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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.176 of 2022

G.Kasinath

... Petitioner/ Appellant

vs.

1. The Union of India,
rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Industrial Security Force,
CCO Complex, Lodhi Road,
New Delhi.
3. The Inspector General,
Central Industrial Security Force,
Training Sector, Head Quarters,
NISA, Hakimpet,
Hyderabad.
4. The Deputy Inspector General,
Central Industrial Security Force,
South Zone, Head Quarters,
Rajaji Bawan, Besant Nagar,
Chennai 600 090.
5. The Group Commandant,
CISF Group Head Quarters,
Cochin - 37

... Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 06.03.2020 passed by this Court in W.P.No.20928 of 2013.

Prayer in W.P.No.20928 of 2013 : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, or any other appropriate Writ, order or directions to call for the records relating to the



order passed by the 3rd respondent in his order No.V-15014/L&R/SS/Rev/KS/2013-89, dated 22.04.2013 confirming the order passed by the 4th respondent in his order No.V-11014/23/Disc/SZ/2012/6607, dated 08.08.2012 confirming the order passed by the 5th respondent in his final order No.V.15014/KN/MAJ/KIOCL/GHC/AD.V/2012/1396, dated 28.03.2012 and quash the same and direct the respondents to pay all monetary benefits.

For Appellant : Mr.B.Hari Krishnan

For Respondents : Mr.C.Kulandaivel,
Senior Panel Counsel

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Aggrieved by the order dated 06.03.2020 passed by the learned Single Judge in W.P.No.20928 of 2013, the Writ Petitioner has come up with this Writ Appeal.

2. While the Writ Petitioner was working as a Constable in the Central Industrial Security Force (CISF), in the year 2011, disciplinary proceedings were initiated against him on 29.09.2001, by framing two charges under Rule 36 of the CISF Rules, 2001, which reads as under:

ARTICLE OF CHARGE - I

"An act highly prejudicial to the good character, image and discipline of the force in that No.902293324 Const/GD Kashinath of CISF Unit KIOCL, Kudermukh, who was detained for quarter guard duty on 24.08.2011 was given out pass by Guard Commander, HC/GD T.K.Vinod, for two hours from 12.40 hours. Whereas, he reported back to quarter guard at about 16.30 hours instead of 14.40 hours and stayed outside from quarter guard exceeding 02 (two) hours at his own without any information or permission from competent authority, violating the standing order of quarter guard. Thus, the above act on the part of No.902293324 Constable/GD Kashinath of CISF Unit KIOCL, Kudremukh, tantamount to gross misconduct, indiscipline, violation of lawful order and dereliction of duty."

ARTICLE OF CHARGE - II

"An act highly prejudicial to the good character, image and discipline of the force



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in that No.902293324 Const/GD Kashinath of CISF Unit KIOCL, Kudremukh, who was arrested by Kudremukh police on 27.08.2011 at about 18.00 hours for a case registered against him under Sections 498A, 504, 324, 506(ii) I.P.C. and he was detained under judicial custody beyond 48 hours. Thus, the above act on the part of No.902293324 Const/GD Kashinath of CISF Unit KIOCL, Kudremukh tantamount to gross misconduct, indiscipline, tarnishing the image of the force and an act unbecoming of a member of the force."

3. Not satisfied with the explanation given by the Writ Petitioner, enquiry was conducted, wherein, charges have been held to be proved. After considering the explanation of the Writ Petitioner to the Enquiry Report, the Disciplinary Authority imposed the punishment of reduction of pay by one increment from Rs.9,700/- + 2800 (GP) to Rs.9330/- + 2800/- (GP) in PB-I (5200 - 20200/- + 2800/- (GP) for a period of one year with effect from the date of issuance of the order with further direction that he will not earn increments of pay during the period of reduction and that on the expiry of the period, the reduction will have the effect of postponing his future increments of pay. Challenging the punishment imposed on him, the Writ Petitioner filed an Appeal before the Appellate Authority/Deputy Inspector General, CISF, Chennai, and the Appeal came to be dismissed.

4. Challenging the dismissal of the Appeal, the Writ Petitioner filed W.P.No.20928 of 2013 before this Court and by an order dated 06.03.2020, the learned Single Judge dismissed the Writ Petition.

5. As regards the first charge framed against the Appellant/Writ Petitioner, learned counsel for the Appellant/Writ Petitioner submitted that, the Writ Petitioner has properly explained the reason for the delay in reporting duty to the Quarters Guard. On the strength of out-pass, the Writ Petitioner went home, where his estranged wife had come; she quarrelled with him and it resulted in a brawl and it took time to sort out the issue. Immediately thereafter, the Writ Petitioner reported for duty. In any case, such late reporting of duty cannot be construed as an act highly prejudicial to the good character, image and discipline of the Force, as alleged in the Charge Memo.

6. Insofar as the second charge is concerned, learned counsel for the Appellant/Writ Petitioner submitted that, the criminal case foisted against the Writ Petitioner is only a



false case and that, he has already divorced his wife and only based on the false complaint by his estranged wife, the Writ Petitioner was arrested and subsequently, came out on bail and thereafter, he has been acquitted from the criminal case. Learned counsel pointed out that, except Section 498A I.P.C., other offences under Sections 504, 324 and 506(ii) I.P.C. are bailable. It is his contention that, merely because the Writ Petitioner has been charged under these Sections, it cannot be a ground for instituting departmental proceedings against him.

7. It is further contended by the learned counsel for the Appellant/Writ Petitioner that, the enquiry was conducted only for the purpose of punishing the Writ Petitioner. As such, the course adopted by the Enquiry Officer in summoning the Writ Petitioner's estranged wife and examining her, and imposing the punishment of reduction in pay by relying upon her chief-examination and not taking into consideration, the questions put to her during her cross-examination, is a patent illegality apart from being contrary to the principles of natural justice.

8. On the other hand, learned Senior Panel Counsel appearing for the Respondents submitted that, the Appellant/Writ Petitioner has been given sufficient opportunity to defend his case and all the formalities were duly complied with by the Enquiry Officer as well as by the Disciplinary Authority. Hence, according to the learned counsel, there is no need for interference of the order passed by the learned Single Judge.

9. Learned counsel for the parties placed reliance on a decision of the Apex Court in the case of Union of India vs. P.Gunasekaran reported in AIR 2015 SC 545. Referring to paragraph 13 of the said decision, learned counsel for the Appellant/Writ Petitioner submitted that, the punishment imposed on the Writ Petitioner has to be interfered with. For better appreciation, relevant portion of the said decision is extracted hereunder:

"13. Despite the well-settled position, it is painfully disturbing to note that, the High Court has acted as an Appellate Authority in the disciplinary proceedings, re-appreciating even the evidence before the Enquiry Officer. The finding on Charge No.1 was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of First Appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the



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evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;



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(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based;

(vi) correct the error of fact, however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks the conscience."

10. With reference to decision rendered in P.Gunasekaran's case (supra), learned Senior Panel Counsel appearing for the Respondents submitted that, the High Court cannot exercise jurisdiction under Article 226 or Article 227 of the Constitution of India, to go into the proportionality of the punishment imposed, so long as it does not shock the conscience of the Court. To substantiate his stand, he referred to paragraph 19 of the said decision and the same is extracted hereunder:

"19. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the Court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence, but certainly there are indicators for such assessment. Integrity according to Oxford Dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence, etc. In short, it depicts sterling character with firm adherence to a code of moral values."

11. Heard the learned counsel on either side and perused the material documents available on record.



12. In the case on hand, the Appellant/Writ Petitioner was given out pass on 24.08.2011 for two hours from 12.40 hours and that, he reported back to Quarters Guard at 16.30 hours, instead of 14.40 hours. It is no doubt true that, the Writ Petitioner stayed outside the Quarters Guard exceeding two hours without any permission from the competent Authority. It is also an admitted fact that, the Writ Petitioner was detained under judicial custody beyond 48 hours for a case registered against him under Sections 498-A, 504, 324 and 506(ii) I.P.C. However, the Writ Petitioner came out on bail and he was subsequently acquitted from the criminal case.

13. As the charges framed against the Writ Petitioner have been duly established in the enquiry and the punishment imposed by the Disciplinary Authority has been confirmed by the Appellate Authority, the only issue for consideration before this Court is, whether the punishment of reduction of pay by one increment imposed on the Writ Petitioner, is proportionate to the charges framed against him for the misconduct under Rule 36 of CISF Rules, 2001.

14. Rule 34 of the Central Industrial Security Force Rules, 2001, prescribe two different types of punishment, one for major penalties and the other for minor penalties. For the sake of convenience, the said Rule is extracted hereunder:

34. Nature of Penalties: The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an enrolled member of the Force, namely:

Major penalties:

(iv) reduction to lower time scale of pay, grade, post or service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the enrolled member of the Force during such specified period to the time scale of pay, grade, post or service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period -

(a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and

(b) the enrolled member of the Force shall regain his original seniority in the higher time scale of pay, grade, post or service;

Minor Penalties:



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(viii) reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension;

15. In this case, charges have been framed against the Appellant/Writ Petitioner for a major misconduct. However, it is not necessary that, the punishment falling under major misconduct alone has to be imposed. In P.Gunasekaran's case referred to supra, the Apex Court has dealt with a case, wherein, Police have registered a case falling under Sections 143, 319 and 420 I.P.C. against the Respondent therein and punishment has been imposed. As the punishment imposed on the employee in the said case did not shock their conscience, the Apex Court refused to grant the relief in favour of the employee. Even going by the ratio laid down by the Apex Court in P.Gunasekaran's case (supra), the punishment imposed on an employee can be interfered with, only if it shocks the conscience of the Court.

16. In the case on hand, family dispute with his estranged wife has resulted in filing of a criminal case against the Appellant/Writ Petitioner under Section 498-A I.P.C. Domestic disputes need not be viewed seriously by the Department to impose a major punishment. Certain family disputes will result in offence under Section 498-A I.P.C. and some other cases under the Divorce Act. As there was a rift between the Writ Petitioner and his wife, the Department called upon the Writ Petitioner's wife to tender evidence. On account of the rift, it is quite natural that, the Writ Petitioner's wife tendered evidence against him. That apart, the Appellant/Writ Petitioner and his wife have been separated by means of a judicial order. Further, delay of two hours in reporting to duty does not mean that, the employee need to be imposed with the punishment falling under major penalties.

17. In view of the aforesaid discussion, as the punishment imposed on the Appellant/Writ Petitioner shocks the conscience of the Court, in the light of Clause (vii) of paragraph 13 of the judgment of the Apex Court in P.Gunasekaran's case (supra), we are inclined to modify the punishment imposed by the Disciplinary Authority on the Appellant/Writ Petitioner. Accordingly, the punishment imposed on the Appellant/Writ Petitioner is modified in terms of Clause 34(viii) of the CISF Rules, 2001 to the effect that, there will be reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.



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In fine, the Writ Appeal is allowed on the above terms. No costs.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary to Government, Union of India,
Ministry of Home Affairs, New Delhi.
2. The Director General,
Central Industrial Security Force,
CCO Complex, Lodhi Road, New Delhi.
3. The Inspector General,
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4. The Deputy Inspector General,
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5. The Group Commandant,
CISF Group Head Quarters,
Cochin - 37.

+1cc to Mr.C.Kulandaivel, Advocate SR.No.12420

W.A.No.176 of 2022

SKM(CO)
GMY(28/03/2022)