

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.NO.12486 OF 2014

K.T. Rao

... Petitioner

Vs.

1. The Union of India,
Rep. by its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. The Director General
The Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi - 110 003.
3. The Inspector General
The Central Industrial Security Force,
South Sector, Near War Memorial,
Chennai - 600 009.
4. The Deputy Inspector General
The Central Industrial Security Force,
South Zone, Rajaji Bhawan,
Besant Nagar, Chennai - 600 090.
5. The Group Commandant
The Central Industrial Security Force,
Group Head Quarters,
Hyderabad.
6. The Commandant
The Central Industrial Security Force,
FACT-Udyogamandal.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 3rd respondent dated 06.02.2014 in his order No. V-

15014/L&R/SS/Rev/KTR/2014-1402 confirming the order of the 4th respondent dated 04.11.2013 in his Order No.11014/43/Disc/SZ/2013/8165 confirming the order of the 5th respondent dated 26.07.2013 in his final order No.V-15014 Group Commandant/Maj(06/13)/KTR-STPP(S)/Ad.IV/13/1136 and quash the same and to direct the respondents to pay the benefits including the MACP Scheme to the petitioner.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Ms.G.Baskaran
Central Government Standing Counsel

ORDER

The order of punishment of reduction of pay by one increment in Pay Band-1 for a period of one year with immediate effect with further direction that during the period of reduction he will not earn increments of pay and on expiry of this period, the reduction will have the effect of postponing his future increments of pay, awarded by Group Commandant, Central Industrial Security Force (CISF) and confirmed by the Appellate Authority is under challenge in the present writ petition.

2. The writ petitioner was posted at CD Sector, CISF Unit FACT-Udyogamandal. The 5th respondent had issued a charge memorandum under Rule 37 of the Central Industrial Security Force Rules, 2001 ['CISF Rules'] vide letter dated 01.04.2012 and the allegation against the petitioner are as under:

"ARTICLE OF CHARGE-1

'Gross indiscipline, negligence of duty and misconduct on the part of No.922291786 Constable K.T. Rao of CISF Unit FACT-Udyogamandal CD Sector while performing 'C' shift duty 2100 hrs on 25.03.2012 to 0600 hrs on 26.03.2012 at Boat Basin with Arms and Ammunition, found by SI/Exe Amardeep Singh Coy Commander, who carried out checking along with Const. M. Natarajan (CIW) at about 0150 AM on 26.03.2012 that Const. K.T. Rao was deep sleep with sound, sitting on a chair, keeping both the legs on another chair, head of down right side and his issued weapon was left in between the legs but both hands off from the weapon.' Hence the charge"

3. The petitioner submitted his explanation to the charge and not satisfied with the explanation, an Enquiry Officer was appointed, who in turn, conducted an enquiry and submitted his

report. Based on the enquiry report, the disciplinary authority issued a Show Cause Notice, calling further objections from the writ petitioner and thereafter, imposed the punishment of withholding of one increment for a period of two years which will not have the effect of postponing his future increments of pay.

4. The appeal filed by the writ petitioner was rejected by the Appellate Authority. The petitioner preferred a Revision Petition mainly on the ground that he requested the Disciplinary Authority on 05.04.2012 to provide Photostat copies of additional documents, which all are relevant for the purpose of defending his case. But the Disciplinary Authority did not considered the request of the petitioner and directed him to inspect the documents vide letter dated 06.04.2012. He submitted another application on 08.04.2012, requesting the Disciplinary Authority, stating that he has found it difficult to read and understand the documents and further, requested him to provide Photostat copies of the additional documents. However, the Disciplinary Authority has not given any reply to the request and proceeded with the enquiry and therefore, the punishment imposed is in violation of the principles of natural justice. However, the Revisional Authority also not considered the grounds and passed a cryptic order and thus, the order of punishment, the Appellate and Revision orders are to be set aside.

5. The learned counsel appearing on behalf of the writ petitioner mainly contended that the punishment is not in proportionate with the gravity of the allegations. The major punishment imposed by the Group Commandant in proceedings dated 26.07.2013, confirmed by the Appellate Authority and Revisional Authority are not in consonance with the principles as the major punishment imposed for certain lapses are in violation of the Rules itself.

6. The learned counsel for the petitioner further contended that the allegations or certain lapses or dereliction on duty and for such misconducts, minor punishment alone are to be imposed under Rule 8(ii) of the Central Industrial Security Force Act, 1968 read with Rule 34 of the the Central Industrial Security Force Rules, 2001.

7. The learned Central Government Standing Counsel appearing on behalf of the respondents objected the said contentions by stating that the proved charges are grave in nature. The allegation against the writ petitioner was gross indiscipline, negligence of duty and misconduct and an unbecoming act on the part of the member of an Armed Forces. The petitioner, while serving at CISF Unit FACT, Udyogamandal was

detailed in 'C' shift duty from 2100 hours on 25.03.2012 to 0600 hours on 26.03.2012 for patrolling duty at PAP/SAP/Boat Basin of FACT Udyogamandal along with Arms and Ammunitions was found that the petitioner was in deep sleep sitting on a chair with snoring sound, keeping his both the legs on another chair and leaving the issued weapon between his legs with both the hands off the weapon. Thus, the said charge proved before the Enquiry Officer is serious in nature and therefore, the punishment of reduction of pay by one increment in Pay Band-1 for a period of one year with immediate effect with further direction that during the period of reduction he will not earn increments of pay and on expiry of this period, the reduction will have the effect of postponing his future increments of pay may not be considered as disproportionate.

8. When the petitioner is serving in Armed Forces and posted to Guard and was deeply slept with snoring sound, it is to be considered as grave misconduct and thus, the writ petition is to be rejected.

9. This Court is of an opinion that Section 8(ii) of the Central Industrial Security Force Act, 1968 enumerates that "award any one or more of the following punishments to any of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof." Rule 34 of the Central Industrial Security Force Rules, 2001 deals with the nature of penalties to be imposed, major and minor penalties are contemplated. If at all an allegation of discharging duty in a careless or negligent manner is established, Section 8(ii) contemplates certain punishments, which reads as under:

- "8. (i).....
- (ii)
- (a) fine to any amount not exceeding seven days' pay or reduction in pay scale;
- (b) drill, extra guard, fatigue or other duty;
- (c) removal from any office of distinction or deprivation of any special emolument;
- [(d) withholding of increment of pay with or without cumulative effect;
- (e) withholding of promotions;
- (f) censure.]"

10. Question arises, whether the allegations of gross indiscipline, negligence of duty, misconduct and an unbecoming act on the part of the member of Armed Force are construed as discharging duty in a careless or negligence manner or not?

11. This Court is of the considered opinion that the discharging of duty in a careless and negligent manner cannot be compared with the gross indiscipline, negligence of duty, misconduct and an unbecoming act. The prime duty of the Armed Forces are to Guard. When the writ petitioner was posted for patrolling duty along with Arms and Ammunitions, he was found deep sleep sitting on a chair with snoring sound, keeping his both legs on another chair and leaving the issued weapon between his legs with both the hands off the issued weapon and the said allegations are held proved. Thus, there is no reason to form an opinion that such performance of duty by the writ petitioner is to be construed merely as carelessness or negligent. Such misconduct as far as the Armed Forces are concerned, the proved allegations are to be construed as serious misconduct as the failure in performing the duty by such Armed Personnel may lead to disastrous consequences.

12. Thus, the very contention of the writ petitioner that it is a mere dereliction of duty, deserves no merit consideration. The nature of misconduct proved by the Disciplinary Authority is undoubtedly grave in nature and the petitioner acted unbecoming of an Armed Force Personnel, while performing the patrolling duty and this Court do not find any infirmity or perversity in respect of the quantum of punishment imposed by the Disciplinary Authority, which was confirmed by the Appellate Authority and the Revisional Authority.

13. Thus, this Court has no hesitation in forming an opinion that there is no infirmity or perversity in the matter of deciding the quantum of punishment and accordingly, the Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jeni/Kak

To

1. The Secretary,
The Union of India,
Ministry of Home Affairs,
North Block, New Delhi.

2. The Director General
The Central Industrial Security Force,
CGO Complex, Lodhi Road,
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3. The Inspector General
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South Sector, Near War Memorial,
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5. The Group Commandant
The Central Industrial Security Force,
Group Head Quarters,
Hyderabad.
6. The Commandant
The Central Industrial Security Force,
FACT-Udyogamandal.

+1cc to Ms.G.Baskaran, Advocate, S.R.No.38868

+1cc to Mr.A.S.Mujibur Rahman, Advocate, S.R.No.39047

W.P.No.12486 of 2014

BR(CO)
PM/14/07/2022