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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13305 OF 2022

Kyatale Santosh Ramesh

.. Petitioner

Vs.

The Director General,

Central Industrial Security Force & Ors.

.. Respondents

Mr. Rajeev N. Kumar for petitioner.

Mr. Y. S. Bhate a/w Sangeeta Yadav for respondents.

**CORAM: DIPANKAR DATTA, CJ. &
ABHAY AHUJA, J.**

DATE : NOVEMBER 22, 2022

P.C.:

1. The petitioner was a member of the Central Industrial Security Force. He has been dismissed from service by an order of the disciplinary authority dated 22nd March, 2021. Such order having been carried in appeal, it has been confirmed by the appellate authority by his order dated 1st July, 2021. A revision having been preferred by the petitioner, the revisional authority by his order dated 15th March, 2022 confirmed the order of the appellate authority.

2. The petitioner was charged as follows: -

"Charge-01

Force No.103610249 Constable / GD K. s. Ramesh CISF Unit MSTPP Mouda was posted for duty on 01/02.12.2020 in night shift from 1800 hrs to 0600 hrs at Watch Tower No.07 (Seven), but during the night checking at around 2345 hrs by (unit in-charge) Deputy Commandant Ajay Tripathi, the said force number was found sleeping in deep sleep at the duty site. Force No.103610249 Constable/ GD K. S. Ramesh was sleeping while on duty at the important and sensitive duty site of the plant shows his gross negligence and apathy towards his duty. Hence the allegation.

Charge-02

Force No.103611024 Constable/GD K. S. Ramesh, CISF Unit MSTPP Mouda has been punished with 07 minor punishments and 01 major punishment by different disciplinary authorities for various undisciplined acts done by him during his service period till now. And 07 (seven) written warnings notice has been issued to him. Many opportunities were given to him by the disciplinary authorities to be disciplined towards duty and to improve his conduct, but the force member did not learn any lesson from this and kept showing gross negligence and indiscipline towards his duty. In this way, the continuous gross negligence of the said force member towards duty and indulging in undisciplined activities shows the force member to be HABITUAL OFFENDER. Hence this allegation."

3. If indeed the first charge, extracted supra, were proved, subject matter of the second charge being matters of record would have a bearing on the punishment to be imposed on the petitioner who was found to be remiss while discharging his duties.

4. The disciplinary authority had before him, inter alia, the depositions of Prosecution Witness No.1 – Ajay Tripathi,

Deputy Commandant (erstwhile unit in-charge) and Prosecution Witness No.3 – Gunjal Deepak Ramdas, Constable/GD of the relevant CISF Unit.

5. The oral testimony of PW 1 in course of examination-in-chief, to the extent relevant, is extracted below: -

“On 01/02.12.2020 I went to MSTPP Mouda Plant for night checking between time 2230 hrs to 0130 hrs with Force number 931403329 Head Constable/GD Avate Ganesh (Intelligence Section Personnel) and force number 095273338 Constable /GD Deepak Gunjal. During night checking, no duty personnel were seen there when they reached the watch tower number-07 (VII) at around 2345 hrs. I instructed constable/GD Gunjal Deepak Ramdas to climb on top of watch tower number – (07) seven. Constable/GD Gunjal Deepak Ramdas on seeing watch tower number seven informed that constable /GD K S Ramesh is sleeping on the floor of watch tower. After this the head constable/GD along with Avate Ganesh and constable/GD Gunjal Deepak Ramdas went to the top of watch tower number seven and found that constable/GD K S Ramesh was sleeping soundly on the floor of watch tower number seven. After this I woke up constable/GD KS Ramesh from sleep by calling 03 to 04 times, after that constable/GD KS Ramesh woke up from sleep. Force No. 103610249 constable/GD KS Ramesh on being asked the reason for sleeping at the duty site, apologized to him and was cited for not sleeping properly in the afternoon to fall asleep at the duty site. After this, I gave information about the said incident to the control room in-charge force number 892240034 ASI/Work Syed Mir through mobile phone and directed him to file an information report in this regard in the journal.”

6. Having noticed the aforesaid oral testimony, we had the occasion to look into the oral testimony of PW 3 to examine whether the version of PW 1 is corroborated by

him or not. This is what the PW 3 deposed in course of examination-in-chief: -

"I am force number 095273338 constable/GD Gunjal Deepak Ramdas posted in CISF unit MSTPP MOUDA since March 2018 and I am currently on duty in the unit office. On 01.12.2020 in the night shift time between 23:00 to 23.15 hrs, checking the railway gate, silo gate through gate number 2 of the plant in checking with the unit in-charge from the unit line, reached at around 2345 hrs at Watch Tower No.07. Thereafter stopping at watch tower 07, the head constable /GD Avate Ganesh S also honked the horn of the car, but there was no response from the force member posted at watch tower number 07. After this, I climbed up the watch tower number 07 and got down as per the order given by the unit in-charge. After climbing up the watch tower number 07 I saw that constable /GD SK Ramesh was sleeping in the watch tower. After which I came down and told the Deputy Commandant in charge of the unit that the constable/GD SK Ramesh was sleeping in the watch tower. After that the unit in-charge Deputy Commandant Sahib, Head Constable/GD Avate Ganesh S and I myself climbed up the watch tower number 07 and found there that the constable/GD SK Ramesh, posted in the night shift, was sleeping flat by putting Mattress on the ground in a corner of the watch tower number 07. After that the concerned force member was woken up by the unit in-charge and the unit in-charge was asked to inform the head constable/GD Avate Ganesh S by mobile phone in the unit control room. After that a conversation with the unit in-charge Deputy Commandant Sahib was conducted from the unit control room through mobile phone by the head constable/GD Avate Ganesh S. In that the unit control room in-charge was asked by the unit in-charge Deputy Commandant Sahib to record this incident in the general diary and after that we went to the watch tower number 08 along with the unit in-charge."

7. It is, *inter alia*, based on these statements of PW 1 and PW 3 that the disciplinary authority returned a finding

of the petitioner being found guilty of the first charge; and, there being no material to dispute the second charge, dismissal from service was considered to be the most appropriate punishment. Accordingly, the petitioner stood dismissed from service.

8. Appearing in support of the writ petition, Mr. Kumar, learned advocate for the petitioner, sought to make out a case of ill-will and bias of PW 1 towards the petitioner. We have looked into the cross-examination part. The only question which could remotely have a bearing on the contention raised by Mr. Kumar is Question No.6. We consider it appropriate to extract below Question No.6 and the answer thereto given by PW 1: -

"Question No.06. I had applied for government accommodation on the basis of medical treatment of my wife, in respect of which I personally appeared several times to you and you did not give me government accommodation keeping ill-will towards me, what do you have to say in this regard?"

Answer: This question has nothing to do with your allegation, yet in this regard I have to say that You were told by me on 19.08.2020 by personally presenting you for government accommodation on the basis of your wife's treatment then you were told that Government accommodation is given on the basis of preference in the unit And you can claim HRA by keeping your family anywhere in India and this was also signed by you. I am also presenting evidence in this regard."

9. Having read the question and the relevant answer, we see no reason to accept Mr. Kumar's contention. The answer given by PW 1 seems to be in order in the sense that if an accommodation of the choice of a member of the force is

not available, he is entitled to claim HRA and keep his family members anywhere in India.

10. Interestingly, this point of alleged bias and ill-will that Mr. Kumar has raised before us is not shown to have been raised by the petitioner either in response to the inquiry report, which was considered by the disciplinary authority, or even in the appeal petition before the appellate authority. We have also looked into the cross-examination of PW 3. No suggestion appears to have been given by the petitioner to PW 3 that he was acting under the pressure and/or influence of PW 1 and had cooked up a story with PW 1 of the petitioner having fallen asleep while on night duty. It is, therefore, nothing but an after thought of the petitioner that PW 1 was biased against him.

11. For these reasons, the contention of Mr. Kumar of PW 1 being biased against the petitioner is rejected.

12. Next, it has been contended by Mr. Kumar that the punishment of dismissal is disproportionate to the gravity of the offence committed by the petitioner.

13. This contention is equally untenable. We have found from the defense statement of the petitioner to the charge-sheet that no case has been made out that for reasons beyond his control the petitioner fell asleep. If indeed that were the case, a sympathetic view could have been taken. However, the facts found to be proved are quite glaring. The petitioner, a member of a disciplined force entrusted to guard a plant of public importance, was found to be in deep slumber while on night duty. This was not the solitary case

of negligence on the part of the petitioner while discharging his official duty. The second charge refers to previous six instances when the petitioner was found to be negligent in the discharge of his duty and was let off with warnings by the disciplinary authority who took a lenient view of the misconduct committed by him. Hence, the finding that the petitioner was a 'habitual offender' cannot be said to be a perverse finding, on facts and in the circumstances.

14. In such view of the matter, we find the writ petition to be entirely devoid of merits. Consequently, the same stands dismissed. No costs.

(ABHAY AHUJA, J.)

(CHIEF JUSTICE)

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