

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-06-2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.23287 OF 2014

CT/GD.Siddappa Shilawant,
No.822312480,
CISF 10th Reserve Battallion,
Arakkonam,
Vellore District.

... Petitioner

.Vs.

1. The Union of India,
Represented by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Diretor General,
Central Industrial Security Force,
Head Quarters, APS,
CGO Complex,
Lodhi Road,
New Delhi.
3. The Inspector General,
Central Industrial Security Force,
South Sector,
Chennai Port Trust Complex,
New War Memorial,
Chennai - 600 009.
4. The Deputy Inspector General,
Central Industrial Security Force,
DOS, Head Quarters,
Bangalore.
5. The Commandant,
Central Industrial Security Force,
ISAC, Bangalore.

... Respondents

PRAYER:-

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 fourth respondent dated 13.06.2012 in his order No.V-11014/CISF/DOS/QM-Appeal-SS/2012/1650 confirming the order of the fifth respondent in his Final Order No.V-15014/CISF/ISAC (B)/Disp/MAJ-3/SS/2012/1028 dated 31.03.2012 and quash the same and to direct the respondents to grant the petitioner all monetary benefits and MACP from the date of eligibility.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondent : Mr.A.Kumara Guru
Central Government
Standing Counsel

O R D E R

The order of punishment of reduction of pay by one stage from Rs.10,510/- to Rs.10,190/- in the pay band of Rs.5200-Rs.20,200 (Grade Pay Rs.2,800) for a period of one year with cumulative effect awarded by the Disciplinary Authority, which was confirmed by the Appellate Authority and Revisional Authority, are under challenge in the present writ petition.

2. The writ petitioner joined as Constable on 15.10.1982 in the Central Industrial Security Force. The petitioner was transferred from CISF ISRO Bangalore to 10th R.B.Arakkonam on 30.04.2012. The writ petitioner was charge sheeted under Rule 36 of the CISF Rules, 2001, vide the charge memorandum dated 25.10.2011 and the charges against the writ petitioner read as under:-

"ARTICLE OF CHARGE - I

That No.822312480 HC/GD S.Siddappa of CISF Unit ISAC-Bangalore was detailed for Night shift duty from 1700 hrs on 06.10.2011 to 0500 hrs on 07.10.2011 at Gate No.01, ISAC-Bangalore along with Arms and Ammunitions. At about 0515 hrs on 07.10.2011 Shift In-charge SI/Exe Rajiv Pawar instructed the duty personnel to remove the Magazine first, count the Ammunitions and then deposit the Arms in the Kote. But the enrolled member of the Force deliberately failed to comply with the instruction of Shift In-charge, SI/Exe Rajiv Pawar and cleaned his issued Rifle with pull-

through without removing the loaded magazine. Thus, the act committed by the enrolled member of the Force amounts to gross indiscipline, negligence, disobeying of lawful orders and also failure to comply with the standing instructions/procedure while depositing the Arms and Ammunitions at Unit Kote of CISF Unit ISAC-Bangalore. Hence, the charge.

ARTICLE OF CHARGE - II

That No.822312480 HC/GD S.Siddappa of CISF Unit ISAC-Bangalore was detailed for Night shift duty from 1700 hrs on 06.10.2011 to 0500 hrs on 07.10.2011 at Gate No.01, ISAC-Bangalore along with Arms and Ammunitions. After completion of duty, the enrolled member of the Force while depositing the Arms and Ammunitions issued to him at Unit Kote, failed to comply with the standing instructions/procedure in handing over of Arms, thereby caused accidental firing of 02 rounds from his Rifle AK-47, bearing Butt No.15, Regd. No.NH-43-6468 on 07.10.2011 at 0520 hrs, in front of Quarter Guard Building, CISF Unit ISAC-Bangalore. Thus, the act committed by the enrolled member of the Force amounts to gross negligence of duty and unbecoming of a member of disciplined Force like the CISF. Hence, the charge."

ARTICLE OF CHARGE - III

That No.822312480 HC/GD S.Siddappa of CISF Unit ISAC-Bangalore while depositing the Arms and Ammunitions issued to him at Kote on 07.10.2011 at about 0520 hrs accidentally fired 02 rounds from his rifle AK-47 bearing Butt No.15, Regd. No.NH-43-6468 causing bullet hit injury on the fourth left foot finger tip of No.104384776 Constable/GD Satender Singh Gurjar, who is under attachment duty at CISF Unit ISAC (B) from CISF Unit MCF-Hassan. Thus, the act committed by the enrolled member of the Force amounts to gross negligence, indiscipline and mishandling of Arms. Hence, the charge."

3. The petitioner submitted his explanations to the allegations and not satisfied with the explanations, the Disciplinary Authority appointed an Enquiry Officer, who in turn conducted an enquiry. The writ petitioner admittedly participated in the process of examination by availing the opportunities provided to him under the Rules. The Enquiry

Officer submitted his report holding that all the charges held proved against the delinquent official and accepting the report of the Enquiry Officer, the Disciplinary Authority issued show cause notice communicating the copy of the enquiry report enabling the charged official to submit his further objections on the enquiry report. On receipt of the objections, the final order of punishment was passed imposing the penalty of reduction of pay of one stage for a period of one year with cumulative effect. The petitioner preferred an appeal and thereafter, the revision and both were rejected by the respective Authorities. Thus, the petitioner is constrained to move the present writ petition.

4. The learned counsel appearing on behalf of the writ petitioner mainly contended that certain additional documents sought for by the petitioner had not been furnished to him before the Enquiry Officer. Thus, the procedures followed are improper and an opportunity contemplated had not been granted in its real sense. Though the petitioner submitted an application furnishing all those documents, the said documents were not furnished to him. Thus, the petitioner is deprived of his opportunity to defend his case with reference to those documents, which were not furnished to him at the time of enquiry.

5. The learned counsel for the petitioner further contended that the allegations are disputed by the petitioner as certain witnesses were not examined. More specifically, the Inspector, who prepared the documents regarding the alleged incident, was not examined by the Presenting Officer of the Department before the Enquiry Officer. Therefore, the enquiry was not conducted in accordance with the procedures contemplated and the petitioner was deprived of cross-examining those witnesses, who all are also relevant for the purpose of defending his case. For all these reasons, the appellate order and the revisional order, are liable to be set aside.

6. 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 procedures contemplated under the Discipline and Appeal Rules were followed scrupulously by the Authorities. The petitioner has availed the opportunities. After appointment of Enquiry Officer and the Presenting Officer on 12.11.2011, preliminary hearing was held on 21.11.2011, in which the petitioner pleaded not guilty of the articles of charges of 1, 2 and 3 levelled against the writ petitioner.

7. The writ petitioner did not raise any objections over appointment of Enquiry Officer during the preliminary hearing.

The petitioner was given an opportunity by the Enquiry Officer to avail his defence assistant. But the petitioner declined to take any assistant. During the preliminary hearing, the petitioner was informed about the requirements of some additional documents to defence his case, for which the petitioner replied that he will apply for the same in writing with details. The departmental enquiry was conducted in a just and fair manner and as per the procedures contemplated. During the course of enquiry, the petitioner was given ample opportunities to cross-examine the prosecution witnesses and the Court witnesses which he also availed and accepted himself in his affidavit. Therefore, the petitioner now turn around and make a complaint before the Enquiry Officer that he was not given sufficient opportunity to defend his case. The petitioner availed of all opportunities provided to him to examine and cross-examine the witnesses and perused the documents, which were relied upon by the Presenting Officer during the course of enquiry and thus, the present writ petition is to be rejected.

8. No doubt the charges against the writ petitioner are serious in nature. The writ petitioner handled the arms and ammunitions either in a careless manner or in an negligent manner. However, on account of the act of the writ petitioner, the other CISF personnel got injured. Thus, the department initiated the disciplinary proceedings and conducted an enquiry against the writ petitioner.

9. The Court, in exercise of judicial review, must restrict its review to determine whether the rules of natural justice have been complied with, the finding of misconduct is based on some evidence, statutory rules governing the conduct of the disciplinary enquiry have been observed, whether the findings of the Disciplinary Authorities suffer from perversity and the penalty is disproportionate to the proven misconduct. The above principles broadly laid down by the Constitutional Courts are to be followed while dealing with such disciplinary matters.

10. In the present case, the charge memorandum was issued containing three articles of charges. The petitioner submitted his explanations, Enquiry Officer was appointed, who in turn conducted an enquiry in the presence of the charged official by providing an opportunity to him to peruse the documents, examine and cross-examine the witnesses. The writ petitioner also availed of the opportunities provided to him. There is no serious complaint against the procedures followed by the Enquiry Officer in the affidavit even by the writ petitioner. Therefore, this Court is of the considered opinion that the procedures as contemplated are followed by the Disciplinary Authority and by the Enquiry Officer while conducting the domestic enquiry.

11. The charges are held proved against the petitioner. The proved charges are no doubt grave in nature. The petitioner was handling the arms and ammunitions in a casual manner which caused injury to the other CISF personnel standing nearby and the incident was witnessed by some other colleague and the Supervisory Authorities. Therefore, the documents were prepared and those documents were relied upon for the purpose of establishing the charges.

12. Perusal of the findings would reveal that there is no infirmity in respect of the procedures followed for the purpose of conducting an enquiry. The question arises whether the penalty imposed is disproportionate. In respect of the charges, in the present case, the penalty of reduction of pay by one stage for a period of one year with cumulative effect was imposed. The said punishment was admittedly confirmed by the Appellate Authority and the Revisional Authority.

13. This Court is of the considered opinion that the punishment imposed cannot be construed as shocking conscience of the Court nor it can be opined as disproportionate to the gravity of the proved charges.

14. This being the factum, this Court do not find any acceptable ground for the purpose of interfering with the quantum of punishment imposed against the writ petitioner.

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

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Secretary to Government,
Union of India,
Ministry of Home Affairs,
New Delhi.
2. The Diretor General,
Central Industrial Security Force,
Head Quarters, APS,
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DOS, Head Quarters,
Bangalore.
5. The Commandant,
Central Industrial Security Force,
ISAC, Bangalore.

+1cc to Mr.A.S.Mujibur Rahman, Advocate, S.R.No.40851

+1cc to Mr.A.Kumara Guru, Advocate, S.R.No.39755

W.P.NO.23287 OF 2014

SSD(CO)
PBS/19/07/2022