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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2022

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

W.A. No. 2041 of 2018

P. Palanivel 'C' Coy .. Appellant/Petitioner
Vs.

1. The Commandant,
CISF Unit, Department of Atomic
Energy (DAE),
Kalpakkam, Disciplinary Authority,
Kancheepuram District,
Tamil Nadu.
2. The Deputy Inspector General,
CISF DAE Head Quarters,
Post: ECIL, Hyderabad - 62,
State: Andhra Pradesh - 500 062.
3. The Inspector General,
CISF, Western Sector,
Navi Mumbai, Mumbai.
4. Shri D.D. Sagar
Insp/Enquiry Officer,
CISF Unit,
DAE, Kalpakkam,
Kancheepuram District. .. Respondents/Respondents

Prayer: Writ Appeal as against the order dated 01.02.2018 passed in W.P. No. 2040 of 2018.

Prayer in WP.No.2040 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent dated 21.08.2009 pertaining to framing of the 3



Articles of Charges against the petitioner made Vide Charge Memorandum No.V-15014/DAE (K)/Maj.03/PPV/DISC/2009/1444, 1st respondent Memorandum dated 1.6.2010 made in V-15014/DAE (K)/Disc/Maj-03/PPV/2009/2530 culminating from the Enquiry Report prepared by the 4th respondent Enquiry Officer dated 26.5.2010, 1st respondent Final Order resulting in Termination of Service of the Petitioner herein dated 30.06.2010 made in No.V-15014/DAE (K)Maj.03/PPV/Disc/2009/2998, Appeal order of the 2nd respondent dated 28.9.2010 made in Order No.V-15016/A-32/DAE/DISC/2010/5407, order passed by the 3rd respondent Revisioning Order bearing No.V-15017/SS/L&R/2014/01425 dated 06.06.2014 and quash the same and consequently direct the Respondents to reinstate the petitioner into service as constable in CISF Unit, Kalpakkam, Kancheepuram District, based on the Judgments of the Hon'ble Supreme Court of India and Hon'ble Madras High Court, with effect from 31.03.2010, along with all attendant benefits due to the petitioner as a consequence thereof.

For Appellant ::Mr.Pugalendhi

For Respondents ::Mr.Venkataswamy Babu
for R1 to R4

J U D G M E N T

S. VAIDYANATHAN,J. AND MOHAMMED SHAFFIQ,J.

Assailing the order dated 01.02.2018 passed in W.P. No. 2040 of 2018, dismissing the writ petition on the ground of laches, the present writ appeal has been preferred by the writ petitioner.

2. The appellant/writ petitioner, a Constable in Central Industrial Security Force (CISF), while posted in the CISF Unit at Department of Atomic Energy, Kalpakkam, had availed sanctioned leave for 8 days from 03.07.2009 to 12.07.2009. Subsequently, he had overstayed the leave for 27 days unauthorisedly in spite of receiving two call up letters on 30.07.2009 and 06.08.2009 asking him to report for work thereby violating the orders of the competent authority. For the overstaying of leave, a charge memo was issued on 21.08.2009 for which a reply was sent by the appellant. Departmental proceedings ensued thereafter culminating in the punishment of compulsory retirement vide order dated 30.06.2010, which was also confirmed by the Appellate and Revisional Authorities. Seeking redressal of his grievance, the appellant approached this Court by filing



3. Two contentions were raised by the learned counsel for the appellant before us and they are:

Learned counsel for the appellant would further contend that though initially, the punishment of reduction of pay by 3 stages with cumulative effect was imposed on the appellant by the Disciplinary Authority, on appeal preferred by the appellant to the 2nd respondent herein /Appellate Authority, the matter was remitted back to the Disciplinary Authority to conduct the departmental enquiry afresh and the enquiry conducted subsequently is completely vitiated as the very same enquiry officer was appointed by the Disciplinary Authority, who conducted the enquiry proceedings earlier was appointed, defeating the very purpose of remittance of the enquiry and the report submitted by him based on which the punishment of compulsory retirement was imposed by the Disciplinary Authority and subsequently confirmed by the Appellate Authority and Reviewing Authority, is nothing but a mechanical reproduction and repetitive version of the earlier report. Moreover, the enhancement of punishment from "reduction of pay by 3 stages with cumulative effect" to that of "compulsory retirement" is highly unreasonable. Hence, the learned Single Judge ought to have granted the relief as prayed for by the appellant.

<https://hcservices.ecourts.gov.in/hcservices/>



The enquiry was conducted and ultimately, the Disciplinary Authority imposed the punishment of compulsory retirement with full pension and gratuity, which was also confirmed on appeal and further on revision. The learned counsel would further contend that the appellant had three bad past records apart from the present one, which would disentitle him from getting the relief and therefore, prayed that the order of the learned Single Judge need not be interfered with.

5. Heard both parties.

6. The fact that the appellant had availed 8 days sanctioned leave and there was extension of leave for 27 days is not in dispute. The contention of the appellant that there was a flaw in the enquiry, which needs to be interfered with may not be correct as the flaw has been rectified by the Appellate Authority and the matter has been remanded back to the Disciplinary Authority to conduct an enquiry from the stage where the mistake had occurred. Thereafter, a complete enquiry was conducted in which the appellant participated and suffered an adverse order at the hands of the Disciplinary Authority, which stood confirmed by the Appellate Authority and by the Revisional Authority as well. The scope of interference with the punishment imposed under Article 226/227 of the Constitution of India is very limited and the Hon'ble Court, in the judgment rendered in Central Industrial Security Force V. Abrar Ali reported in 2017 4 CTC 507, with reference to unauthorised absence for 5 days of an employee in CISF, held thus:

"12. Though we are of the view that the High Court ought not to have interfered with the order passed by the Disciplinary Authority, the penalty of dismissal from service is not commensurate with delinquency. The Respondent was found guilty of desertion of the Force for a period of five days and not improving his conduct in spite of imposition of penalties on three occasions earlier. For the above delinquencies, the penalty of dismissal from service is excessive and harsh. In our view, the penalty of compulsory retirement would meet the ends of justice. We are informed by the counsel for the Appellants that the Respondent is entitled for pension as he has completed 10 years of service. In order to avoid any controversy, we direct that the Respondent shall be entitled for notional continuity of service till the date of completion of minimum service required to make him eligible for pension. He will not be entitled for payment of salary and allowances for that period.



In this case, the past record of the appellant has been found to be bad on three occasions. Even though the appellant would contend that for a trivial misconduct, he has been punished and that it cannot be considered as a past record, we are of the view that past record is a past record whether the charges are grave or trivial in nature. The authorities have rightly taken into account all relevant aspects and imposed the punishment of compulsory retirement with all retirement benefits. Besides, there has been a delay in approaching this Court, which cannot be lost sight of. We are, therefore, of the view that the order passed by the Disciplinary Authority as confirmed by the Appellate Authority and the Revisional Authority is perfectly valid and need not be interfered with.

7. In fine, the writ appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

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To

1.The Commandant,
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Kalpakkam, Disciplinary Authority,
Kancheepuram District,
Tamil Nadu.

2.The Deputy Inspector General,
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W.A. No. 2041 of 2018

BR(CO)
CB(28/04/2022)