



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)Nos.9441 to 9443 of 2011

W.P. (MD)No.9441 of 2011

M.Rajamony

... Petitioner

Vs.

1.The Deputy Inspector General,
Central Industrial Security Force,
CISF DAE Head Quarters,
ECIL Post, Hyderabad-62.

2.The Senior Commandant,
Central Industrial Security Force,
Western Sector,
Head Quarters,
Mumbai.

3.The Assistant Commandant,
Central Industrial Security Force Unit,
RMP, Mysore,
Karnataka.

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

... Respondents

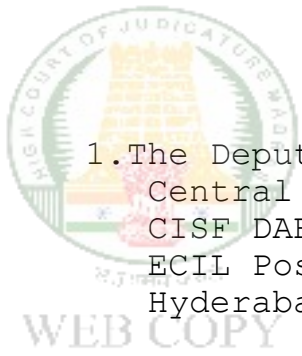
Prayer : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records relating to the order of the third respondent dated 27.07.2010 in his ref.No.V-15014/37(7)/MRM/RMP(M) Disc/2010/1460, as confirmed by the order of the second respondent, dated 17.09.2010 in his ref.No.15014/BARC/DISC/APPEAL/RMP(M)/10-603, and the first respondent in his ref.No.V-15017/R-02/DAE/Disc/2011/1127, dated 19.02.2011 and quash the same.

W.P. (MD)No.9442 of 2011

M.Rajamony

... Petitioner

Vs.



- 1.The Deputy Inspector General,
Central Industrial Security Force,
CISF DAE Head Quarters,
ECIL Post,
Hyderabad-62.
- 2.The Senior Commandant,
Central Industrial Security Force,
Western Sector,
Head Quarters,
Mumbai.
- 3.The Assistant Commandant,
Central Industrial Security Force Unit,
RMP, Mysore,
Karnataka.
- 4.The Deputy Commandant,
Central Industrial Security Force Unit,
Kudankulam Nuclear Power Project,
Tirunelveli District,
Tamil Nadu.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records relating to the order of the third respondent in his reference No..V-15014/UR-37(10)/Disc/RMP(M)/10/1827, dated 11.10.2010, as confirmed by the order of the second respondent, in his ref.No.15014/BARC/DISC/App-RAJ-RMP/2011/390, dated 21.01.2011 and also by the first respondent in his ref.No.V-15016/Rev-05/2011/L&R/DAE-3732, dated 17.06.2011, quash the same and direct the respondents to restore monetary benefits to the petitioner.

W.P. (MD)No.9443 of 2011

M.Rajamony

... Petitioner

Vs.

- 1.The Senior Commandant,
Central Industrial Security Force,
Western Sector,
Head Quarters,
Mumbai.
- 2.The Assistant Commandant,
Central Industrial Security Force Unit,
RMP, Mysore,



3.The Deputy Commandant,
Central Industrial Security Force Unit,
Kudankulam Nuclear Power Project,
Tirunelveli District,
Tamil Nadu.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records relating to the memorandum of the second respondent, dated 13.10.2010 in his reference No.E-15015/ACR/ORS/RMP/DOC/2010/1845 as confirmed by the first respondent in his reference No.E-42014/CISF/BARC (M)/DOC/ACR/2011/2277, dated 21.04.2011 and quash the same.

For Petitioner
in all petitions: Mr.D.Malaichamy

For Respondents
in all petitions: Mr.C.Nandagopal
Central Government Standing Counsel

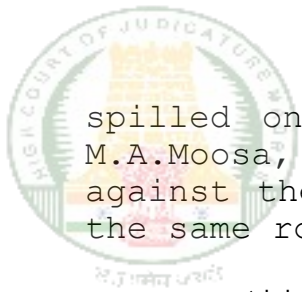
COMMON ORDER

W.P.(MD)Nos.9441 and 9442 of 2011 have been filed challenging the order of punishment imposed by the third respondent and confirmed by the appellate authorities. W.P.(MD)No.9443 of 2011 has been filed challenging the assessment made by the original authority awarding below average in the petitioner's ACR.

2. Since the petitioner is the same in all three writ petitions and all the petitions are inter-connected with each other, they are taken up together and disposed of by this common order.

3. The case of the petitioner in W.P.(MD)No.9441 of 2011 is as follows:

(i) The petitioner joined Central Industrial Security Force in the year 1982 and during the year 2010, he was working as Head Constable under the third respondent till 12.10.2010 and thereafter he was moved to the fourth respondent. While he was working under the third respondent, on 03.07.2010, the third respondent issued a charge memo, on the ground that the petitioner has committed an act of nuisance and spoiled the hygienic living condition in the unit barracks, in that he passed urine on his bed, which also spoiled the surrounding area at about 22.15hours on 24.05.2010 in an inebriated condition and this act on the part of the petitioner tantamount to gross misconduct, remiss is being the member of Armed Force of the Union. For the said charge memo, the petitioner submitted his reply on 12.07.2010 by stating that on 24.05.2010, while he was sleeping in his cot at the unit room, he felt thirsty and he took the water from a cooler placed nearby and while taking the water, due to slip, water



spilled on the bed and floor and for that, Constable Safeer and M.A.Moosa, due to previous personal animosity, gave statement against the petitioner and though several members were sleeping in the same room, they did not complain about the said conduct.

(ii) The third respondent, vide order dated 27.07.2010, imposed a penalty of withholding of one future increment for a period of one year, which will not have the effect of postponing his future increment of pay. Against the said order, the petitioner preferred an appeal before the second respondent, however, the second respondent dismissed the appeal. Against the order of dismissal, the petitioner preferred a revision before the first respondent and the first respondent also dismissed the revision. Challenging the original appellate authority's order, the present writ petition is filed.

4. The case of the petitioner in W.P.(MD)No.9442 of 2011 is as follows:

(i) The petitioner was working as Head Constable under the third respondent till 12.10.2010 and thereafter, he was moved to the fourth respondent. During the third week of August 2010, the petitioner reported to the first respondent in the Durbar that his GPF Account has not been transferred from RPAO (Regional Pay and Account Office), Kolkata and as a measure of punishment, the petitioner was compelled to do the duty of transferring GPF accounts of 17 personnel of CISF Unit, RMP, Mysore. Further, the petitioner made a oral plea that he was not familiar with such office duty and that too at Kolkata, where Bengali is spoken. However, he was compelled to do the said duty by the third respondent, vide his order dated 08.09.2010.

(ii) The petitioner went to Kolkatta and started to carry out his duty assigned to him from 13.09.2010. Further, the personnel at RPAO, Kolkata did not help properly to find out the ledgers of the said 17 personnel of CISF, RMP, Mysore unit in the heap of mound of ledgers, except pointing out the heap of ledgers. Hence, he could not get full assistant from them as they speak only Bengali. However, with great effect, on 13.09.2010, the petitioner found out the case of Head Constable Soren Singh and his case on 15.09.2010. Further, the petitioner was not able to secure other persons' ledger, for which, the third respondent issued a charge memo, dated 28.09.2010 and the sum and substance of the charge memo is that the petitioner had failed to complete the task/duties assigned to him and has reported back to the unit on his own, without any authority and without completing the task/work assigned to him. Thereafter, the petitioner submitted a detailed explanation along with the documents. However, without giving any personal opportunity of hearing, the third respondent passed an order dated 11.10.2010, by imposing a minor penalty of " pay fine equivalent to seven days pay". Challenging the said order, the present writ petition is



(iii) Since the petitioner suffered with punishment during the above said period, for which, he was given ACR and the third respondent had assessed his character as below average. Challenging the same, the writ petition in W.P.(MD)No.9443 of 2011 is filed.

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5. Learned Counsel appearing for the petitioner would submit that in respect of the first charge, the adjacent bed occupants were examined, however the Unit Commandant was not informed about the said allegation and he was not examined to prove the said charge against the petitioner and based on the adjacent bed occupants, the said charge memo was issued, which is an unsustainable one. The learned Counsel would further submit that as it is alleged that the petitioner was in an inebriated condition, no medical advise was sought for and his blood was not sent for test. Further, the preliminary report was not entrusted to the petitioner to enable him to give explanation.

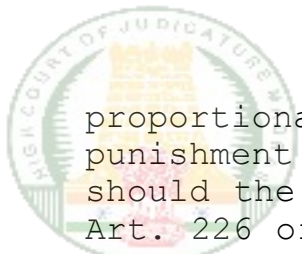
6. With the regard to the second charge, the learned Counsel appearing for the petitioner would submit that the petitioner was entrusted a duty of transferring GPF Accounts of 17 personnel of CISF Unit, from Kolkata to Mysore. However, for lack of language, the petitioner was unable to complete the task and also orally submitted before the third respondent. However, the third respondent imposed the punishment of " pay fine equivalent to seven days pay", which is highly disproportionate and hence, the learned Counsel would pray for allowing the writ petitions.

7. Per contra, the learned Standing Counsel appearing for the respondents would submit that though the writ petitions are filed challenging two punishments, there are 10 punishments imposed against the petitioner. The learned Standing Counsel would further submit that the petitioner is known for default in his duty and suffered with several punishments. In respect of first charge, for urinating the bed, two witness, who were the adjacent bed occupants were examined and in respect of the other charge, the petitioner himself admitted that the GPF accounts of 17 personnel were not transferred from Kolkata to Mysore, which shows the lethargic attitude of the petitioner, for which, minor punishment only was issued and the said minor punishment was confirmed by the appellate authority, which was confirmed by the revisional authority and the same cannot be interfered with. Therefore, the learned Standing Counsel would pray for dismissal of the writ petitions.

8. Heard the learned Counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents and perused the materials placed on record.

9. It has been the consistent view of the Courts that it is always within the domain of the authority to decide on the punishment to be imposed on the delinquent, which should be

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proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In **Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415)**, the Hon'ble Supreme Court held as under :-

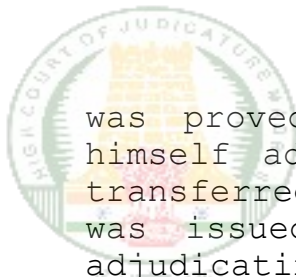
"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

10. This Court, keeping in mind the ratio laid down by the Hon'ble Apex Court in relation to interfering with the punishment imposed by the authority, would now proceed to dissect the materials available on record to find out whether the punishment imposed on the petitioner is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court requiring interference.

11. Admittedly the petitioner is known for default in his duty and suffered with several punishments. In respect of first charge, for urinating the bed, two witness, who were the adjacent



was proved and in respect of the other charge, the petitioner himself admitted that the GPF accounts of 17 personnel were not transferred from Kolkata to Mysore, for which, minor punishment only was issued. It appears that the original authority, viz., the adjudicating authority adjudicated the issue by appreciating the evidence and rendered his findings and imposed the punishment and thereafter, the appellate authority re-appreciated the evidence and confirmed the order passed by the original authority. Again, the matter was considered by the revisional authority, who also confirmed the order passed by the original authority as well as the appellate authority and all the authorities appreciated the evidence and passed the orders, which cannot be interfered with by this Court under Article 226 of the Constitution of India and re-appreciation of evidence is not permissible before this Court.

12. For the reasons aforesaid, all the Writ Petitions sans merit and, accordingly, the same are dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

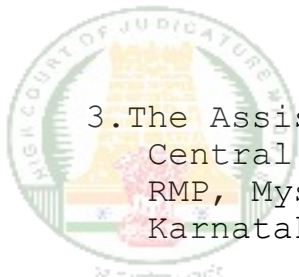
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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Deputy Inspector General,
Central Industrial Security Force,
CISF DAE Head Quarters,
ECIL Post,
Hyderabad-62.

2.The Senior Commandant,
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Tirunelveli District,
Tamil Nadu.

+1 CC to M/s.C.NANDAGOPAL, Advocate (SR-2542[F] dated 01/02/2021)

+1 CC to M/s.D.MALAICHAMY, Advocate (SR-2562[F] dated 01/02/2021)

W.P(MD)Nos.9441 to 9443 of 2011

27.01.2021

NA (CO)

NR (11/02/2021) 8P : 7C