

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-06-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.26032 of 2014

And

MP No.1 of 2014

K.R.K.Kutty

..

Petitioner

vs.

1.The Union of India,
Represented by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.

2.The Deputy Inspector General,
Central Industrial Security Force,
South Zone Head Quarters,
Besant Nagar,
Chennai - 600 090.

3.The Commandant,
Central Industrial Security Force Unit,
RSTPS - Ramagundam,
Andhra Pradesh.

4.The Deputy Commandant,
Central Industrial Security Force Unit,
RSTPS - Ramagundam,
Andhra Pradesh.

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Respondents

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 order passed by the second respondent dated 09.12.2013 in his order No.V-11015/48/Anu/SZ/2013/8961 confirming the order of the

third respondent dated 26.07.2013 in his order No.V-11014/RSTPS(R)/Appeal/Adm.4/KRKK/2013/1789 confirming the order of the fourth respondent dated 27.05.2013 in his final order No.V-15014/RSTPS(R)/Min/Adm.IV/KRKK/13/1294 and the order of the third respondent dated 18/19.02.2014 in his order No.E-24018/44/OSL/JKS/ Adm.III/2014-343 and quash the same and to direct the respondents to pay all monetary benefits to the petitioner.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.K.S.Jeya Ganesan,
Central Government Standing Counsel.

O R D E R

The order of punishment of withholding of one increment for a period of three years which will not have the effect of postponing his future increment of pay, confirmed by the Appellate Authority and the Revisional Authority, are under challenge in the present writ petition.

2. The writ petitioner was working as Head Constable and detailed for 'C' Shift duty. The petitioner states that after dinner, he felt some tiredness and senseless feeling and was unable to report for duty. The writ petitioner found some abnormalities and he informed about the same with Mr.P.Devarajan, CHM, HC/GD. Thereafter, he left the duty place without performing his duties. A charge memorandum was issued against the writ petitioner on 04.05.2013. The charge framed against the writ petitioner is as under:-

"No.844470537 HC/GD K.R.K.Kutty of CISF Unit RSTPS Ramagundam was detailed in 'C' shift from 2100 hours on 24.04.2013 to 0500 hours on 25.04.2013 at Gate No.1 for vehicle checking duty. He reported for duty at the Unit Line, but not proceeded with the other duty personnel for performing his assigned duty on that night and left for his quarter on his own. Thus he absented himself from 'C' shift duty on 24.04.2013. This act on the part of HC/GD K.R.K.Kutty amounts to gross misconduct, insubordination, unbecoming of a member of a disciplined Force."

3. The charge memorandum itself was issued for imposing minor penalty. Thus, the summary procedure was adopted as contemplated under Rule 37 of the Central Industrial Security Force Rules, 2001 [hereinafter referred to as the 'CISF Rules', in short].

4. The petitioner submitted his written statement of defence on 13.05.2013. The Disciplinary Authority considered the defence statement and issued the impugned order on 27.05.2013, imposing the punishment of withholding of one increment for a period of 3 years which will not have the effect of postponing his future increments of pay. The petitioner preferred an appeal on 15.06.2013 and the said appeal was rejected in proceedings dated 26.07.2013. The revision filed by the petitioner on 31.08.2013 was also rejected by the second respondent on 09.12.2013.

5. The learned counsel appearing on behalf of the petitioner mainly contended that due to unavoidable circumstances and on the ground of health, the petitioner could not report for duty and he returned back to his quarters and thereafter, went to the Hospital for taking treatment. Therefore, the punishment imposed is disproportionate and liable to be set aside.

6. The petitioner states that the Disciplinary Authority had failed to consider the mitigating facts and circumstances and more specifically, the illness suffered by the petitioner. Thus the non-consideration of the medical grounds by the Competent Authority is to be considered for the purpose of setting aside the order of punishment.

7. The learned Central Government Standing Counsel appearing on behalf of the respondents objected the said contentions raised on behalf of the petitioner by stating that the procedures as contemplated under Rule 37 of the CISF Rules was followed by the Authorities and after receiving the written statement of defence from the writ petitioner, the minor penalty was imposed.

8. The contention of the petitioner that he was suffering from certain ailments on the particular day is incorrect and in order to escape from the performance of the duty along with one ASI/Exe.P.S.Sharma, the petitioner absented himself from duty.

9. Relying on the brief facts of the case narrated in the counter-affidavit filed by the respondents, the learned Central Government Standing Counsel reiterated that the writ petitioner was earmarked for 'C' shift duty from 2100 hours on 24.04.2013 to 0500 hours on 25.04.2013 at Gate No.1 for vehicle checking duty. Accordingly, he reported for duty on 24.04.2013 at Unit Line and went to the place where shift goes for fall-in/briefing and saw his duty place in the duty deployment register. After seeing the duty place, the petitioner went to Coy CHM and then to shift in-charge and requested to change of his duty place from Gate No.1, Vehicle Gate to some other place as he did not want to perform duty with ASI/Exe P.S.Sharma, whose duty was also at Gate No.1 as Gate In-charge. The petitioner further stated that if his duty place was not changed, he will not go for duty and go for medical rest. Since no concrete reason in support of his request to change the duty post was given by the petitioner, his request was not acceded to. On this, the petitioner took away his bag and left towards his quarter stating his health was not good and finally did not report for duty. As such, on 24.04.2013, the petitioner willfully absented from 'C' shift duty without any valid reasons. To cover up his willful absence from duty on that night and also to evade disciplinary action, the petitioner visited the hospital and obtained medical rest. Such act shows his disobedience of order and also indifferent attitude towards Government bona fide duty. Being a matured and experienced Force Member having rendered more than 28 years of service in the Force, such misdemeanour is neither expected from the petitioner nor tolerable in any Armed Force.

10. The entire facts and circumstances as narrated by the respondents would reveal that the petitioner in order to avoid duty along with one Mr.P.S.Sharma, absented himself from performing his duties. In order to escape from the clutches of disciplinary proceedings, he went to the hospital under the guise of taking treatment. Thus the entire facts and circumstances were considered by the Disciplinary Authority while inflicting the minor penalty on the writ petitioner.

11. The minor penalty imposed on the writ petitioner, cannot be construed as disproportionate in view of the fact that the intention of the petitioner to absent himself from performing his duty was established through sequence of facts. Therefore, this Court is not inclined to interfere with the orders impugned.

12. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

Svn

To

- 1.The Secretary to Government,
Unionof India,
Ministry of Home Affairs,
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RSTPS - Ramagundam,
Andhra Pradesh.

+1cc to Mr.A.S.Mujbur Rahman, Advocate SR.No.40850
+1cc to Mr.K.S.Jeyaganeshan, Advocate SR.No.41008

WP 26032 of 2014

PMK(CO)
CB(19/07/2022)