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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.10519 OF 2014

Subodh Kumar Singh

... Petitioner

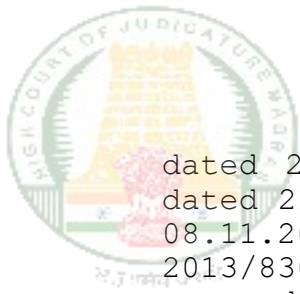
.Vs.

1. The Union of India,
Represented by its Secretary to the Government,
Department of Home Affairs,
New Delhi.
2. The Director General,
CISF Head Quarters,
No.13, C.G.O. 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 Head Quarters South Zone,
'D' Block First Floor Rajaji Bhavan,
Besant Nagar, Chennai - 600 090.
5. The Senior Commandant,
CISF Unit ChPT Chennai,
Chennai Port Trust Campus,
Near War Memorial,
Chennai - 600 001.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for record relating to the order passed by the 3rd respondent



dated 21.02.2014 in his order No.V-15014/L&R/SS/Rev/SKS/2014-63 dated 21.02.2014, confirming the order of the 4th respondent dated 08.11.2013 in his appellate order No.V-11014/45/Disc/SS/2013/8303 dated 08.11.2013 and upheld the order passed by the 5th respondent dated 10.07.2013 in his final order No.V-15014/ChPT/SKS-03/Disc/2013/4730 dated 10.07.2013 to quash the same and to direct the respondents to reinstate petitioner into service with all monetary benefits.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.G.Ilangovan
Central Government
Standing Counsel

ORDER

The writ petition on hand has been instituted questioning the order imposing the penalty to compulsory retirement and the appellate orders.

2. The writ petitioner joined as Constable General Duty on 15.11.1985, in the Central Industrial Security Force (CISF) at IOC Barauni, Bihar. The petitioner states that he served all over India up to the year 2013 and had clean record of service for about 28 years. While he was serving at CISF unit, Chennai Port Trust (ChPT) of Chennai under the control of the 5th respondent, a charge memo under Rule 36 of the CISF Rules was issued on 07.03.2017 stating the allegation that the petitioner of CISF unit ChPT, Chennai was deployed in 'B' shift duty post along with Rifle. An unaccounted amount of Rs.410/- was recovered from the front pocket of his uniform shirt on 25.02.2013 at about 2140 hours in violation of office memorandum dated 28.04.2010, and standing security procedure of Administrative Building Key Board duty post of CISF Unit ChPT Chennai, by searching team led by Inspector K.R.Raju, along with Sub-Inspector Satish Kumar and Sub-Inspector K.Loganathan and Constable G.Vikaram. This act on the part of the enrolled member of the Force tantamount to gross misconduct, tarnishing the image of the Force and deliberate violation of lawful order of the superior authority, which is unbecoming of a member of the disciplined Force.

3. Further, it is stated that the petitioner being the enrolled member of the Force of CISF unit ChPT Chennai had developed an irresistible and incorrigible attitude of committing acts of misconduct and indiscipline and failed to change his attitude and not shown any improvement in spite of charge appeals on three earlier occasions during his service for



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6. The petitioner has mainly contended that none of the prosecution witnesses had seen the transaction of money between the charged official/writ petitioner and the payer. No CCTV footage revealed that the charged official has collected illegal money while on duty at Administrative Building Key Board duty from 1300 hours to 2100 hours on 25.02.2013. In the absence of establishing the fact that the petitioner had collected money in an illegal manner or otherwise, the charge framed against the writ petitioner is untenable. Relying on the deposition of the witnesses, the petitioner has urged this Court by stating that, nowhere in the enquiry report the department could able to establish that the alleged money of a sum of Rs.410/- was collected in an illegal manner while the petitioner was on duty. The statement of the petitioner is that it was handed over to him by his colleague on cancellation of train ticket was also not accepted without any valid reason. Therefore, relying upon



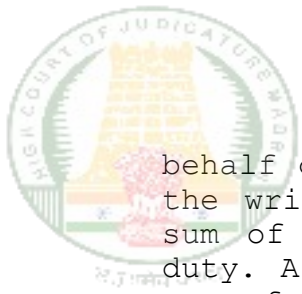
the enquiry officer to verify that the charges are proved is not based on any acceptable evidence and therefore, the consequential punishment is liable to be set aside.

7. It is further contended that there is no reason, whatsoever to rely on the earlier punishment imposed by the disciplinary authority. The disciplinary authority did not quote any specific rule or provision enforced to reopen the passed case along with the fresh allegations as contended in the final order. Thus, the findings with reference to the article of charges-II is also untenable. The appellate authority and the revision authority also failed to consider all these factors and rejected the appeal and revision petition filed by the writ petitioner.

8. The learned Standing Counsel appearing on behalf of the respondents objected the said contentions raised by stating that the petitioner was in possession of sum of Rs.410/- in violation of the official memorandum while on duty. The charges against the petitioner was proved beyond doubt. The defence by the petitioner was not established before the enquiry officer. The petitioner could not able to produce any evidence to establish that the said amount of Rs.410/- was given by his colleague by cancelling the train ticket. In the absence of any such evidence, the enquiry officer rightly formed an opinion that the charge against the petitioner was proved.

9. The learned Standing Counsel for the respondents drew the attention of this Court with reference to the three punishments imposed on earlier occasions. With reference to the said punishments, the allegations were that the petitioner was 05 days OSL with effect from 27.06.1989 to 01.07.1989 and the punishment of Censure on 11.10.1989. Secondly, another 05 days ODL from 28.08.1991 to 01.09.1991 the competent authority again issued the punishment of Censure in proceedings dated 23.10.1991. The third punishment was imposed for allegation for having misbehaved with Inspector/Exe Karan Singh during mounting of 'C' shift duty on 03.02.2010, and the punishment of fine equivalent to seven days pay by the competent authority in proceedings dated 04.08.2010. The authorities have considered the earlier conduct of the petitioner and the three punishments imposed on him by taking consideration of the facts and circumstances, the punishment of compulsory retirement from service with full retirement benefits was imposed. The appellate authority has considered the nature of the proved charges and the earlier conduct of the petitioner and confirmed the penalty. Thus, the writ petition is to be rejected.

10. Considering the facts as well as the arguments as advanced between the respective learned counsels appearing on



behalf of the parties to the lis on hand, the allegation against the writ petitioner was that he was in illegal possession of a sum of Rs.410/- over and above the permissible limit while on duty. As per the official memorandum, he is permitted to keep a sum of Rs.50/- only. However, during inspection the authorities found that the petitioner was in possession of a sum of Rs.410/- and committed an act, which is in violation of the official memorandum and accordingly, framed the charges to the second article of the charges are that the petitioner earlier suffered three punishments and in spite of the said punishments he has not changed his attitude and behavior and therefore, committed an act of misconduct.

11. This is Court is of the opinion that the department could able to establish that the petitioner was in possession of a sum of Rs.410/- while on duty. The petitioner could not able to disprove the same before the enquiry officer and his statement that by cancelling the train ticket his colleague handed over the money, was also not established before the enquiry officer. Thus, the enquiry officer arrived at a conclusion that the articles of charge-1 is held proved. No doubt, the charge against the writ petitioner that he was in possession of a sum of Rs.410/- was proved before the departmental enquiry. However, the department could not able to establish that the said amount of Rs.410/- was a money, which was possessed in an illegal manner or ill-gotten money. At the outset, the department could not able to establish that it is the money, which was collected in an illegal manner or otherwise. Contrarily, the department had proved that the petitioner was in possession of the amount of Rs.410, which is beyond permissible limit of Rs.50/- as per office memorandum.

12. The allegation regarding possession of excess money by the writ petitioner during duty hours had been proved. However, the respondents could not able to establish that the said excess money is an ill-gotten money or possessed in an illegal manner. Thus, the possession of excess money is in violation of the official memorandum relied on by the disciplinary authority. Under these circumstances, this Court has to examine whether the major penalty of compulsory retirement imposed on the petitioner is in commensuration with the gravity of the proved charges. Undoubtedly, the disciplinary authority is empowered to impose any punishments with assessment of facts, circumstances and the charges proved against the delinquent official. However, while imposing punishments the disciplinary authority must take into consideration the gravity of the proved charges and the proposed punishment to be imposed.

13. Regarding the second article of charges, the authorities have considered the previous conduct of the writ petitioner and



the earlier punishments. Those punishments are minor punishment. The said punishments were imposed during various occasions. However, the earlier misconducts and the punishments imposed are also minor in nature and relating to the years 1989, 1991 and 2010. Thus, in respect of the allegation of the year 2013, those minor punishments need not be taken as a ground for the purpose of imposing major punishment of compulsory retirement.

14. 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 appellate and revision authorities also failed to consider these principles, while confirming the order of original punishment.

15. 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 sight 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



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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."

16. 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."

17. In view of the facts and circumstances the case of the writ petitioner is to be considered on the principles of the proportionality of punishment. Accordingly, the impugned orders passed by the 3rd respondent dated 21.02.2014 in order in order No.V-15014/L&R/SS/Rev/SKS/2014-63 confirming the order of the 4th respondent dated 08.11.2013 in appellate order No.V-11014/45/



Disc/SS/2013/8303, upholding the order passed by the 5th respondent dated 10.07.2013 in final order No. V-15014/ChPT/SKS-03/Disc/2-13/4730 are quashed.

18. The petitioner is not entitled for back wages based on the principles of "no work and no pay". The respondents are directed to reinstate the petitioner into service and his pay and revision of pay shall be granted with prospective effect. The respondents are at liberty to consider the case of the writ petitioner and based on the proved charges to impose minor penalty if required.

19. With these directions, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Jeni

To

1. The Secretary to the Government,
The Union of India,
Department of Home Affairs,
New Delhi.
2. The Director General,
CISF Head Quarters,
No.13, C.G.O. 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 Head Quarters South Zone,
'D' Block First Floor Rajaji Bhavan,
Besant Nagar,
Chennai - 600 090.



5. The Senior Commandant,
CISF Unit CHPT Chennai,
Chennai Port Trust Campus,
Near War Memorial,
Chennai - 600 001.

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+1cc to Mr.G.Ilangovan, Advocate, S.R.No.34817

W.P.NO.10519 OF 2014

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