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WP No.10851 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-07-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

**WP No.10851 of 2014
And
MP Nos.1 and 2 of 2014
And
WMP No.22331 of 2016**

Barneswar Rai

..

Petitioner

VS.

1.Commandant,
Central Industrial Security Force (CISF),
(Disciplinary Authority),
Department of Atomic Energy (DAE),
Ministry of Home Affairs,
Kalpakkam – 603 102,
Kancheepuram District,
Tamil Nadu.

2.Deputy Inspector General,
(Appellate Authority),
CISF., DAE., Zonal Head Quarters,
NFC Complex,
ECIL P.O.,
Hyderabad.



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3.The Inspector General,
(Revisional Authority),
CISF Western Sector,
Kharghar, Navi Mumbai,
Pincode – 410 210.

4.Union of India,
Represented by its Home Secretary,
Ministry of Home Affairs,
North Block,
New Delhi – 110 001. ..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, after calling for the concerned records relating to the order of Compulsory Retirement bearing Ref.No.V-15014/DAE (K) Major-2/BMR/Disc/2012/1347 dated 03.04.2012 read with final amendment order Ref.No.V-15014/DAE (:K)/maj.2/BMR/Disc/2012/1368 dated 03.04.2012 issued by the first respondent as confirmed by the second respondent by order dated 31.07.2012 Ref.No.V-15017/A-08/L & R/DAE/2012/4369 read with order of the third respondent dated 26.12.2012 bearing Ref.No.15012/07/12 – 10910 and to quash the same.

For Petitioner : Mr.S.Satish Kumar

For Respondents : Mr.K.Venkatesh Swamy Babu,
Senior Central Government Standing
Counsel.



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ORDER

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The punishment of compulsory retirement, affirmed by the Appellate Authority and the Revisional Authority, is under challenge in the present writ petition.

2. The writ petitioner joined as Head Constable/Driver in Central Industrial Security Force (CISF) on 20.05.1989. He was promoted as Assistant Sub Inspector and posted at Department of Atomic Energy at Kalpakkam, Tamil Nadu. During the year 1991, when the writ petitioner was a bachelor, he nominated his brother's wife Smt.Kalawati Devi and her two sons, namely, Radhakrishna Rai and Jagnarayan Rai as his nominees to receive his terminal benefits in the event of his death.

3. In March 2002, the petitioner married a widow namely Smt.Gayatri Devi, who was a Cook/Constable in the Central Industrial Security Force (CISF). A son born out of the wedlock, namely, Pawan Kumar Rai. In the year 2004, the petitioner gave a fresh nomination, nominating Smt.Gayatri Devi as his wife and his son Pawan Kumar Rai.



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Thus the earlier nomination of the writ petitioner stands cancelled or superseded.

4. The respondents issued a charge sheet dated 05.11.2011 containing two charges. The first article of charge against the writ petitioner was that during the lifetime of his wife Smt.Kalawati Devi, the petitioner married another lady, namely Smt.Gayatri Devi, which is in violation of the Rule 21(2) of the Central Civil Services Conduct Rules, 1964. The second charge is that the petitioner had given a wrong and contradictory information on 28.06.2002 while making changes in the Nomination Form already furnished by him on 14.12.1991.

5. The Nomination Form submitted by the writ petitioner on 14.12.1991 reveals that the name of the wife of the writ petitioner has been mentioned as Smt.Kalawati Devi. Therefore, the Department for all purposes treated the said Smt.Kalawati Devi as his wife from the date of nomination. However, during the year 2004, the petitioner revised his nomination by stating that he married Smt.Gayatri Devi. Thus, the



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Department drew an inference and framed the charges.

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6. The petitioner submitted his explanations, denying the charges, by stating that Smt.Kalawati Devi is his brother's wife and mistakenly he has mentioned her name and her children in the first nomination along with the name of his parents. The petitioner had no intention to furnish false information and in order to ensure that the service benefits in the event of his death is to be settled, he has mentioned the name of his brother's wife Smt.Kalawati Devi and therefore, it was a mistaken entry and accordingly requested for exoneration from the charges.

7. The Disciplinary Authority not satisfied with the explanations, appointed an Enquiry Officer, who conducted an enquiry. The writ petitioner participated in the process of enquiry and defended his case. The Enquiry Officer made a finding that the first charge is held not proved and the second charge is held proved. Based on the second charge, the Disciplinary Authority imposed the punishment of compulsory retirement, which was confirmed by the Appellate Authority and the Revisional



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Authority.

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8. The learned counsel for the petitioner made a submission that as far as the first charge is concerned, the Department could not prove that the said Smt.Kalawati Devi is the first wife of the writ petitioner and he married Smt.Gayatri Devi as his second wife. However, the petitioner could establish that the said Smt.Kalawati Devi is his brother's wife and therefore, the Enquiry Officer formed an opinion and made a finding that the first charge is held not proved. Regarding the second charge, it is consequential to the first charge and therefore, imposition of the major penalty of compulsory retirement is excessive and therefore, the orders impugned are liable to be set aside.

9. The learned Senior Central Government Standing Counsel, appearing on behalf of the respondents, objected the said contentions raised on behalf of the writ petitioner by stating that the petitioner knowingly furnished the nomination. He has clearly stated that the said Smt.Kalawati Devi as his wife. During the year 2004, he has revised the nomination and



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under those circumstances, the Disciplinary Authority framed the charges on the ground that the petitioner entered into the contract for second marriage during the lifetime of the spouse.

10. In view of the fact that there is no incriminating evidence to establish the charges, the Enquiry Officer formed an opinion that the first charge is not held proved. However, the second charge is held proved and the writ petitioner has furnished wrong information with reference to the family particulars in his Nomination Form and therefore, there is no infirmity as such in respect of the penalty of compulsory retirement. Thus the writ petition is to be rejected.

11. No doubt, there was a reason for framing of the charges. The Authorities Competent had a reason to believe that the said Smt.Kalawati Devi is the wife of the writ petitioner. Only after framing the charges, the petitioner submitted his explanations by stating that the said Smt.Kalawati Devi is his brother's wife. However, an enquiry was conducted. The writ petitioner participated in the process of enquiry and



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could establish that the said Smt.Kalawati Devi is his brother's wife.

Consequently, the Enquiry Officer made a finding that the first charge is not proved against the writ petitioner.

12. When the first charge regarding the alleged second marriage has not been established, the second charge, which is consequential, cannot be viewed seriously. Though the contradictory statement furnished by the writ petitioner is proved with reference to the second charge, the major penalty of compulsory retirement is no doubt excessive and not in proportionate with the gravity of the proved charges.

13. When the main allegation of contracting a second marriage has not been established, there is no reason to impose the major penalty of compulsory retirement for the allegation of contradictory statement, more-so, when the allegations in the second charge are interconnected. Once the contracting second marriage has not been established as per the first charge, the contradictory statements, though proved, cannot be construed as grave, warranting major penalty of compulsory retirement. Thus, this Court is of



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the considered opinion that the punishment of compulsory retirement is disproportionate to the gravity of the proved allegations against the writ petitioner. Therefore, interference of this Court is certainly warranted.

14. The Disciplinary Authority has followed the procedures as contemplated under the Central Industrial Security Force Act and the Rules, the enquiry was conducted and the writ petitioner had participated in the process of enquiry by availing the opportunities provided to him. The copy of the enquiry report was furnished to the delinquent official and there is no infirmity in respect of the process of enquiry conducted by the Authorities.

15. The Constitutional Courts have held that the punishments imposed must be in proportionate with the gravity of the allegations/proved charges and excess punishment is not desirable. The Authorities are empowered to impose punishments as per the Statute and the Rules in force. While exercising the powers of discretion in the matter of imposing penalty, the Authorities are expected to apply their mind and impose penalty, which must be in commensuration with the proved charges. Though there is no



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strict guidelines for imposing penalty, the application of mind is of paramount importance with reference to the allegations, which all are proved against the charged official.

16. In the present case, contracting for a second marriage has not been proved against the writ petitioner. The contradictory statements made by the writ petitioner alone is held proved. However, such contradictory statements are interrelated with the allegations of contracting for a second marriage. Under these circumstances, major penalty of compulsory retirement for the proved charges of contradictory statements, is undoubtedly excessive and thus the same liable to be set aside.

17. The Hon'ble Supreme Court of India, in the case of **Union of India and Others vs. P.Balasubrahmanyam [(2021) 5 Supreme Court Cases 662]** made an observation which reads as under:

“21. It is correct to say that judicial forums do not sit as an appellate authority to substitute their mind with the mind of the disciplinary authority insofar as the finding is concerned. However, disproportionality of punishment is a concept certainly



not unknown to service jurisprudence and has received consideration inter alia of this Court. This is what the Tribunal proposed to do. We may examine the finding of the Tribunal on the issue of disproportionality of punishment and are in complete agreement with the view that the punishment of compulsory retirement was completely disproportionate and harsh, keeping in mind the finding arrived at by the disciplinary authority. It, thus, seems to appear that the charges originally levelled may have persuaded the authority concerned to impose punishment; losing sight of the fact that the allegations qua bribery had not been found against the respondent.

22. The question is whether the Tribunal proceeded correctly in passing the final direction to impose appropriate minor penalty. The Tribunal itself did not impose the punishment but left it to the authority concerned (for appropriate course of action). It was of the view that considering the findings of procedural lapses against the respondent, the appropriate punishment could only be a minor penalty and not a major penalty. With this again, we are in agreement with the course of action adopted. The nature of charges found against the respondent can hardly be one to call for a major penalty, keeping in mind that there was no bribery charge. Anyone can make mistakes. The consequences of mistakes should not be unduly harsh. We are, thus, of the view that the direction of the Tribunal is what is liable to be sustained.”



18. The Hon'ble Supreme Court of India, in the case of **Union**

of India and Others vs. Managobinda Samantaray [2022 LiveLaw (SC)

244] also made an observation which reads as follows:

“In the present case, the procedure requiring issue of show-cause notice and compliance with the principles of natural justice is made. Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved. Such discretionary power is exposed to judicial interference if exercised in a manner which is grossly disproportionate to the fault, as the constitutional courts while exercising the power of judicial review do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice. The decision are also disturbed when it is found to be ailing with perversity. On the question of quantum of punishment, the court exercising the power of judicial review can examine whether the authority has been a reasonable employer and has taken into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and excluded irrelevant matters. In the context of quantum of punishment these aspects are examined to consider whether there is any error in decision making process. On merits of the quantum of punishment imposed, the courts would not interfere unless the



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exercise of discretion in awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate.”

19. In view of the facts and circumstances, this Court is of the considered opinion that the Authorities shall impose anyone of the minor penalties for the proved charges under Rule 34 of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as the 'CISF Rules, 2001', in short).

20. It is brought to the notice of this Court that the writ petitioner had already reached the age of superannuation during the year 2020.

21. This being the factum established, the impugned orders passed by the first respondent in Ref.No.V-15014/DAE (K) Major – 2/BMR/Disc/2012/1347 and Ref.No.V-15014/DAE (:K)/maj.2/ BMR/ Disc/ 2012/1368 respectively dated 03.04.2012 and 03.04.2012, the appellate order passed by the second respondent in Ref.No.V-15017/A-08/L & R/DAE/2012/4369 dated 31.07.2012 and the revisional order passed by the



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third respondent in Ref.No.15012/07/12 – 10910 dated 26.12.2012, are quashed.

22. The writ petitioner was imposed with the penalty of order of compulsory retirement and all the benefits were already settled. In view of the fact that the petitioner has not served during the intervening period from the date of punishment till the date of retirement, the principle of 'No Work No Pay' would be applicable and therefore, the petitioner is not entitled for any back wages.

23. The respondents are at liberty to impose anyone of the minor penalties contemplated under Rule 34 of the CISF Rules, 2001 for the proved second charge. Thus, the respondents are directed to issue appropriate orders, allowing the writ petitioner to retire from service from the date on which he reached the age of superannuation with all service and consequential service benefits except the back wages.



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24. With the abovesaid directions, the writ petition stands allowed in part. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No.
Internet : Yes/No.
Speaking Order/Non-Speaking Order.
Svn

To

1.Commandant,
Central Industrial Security Force (CISF),
(Disciplinary Authority),
Department of Atomic Energy (DAE),
Ministry of Home Affairs,
Kalpakkam – 603 102,
Kancheepuram District,
Tamil Nadu.

2.Deputy Inspector General,
(Appellate Authority),
CISF., DAE., Zonal Head Quarters,
NFC Complex,
ECIL P.O.,
Hyderabad.

S.M.SUBRAMANIAM, J.

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3.The Inspector General,
(Revisional Authority),
CISF Western Sector,
Kharghar, Navi Mumbai,
Pincode – 410 210.

4.The Home Secretary,
Union of India,
Ministry of Home Affairs,
North Block,
New Delhi – 110 001.

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