

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17277 of 2014

M.Shankar Rao

... Petitioner

Vs

- 1.Union of India,
Rep. by its Secretary to Government
Department of Home Affairs,
New Delhi.
 - 2.The Director General,
CISF Head Quarters,
No.13, CGO Complex,
Lodhi Road, New Delhi - 110 003.
 - 3.The Inspector General,
CISF Head quarters South Sector,
Chennai Port Trust Campus,
Near War Memorial,
Chennai - 600 009.
 - 4.The Deputy Inspector General
CISF Unit NLC Neyveli,
No.G-14, J.N.Salai,
Block No.16, NLC Township Neyveli District,
Cuddalore, Tamil Nadu - 607 801.
 - 5.The Senior Commandant,
CISF Unit, NLC Neyveli,
No.4-14, J.N.Salai,
Block No.16, NLC Township Neyveli District,
Cuddalore, Tamil Nadu - 607 801.
- ... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 3rd respondent in his order No.V-15014/L&R/SS/Rev/SMR/2013-130 dated 15.06.2013, confirming the

order of the 4th respondent in his appellate order No.V-15014/NLC/Disc/Appeal-Maj/MSR/2012/13299 dated 29.12.2012 and upheld the order passed by the 5th respondent in his final order No.V-15014/NLC/Disc/Maj-MSR/2012/11001 dated 30.10.2012 to quash the same and to direct the respondents to release the increments reduced by the disciplinary authority and upheld by the appellate and revision authorities.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.K.Srinivasa Murthy
Central Government Standing Counsel

O R D E R

The order of punishment of reduction of pay by two stages for a period of one year and the appellate order confirming the order of punishment are under challenge in the present writ petition.

2.The writ petitioner joined as Constable general duty in the Central Industrial Security Force at Visakhapatnam. He was posted at CISF Unit at NLC Neyveli and during the relevant point of time, a charge memo was issued in proceedings dated 02.02.2012 under rule 36 of the CISF Rules. The allegation against the petitioner was that he was deployed for 'C' shift duty from 2100 hours on 03.01.2012 to 0500 hours on 04.01.2012 at S Bridge Frame No.116 to S5-DH PTL of Mine-II ['J' Coy]. During his duty hours, 18 meters of cable No.T366B [185 sq.mm] connected between Pillar Box 138 & Double Post erected opposite to Frame No.39 of S5 Conveyor Bench system, costing Rs.14,400/- was cut down and taken away by miscreants. The petitioner failed to provide protection to the material belong to NLC Neyveli for which he was posted for duty. The lapse was construed as gross misconduct, indiscipline, dereliction of duty and accordingly, charge memo was issued. The writ petitioner submitted his explanation defending the allegations. Not satisfied with the explanation, an Enquiry Officer was appointed, who in turn conducted an enquiry by affording an opportunity to the writ petitioner and the Enquiry Officer submitted his report holding that the articles of charges against the petitioner are held to be proved. Based on the proved charges, the punishment of reduction of pay by two stages for a period of one year was imposed. The writ petitioner preferred an appeal and the Appellate Authority also rejected the same on merits. Further, the revision preferred by the petitioner was also rejected.

3.The learned counsel appearing on behalf of the petitioner mainly contended that the writ petitioner on joining duty at NLC on the first day the incident occurred, he had no thorough knowledge about the location and therefore, he had not committed any act intentionally. The Enquiry Officer has not considered these facts and circumstances while forming an opinion that the charges are held proved. The petitioner has raised several grounds including that he has not committed any lapse or dereliction while he was on duty. The learned counsel reiterated that no criminal case has been registered with reference to the offence of theft and there was no eye witness and in the absence of any such evidence, the finding of the Enquiry Officer is untenable.

4.The learned Central Government Standing Counsel appearing on behalf of the respondents objected the said contention by stating that if at all the petitioner had colluded or a criminal case has been registered, the punishment would have been major in nature. In view of the fact that there was a lapse and dereliction of duty the authorities have viewed leniently and imposed the punishment of reduction in pay by two stages for one year. The lapses are established based on the complaint by the subsequent shift CISF Constable that a particular portion of the cable were missing and it was stolen. Therefore, the CISF duty personnel who were posted subsequently traced out the theft and informed to the officials who in turn conducted a field enquiry and noticed that particular portion of the cable was stolen by some miscreants. Therefore, actions were initiated. The enquiry report of the Enquiry Officer reveals that all such factors were considered elaborately and the facts not disputed also reveals that the petitioner was well aware about the idle cable placed in S.Bridge Frame No.116 to S5-DH area as the same he was briefed to 'A' shift sentry Const/GD Shoket Ali..

5.The main defence taken by the charged official that there was no eye witness about the cutting of cable by the miscreants on the intervening night of 03/04.01.2012 in his duty post jurisdiction. With reference to the allegations even in the absence of any eye witness the authorities could able to establish that there was a theft of cable and the cable was stolen by miscreants during night hours when the petitioner was on duty. When such facts were established with reference to the enquiry conducted and the materials available on record the very defence taken by the petitioner that there was no eye witness was rejected.

6.This Court is of the considered opinion that in such kind of lapses and dereliction of duty, no eye witnesses is required. Even probabilities are sufficient to punish an employee. The probabilities in the present case were considered by the authorities and they arrived a conclusion that the cable was stolen by the miscreants and the said factum was established. When the missing of cable was established during the duty hours of the petitioner, they formed an opinion that the petitioner had committed dereliction of duty and lapses and accordingly, they have imposed the punishment of reduction of pay by two stages for a period of one year.

7.The Enquiry Officer in his discussion also elaborately considered the charges and the defence submitted by the writ petitioner and formed an opinion that on the basis of discussion, prosecution statements and prosecution documents and defence statement it is clearly established that the charged official was detailed in C-Shift duty from 2100 hours to 0500 hours on 03/04.01.2012 at S Bridge to S-5DH. During his duty period 18 meters control cable cut and stolen away by the criminals from his duty post, but he failed to notice the movement of criminals and also failed to prevent the theft of undertaking property. Therefore it is not a case where the petitioner has abated or colluded with the criminal, it is a case where dereliction of duty and lapses were noticed and accordingly the punishment of reduction of pay by two stages for a period of one year was imposed. This being the factum there is no infirmity in respect of the appellate order and the order passed in the review confirming the order of punishment.

8.The power of judicial review is to be exercised only to scrutinize the processes through which a decision is taken. In the present case, the procedures were followed by the disciplinary authority. The petitioner was afforded with opportunity as contemplated under the Rules and he defended his case before the Enquiry Officer and before the disciplinary authority. The authorities arrived at a conclusion that the charges are proved. The main defence taken by the charged official that there was no eye witness was rightly rejected. Regarding the proportionality of punishment, this Court do not find that there is any disproportionate or otherwise. As for the misconduct, indiscipline and dereliction of duty, reduction of pay by two stages for a period of one year was imposed which cannot be said to be disproportionate and therefore, the order of punishment, appellate order and the order passed by the review authority are confirmed.

9.With these observations, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To

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Rep. by its Secretary to Government
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+1cc to Mr.K.Srinivasamurthy(SPCCG) SR.No.36154

W.P.No.17277 of 2014

SJ(CO)
CB(05/07/2022)