

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition No.14892 of 2014

Babu Prasad Didla

... 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,
South Zone, Rajaji Bhavan,
Besant Nagar, Chennai - 600 090.
5. The Senior Commandant,
CISF Unit Visakhapatnam Steel Plant,
Visakhapatnam, Andhra Pradesh.
6. The Assistant Commandant,
Preliminary Enquiry Officer,
CISF Unit VSP Visakhapatnam.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for all the records relating to the order passed by the third respondent in his Order No.V-15014/L&R/SS/Rev/BPD/2014-100 dated 18.04.2014 confirming the order of the fourth respondent in his appellate order No.V-11014/57Disc/SZ/2013/9478 dated 31.12.2013 confirming the order

of the fifth respondent in his final order No.V-15014/VSP/Disc/Maj-09/BPD/13/10489 dated 19.09.2013 and quash the same and to direct the respondents to take the petitioner into the strength of CISF as Head Constable with all monetary benefits.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.Venkataswamy Babu, SPC

O R D E R

The petitioner was holding the post of Head Constable in Central Industrial Security Force. He was appointed as CISF Constable on 04.01.1991. He was posted at Visakhapatnam Steel Plant in the month of July'2010. The petitioner was directed to perform the duties in duty deployment cell at CISF Unit Visakhapatnam Steel Plant, Vizag. During the relevant point of time, several lapses were traced out in guarding the Visakhapatnam Steel Plant and accordingly, actions were initiated against the CISF officials. A memorandum of charge was issued. The article of charge against the writ petitioner is as follows:

"That No.912331890 HC/GD Babu Prasad Didla, of CISF Unit VSP Visakhapatnam was detailed for operating the duty deployment package of the unit. From the duty deployment chart prepared by HC/GD Babu Prasad Didla on 07.01.2013, 09.01.2013, 10.01.2013, 22.01.2013, 23.01.2013, 26.01.2013 and 27.01.2013 it can be seen that HC/GD K.Balsubramaniam and HC/GD A Sundarm were detailed repeatedly on different occasions at New Vehicle In & Out Gate of B.C. Gate with malafide intention. Result of which the duo have committed theft of VSP materials on 07.01.2013/10.01.2013 and on 23.01.2013/24.01.2013 by giving entry to an unauthorized truck bearing No.AP 22 TA 4902 and also to hatch a plan for getting out the plant materials (Finished products) loaded in an unauthorized Truck bearing No.AP 04 W 6804 amounting to Rs.40,00,000/- which was later on caught by HC/GD/ K Preman. The above act on the part of No.912331890 HC/GD Babu Prasad Didla amounts to gross misconduct and connivance for malafide gains being a member of an Armed Force of the Union. Hence the charge."

2. The petitioner submitted an explanation denying the charges and not satisfied with the explanation, the disciplinary authority appointed an enquiry officer to conduct departmental

enquiry. The enquiry officer conducted an elaborate enquiry by examining witnesses and adjudicating the documents available on record. The petitioner participated in the process of enquiry and defended his case. The enquiry report dated 28.08.2013 reveals that the charge against the writ petitioner was proved. Based on the proved charges, the writ petitioner was imposed with punishment of removal from service. The appeal and revision filed by the writ petitioner were also rejected.

3. Learned counsel appearing for the petitioner mainly contended that the petitioner is not responsible for any such financial loss to the Visakhapatnam Steel Plant. The petitioner was not directly involved in the offence and therefore, the punishment of removal from service is inappropriate and to be set aside. It is contended that the petitioner is noway connected with the allegations and he was not on duty during the relevant point of time. Therefore, the punishment is liable to be set aside.

4. The other grounds raised by the petitioner with reference to the facts and circumstances were elaborately adjudicated by the enquiry officer with reference to the documents and based on the deposition of witnesses. The findings in the enquiry report and the facts established during the enquiry are as under:

"FACTS ESTABLISHED DURING ENQUIRY

As per the statements of PW's, DW's, and documentary evidence on record below mentioned facts are revealed.

1. As per the statement of PW-1 it is clear that on 27.01.13 at about 1900-1930 hrs a trailer was found by PW-1 standing at stock yard junction near over bridge in suspicious position in which neither driver nor Khalasi was available and the cabin of the truck was found locked. When checked, it was found loaded with VSP finished products TMT Bar, plain rod and other steel material without valid pass and papers. the Trailer Truck was having No.AP 04 W 6804 pasted temporarily in yellow plastic paper on front and backside. All concerned were found accordingly and on a close watch was kept on the vehicle, it was found that original Regn.No.of truck was AP 31 TD 1545. When PW-1 checked there was no entry of Vehicle in Vehicle entry Register kept at BC Gate New Vehicle In-Gate and at that time HC/GD K.Balasubramaniam at BC Gate New Vehicle in-Gate which is supported by PW-1 exhibit-1. When PW-1 reached BC Gate to check the Vehicle Entry Register HC/GD K.Balasubramaniam was shivering and seems to

be feared in guiltiness.

2. As per the statement of PW-1 a phone call was received by PW-1 to leave the of the trailer and get Rs.10,00,000/- otherwise be ready to be killed which cause the great suspicion in the case and exhibit (PW-1 exhibit-1). Since above Trailer was loaded with theft material of VSP an FIR was lodged by PW-1 in local Police vide FIR No.18/2013 dated 28.01.13. The fact is supported by PW-1 exhibit-1 and PW-2 & Exhibit-2.
3. As per statement of PW-2 on 27.01.13 at about 1540 hrs CW-1 informed PW-2 over telephone that a vehicle bearing Regn.No.AP 22 TA 4902 as entered to BC Gate New Vehicle In-Gate which was of some different type and entry of the vehicle was not available in the concerned register kept at BC Gate New Vehicle entry gate. PW-2 searched the vehicle and at about 1740 hrs on 27.01.13 he found the above vehicle at Fabrication yard near New PP Gate in abundant condition. The vehicle was locked and neither driver nor Khalasi was there which raised the suspicion. Above statement corroborates with the statement of CW-1 which focuses light on the fact that on 27.01.13 about 1525 hrs above Trailer gained entry in-side VSP Plant through BC Gate New Vehicle In-Gate where HC/GD K.Balasubramaniam detailed in "B" shift (1300-2100 hrs).
4. Truck bearing No.AP 31 TD 1545 and Truck No.AP 22 TA 4902 gained entry through BC Gate New Vehicle In-Gate without valid pass/paper and without making entry in the material entry register kept at concerned gate where HC/GD K.Balasubramaniam was deployed. Truck bearing No.AP 31 TD 1545 was found loaded with VSP finished product without valid authority/paper/pass. This fact is supported by statement of PW-1, PW-2, CW-1 and PW-1 exhibit-1, PW-1 exhibit-2.
5. Truck bearing No.AP 22 TA 4902 was found in abundant condition and without valid pass/entry authority inside VSP premises and an FIR was lodged in local Police Station vide FIR No.20/2013 dated 29.01.13. The fact is supported by the statement of PW-2, CW-1, CW-7 and exhibit CW-7 exhibit-1.
6. After Police Investigation HC/GD K.Balasubramaniam and HC/GD A.Sundaram were arrested by local Police.

It was also reported that the other civilian accused involved in the case had accepted before the police during interrogation that they had committed the theft of VSP material two times earlier i.e. on 07/01/13-10/01/13 & 23/01/13-24/01/13 before 26.01.2013 with the help of CISF HC/GD K.Balasubramaniam & HC/GD A.Sundaram and they had indulged in the theft of plant material for gaining illegal money from the personnel involved in the case.

7. In police investigation it was revealed that the HC/GD K.Balasubramaniam and HC/GD A.Sundaram were deployed at New Vehicle In and out gates of BC Gate on the above dates and they had connived with the accused in committing the theft of plant material two times earlier and on 26.01.2013 by allowing unauthorized entry of the vehicle Regn. AP 31 TD 1545 which was later on caught by HC/GD K.Preman on 27.01.2013 with loaded material of VSP amounting Rs.40,00,000/- near the stock yard junction.
8. On scrutiny of duty deployment charge for the month of January - 2013, it is also observed that both the above named personnel were deployed at these gates more than thrice during the month while no other HC/GD performed duty more than once in these gates. The fact is supported by below mentioned duty deployment:-

Dates	HC/GD A.Sundaram	HC/GD K.Balasubramaniam
07.01.2013	"C"Shift - New Vehicle Gate OUT at BC Gate (CW-6 exhibit-2)	"C"Shift - New Vehicle Gate IN at BC Gate (CW-6 exhibit -1)
09.01.2013	"C" Shift - CS-1 (CW-6 exhibit-2)	"C"Shift- New Vehicle Gate OUT at BC Gate (individual proceeded on TD)
10.01.2013	"B"Shift - New Vehicle Gate OUT at BC Gate (CW-6 Exhibit -2)	Temp.Duty

Dates	HC/GD A.Sundaram	HC/GD K.Balasubramaniam
22.01.2013	"A"Shift - New Vehicle IN Gate at BC Gate (but the individual was detailed at BCSY PTL) (CW-6 exhibit -2)	"C"Shift-FMD-II (CW-6 exhibit -1)
23.01.2013	"A"Shift - New Vehicle Gate IN at BC Gate (CW -6 exhibit -2)	"C"Shift New Vehicle Gate OUT at BC Gate (CW-6 Exhibit -1)
26.01.2013	"C"Shift - New Vehicle Gate IN at BC Gate (CW-6 exhibit-2)	"B" shift'- RMHP (CW-6 exhibit -1)
27.01.2013	"C" shift -New vehicle Gate OUT at BC Gate (CW-6 exhibit - 2)	"B" shift - New vehicle Gate IN at BC Gate (CW-6 exhibit -1)

9. As per statement of C.O. and exhibit (CW-5 exhibit -1) and as per office order No.E-42099/CISF/DD package/11-4707 dated 10.06.11. It is crystal clear that charged official was deployed in computerized duty deployment cell and he was entrusted with no other duties.
10. As per the statement of CW-2, CW-3 and CW-4 it is crystal clear that during duty deployment due care is being taken so that one person is not deployed continuously at the same post and frequent rotation of duty is being done. Special care is being given so that duty should not be repeated for last 03-days. Person detailed for computer duty deployment cell has the option to change the duty of any person and was in a position to deploy duty of a person as per his will and wish. Duty deployments of the personnel are being done manually at computerized duty deployment cell.
11. As per statement of CW -4 and CW-6 there is no interference of any one in computer duty deployment cell regarding deployment of any person at any specific place and it was the sole responsibility of personnel deployed in computerized duty deployment cell.

12. When charged official was detailed exclusively for duty deployment cell and he was entrusted with no other duties it was his prime duty to make the duty deployment judiciously and should not detailed a pair of personnel like HC/GD K.Balasubramaniam and HC/GD A.Sundaram repeatedly i.e. One at BC Gate New vehicle in-gate and other on BC Gate New Vehicle Out-Gate on the same day/shift or next day which facilitated the entry of un-authorized vehicle and exit of vehicle with theft material of VSP.
13. The duty deployment made by charge official as mentioned at SL.08 indicates that charged official CISF No.912331890 HC/GD Babu Prasad Didla connived with the above named Head Constables who were involved in the theft of VSP materials with other civilians. Had the duty deployment chart prepared by HC/GD Babu Prasad Didla with proper method, the theft of plant material and unauthorized entry of vehicles inside the plant premises could not have been possible. But he failed to do his bonafide official duty properly and systematically. As a result, HC/GD K.Balasubramaniam and HC/GD A.Sundaram committed theft of plant property 02(two) times on earlier occasion and this time they had succeeded to hatch a plan for getting and out the plant material (finished products) amounting to Rs.40,00,000/- in an unauthorized truck bearing No.AP 04 W 6804 the actual number is AP 31 TD 1545. By this way it is proved that the charged official was involved in the above said theft case.

FINDINGS

On going through the statements of PW's, statement of DW's exhibits produced during the court of enquiry and above discussion as well as material evidences held on record, it is found that the charges framed against CISF No.912331890 HC/GD Babu Prasad Didla of CISF Unit VSP Visakhapatnam vide Charge Memorandum No.V-15014/VSP/Disc/Major-09/BPD/13-4137 dated 27.04.2013 stand fully proved.''

5. The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure whether the decision taken by the competent authorities is in consonance with the statute and rules and decision in force. Therefore, the High Court may interfere with the quantum of punishment only if such punishment is perverse or shocking to the conscious. The competent disciplinary authority is empowered to impose

punishment based on the proved charges. The High Court cannot re-appreciate the evidences recorded unless such recording of evidence is absolutely perverse resulting in miscarriage of justice. In the present case, perusal of the facts established during enquiry reveals that the petitioner had committed certain serious lapses and such lapses were established beyond any pale of doubt. The connivance of the petitioner along with other officials were established and more so, he was performing a responsible duty and he was bound to follow the norms while performing the duty in the duty deployment cell. Under those circumstances, the enquiry officer formed an opinion that the petitioner has committed serious lapses and the charges against the petitioner were proved.

6. This Court is of the considered opinion that re-appreciation of evidence cannot be done in writ proceedings and the Courts are bound to consider the procedure followed by the disciplinary authority in accordance with the discipline and appeal rules in force. In the present case, reasonable opportunity had been afforded to the charged official, who, in turn, participated in the process of enquiry. The facts established during enquiry with reference to the documents and evidence reveal that the petitioner has committed serious misconduct. Accordingly, the enquiry officer made a finding that the charges are proved. Based on the proved charges, penalty of removal from service was imposed. The proved charges are serious in nature and more so, it was an offence resulting in huge monetary loss to Visakhapatnam Steel Plant running more than a sum of Rs.40,00,000/-. This being the facts and circumstances, this Court is not inclined to interfere with the quantum of punishment as the same cannot be construed as disproportionate to the gravity of the allegations proved against the writ petitioner.

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

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Union of India,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
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6. The Assistant Commandant,
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CISF Unit VSP Visakhapatnam.

+1cc to Mr.A.S.Mujibur Rahman, Advocate, S.R.No.36338

+1cc to Mr.Venkataswamy Babu, Advocate, S.R.No.36022

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JPL(CO)
CT/11/07/2022