

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22089 of 2014

D.Mari Gowda

...Petitioner

Vs

- 1.The Union of India,
Rep. by its Secretary to Government,
Ministry of Home Affairs,
North Block, Parliamentary House,
New Delhi.
- 2.The Director General,
CISF Head Quarters,
No.13, CGO Complex,
Lodhi Road,
New Delhi - 110 003.
- 3.The Inspector General of Police,
Central Industrial Security Force,
South Sector Head Quarters,
Chennai - 600 009.
- 4.The Deputy Inspector General of Police,
Central Industrial Security Force,
Rajaji Bhavan, Besant Nagar,
Chennai - 600 090.
- 5.The Group Commandant,
Central Industrial Security Force,
Group Head Quarters,
Kendriya Bhawan,
Cochin.
- 6.The Deputy Commandant,
Central Industrial Security Force Unit,
NMPT, Mangalore.

...Respondents

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 portion of the impugned order passed by the 3rd respondent in his order No.V-15014/L&R/SS/App/DMG/2014/114 dated 31.05.2014 confirming the

order of the 4th respondent in his order No.V-15015(1)/01 SMR/OMG/L&R(SZ)/14-1822 dated 10.03.2014 and enhancing the order of the 5th respondent in his final order No.V-15014/DMG/MAJ/NMPT/GHC/2013/4807 dated 12/13.09.2013 and quash the same and to direct the respondents to pay all monetary benefits.

For Petitioner : Mr.R.Thiyagarajan

For Respondents: Mr.J.Madanagopal Rao, SCGSC

ORDER

The order of penalty, reducing the pay by two stages for a period of 3 years, with further direction that during the period of reduction, the petitioner will not earn any increment and on expiry of this period, the reduction will have the effect of postponing his future increment of pay, is under challenge in the present writ petition.

2. The writ petitioner joined as a Constable in the Central Industrial Security Force in the year 1997. While he was serving under the control of the sixth respondent at Central Industrial Security Force Unit, NMPT, Mangalore, a charge memo under Rule 36 of the Central Industrial Security Force Rules, 2001, was issued with the following Article of Charge:-

ARTICLE OF CHARGE

"That No.974700052 CT/GD D.Mari Gowda of CISF Unit NMPT-Mangalore detailed for 'A' shift duty on 01.06.2013 from 0500 hrs to 1300 hrs at K.K. gate (In) entry of New Mangalore Port Trust, Mangalore was found in possession of an illegal money of Rs.275/- (Rupees two hundred and seventy five only) in different denominations which was handed over to HC/GD E.Kuppu Samy deployed at K.K. Gate (Out) by leaving his duty post K.K. Gate (In) Entry, New Mangalore Port Trust and seized by Inspector Ravindra. J, Coy Commander/RI while on routine checking carried out at K.K. Gate at about 1105 hrs on 01.06.2013. The above act on the part of No.974700052 CT/GD D.Mari Gowda amounts to gross indiscipline, gross misconduct, violation of lawful orders and unbecoming of a member of a disciplined Force like CISF".

3. The petitioner submitted his written statement of defence and not satisfied with the same, the disciplinary authority ordered for an enquiry. The Enquiry Officer conducted an enquiry by affording opportunity to the delinquent official

and submitted his final report, holding that the charge against the delinquent official was held proved. The report of the Enquiry Officer was accepted by the disciplinary authority, who in turn imposed the punishment of 'reduction of pay by two stages for a period of 3 years with cumulative effect'. The petitioner preferred an appeal and the said appeal was also rejected. Thus, the petitioner is constrained to move this writ petition.

4. The learned counsel for the petitioner mainly contended that the illegal possession of any excess amount has not been established during the course of enquiry. The department was not able to prove that the petitioner was possessing a sum of Rs.275/-, while he was on duty. However, the department has failed to establish that such an excess amount was by way of an illegal gratification or otherwise. Therefore, the punishment imposed is excess and it is liable to set aside.

5. The learned Senior Central Government Standing Counsel appearing for the respondents objected the said contention by stating that it is a misconduct which is established. As per the regulations, a CISF Personnel cannot possess excess amount during duty hours. In the present case, during surprise inspection by the Supervising authority, the petitioner was in possession of a sum of Rs.275/- and therefore, the departmental disciplinary proceedings were initiated, which was proceeded with and concluded by affording an opportunity to the charged official. Thus, there is no infirmity and hence, the writ petition is to be rejected.

6. Questions arise whether the procedures as contemplated are followed by the authorities competent or not and whether the punishment imposed is in proportionate with the gravity of the proven charges or not.

7. It is an admitted fact that the CISF Personnel, while on duty, cannot possess excess money, as per the rules which were in force. During the relevant point of time, a CISF Personnel is entitled to possess a sum of Rs.20/- while performing his duty. A surprise inspection was conducted and the authorities found that the petitioner was in possession of a sum of Rs.275/- when he was on duty and consequently, a charge memo was issued. The petitioner defended his case and participated in the enquiry. The Enquiry Officer held the charges to be proved and based on the proved charges, the punishment was imposed.

8. This Court is of the considered opinion that there was no procedural irregularity or otherwise in conducting the departmental disciplinary proceedings. The procedures contemplated were followed by the authorities by affording

opportunity to the petitioner, who in turn availed the said opportunity and defended his case.

9. However, the question arises whether the major penalty of reduction of pay by two stages for a period of 3 years 'with cumulative effect' is harsh and excess or not. In this regard, this Court is of the opinion that no doubt, the possession of excess amount of Rs.275/- was proved before the Enquiry Officer. However, the disciplinary authority failed to prove that the said excess amount was earned by way of illegal gratification or otherwise. There is a probability that by mistake the official would have possessed a sum of Rs.275/- while reporting for duty. Such possible mistakes are also to be taken into consideration in this nature of charges. When the respondents are unable to prove that the excess amount possessed by the delinquent official was an illegal money, there is no reason to impose a major penalty. Mere possession of excess amount over and above Rs.20/- is to be considered as minor misconduct and therefore, imposing a major penalty for such a minor misconduct is to be construed as disproportionate to the gravity of charges. Thus, this Court is inclined to consider the case of the writ petitioner.

10. In view of the facts and circumstances of the case, the impugned order passed by the third respondent dated 31.05.2014, the order passed by the fourth respondent dated 10.03.2014 and the order of the fifth respondent dated 12/13.09.2013, are quashed. The respondents are directed to impose any one of the minor penalty, as contemplated under Rule 34 of the Central Industrial Security Force Rules. The said exercise is directed to be completed within a period of 12 weeks from the date of receipt of a copy of this order. After imposing the minor penalty, the excess amount, if any recovered from the petitioner, is directed to be repaid to the petitioner without any further delay.

11. With the above directions, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

hvk

To

- 1.The Secretary to Government,
Union of India,
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+1cc to Mr.R.Thiyagarajan, Advocate, S.R.No.41753

W.P.No.22089 of 2014

SR(CO)
SB(22/07/2022)