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WP No.14184 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-11-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.14184 of 2018

V.Venkatesh/Ex.Constable-Sweeper ..

Petitioner

vs.

- 1.The Union of India,
Represented by its Secretary,
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,
Southern Sector Head Quarters,
Central Industrial Security Force,
Near War Memorial,
Chennai – 600 009.
- 4.The Deputy Inspector General of Police,
Central Industrial Security Force,
Southern Zone Head Quarters,
Rajaji Bhavan,
Chennai – 600 090.

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5. The Group Commandant,
Central Industrial Security Force,
Group Head Quarters, NISA Post,
Hakimpet,
Hyderabad-78. ..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Order passed by the fifth respondent dated 03.10.2013 in his order No.15014/Group/Major (10/13)/VV-STPP(2)/Ad.IV/13/5386 dated 03.10.2013 and quash the same and to direct the respondents to take the petitioner into the strength of CISF as Constable-Sweeper with all monetary benefits.

For Petitioner : Mr.A.S.Mujbur Rahman

For Respondents : Mr.K.Srinivasamurthy,
Central Government Standing Counsel.

ORDER

The punishment of removal from service imposed on the petitioner is under challenge in the present writ petition.



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2. The petitioner joined as Constable-Sweeper in the Central Industrial Security Force in the year 2000. Due to his family affairs, the petitioner suffered with the disease of mental depression. He had taken treatment at NTPS Limited Hospital and was unable to report for duty.

3. The learned counsel for the petitioner states that the petitioner was taking treatment for his mental ill-health and for a continuous period. Thus the overstayal from reporting duty was not intentional and hence, the punishment imposed on the petitioner is to be set aside.

4. The learned Central Government Standing Counsel, appearing on behalf of the respondents, objected the contentions raised on behalf of the petitioner by stating that the petitioner is a habitual absentee and the punishment was imposed on five occasions during earlier period and therefore, he is not entitled for reinstatement into service.

5. That apart, during the pendency of the departmental disciplinary proceedings, again he remained unauthorisedly absent and



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another charge memo was issued and an Enquiry Officer was appointed, who in turn conducted an enquiry and by that time, the order of removal, which is impugned, was issued and thus the Authorities have not continued the subsequent departmental disciplinary proceedings.

6. A charge memo was issued with an allegation of overstayal with effect from 15.06.2013 without getting permission from the Competent Authorities. The petitioner submitted his explanation and not satisfied with the explanation, the Disciplinary Authority appointed an Enquiry Officer, who in turn conducted an enquiry. The petitioner partially participated in the enquiry proceedings. Thereafter, the Enquiry Officer conducted an ex parte enquiry and submitted his Final Report held that the charge of overstayal from the duty was proved. Based on the proved charges, the Disciplinary Authority imposed the punishment of removal from service. The petitioner submitted an appeal and the said appeal was subsequently disposed of by the Appellate Authority on 17.01.2014.



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7. The contention of the petitioner is that he was taking continuous treatment in various Hospitals for his mental ill-health and not able to join duty immediately and therefore the overstayal from reporting duty is not wilful. Thus the case of the writ petitioner is to be considered.

8. Perusal of the documents reveal that the petitioner overstayal on expiry of leave on several occasions and four minor and one major penalties were imposed on the petitioner. Therefore, the Authorities considering the previous conduct of the writ petitioner imposed the major penalty of removal from service.

9. That apart, the petitioner was facing yet another departmental disciplinary proceeding, which was not disposed of on account of the punishment of removal from service imposed on the petitioner by issuing the proceedings on 03.10.2013.

10. In the present case, the procedures as contemplated under the CISF Rules were followed. There is no violation of the principles of



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natural justice, since the opportunities as contemplated were afforded to the writ petitioner to defend his case.

11. The petitioner partially participated in the enquiry proceedings and thereafter, the Enquiry Officer proceeded further and conducted an ex parte enquiry and submitted his report based on the documents and evidences available on record. Thus there is no infirmity in the matter of conduct of enquiry proceedings into the charges framed against the writ petitioner. The charges were held proved based on the documents and evidences.

12. The allegation against the petitioner was that he overstayed from his leave and based on the records the said charges were held proved against the writ petitioner. Thus the charges were held proved based on the evidence and relating to the proportionality of the punishment, the Authorities Competent have considered the previous conduct of the writ petitioner, which cannot be found fault with.



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13. Regarding the overstayed from leave, if it is on first occasion, then the Authorities have normally take a lenient view. The overstayed from leave if explained satisfactorily and found to be genuine, then the Authorities are bound to take lenient view in the matter of imposing penalty. If the unauthorised absent if became habitual, then they have to take serious note of the factors and accordingly impose the punishment. If an employee become a habitual absentee, the same would affect the discipline and morale of the Force like CISF and therefore, there cannot be any compromise in the matter of maintenance of high discipline in the Force.

14. In the present case, the petitioner earned punishment on five previous occasions for his unauthorised absence. Out of five departmental disciplinary proceedings, in four departmental disciplinary proceedings minor punishments were imposed and one major penalty of reduction of pay was imposed only during the sixth occasion. The Authorities have imposed the major punishment of removal from service and even during the pendency of the departmental disciplinary proceedings, the petitioner



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remained and for the said misconduct, the departmental disciplinary proceedings were initiated, which were not proceeded with on account of the punishment of removal from service imposed on the petitioner in proceedings dated 03.10.2013.

15. This being the factum, this Court do not find any disproportionality or perversity in the matter of quantum of punishment imposed on the petitioner. Thus the petitioner has not established any acceptable ground for the purpose of granting the relief, as such, sought for in the present writ petition.

16. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

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Index : Yes/No.

Internet : Yes/No.

Speaking Order/Non-Speaking Order.

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S.M.SUBRAMANIAM, J.

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