



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :
25.01.2022

DELIVERED ON :
21.02.2022

WEB COPY

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.NO. 30005 OF 2012
AND WMP.NO. 230 OF 2020

Sh.Subodh Kumar

..Petitioner

Vs.

1. The Inspector General of Police,
CISF WS Head Quarters,
Mumbai.
2. The Deputy Inspector General/DAE,
CISF, DAE, Zonal Head Quarters,
ECIL Post, Hyderabad.
3. The Commandant,
CISF Unit, DAE, Kalpakkam.

.. Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, call for the records of the respondents particularly the 3rd respondent relating to the order in V - 15014/DAE (K) Disc/Major-06-SK/09/180 dated 28.12.2009 and 1st respondents order dated 2.8.2011 vide reference No.V-15017/Disc/Major-11-6032 and to quash the same and consequential directions to the respondents to reinstating the petitioners service under the Respondents

For Petitioner : Mr.R.Thanjan

For Respondent : Mr.K.Gunasekar, SCGSC

O R D E R

Brief facts of the case is that the petitioner had joined service under the respondents on 25.08.2001as Constable and



posted at Mumbai International Airport and thereafter transferred to Goa Airport in the year 2009 and finally transferred to Kalpakkam Atomic Power Project, Kalpakkam. Based on the compliant made by one Uganta Devi, the respondents have framed charges against the petitioner, conducted disciplinary proceedings and based on the enquiry report, the respondents have imposed punishment of dismissal from service. As against the order of the disciplinary authority, the petitioner had preferred an appeal before the 1st respondent, the said appeal also rejected by the appellate authority. As against the order of the appellate authority, the petitioner had preferred a revision petition. The said revision petition was also rejected, hence the present writ petition to set aside the punishment order.

2. The learned counsel for the petitioner would submit that based on the false complaint lodged by one Uganta Devi, the 2nd respondent had framed three charges against the petitioner. The petitioner has submitted a detailed explanation. The respondent without considering the petitioner's explanation and analysing the statement of witnesses and other material facts, had passed an order of dismissal from service.

3. The learned counsel for the petitioner has further submitted that the said alleged incident to Uganta Devi on 23.09.2009 at about 21.00 hrs, while returning from Pudupattinam Market, not during the course of employment or in the place of employment. If actually, the alleged incident would have taken place, the said Uganta Devi would have given a compliant before the concerned Police Station. The subject incident would not have taken place, but she posed herself that the alleged incident had taken place, only with a view to harass the petitioner.

4. The learned counsel for the petitioner has further submitted that the the Disciplinary authority and the Appellate Authority without considering the the petitioner's lengthy service of 10 years and the foremost aspect that the alleged incident taken not in the course of employment or place of employment had arbitrarily decided against the petitioner and imposed capital punishment of dismissal from service, which according to the learned counsel for the petitioner is illegal and liable to be quashed.

5. Counter affidavit has been filed by the respondents, wherein it has been stated that the respondent force required to maintain discipline of the highest order. On 23.09.2009 the petitioner had went out of the Unit Line to Pudupattinam Market without making entry in the Register kept at the R.P. Gate thereby violated the lawful instructions. Further a complaint



dated 24.09.2009 was received from a Constable/Driver Rajbir of CISF Unit, DAE Kalpakkam alleging that the petitioner had misbehaved with his wife while she was riding cycle at Family quarter line. Accordingly, preliminary enquiry was conducted and in the said enquiry and since prima facie was established, the 3rd respondent has framed three charges against the petitioner vide memorandum No.V-15014/DAE(K)/Dis/Maj-06/SK/09/123, dated 29.09.2009.

6. The learned Standing Counsel has further submitted that since the reply submitted by the petitioner was not satisfactory, the respondents have initiated departmental enquiry in accordance with Rule 36 of CISF Rules, 2001 and after affording ample opportunities to the petitioner and based on the statements of PW1 to PW5 and the materials available on record to substantiate the charges levelled against the petitioner, the enquiry officer submitted a report holding all the three charges framed against the petitioner as proved. Subsequently, the Disciplinary Authority/3rd respondent awarded the punishment of Dismissal from service vide impugned order dated 28.12.2009. As against the said order of dismissal, the appeal and the revision petitioner preferred by the petitioner were also dismissed by the respondents. Therefore, there is no violation or illegality in the impugned dismissal order passed by the respondents and the same does not require any interference by this Court.

7. Heard Mr.R.Thanjan, learned counsel for the petitioner and Mr.K.Gunasekar, learned Senior Central Government Standing Counsel appearing for the respondents.

8. Before proceeding to analyze the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, it is just and necessary to adumbrate the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.

9. The Hon'ble Supreme Court, in B.C. Chaturvedi v. Union of India, (1995 (6) SCC 749), while dealing with issue relating to the power of the Court relating to judicial review of the order passed by the disciplinary authority, held as under :

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to



WEB COPY

determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

10. In a recent decision in Director General of Police, RPF & Ors. - Vs Rajendra Kumar Dubey (C.A. No.3820/2020 dated 25.11.20), the Hon'ble Supreme Court, advertent to the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, including the decision in Chaturvedi's case (supra), held as under :-

12.1 It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.

We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant. In State of Andhra Pradesh v S.Sree Rama Rao, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may,



WEB COPY

however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

11. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination of correctness of the act of the disciplinary authority, but only limit itself to the manner in which the decision has been arrived at by the authorities and whether the same is in accordance with law.

12. The main contention of the learned counsel for the petitioner is that the enquiry officer without considering the foremost aspect that the alleged incident occurred not in the course of employment or place of employment, but arbitrarily decided the as against the petitioner and imposed major punishment of dismissal from service.

13. On perusal of the records, the following charges were framed as against the petitioner;

Charge No.1 :

Gross indiscipline disobedience of lawful orders and wilful act by which force No. 014506422 Constable Subodh Kumar of CISF Unit DAE Kalpakkam on 23.09.2009 after afternoon roll-call left the unit line and without permission/prior intimation of any competent officer and went to Pudupatnam market on his own. Being a member of Armed Force, the above act of Force No. 014506422 Constable Subodh Kumar shows his gross misconduct, indiscipline and violation of unit orders.

Charge No.2 :

"Gross Misconduct and indiscipline, by which



WEB COPY

force No. 014506422 constable Subodh Kumar of CISF Unit DAE Kalpakkam on 23.09.2009 at about 21.00 Hrs, while returning from Pudupatnam market leased and did obscene action to Smt. Uganta Devi (wife of force No. 074700642 Constable/Driver Rajbir) standing with cycle in family residential complex. Being a member of Armed Force, the above act of Force No. 014506422 Constable Subodh Kumar shows his gross misconduct, indiscipline and indecent conduct.

Charge No. 3 :

" Force No. 014506422 Constable Subodh Kumar has been earlier punished four times for different indiscipline activities. But, the force member by not taking lesson from the punishment awarded earlier, not improving himself once again showed gross misconduct, indiscipline and undesirable conduct. Being a member of force, the above said act of Force No. 014506422 Constable Subodh Kumar shows his undesirable conduct.

14. On careful perusal the final order passed by the 3rd respondent/Disciplinary authority, it has been categorically explained that based on the complaint given by Constable/Driver Rajbir, husband of one Uganta Devi the aforesaid charges were framed against the petitioner. The said Constable/Driver Rajbir was examined as PW1 and his wife Uganta Devi was examined as PW2. Apart from these two witnesses, PW 3 Inspector/E.Kanwar Singh and PW4/Head constable/GD O.N. Agnihotri and PW5/Constable Rakesh Kumar were examined as witnesses.

15. As regards the Charge No.1 i.e the petitioner has left the unit line without making entry and proper permission, the version of the petitioner is that he could not make entry in the register at RP gate of unit line, as no register was available and sentry was also not present at that point of time. But on the said date, entries were made in the register, particularly at page no. 62, entries were made from 22.09.2009 to 25.09.2009. The petitioner has also admitted that on 23.09.2009 at about 19.30 hrs went to the market. Further PW5/Constable Rakesh Kumar who was on duty on the said date at RP gate has deposed that he was present at the gate that all companies were kept at the gate, but the petitioner had failed to make entry in the out pass Register kept at the RP gate, which has been proved during the enquiry. Hence it was held that the petitioner had left the line on his own, which shows gross indiscipline and disobedience on his and proved the charge no.1 as against the petitioner.

16. As regards the charge no.2 that the petitioner had misbehaved with one Uganta Devi/PW2, wife of Constable/Driver



Rajbir/PW1. The said Uganta Devi deposed that on 23.09.2009 at 21.00 hrs the petitioner hold her cycle hand, caught chin, winked at her and did such obscene act which she can't describe. Immediately she informed to her husband and her husband followed the petitioner in his scooter and asked about the alleged misbehaviour to the petitioner. The petitioner told that such things will happen and asked him to leave from the place. This act of the petitioner was substantiated during the course of enquiry from the state of PW2, which has been corroborated with the statement of PW1 and PW5/Constable Rakesh Kumar who had seen the petitioner while entering the line by running. During examination PW2 categorically deposed that she recognised the person who misbehaved with her. Hence the said charge was also proved as against the petitioner.

17. As regards the Charge No.3 is concerned, that the petitioner has been earlier punished for four times for different indiscipline activities, but not improved himself and once again showed gross misconduct, indiscipline and undesirable conduct. It is clearly stated in the report that for the misconduct and indiscipline activities, the petitioner was punished four times, but he preferred appeal for only two punishments. Out of the said two appeals, one was got rejected and another was got punishment imposed. Hence the said charge was also proved as against the petitioner.

18. In view of the above, it is clear that based on the evidence and records, the enquiry officer held the charges proved as against the petitioner. The disciplinary authority has also confirmed the report and imposed the punishment. It is also reveals from the records that during preliminary enquiry, the petitioner was given an opportunity to produce any defence witness, but the petitioner had not opted to produce any witnesses and could not take the help of any force members during the enquiry.

19. The appellate authority and the revisional authority in the course of the order observed that the charge of absenting from unit lines without making entries in the register, misbehaving with a lady are grave in nature and cannot be tolerated in a disciplined force. It is also further observed that the said allegations against the appellant/petitioner herein were enquired into by the disciplined authority and the appellant/petitioner herein also participated in the enquiry and availed due prospects to prove himself innocent. During enquiry, the petitioner admitted the fact that on 23.09.2009 at about 19.30 hrs he went to the market.

20. In view of the above clear findings of the authorities concerned, the contention of the learned counsel for the



petitioner that the major punishment imposed on the petitioner on the basis of the false complaint given by one Uganta Devi, W/o. Constable/Driver Rajbeer cannot be accepted and liable to be rejected.

WEB COPY

21. With regard to the punishment, it has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Article 226 of the Constitution. In Prem Nath Bali Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under;

20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.

22. In view of the foregoing discussions and the decisions of the Hon'ble Supreme Court cited supra, the punishment of dismissal from service imposed on the petitioner in no way could



be termed to be disproportionate or shocking the conscience of the Court warranting interference. The petitioner has not proved the punishment imposed on him is arbitrary or bad or the punishment is disproportionate to the gravity of the charges and is in contravention of the rules. In such circumstances, this Court is of the considered view that the punishment imposed on the petitioner does not warrant any interference of this Court.

23. This Court is concerned with a member of the uniformed force where discipline is of utmost important. The members of this uniformed force are to provide security to major institutions belonging to the Government and public sector undertakings in the country. If they are to fulfil the purpose for which they have been recruited, they must maintain high sense of duty and observe strict rules of discipline as , any failure on those grounds will render them unfit to the services for which they have been recruited. The petitioner who had a past record of disobedience and other allegations for which he had been punished, instead of mending his ways, had chosen to continue his indiscipline activities.

24. Such the conduct on the part of the petitioner not on one occasion, but as many as four occasions certainly warranted a kind of action which has been taken against the petitioner. The petitioner had served the force only for a period of ten (10) years and had committed misconduct five times including the allegations involved in the present writ petition and suffered penalties for his earlier four indisciplined activities. The gravity of misconduct/misbehaviour committed by the petitioner, having regard to the nature of the employment and the purpose for which the Central Industrial Security Force had been brought into existence, clearly warranted imposition of punishment of dismissal of service that has been inflicted on the petitioner.

25. For the reasons aforesaid, this writ petition is devoid of merits and deserves to be dismissed. Accordingly, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ak



To

1. The Inspector General of Police,
CISF WS Head Quarters,
Mumbai.
2. The Deputy Inspector General/DAE,
CISF, DAE, Zonal Head Quarters,
ECIL Post, Hyderabad.
3. The Commandant,
CISF Unit, DAE,
Kalpakkam.

+1cc to Mr.R.Thanjan, Advocate, S.R.No.11431

W.P.No.30005 of 2012
and WMP.No. 230 of 2020

MT (CO)
PM/23/03/2022