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WP.No.22298 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.08.2022

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THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

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Shiv Pratab Singh

.. Petitioner

Versus

- 1.The Union of India,
Rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
- 2.The Additional Director General,
Airport Sector CISF Head Quarters,
No.16, CGOs Complex,
Lodhi Road,
New Delhi – 110 003.
- 3.The Deputy Inspector General,
CISF Head Quarters,
South Zone/Airport Sector,
D-Block, 1st Floor,
Rajaji Bhawan, Besant Nagar,
Chennai – 600 090.
- 4.The Commandant,
Central Industrial Security Force Unit,
Airport Security Guard,
Trivandrum.



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5. The Assistant Commandant,
Central Industrial Security Force Unit,
Airport Security Guard, Madurai.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 2nd respondent and communicated by the 4th respondent in his Office Memorandum No.B-15014/CISF/ASG [Ch]/DISC/2017-9004 dated 10.10.2017 confirming the order passed by the 3rd respondent dated 20.12.2016 in his Order No.V-15019/L&R/AP-SZ/Rev.02(SPS)/2016/6989 confirming the order passed by the 4th respondent dated 12.04.2016 in his Final Order No>V-15015/CISF/ASG-MDU/DISC/S.P.S./2016/852 dated 12.04.2016 and quash the same and direct the respondents to pay all benefits and promotions.

For Petitioner : Mr.R.Thiyagarajan

For Respondents : Mr.K.Ramanamoorthy
Central Government Standing Counsel

ORDER

The prayer sought for herein is for a writ of Certiorarified Mandamus to quash the order passed by the 2nd respondent and communicated by the 4th respondent in his Office Memorandum No.B-15014/CISF/ASG



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[Ch]/DISC/2017-9004 dated 10.10.2017 confirming the order passed by the 3rd respondent dated 20.12.2016 in his Order No.V-15019/L&R/AP-SZ/Rev.02(SPS)/2016/6989 confirming the order passed by the 4th respondent dated 12.04.2016 in his Final Order No>V-15015/CISF/ASG-MDU/DISC/S.P.S./2016/852 dated 12.04.2016 and direct the respondents to pay all benefits and promotions to the petitioner.

2.The petitioner joined in the CISF as a Constable on 02.09.2006. After completing the basic training, he was posted at the CISF Unit in Farakka upto 15.12.2009, then he was posted to ASG Mumbai, thereafter he was selected as Sub-Inspector through LDCE-2011 and proceeded to attend basic training at CISF RTC, Arakkonam.

3.After completion of basic training, he was posted at CTST Unit ASG Madurai on 24.05.2012 and thereafter, he was finally deployed at ASG, Chennai Unit in the month of August 2016.

4.While so, there was a disciplinary proceedings against the petitioner for having kept the mobile phone of the petitioner in a QRT vehicle under



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the Driver seat without knowledge or permission of the Shift in-charge on duty. In that disciplinary proceedings, the guilty of the petitioner having accepted by him, the disciplinary authority by order dated 12.04.2016 imposed the punishment of censure, being a minor punishment against the petitioner. As against which, the petitioner filed appeal/review and that was also dismissed by confirming the order passed by the original authority by order dated 20.12.2016. Thereafter, the second review order has been passed by the Deputy Commandant on 10.10.2017. Challenging all these orders, the petitioner moved the present writ petition with the aforesaid prayer.

5.Learned counsel appearing for the petitioner would submit that, in so far as keeping the mobile phone of the petitioner in the QRT vehicle is concerned, it is not a violation provided, prior permission or intimation should have been obtained or made, however due to work pressure, such a prior intimation could not be given to the Duty In-charge and that was accepted by the petitioner, for which warning could have been given to the petitioner instead the disciplinary authority since imposed the punishment of censure, that will have a civil consequences in the service conditions of the



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petitioner as by virtue of the said punishment of censure, the petitioner would become ineligible to write the limited competitive examination for the purpose of further promotion to the post of Assistant Commandant and also by virtue of this punishment of censure, in the last five years of the block years for the purpose of MACT five marks would be reduced, thereby the petitioner is not able to achieve the minimum marks and after deduction of this five marks, he will not be getting the MACT in time. Therefore, these kind of civil consequences since follow pursuant to the said punishment of censure, the same can be modified into a warning and to that limited extent atleast the orders passed by the respondents can be interfered by this Court, he pleaded.

6.Per contra, the learned Central Government Standing Counsel appearing for the respondents, on instructions, would submit that, in so far the chance of writing limited competitive examination is concerned, the petitioner will loose the same as the relevant rule of CISF has already amended, under which Rules 3 and 4 has got amended by notification dated 06.02.2017. Rule 3 makes it clear that the candidate should have completed four years of regular service as on 1st January 2018 in the rank of Sub-



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Inspector/Inspector including the period of basic training and should have clean records of service till issue of offer of appointment. Therefore, unless the incumbent having the clean record, he will not be entitled to participate in the limited competitive examination under Rule 3 as amended and validity of the Rule was challenged before this Court. A Division Bench of this Court by order *dated 10.02.2020 in W.P.No.3545 of 2018* in the matter of ***GSN Rao vs. The Union of India and others***, held that the Rule cannot be declared as arbitrary or unconstitutional since the CISF is a disciplined force which was formed for protection and security of industrial undertakings owned by the Central Government and other industrial undertakings. The post of a Commandant since is an extremely important post, the decision of the Government to restrict only such of those employees who have a clean record alone to be entitled to take the limited departmental competitive examination, cannot be found fault with nor it can be termed to be arbitrary.

7.In view of the law having been settled while challenge was made against the said Rule, i.e. Rule 3 which impose the condition that he must have a clean record as a pre-condition to participate in the limited competitive examination, the petitioner cannot now make a plea that his



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chance of participating in the limited competitive examination is taken away because of the punishment.

8.The learned counsel, however would submit that, in so far as the upper age limit of 35 years prescribed under Rule 4 is concerned, the petitioner already reached the upper age limit. Therefore, even otherwise, the petitioner would not be entitled to participate in the limited competitive examination.

9.That apart, the learned counsel for the respondents would further submit that, the further consequence of the punishment of censure is that in the MACT after completion of ten years the last five years would be taken into account in the ACR for awarding marks where the incumbent must reach atleast minimum 25 marks, then only would be entitled for MACT, where, after calculating the total marks for the last five years, out of the total marks obtained by the candidate, 5 marks would be reduced for those who suffered with punishment like that of the petitioner and after deducting 5 marks, what shall be the total marks would be taken into account for the purpose of MACT provided if he reaches the minimum mark of 25. These



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two consequences become inevitable because of the punishment awarded against the petitioner for the proven guilty or admitted guilty. Therefore, no interference is called for in the impugned order, he contended.

10.I have considered the rival submissions made by the learned counsels for the parties and have perused the materials placed before this Court.

11.Insofar as the violation of instruction by the petitioner in keeping the mobile phone in QRT vehicle is concerned, it is an admitted guilt and therefore, it cannot be found fault with the disciplinary authority to impose the punishment.

12.The disciplinary authority has imposed only a very minimum punishment of censure and in this regard, the petitioner cannot seek any indulgence from this Court to give a direction to the disciplinary authority to alter or modify the punishment into a warning.

13.The punishment is a discretion of the disciplinary authority as per



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the Rules, wherein minimum punishment of censure is one of the punishment which can be awarded and that has been awarded. Unless and until such a punishment awarded by the disciplinary authority shocks the conscience of the Court, the Court normally would not interfere in the quantum of the punishment, moreover since it is a very minimum punishment of censure, this Court is not inclined to interfere with the said quantum.

14.Insofar as the civil consequences, i.e. two instances mentioned by the petitioner, one is debarring from participating in the limited competitive examination and would be liable to be reduced 5 marks in the last five years of MACT Scheme is concerned, it become inevitable in view of the punishment imposed against the petitioner. Therefore, on that ground also the petitioner would not be entitled to seek for indulgence from this Court against the impugned order. Therefore, the challenge made against the impugned orders on these grounds as projected by the learned counsel for the petitioner fails and hence, the writ petition is liable to be dismissed.



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15. Accordingly, the writ petition stands dismissed. However, there

shall be no order as to costs.

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Internet : Yes
Index : Yes/No
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No.16, CGOs Complex,
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R.SURESH KUMAR, J.,

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