



W.P.No.855 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13.07.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.855 of 2015

and

M.P.No.1 of 2015

B.Veerappan

...Petitioner

Vs.

1.Union of India, rep.by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.

2.The Director General,
Central Industrial Security Force,
CGO Complex,
Lodhi Road, New Delhi – 110 003.

3.The Inspector General,
Central Industrial Security Force,
NISA Hakimpet,
Hyderabad – 560 078.

4.The Deputy Inspector General of Police,
Central Industrial Security Force,
Rajaji Bhavan, Besant Nagar,
Chennai – 600 090.

5.The Commandant,
Central Industrial Security Force,
Chennai Port Trust,
Chennai.



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6.Mrs.S.V.Methews

..Respondents

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Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 3rd respondent dated 30.10.2014 in his Order No.V-15014/1&R/SS/Rev/BV/2014-236, confirming the appellate order passed by the 4th respondent dated 30.09.2009 in his order No.V-11014/26/2009/L&R/(SZ)/2297 confirming the final order passed by the 5th respondent dated 26.03.2007 in his final order No.V-15014/Estt.I/Maj-BV/2007/1985 quash the same and direct the Respondents to take the petitioner as constable in to the strength of CISF Ch P T, Chennai, with all monitory benefits.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.G.Ilangovan
Central Government Standing
Counsel [For R1 to R6]

ORDER

The order of removal from service confirmed by the Appellate Authority and the Revisional Authority are under challenge in the present writ petition.

2. The petitioner joined as Constable in the Central Industrial Security Force in the year 1988. While he was working under the control of the 5th respondent, one Mrs.B.M.Chandra of Redhils, Chennai-56, has



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lodge a complaint against the petitioner on 24.03.2005. The petitioner was arrested on 29.03.2005 and released on bail on 31.03.2005. The fact was informed to the 4th respondent through phone and a letter was sent to the department, intimating about the arrest and release. The 5th respondent placed the writ petitioner under suspension and a charge memo under Rule 36 of the CISF Rules, 2001 dated 06.06.2005 was issued, framing the following charges:

ARTICLE OF CHARGE-I

No.882330578 Constable B.Veerappan of 'A' Coy, CISF Unit, ChPT Chennai, along with his wife, had gone to the residence of Smt.B.M.Chandra, at Redhills, Chennai – 56, on 20.03.2005 at 07.00 hrs and assaulted her. This act on the part of No.882330578 Constable B.Veerappan amounts to gross misconduct, breach of decorum and good order of a member of disciplined Force and also tarnished the image of the Force.

ARTICLE OF CHARGE-II

No.882330578 Constable B.Veerappan of 'A' Coy, CISF Unit, ChPT Chennai, was arrested on 29.03.2005 at 12.00 hrs, for assaulting one Smt.B.M.Chandra on 20.03.2005 and sent for remand by judicial Magistrate Court II, Ponneri and released on bail on 31.03.2005 at about 16.30 hrs. No.882330578 Constable B.Veerappan who was detained in police/judicial custody failed to intimate promptly the fact of



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his arrest and the circumstances connected therewith to his superior thereby suppressing material information. This act on the part of No.882330578 Constable B.Veerappan amounts to gross misconduct and disregard towards the department.

ARTICLE OF CHARGE-III

No.882330578 Constable B.Veerappan of 'A' Coy, CISF Unit, ChPT Chennai had developed an irresistible and persistent attitude of committing similar offence of assaulting and fighting with others and failed to redeem himself and show improvement in his work and conduct in spite of charge sheeted and penalized on 3 earlier similar occasions during his service. This amounts to an act of gross misconduct and reprehensible attitude.”

3. The petitioner submitted his explanations on 18.06.2005, denying the charges. Not satisfied with the explanations, the 5th respondent appointed the Enquiry Officer, who in turn, conducted an enquiry and the petitioner submitted a representation to keep in abeyance the departmental proceedings during the pendency of the criminal case. However, the departmental enquiry proceeded with and the petitioner defended his case. The petitioner made a request to have defence assistance and the 5th respondent suggested three names of the local CISF Personnel under Rule



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36(8)A of the Rules on 15.09.2005. Thus, the petitioner filed W.P.No.29655

of 2005, challenging the validity of Rule 36(8)A and the Hon'ble Division Bench of this Court upheld the validity of the said Rule. Meanwhile, the Criminal Case on the file of the Judicial Magistrate-II, Ponneri in C.C.No.98/05 was finally disposed of on 01.08.2006. The petitioner was acquitted. The Enquiry Officer proceeded with the charge and held that the charges against the writ petitioner are held proved. Thereafter, the 5th respondent issued show cause notice on 03.03.2007 and the petitioner filed his objections on 17.03.2007. The petitioner has stated that he was acquitted by the Judicial Magistrate, Ponneri as the complaint lodged by Smt.B.M.Chandra has been proved false and fabricated one. However, those factors were not considered and the petitioner was imposed with the penalty of removal from service. The petitioner preferred an appeal and Revision thereafter and both the appeal and revision were rejected. Thus, the petitioner is constrained to move the present writ petition.

4. The learned counsel for the petitioner mainly contended that the Criminal Case is no way connected with the official performance of the writ petitioner. The case was registered for simply causing hurt and the complaint itself was false. On account of certain personal vengeance, one



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Mrs.B.M.Chandra at Red Hills lodged a false complaint and the petitioner proved the same as false before the Judicial Magistrate and accordingly, he was acquitted from the Criminal Case. The fact that the complaint itself for causing simple hurt and the said Smt.BM.Chandra has falsely lodged a complaint was not considered by the respondents and they have imposed the major penalty of removal from service.

5. The learned counsel for the petitioner reiterated that the findings of the learned Judicial Magistrate in the judgment has not been considered by the competent authorities including the Appellate Authority and the Revisional Authority.

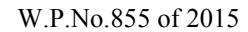
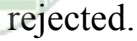
6. The learned Central Government Standing counsel appearing on behalf of the respondents objected the said contention by stating that when the petitioner was in service, he along with his wife Smt.Hamsavalli has gone to the residence of a third party namely Smt.B.M.Chandra at Red Hills on 20.03.2005 at about 07.00 hours, when she was alone in her house and indulged in heated altercation in connection with some money transaction between them. In the ensuing melee, the petitioner and his wife have assaulted Smt.B.M.Chandra, resulted in injuries caused. Later,



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Smt.B.M.Chandra, who was taken to the Government Stanley Hospital and admitted on 20.03.2005 and discharged on 23.03.2005, after Medical treatment. On 24.03.2005, Smt.B.M.Chandra had lodged a complaint against the petitioner and his wife before G4 Red Hills Police Station on the incident. The case was registered in Crime No.411/2005 dated 24.03.2005 under Sections 341, 323 and 506(1) I.P.C. The petitioner was arrested on 29.03.2005 and released on bail on 31.03.2005. Thus, the departmental disciplinary proceedings were initiated and after affording opportunity and by following the procedures, the enquiry was concluded and based on the proved charges, the penalty of removal from service was imposed on the writ petitioner. Thus, there is no infirmity as such in respect of the conduct of departmental disciplinary proceedings and the petitioner involved in a Criminal Case and thus, the major penalty of removal from service was inflicted.

7. The learned Central Government Standing counsel for the respondents made a submission that acquittal in a Criminal Case is not a bar for imposing punishment under the Discipline and Appeal Rules. Acquittal in a Criminal Case would not provide an automatic exoneration from the departmental disciplinary proceedings. Thus, the writ petition is liable to be



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9. Acquittal in a Criminal Case, no doubt, is not a bar for initiation of



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departmental disciplinary proceedings. Even in case of acquittal in a Criminal Case, an employee may be punished by the Disciplinary Authority under the Discipline and Appeal Rules. Acquittal is not a ground for exoneration from the departmental disciplinary proceedings. The standard of proof required to convict a person under Criminal Court of law is strict. However, no such strict proof is required to punish an employee under the Discipline and Appeal Rules. The preponderance of probabilities are enough to punish an employee. While so, the ground raised by the petitioner that he was acquitted from the Criminal Case is of no avail to grant exoneration from the departmental disciplinary proceedings.

10. In the present case, admittedly, the Criminal Case is no way connected with the official performance of duties by the petitioner. There was a dispute between the petitioner's family and a third party namely Smt.B.M.Chandra. The said Smt.B.M.Chandra lodged a complaint after four days from the date of occurrence regarding an assault caused against her by the petitioner and his wife. When the petitioner and his wife both were exonerated from the allegations, causing assault against the said Smt.B.Chandra, the department has to consider the same only for the purpose of deciding the quantum of punishment.



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11. A distinction or a thin line in between is to be drawn by the Disciplinary Authority, while inflicting punishment in such circumstances. If the Criminal Case is relating to the official performance of the personnel concerned, then there cannot be any leniency or misplaced sympathy in imposing penalty in accordance with the rules in force. Whenever, the Criminal Case is relating to certain private affairs and the nature of the Criminal Case is for causing hurt and the employee was acquitted from the Criminal Case, then the authorities would have considered those mitigating factors for imposing any other punishment other than the penalty of removal from service. The mitigating factors are to be weighed, while deciding quantum of punishment to be inflicted on the delinquent employee.

12. In the present case, the petitioner admittedly was acquitted by the Criminal Court of Law. The charge against him and his wife was causing hurt to a third party Smt.B.M.Chandra. For example, if the Criminal Case is relating to attempt to murder or murder or causing grievous hurt, then the circumstances are to be considered differently. When the charges are relating to hurt and the complaint itself was lodged by the de-facto complainant, after a lapse of four days from the date of occurrence, then



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those factors are also to be considered for the purpose of deciding the quantum of punishment to be imposed on the delinquent employee.

13. No doubt, involving in a Criminal Case by the CISF Personnel itself is a misconduct under the Rules. Therefore, the petitioner, who had involved in a Criminal Case is liable to be punished, if the charges are held proved.

14. In the present case, the charges against the writ petitioner are held proved before the Enquiry Officer. The report of the Enquiry Officer was accepted by the Disciplinary Authority. Thus, the involvement of the petitioner in a Criminal Case was established by the department in the disciplinary proceedings. For such involvement, whether the penalty of removal from service is justified or not alone is to be considered by this Court.

15. No doubt, the charges against the writ petitioner are held proved, more so, regarding his involvement in a Criminal Case. However, the charges in the Criminal Case regarding an assault against a third party has not proved before the Criminal Court of law. Further, the accused persons



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are the petitioner and his wife. Whether the wife of the petitioner assaulted the third party lady or the petitioner assaulted the third party lady are not clearly established before the competent Court of law. Under those circumstances, this Court is of an opinion that imposing the major penalty of removal from service is to be construed as excessive and not in proportionate with the gravity of the proved charges of the involvement of the petitioner in a criminal case.

16. In view of the facts and circumstances, this Court is inclined to consider the writ petition. Accordingly, the impugned order of removal from service passed by the 5th respondent in proceedings No.V-15014/Estt.I/Maj-BV/2007/1985 dated 26.03.2007 and the Appellate order passed by the 4th respondent dated 30.09.2009 in his order No.V-11014 / 26 / 2009 / L&R / (SZ) / 2297 and the Revisional order passed by the 3rd respondent in proceedings dated 30.10.2014 in his Order No.V-15014/1&R/SS/Rev/BV/2014-236 are quashed. The respondents are directed to reinstate the writ petitioner in service without backwages, but with continuity of service. The respondents are directed to impose any one of the penalties other than the removal from service. The said exercise is directed to be done within a period of eight weeks from the date of receipt



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of a copy of this order.

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17. Accordingly, the writ petition stands allowed in part. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes

Speaking order: Yes

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To

1.The Secretary to Government,
Union of India, Ministry of Home Affairs,
New Delhi.

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Central Industrial Security Force,
CGO Complex,
Lodhi Road, New Delhi – 110 003.

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S.M.SUBRAMANIAM, J.



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