



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.11222 of 2014

S.Kanthasamy

... Petitioner

vs.

- 1.The Union of India,
represented 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,
Southern Sector,
Near War Memorial, Chennai - 600 009.
- 4.The Deputy Inspector General,
Central Industrial Security Force,
South Zone, Rajaji Bhawan,
Besant Nagar, Chennai - 600 090.
- 5.The Senior Commandant,
Central Industrial Security Force,
Visakhapattinam Steel Plant,
Visakapattinam,
Andhra Pradesh.

... Respondents

PRAYER: Writ Petition filed under Article 266 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the fourth respondent, dated 25.04.2014, in his order No.V-11014(1)/20/Disc/SZ/2014/2977 confirming the order of the fifth respondent, dated 16.10.2007, in his final order No.V-15014/CISF/VSP/Disc/Maj-03/SKS/07/9738 and to quash the same and to direct the respondents to take the petitioner into the strength of CISF as Constable with all monetary benefits.

For Petitioner : Mr.K.Mohamed Sirajudeen
for Mr.K.Vadivelu
For Respondents : Mr.S.Jeyasingh



O R D E R

This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus, to quash the impugned order passed by the fourth respondent, dated 25.04.2014, confirming the order of fifth respondent, dated 16.10.2007, and to direct the respondents to take the petitioner into the strength of CISF as Constable with all monetary benefits. By the impugned order passed by the fifth respondent, the petitioner was removed from service with immediate effect. The same was confirmed by the fourth respondent.

2.Heard Mr.K.Mohamed Sirajudeen, learned Counsel appearing for the petitioner and Mr.S.Jeyasingh, learned Counsel appearing for the respondents.

3.The petitioner joined in the Central Industrial Security Force in the year 1993. While he was working at Visakhapattinam Steel Plant, Visakhapattinam, a charge memo was issued under Rule 36 of the CISF Rules on 14.03.2007. The following are the two charges framed against the petitioner:

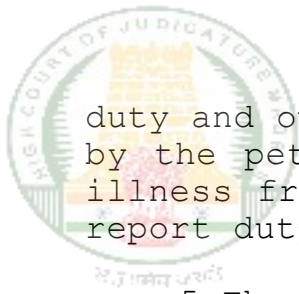
"ARTICLE OF CHARGE No.-I

No.932296498 Constable S.Kanthasami of CISF Unit VSP, Visakhapattinam was sanctioned 20 days Earned Leave and 15 days Half Pay Leave from 14.08.2006 to 17.09.2006. On completion of the said leave, he should have reported for duty on 18.09.2006(FN) but he failed to do so and continued to remain overstayed of the sanctioned leave with effect from 18.09.2006 without any further sanction or permission from the competent authority till date. The act on the part of CISF No.932296498 Constable S.Kanthasami amounts to gross misconduct, indiscipline, violation of orders and unbecoming conduct of a member of the Force."

ARTICLE OF CHARGE No.-II

An act of gross indiscipline and misconduct in that No.932296498 Constable S.Kanthasami of CISF Unit VSP, Visakhapattinam did not respond to the letter No.8280 dated 04.09.2006 and call up notices sent to him and his leave address vide No.8851 dated 29.09.2006, No.9536 dated 10.10.2006, No.10457 dated 08.11.2006 and No.11945 dated 23.12.2006 respectively".

4.The petitioner has submitted that the charge memo was not served on the petitioner, but on his father. It is stated that the petitioner was away from his native place and the enquiry was conducted ex parte in spite of the petitioner's request for an adjournment. It is the case of the petitioner that he was granted twenty days earned leave and fifteen days half pay leave from 14.08.2006 to 17.09.2006 by the Commandant, CSIF Unit, VSP, Visakhapattinam. It is admitted that the petitioner did not report



duty and over stayed from 18.09.2006. The only explanation offered by the petitioner in the course of enquiry is that due to mental illness from the month of September 2006, the petitioner could not report duty and that the over stay was neither wilful nor wanton.

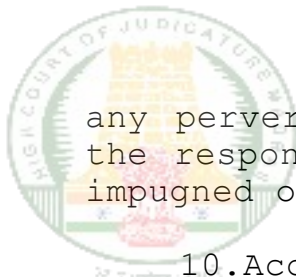
5.The Enquiry Officer came to the conclusion that after receiving all the communications addressed to the petitioner, the petitioner did not care to attend the enquiry in spite of several notices issued to him. It was due to the circumstances created by the petitioner, the Enquiry Officer was constrained to conduct enquiry ex parte. It is seen that the petitioner has not produced any materials to dislodge the findings of the Enquiry Officer. Therefore, the fifth respondent passed an order removing the petitioner from service. As against the same, the petitioner preferred an appeal before the fourth respondent.

6.The fourth respondent after considering the appeal and the findings of the disciplinary authority, came to the conclusion that the explanation offered by the petitioner that he was mentally ill, etc, is not acceptable, as the petitioner has not produced any evidence to prove that he was actually suffering from mental illness and was taking treatment. Since the explanation offered by the petitioner was not convincing, the fourth respondent found that the petitioner has committed serious misconduct and by desertion, the petitioner exhibited his conduct unbecoming the member of the force and that the petitioner deserves the punishment of removal from service.

7.The appeal preferred by the petitioner before the appellate authority/fourth respondent was dismissed after holding that the findings of the enquiry officer and the disciplinary authority are unassailable. As against the order of fourth respondent confirming the order of fifth respondent, the present Writ Petition is filed.

8.It is to be noted that the notices and the copy of the proceedings were served on the petitioner as per records. It is the case of the petitioner that he was not available in his native place and that the whole enquiry is vitiated. This Court is unable to accept the contentions raised by the petitioner, as the notices were sent to the correct address of petitioner and such notices were received by an adult member of his family.

9.First of all, the petitioner did not deny the charges that he over stayed without any leave application. With regard to the first charge, the petitioner himself has admitted the delinquency and therefore, this Court is unable to point out any irregularity in the proceedings. The impugned order of the fifth respondent is a well considered order. Similarly, the order passed by the appellate authority does not suffer from any legal infirmities. Having regard to the scope of judicial review in these kind of cases, especially, when the petitioner is unable to demonstrate



any perversity or non application of mind in the order passed by the respondents, this Court is not inclined to interfere with the impugned order and entertain this Writ Petition.

10. Accordingly, this Writ Petition is dismissed as devoid of any merits. No costs.

Sd/-

Assistant Registrar (T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tmg/cmr

TO

+1 CC to M/s.K.Vadivelu, Advocate (SR-32596[F] dated 26/10/2021)

+1 CC to M/s.S.JEYASINGH, Advocate (SR-32665[F] dated 26/10/2021)

Order made in

W.P. (MD) No.11222 of 2014

26.10.2021

SJ(CO)

RS/SKN (18.11.2021) 4P 3C