



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.A. (MD) No.871 of 2019

S.Baskaran

: Appellant/Writ Petitioner

Vs.

1.The Senior Commandant

Central Industrial Security Force Unit
Cochin Port Trust,
Kerala State.

2.The Deputy Inspector General of Police,
Central Industrial Security Force,
Southern Zone, Head Quarters,
Rajaji Bhavan, Besant Nagar,
Chennai - 600 090.

3.P.S.Abhaya Kumar
Inspector of Executive,
Central Industrial Security Force Unit,
CSY, Cochin.

4.The Inspector General
Central Industrial Security Force,
South Sector,
Chennai Port Trust Campus,
New War Memorial,
Chennai - 600 009.

: Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent as against the order dated 21.03.2019 made in W.P.(MD)No.5566 of 2017.

Prayer in WP(MD). 5566/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 4th respondent in his Revision order No.V-15014/SS/Rev/SB/05/L&R/2017-2372 dated 02.03.2017 confirming the order of the 2nd Respondent in connection with the impugned orders passed by him in No. V-15014/CIST/CSY/ Maj-1/SB/2015/1753, dated 18.07.2015 and modifying order of the 1st respondent in his No. 114014(1) (39) Appeal/BB/2015-16/1226, dated 01.03.2016 and quash the same and to direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

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



For Appellant

: Mr.VR.Shanmuganathan

For Respondents

: Mr.V.Malaiyendran and
and Mr.B.NarayanRam- [RR-1, 2 & 4]
Central Government Standing Counsel

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JUDGMENT

(Judgment of the Court was delivered by **M.M.SUNDRESH, J.**)

This writ appeal has been preferred by the appellant, who suffered a punishment of compulsory retirement for the charges framed, while he was working as a Head Constable.

2. The following are the charges framed against the appellant :

"Article of Charge-I

CISF No.854506433 HC/GD S.Baskaran of CISF Unit, CSY Cochin, while serving at CISF Unit VOCPT Tuticorin was detailed for "C"shift duty from 2100 hrs from 21.03.2015 to 0500 hrs on 22.03.2015 at Check Post No.01 duty post of VOCPT Tuticorin. At about 2040 hrs on 21.03.2015 while conducting the shift briefing by the Shift I/C, ASI/EXe Nahar Singh, in the presence of Insp/Exe C Chinnakannan (Coy. Commander), he created an unpleasant scene, argued with his seniors threatening in front of other duty personnel that he will remain in nude position during the checking of anti-corruption team, if they want to check him. Further, he argued and questioned the authority of checking by anti-corruption checking team detailed by higher formation at CISF Unit VOCPT Tuticorin. The said act on the part of No.854506433 HC/GD S Baskaran tantamount to severe indiscipline, gross misconduct, and insubordination and unbecoming a member of disciplined para-military Force of the Union.

Article of Charge-II

CISF No.854506433 HC/GD S.Baskaran of CISF Unit, CSY Cochin, while serving at CISF Unit VOCPT Tuticorin was detailed for "C"shift duty from 2100 hrs from 21.03.2015 to 0500 hrs on 22.03.2015 at Check Post No.01 duty post of VOCPT Tuticorin. At about 2040 hrs on 21.03.2015 while conducting the shift briefing by the Shift I/C, ASI/EXe Nahar Singh, in the



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presence of Insp/Exe C Chinnakannan (Coy. Commander), without any provocation he took a knife measuring about one foot along with six inches blade from his personal hand bag and showed to all threatened with dire consequences by saying that he won't hesitate to go to jail after using the knife against anti-corruption checking team in front of other duty personnel assembled for the same shift duty. The Coy. Commander checked the hand bag of said HC/GD and finds no other objectionable materials with him. he then proceeded for duty along with the knife without listening the advice of Coy. Commander. A GD entry in this regard has made by the Coy. Commander vide No.806 at 2103 hrs on 21.03.2015 and submitted a special report in this regard vide letter No.(634) dated 22.03.2015. The said act on the part of No.854506433 HC/GD S Baskaran tantamount to gross negligence, severe indiscipline, disobey of lawful standing instructions, and highly unbecoming a member of disciplined para-military Force of the Union.

Article of Charge-III

CISF No.854506433 HC/GD S.Baskaran of CISF Unit, CSY Cochin (formerly of CISF Unit VOCPT Tuticorin) was appointed in the CISF on 22.04.1985. During his service he was dealt departmentally eight times for various types of omissions and commissions and awarded one major penalty and seven minor punishments as below :

3. The Enquiry Officer found that the Charge-I against the appellant was not proved. Charge-II is to the effect that the appellant threatened the prosecution witnesses with dire consequences with a knife by saying that he won't hesitate to go to jail or die. Charge-III is in respect of the past conduct of the appellant along with the punishment suffered.

4. The Disciplinary Authority, after taking into consideration the report of the Enquiry Officer, who held that Charge-II and III are proved, particularly, in the light of the statement made by the prosecution witnesses 1 to 6, as against the defence witnesses produced by the appellant, imposed the punishment of dismissal. On appeal, the punishment was modified to one of compulsory retirement with full pension. Challenging the same, the writ petition was filed.



5. The learned Single Judge, after holding that there is no irregularity in the procedure followed, dismissed the writ petition and hence, the present writ appeal is filed.

6. Mr. VR. Shanmuganathan, learned counsel appearing for the appellant made three submissions, namely, there is a violation of principles of natural justice for not furnishing the documents, non-application of mind with respect to the material available on record and the Charge-III being irrelevant.

7. The learned counsel appearing for the respondents submitted that the enquiry has been conducted, after affording sufficient opportunity followed by due procedures having been adopted by the Disciplinary and Appellate Authorities and hence, no interference is required as held by the learned Single Judge.

8. On the question of violation of principles of natural justice, we do not find any merit. The principles of natural justice has got two distinct elements, viz., one that inheres an individual meaning that an order of civil consequence can never be passed without affording an opportunity. The second is on the question of prejudice for not affording an adequate opportunity. We are dealing with the second situation. It is not as if the appellant was not given an adequate opportunity in a full-fledged enquiry that was conducted. He was permitted to peruse the documents and the statements made by the witnesses. The Enquiry Officer found that the other documents sought for are not relevant. The Charge was proved based on the statements made by the witnesses and not otherwise. Therefore, the Enquiry Officer held that the charge has been proved as presented by the Presiding Officer. In such view of the matter, the said contention stands rejected.

9. On the Charge-III, we concur with the submissions made by the learned counsel for the appellant. We are not able to comprehend as to how such a charge can be pleaded and what explanation and element object to give such a charge. This is the subject matter of Charge-III which are the factors to be considered for imposing adequate punishment and not otherwise. There cannot be a charge for asking delinquent employee to answer, when they have become concluded already. Therefore, the Charge-III has to be declared as not to be proved.

10. In coming to Charge -II, P.W.1 to P.W.6 have spoken about the usage of brandishing of the knife by the appellant. The appellant was not supposed to have the knife. Therefore, the evidence adduced to the contrary is likely to be rejected, as these witnesses did not have any axe to grind against the appellant. However, we do find force in the submission made by the learned counsel for the appellant. The occurrence happened, when an attempt was made to disrobe the appellant without checking. At that point of time, he only said that if such procedure is adopted, he could
<https://hccourtrecords.org.in/services/>, such reaction by brandishing the knife, cannot be



sustained.

11. The cause of action for the said action is the aforesaid proposed action. Therefore, this charge as framed has to be looked into differently, though, it is proved beyond doubt that the appellant was having the knife and he banned it. There was no intention on his part to use it otherwise. It is a knee-jerk reaction on the part of the appellant. It is nobody's case that the appellant was carrying unaccounted money at the time of checking by the Anti-Corruption Personnel. Therefore, this aspect will have to be looked into differently. We are inclined to hold that Charge - III stands deleted and the Appellate Authority may look at it differently. After considering the statements made by the prosecution witnesses namely, P.W.1 to P.W.6, we arrive at a conclusion that they have not stated that the appellant charged them or tried to attack them.

12. In such view of the matter, we are inclined to remit the matter back to the appellate authority, to consider the punishment of compulsory retirement as imposed, to a lesser one. Appropriate orders will have to be passed within a period of eight weeks from the date of receipt of a copy of this judgment.

13. Accordingly, the writ appeal stands allowed. No costs.

Sd/-

Assistant Registrar (Records)

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/ /2021

Sub Assistant Registrar (CS)

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To

Central Industrial Security Force Unit
Cochin Port Trust,
Kerala State.

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Southern Zone, Head Quarters,
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+1 CC to M/s. B. NARAYANRAM, Advocate (SR-9090[F] dated 05/03/2021)

W.A. (MD) No. 871 of 2019
04.03.2021

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