

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition No.14612 of 2014

P.R.Shylendra Kumar

... Petitioner

Vs.

1. The Union of India,
represented by its
Secretary to Government,
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,
Central Industrial Security Force,
Southern Sector, Head Quarters,
Chennai - 600 009.
4. The Deputy Inspector General,
Central Industrial Security Force,
DOS Head Quarters,
Antariksh Bhavan,
New Bel Road, Bangalore.
5. The Group Commandant,
Central Industrial Security Force,
Group Head Quarters,
Rajaji Bhavan, Besant Nagar,
Chennai - 600 090.
6. Deputy Commandant,
Central Industrial Security Force Unit,
ISAC, Bangalore.
7. The Assistant Commandant,
Central Industrial Security Force Unit,
ISAC, Bangalore.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the third respondent in his Order No.15014/L&R/SS/Rev/SKPR/2011-5476 dated 24.06.2011 confirming the order of the fourth respondent in his appellate order No.V-11014/CISF/DOS/L&R/Appeal/2011/948 dated 14.03.2011 confirming the order of the fifth respondent in his final order No.15014/CISF/ISAC/Disc/SKPR/10/6904 dated 23.12.2010 and quash the same and to direct the respondents to take the petitioner into the strength of CISF as Constable with all monetary benefits.

For Petitioners: Mr.A.S.Mujibur Rahman

For Respondent : Mr.A.Veeramani
Central Government Standing Counsel

O R D E R

The order of dismissal from service and the consequent appellate order confirming the punishment of dismissal from service are under challenge in the present writ petition.

2. The writ petitioner joined in the Central Industrial Security Force as constable on 02.08.1999. The petitioner was transferred to Bangalore during the year 2009. The petitioner states that he is the only son of his parents. Both his parents, during the relevant point of time, were aged and were infirm and were suffering from various ailments. The petitioner states that he had to look after his aged parents and therefore, he could not able to contact the higher authorities for seeking permission or for availing leave during the relevant point of time. The petitioner remained unauthorizedly absent and not reported for duty. Thus, disciplinary proceedings were initiated and a charge memo was issued framing three articles of charges, which read as under:

"ARTICLE OF CHARGE - I

CISF No.992200015 Constable Shylendra Kumar P.R. of CISF Unit ISAC Bangalore was granted 10 days E/L from 03.08.2009 to 12.08.2009 on the ground of "Father Serious/Admitted to Hospital". After completion of above leave, he was supposed to rejoin duty on 13.8.2009(FN), but he failed to do so and overstaying the leave wef. 13.08.2009 to till date. The above act

of unauthorized OSL on the part of No.992200015 Constable Shlender Kumar P.R. of CISF Unit ISAC Bangalore tantamount to gross misconduct, indiscipline and unbecoming of member of the disciplined force like CISF.

ARTICLE OF CHARGE - II

CISF No.992200015 Constable Shylendra Kumar P.R. Of CISF Unit ISAC Bangalore who was overstaying leave w.e.f. 13.08.2009 (FN) to till date deliberately failed to rejoin duty even after ending 07 call up letters at his home address by post (Reg. Ack.Due) and also acknowledging a call up letter dated 16.11.2009. The above act on the part of No.992200015 Constable Shylender Kumar P.R. of CISF Unit ISAC Bangalore tantamount to gross misconduct, indiscipline and disobeying the lawful orders of superiors.

ARTICLE OF CHARGE - III

CISF No.992200015 Constable Shylendra Kumar P.R. of CISF Unit ISAC Bangalore, is found to be habitual offender of OSL and AWL for which he has been punished on three occasions. The above act on the part of No.992200015 Constable Shylender Kumar P.R. of CISF Unit ISAC Bangalore tantamount to serious breach of discipline and unbecoming of a member of an Armed force the union like CISF."

3. The petitioner had not submitted any objections or explanations with reference to the charges. In other words, he had not denied the charges nor accepted the same. The disciplinary authority appointed an enquiry officer, who, in turn, conducted an enquiry. The petitioner was not participated in the process of enquiry and based on the records, the enquiry officer submitted a report and based on the said report, the disciplinary authority imposed punishment of dismissal from service. The order of the disciplinary authority was confirmed by the appellate authority also.

4. Learned counsel appearing for the petitioner mainly contended that the petitioner is the only son for his parents and he had to take care of his parents during the relevant point of time as they were suffering from various ailments. It is contended that the petitioner submitted a representation subsequently setting out all the facts and circumstances including his inability to attend duty during the relevant point of time. However, the authorities have not considered the said representation and imposed the major penalty of dismissal from

service. The writ petitioner has stated that based on the ex parte enquiry, the punishment of dismissal from service was imposed. Therefore, the order is to be set aside. It is contended that the punishment of dismissal from service is grossly disproportionate to the charges. The disciplinary authority failed to appreciate the fact that the petitioner is a holder of meritorious service while on duty.

5. Learned Central Government Standing Counsel objected the said contention by stating that the petitioner was not considered as a meritorious personnel and he suffered three punishments of similar charges of unauthorized absence. The petitioner was not punished at the first instance and during the earlier occasions, the charge was dealt in a lenient manner with a view to provide an opportunity to the petitioner to change his conduct. At the outset, it is contended that on three earlier occasions also, the petitioner remained unauthorizedly absent and the authorities had taken a lenient view and provided an opportunity to change his attitude and in spite of the said opportunity, the petitioner has not changed his conduct and therefore, with reference to the final charge memo containing three articles of charges and based on the enquiry report, a penalty of dismissal from service was imposed. Thus, there is no infirmity in respect of the punishment imposed on the petitioner.

6. This Court is of the considered opinion that the punishment imposed should be in commensuration with the gravity of the charges established against the delinquent officer. No doubt, the disciplinary authority is empowered to impose punishment based on facts and circumstances and the charges proved against the delinquent officer. While imposing punishment, the authorities are expected to consider all mitigating factors and its proportionality.

7. The question arises whether the punishment of dismissal from service is reasonable and tenable.

8. No doubt, the Courts have to consider the proportionality of the punishment imposed with reference to the charges proved. In other words, the punishment imposed must be in commensuration with the gravity of the charges proved against the delinquent officials.

9. Thus, there cannot be any straitjacket formula regarding the imposition of punishment. The competent disciplinary authority is empowered to decide the quantum of punishment to be imposed. But, if the punishment imposed is shockingly disproportionate or not in commensuration with the gravity of the proved charges, then the Courts would be interfering with the quantum of punishment, but not otherwise.

10. The power of judicial review under Article 226 of the Constitution of India is to scrutinize the processes, through which, a decision is taken by the competent authorities in consonance with the Statutes and Rules in force, but not the decision itself.

11. The Courts have broadly considered such disciplinary matters that:

(1) Fair and Transparent procedure in enquiry has been adopted

(2) The principles of natural justice are followed

(3) The intention of the Delinquent with reference to the charges established.

(4) The punishment is out of proportion to the misconduct committed.

(5) The nature of services and the position held by the delinquent employee.

(6) The period of absence cause / explanations for absence.

(7) Is the employee guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

(8) The disciplinary authority is required to prove the absence is willful.

12. No doubt, there may be certain personal circumstances of an employee that he himself is suffering from any ill-health, accident or hospitalization. In such circumstances, the authorities are bound to take lenient view in respect of the unauthorized absence. However, in all such cases, the intention of the employee must also be ascertained by the competent authority, while inflicting punishment.

13. In view of the facts and circumstances, this Court does not find the punishment of dismissal from service is disproportionate to the gravity of the charges proved against the petitioner. The petitioner suffered punishment of similar charges of unauthorised absence earlier on three occasions and the authorities had also given opportunity to change his attitude. However, the petitioner has not reported for duty for several months and therefore, the petitioner was treated as a habitual unauthorized absentee and in respect of the charges, finally, the punishment of dismissal from service was imposed. This being the factum, the petitioner has not established any acceptable reason for interfering with the quantum of punishment and further more, the procedure as contemplated under the discipline and appeal rules were duly followed by the authorities competent.

Thus, this writ petition is devoid of merits and accordingly, stands dismissed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Union of India,
Ministry of Home Affairs,
New Delhi.
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7. The Assistant Commandant,
Central Industrial Security Force Unit,
ISAC, Bangalore.

+1cc to Mr.A.S.Mujibur Rahman, Advocate, S.R.No.36339

+1cc to Mr.A.Veeramani, Advocate, S.R.No.35397

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EV(CO)
UMA(13/07/2022)