to the gravity of misconduct and doctrine of proportionality was not remotely attracted."

11. It is now well settled principles of law that the High Court in exercise of its power of judicial review, would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only in certain situations. It is well settled that the Courts should be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one conscience. In the instant case, the punishment of dismissal was not disproportionate to the gravity of misconduct. Therefore, the doctrine of proportionality was not attracted. So, we are of the considered opinion, the order impugned in the Appeal warrants no interference of this Court.



12. In fine, the Writ Appeal fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

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Tamil Nadu - 603 102.

+lcc to Mr.R.Thiyagarajan, Advocate Sr.47274
+lcc to Mr.S.Diwakar, Advocate Sr.47725

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