



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2022

Coram

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

W.A.No.1088 of 2021
and CMP.No.6881 of 2021

1. The Senior Commandant
Office of the Senior Commandant
Central Industrial Security Force,
Ministry of Home Affairs,
CISF Unit, DAE, Kalpakkam,
Kancheepuram District, Tamil Nadu.
2. The Deputy Inspector General / DAE
Office of the Deputy Inspector General,
Central Industrial Security Force,
Ministry of Home Affairs,
CISF DAE, Zonal Head Quarters HQRS,
ECIL Post, Hyderabad, Andhra Pradesh.
3. The Inspector General / Western Sector,
Office of Inspector General Western Sector,
C.I.S.F., Kaosubh Parisar,
Sector 35, Kargarh, Navi Mumbai. ...Appellants

Vs

Mohammed Saleem

... Respondent

Prayer: Writ appeal is filed under clause 15 of the Letter Patent praying to allow the Writ Appeal and set aside the order dated 10.03.2020 in W.P.No.25306 of 2013.

WP.25306 of 2013: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the record in order V-15012/PA KA/V A No/12-6648, dated 27.07.2012, on the file of the third respondent and quash the same as illegal, arbitrary, double jeopardy and against the law and direct the respondents to reinstate the petitioner with backwages.



For Appellants : Mr.N.Ramesh
Senior Standing Counsel

For Respondent : Mrs.Rita Chandrasekar for
Mrs.R.Meenakshi

WEB COPY

J U D G M E N T

S.VAIDYANATHAN, J.
&
MOHAMMED SHAFFIQ, J.

The present appeal has been preferred against the order dated 10.03.2020 in W.P.No.25306 of 2013 passed by the learned single Judge by modifying the punishment of dismissal from service into one of compulsory retirement on the ground that the punishment imposed is excessive and that the employee has been found not guilty in the criminal case.

2. The petitioner was working as a Constable in the Central Industrial Security Force (hereinafter referred to as "CISF"). While he was working at K.K.N.P.P., Kudankulam, disciplinary proceedings has been initiated against him levelling as many as two charges. After issuing the memo of charges and after obtaining his explanation, an enquiry was conducted by the Deputy Commandant of CISF, Kudankulam, wherein the Enquiry Officer has held that both the charges were proved. Thereafter, the first respondent Disciplinary Authority after finishing a copy of the Enquiry Officer's report and also obtaining his further explanation, has concurred with the findings of the Enquiry Officer and imposed the punishment of dismissal from service.

2.1 Challenging the same, the petitioner has filed an appeal before the second respondent Deputy Inspector General, CISF and the Appellate Authority also after considering all his objections rejected his appeal and passed a detailed order. Thereafter the petitioner filed a revision before the Inspector General, CISF, and the Revisional Authority also after considering the materials on record has dismissed the revision and thereby confirming the order passed by the Disciplinary Authority and the Appellate Authority. Challenging the same, the writ petition has been filed. After hearing the learned counsel on either side, the learned single Judge allowed the writ petition in part and modified the order impugned in the writ petition to the effect that the writ petitioner shall be placed under compulsory retirement and all service benefits, which the



writ petitioner is entitled to, shall be given. Aggrieved by the same, the respondents therein filed the present appeal.

3. The learned counsel for the appellant submitted that the learned Single Judge ought not to have interfered with the penalty of dismissal from Service for theft of plant property (brass coupling) as the writ petitioner himself was deployed for security of plant. Therefore, the penalty of dismissal from service is commensurate with the gravity of offence. The learned single Judge has given his judgment on the basis of the judgment in the C.C. No.127/2012 dated 30.04.2018 (Annexure V) pronounced by the Judicial Magistrate, Vallioor as on the very same occurrence, a criminal prosecution had been launched against the writ petitioner and almost same witnesses were examined in the Criminal Court, which ultimately ended in acquittal. But, in the case in C.C.No.127/2012, only PW-1 has deposed in the Court, who was not the spot eye witness in the case and he only filed an FIR in the Kudankulam Police Station as he was the Inspector in-charge of the charged official. The three (3) spot eye witnesses in the above case who were the prosecution witnesses in departmental enquiry and their names were also shown in the FIR were not examined in the above case since the witnesses No.2 to 7 are now transferred to several States due to their duty. Hence, the order of learned single Judge is contrary to law and material evidences available on record.

4. The learned counsel for the appellant further submitted that the learned single Judge has not taken into account the fact that the petitioner was acquitted by the Criminal Court giving benefit of doubt which would not amount to Hon'ble acquittal. The writ petitioner was deployed in nuclear fuel store duty post which is one of the most vital locations in the set-up of Nuclear Power Plant. By removal of fire coupling from such an important area, he did not only merely steal an object, but also even compromised the safety of the nuclear power plant. Stating that the punishment is commensurate with the gravity of offence and the order of the learned single Judge is required to be set aside, the appellant is before this Court.

5. Heard both sides.

6. There are several cases where this Court has held that in a Departmental Enquiry, the preponderance of probabilities is sufficient, whereas, in the criminal case, it has got to be proved beyond reasonable doubt. In this case, the employee has



admitted his misconduct, wherein he has stated that he has brought three pieces of fire couplings from Fuel store area after completion of "C" shift duty. He also accepted that during physical check, by one SI/Exe. Geesh Kumar, one key has been recovered from him. He further stated that he has stolen the fire couplings on several occasions prior to the incident and sold them at Kanyakumari. That apart, he has committed serious misconduct on the earlier occasion for which he was punished. The learned Single Judge observed that the writ petitioner was illegally carrying fire couplings from the high security Kudankulam Atomic Power Plant and in a detailed enquiry, the charges have been established. Moreover, the past conduct of the writ petitioner is also very bad and that he has been imposed with one major and four minor punishments. As the petitioner has committed various irregularities in service, the learned Single Judge ought not to have interfered with the punishment imposed by the Disciplinary Authority, as the power of this Court to interfere with the punishment is very limited.

7. The charges that he was carrying three numbers of Fire Coupling (brass) weighing about 06 Kgs and on further frisking, one fire hose box key hidden inside his inner wear have been duly established. Apart from that the petitioner on previous occasion he has been awarded with five penalties including one major penalty. Even assuming for the sake of argument that there are one or two discrepancies in the evidence, this Court cannot go into the veracity of the same to come to a different conclusion. As the order of the Disciplinary Authority has been confirmed by the Appellate Authority, we are of the view that the order of the learned single Judge in modifying the punishment runs contrary to the judgment of the Supreme Court in Union of India and others Vs P.Gunasekaran (2015) 2 SCC 610 has laid down the following principles.

" 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. I 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 evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;



WEB COPY

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;

(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 its conscience".

8. The Apex Court has held that unless the punishment imposed is shockingly disproportionate to the charges, the punishment cannot be interfered with. In the present case on hand, the order of dismissal from service cannot at any stretch of imagination be said to be shocking the conscience of the Court and the order of the learned Single Judge in modifying the punishment into one of compulsory retirement is liable to be set aside, thereby restoring the original punishment imposed by the



Disciplinary Authority on the employee, namely dismissal from service.

9. Accordingly the writ appeal is allowed. No costs.

WEB COPY

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Dpq

TO

1. The Senior Commandant
Office of the Senior Commandant
Central Industrial Security Force,
Ministry of Home Affairs,
CISF Unit, DAE, Kalpakkam,
Kancheepuram District, Tamil Nadu.
2. The Deputy Inspector General / DAE
Office of the Deputy Inspector General,
Central Industrial Security Force,
Ministry of Home Affairs,
CISF DAE, Zonal Head Quarters HQRS,
ECIL Post, Hyderabad, Andhra Pradesh.
3. The Inspector General / Western Sector,
Office of Inspector General Western Sector,
C.I.S.F., Kaosubh Parisar,
Sector 35, Kargarh, Navi Mumbai.

+1cc to Mr.R.Meenakshi, Advocate SR.No.17833

W.A.No.1088 of 2021

PA(CO)
GN(06/06/2022)