

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19924 of 2014

and

M.P.No.1 of 2014

C.Kamatagi

...Petitioner

Vs

1.The Union of India,
Rep. 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 Deputy Inspector General,
Central Industrial Security Force,
Disaster Management,
CISF Head Quarters,
CGO Complex, Lodhi Road,
New Delhi - 110 003.

4.The Commandant,
4 BN NDRF Arakkonam,
Vellore District - 631 152.

5.The Deputy Commandant,
4 BN NDRF Arakkonam,
Vellore District - 631 152.

...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 dated 09.07.2014 in his order No.V-15014/Appeal/HC(Dvr)C.Kamatagi/DM/ CISF/2014-46 confirming the order of the 4th respondent dated 23.04.2014 in his final order No.V-15014/CISF-04/NDRF/Bn/Disc/Maj-3/CKT/2013/3330 and the consequential order dated 16.07.2014 in his office order No.15014/NDRF/Bn/CISF/EO/Disc/Maj-03/CKT/2014-5710 and quash the

same and to direct the respondents to take the petitioner into the strength of CISF as Head Constable Driver with all monetary benefits and to permit the petitioner to retain the quarters till the disposal of the appeal dated 05.05.2014 pending before the 3rd respondent.

For Petitioner : Mr.R.Thiyagarajan

For Respondents : Mr.A.Murughan, CGSC

ORDER

The punishment of compulsory retirement confirmed by the appellate authority is under challenge in the present writ petition.

2. The writ petitioner was appointed as Constable in the Central Industrial Security Force (CISF) on 05.07.1989 and promoted as Head Constable/Driver. The petitioner states that for the purpose of bringing his daughter to his house at Arakkonam from Marthandam, Kanyakumari District, he applied leave which was not granted and in view of some urgency, he immediately travelled to Marthandam and the authorities, without considering the genuine reason, issued a charge memo under the Discipline and Appeal Rules. The petitioner submitted his explanation denying the allegations and he has put forth the reasons for his absence along with the records. The said reasons were not considered by the authorities and an enquiry was ordered to be conducted. Even before the Enquiry Officer, the petitioner defended his case placing all the records, however, the Enquiry Officer held the charges as proved. Based on the report of the Enquiry Officer, the disciplinary authority imposed the punishment of compulsory retirement and the appeal filed by the petitioner was also rejected. Thus, the petitioner is constrained to move this writ petition.

3. The learned counsel for the petitioner mainly contended that no doubt, the petitioner remained absent for 2 days. However, the said absence was on genuine grounds and the petitioner had submitted records to establish that in order to bring his daughter back to his place at Arakkonam, he had suddenly travelled to Marthandam on account of some urgency. However, the authorities have not considered any of the grounds raised by the petitioner and imposed the major penalty, which is not in accordance with the settled principles. The appellate authority also failed to consider the grounds raised by the petitioner in this regard. More so, the genuine reasons furnished by the petitioner were not considered.

4. The learned Central Government Standing Counsel

appearing for the respondents objected the said contentions by stating that the previous conduct of the petitioner was not satisfied and even during earlier occasions, the petitioner remained absent and thus, the allegations were also considered by the disciplinary authority for imposing a major penalty of compulsory retirement. Thus, the petitioner is not entitled for the relief sought and this writ petition is to be rejected.

5. A perusal of the charge against the petitioner reveals that he remained absent from 28.06.2013 without any prior permission or leave. He remained absent for 2 days and thereafter reported for duty on 30.06.2013. The explanation of the petitioner before the authorities was that he had received an emergency call from his daughter who was studying at Marthandam, Kanyakumari District and in order to bring her to Arakkonam, he immediately proceeded. The petitioner applied for leave and the said leave was not sanctioned by the authorities. The authorities conducted an enquiry and the Enquiry Officer held the charges as proved and consequently, the punishment of compulsory retirement was imposed.

6. This Court is of the considered opinion that when a charge of unauthorized absence is framed against the delinquent official, the genuinity of the absence is also to be considered by the competent authorities. If the delinquent official is able to establish that he remained absent on account of certain unavoidable circumstances, then the authorities competent have to take a lenient view in the matter of imposing punishment. No doubt, unauthorized absence is a misconduct under the Discipline and Appeal Rules. However, while imposing the punishment, the proportionality is also to be considered. The employee who remained absent for several months cannot be compared with an employee who remained absent for 2 days or 1 week on certain emergency circumstances or on account of family circumstances. Thus, the authorities are expected to apply their mind while imposing penalty, which must be in commensuration with the gravity of charges which are proved against the delinquent.

7. In the present case, admittedly, the petitioner remained absent for 2 days. Thereafter, he joined duty immediately on his return from Marthandam, wherein he had gone to bring back his daughter from an educational institution.

8. In the present case, the disciplinary proceedings were conducted in accordance with the procedures contemplated. There is no infirmity in following the procedures under the Rules and in fact the Rule of Natural Justice had been complied with. The finding of misconduct is also based on the evidence that the petitioner had not reported for duty for 2 days. The Statutory Rules governing the conduct was also considered by the

disciplinary authority and the findings of the Enquiry Officer in his report were also taken into consideration by the disciplinary authority. However, the proportionality of the punishment alone has not been properly considered by the disciplinary authority.

9. The Hon'ble Supreme Court of India held that the punishments imposed must be in proportionate with the gravity of allegation/proved charges by the delinquent official and the excess punishment is not desirable. In the present case, the disciplinary authority and the appellate authority also failed to consider these principles, while confirming the order of original punishment.

10. The Hon'ble Supreme Court of India, in the case of Union of India and Others Vs. P. Balasubrahmanyam, reported in (2021) 5 Supreme Court Cases 662, made an observation that reads as follows:

"21. It is correct to say that judicial forums do not sit as an appellate authority to substitute their mind with the mind of the disciplinary authority insofar as the finding is concerned. However, disproportionality of punishment is a concept certainly not unknown to service jurisprudence and has received consideration inter alia of this Court. This is what the Tribunal proposed to do. We may examine the finding of the Tribunal on the issue of disproportionality of punishment and are in complete agreement with the view that the punishment of compulsory retirement was completely disproportionate and harsh, keeping in mind the finding arrived at by the disciplinary authority. It, thus, seems to appear that the charges originally levelled may have persuaded the authority concerned to impose punishment; losing site of the fact that the allegations qua bribery had not been found against the respondent.

22. The question is whether the Tribunal proceeded correctly in passing the final direction to impose appropriate minor penalty. The Tribunal itself did not impose the punishment but left it to the authority concerned (for appropriate course of action). It was of the view that considering the findings of procedural lapses against the respondent, the appropriate punishment could only be a minor penalty and not a major penalty. With this again, we are in agreement with the course of action adopted. The nature of charges found against the respondent can hardly be one to call for a major penalty, keeping in mind that there was no bribery charge.

Anyone can make mistakes. The consequences of mistakes should not be unduly harsh. We are, thus, of the view that the direction of the Tribunal is what is liable to be sustained."

11. The Hon'ble Supreme Court of India, in the case of Union of India and Others Vs. Managobinda Samantaray, reported in 2022 LiveLaw (SC) 244, also made an observation which reads as follows:

"In the present case, the procedure requiring issue of show-cause notice and compliance with the principles of natural justice is made. Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved. Such discretionary power is exposed to judicial interference if exercised in a manner which is grossly disproportionate to the fault, as the constitutional courts while exercising the power of judicial review do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice. The decision are also disturbed when it is found to be ailing with perversity. On the question of quantum of punishment, the court exercising the power of judicial review can examine whether the authority has been a reasonable employer and has taken into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and excluded irrelevant matters. In the context of quantum of punishment these aspects are examined to consider whether there is any error in decision making process. On merits of the quantum of punishment imposed, the courts would not interfere unless the exercise of discretion in awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate."

12. For the unauthorized absence of 2 days, wherein the delinquent official could not be able to establish the genuinity, then the punishment of compulsory retirement is undoubtedly excessive and not in proportion with the gravity of the allegations. Thus, the disciplinary authority ought to have considered for imposing a minor penalty, as contemplated under Rule 37 of the CISF Rules, instead, the authority had imposed a major penalty, without even considering the length of service rendered by the petitioner. Thus, this Court is inclined to consider the case of the writ petitioner.

13. Accordingly, the impugned order passed by the 3rd respondent dated 09.07.2014 in his order No.V-15014/CISF-04/HC (Dvr)C.Kamatagi/DM/ CISF/2014-46, confirming the order of the 4th respondent dated 23.04.2014 in his final order No.V-15014/CISF-04/NDRF/Bn/Disc/Maj-3/CKT/2013/3330 and the consequential order dated 16.07.2014 in his order No.15014/NDRF/Bn/CISF/EO/Disc/Maj-03/CKT/2014-5710, are quashed.

14. At this juncture, the learned Central Government Standing Counsel appearing for the respondents made a submission that the petitioner is in occupation of the official quarters at Arakkonam, Ranipet District and the petitioner has already been transferred to Donimalai, in the State of Karnataka. Therefore, the petitioner has to vacate the official quarters at Arakkonam, Ranipet District.

15. The learned counsel for the petitioner made an undertaking that the petitioner will vacate the official quarters at Arakkonam on or before 31.07.2022 and hand over the possession to the competent authorities.

16. In view of the said undertaking given by the learned counsel for the petitioner, no further direction is required in this regard.

17. With the above observations, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

hvk

To

1.The Secretary to Government,
Union of India,
Ministry of Home Affairs,
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4 BN NDRF Arakkonam,
Vellore District - 631 152.

+1cc to Mr.R.Thiyagarajan, Advocate, S.R.No.42377
+1cc to Mr.A.Murugan, Advocate, S.R.No.42997

W.P.No.19924 of 2014

KK(CO)
SB(25/07/2022)