



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 25.11.2021

DELIVERED ON : 09.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P(MD)No.104 of 2013

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Ajai A.R

... Petitioner

vs

1. Union of India
represented by its Secretary to the Government,
Ministry of Home Affairs, New Delhi.
2. The Special Director General/Airport Sector,
CISF Head Quarters,
No.13, C.G.O. Complex,
Lodhi Road, New Delhi - 110 003.
3. The Inspector General/Airport Sector,
CISF Head Quarters,
No.13, C.G.O. Complex,
Lodhi Road, New Delhi - 110 003.
4. The Deputy Inspector General/Airport Sector,
CISF Head Quarters South Zone,
'D' Block First Floor Rajaji Bhavan,
Besant Nagar, Chennai - 600 090.
5. The Commandant,
CISF Unit ASG Trivandrum,
Post: Vallakkadavu Trivandrum Airport,
Kerala - 695 008.
6. The Deputy Commandant,
CISF Unit, ASG Madurai Airport,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the third respondent in his order No.V-11014/APS/29/AAR/2012/10765, dated 26.09.2012, confirming the order of the fourth respondent in his order No.V-15019/L&R/AP-SZ/Apl-04/2012-2019, dated 19.04.2012 and confirming the fifth respondent in his order No.V-15014/CISF/ASG(TVM)/Disc/Maj/2011-10158, dated 14-12-2011 and to quash the same and to direct the respondents to take the petitioner into the strength of CISF as Constable with all monetary benefits and back wages including seniority.

<https://hcservices.ecourts.gov.in/hcservices/>



For Petitioner : Mr.K.Vadivelu
for Mr.A.S.Mujibur Rahman

For Respondents : Mr.K.R.Laxman

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O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the third respondent in his order, dated 26.09.2012, confirming the order of the fourth respondent, dated 19.04.2012 and confirming the fifth respondent order, dated 14-12-2011 and to quash the same and to direct the respondents to take the petitioner into the strength of CISF as Constable with all monetary benefits and back wages including seniority.

2. The petitioner was appointed as Constable on 16.02.2002 in the Central Industrial Security Force at Trivandrum, Kerala. Thereafter, the petitioner had served all over India up to the year 2010. While he was serving as a Central Industrial Security Force (CISF) Unit, Madurai Airport of Tamil Nadu under the sixth respondent, a Charge Memo under Rule 36 of the CISF Rules was issued alleging that the petitioner while on duty on 18.08.2011 was found sitting on a plastic chair in front side beat of Quarter Guard by leaving his duty post which was noticed by one Mr.Sohan Singh, Guard Commander and Ramamurthy.K who was detailed for Quarter Guard front side on the same day. The petitioner after leaving his duty post of rear side Quarter Guard was found sitting on a plastic Chair at the front side beat area of the Quarter guard which amount to gross misconduct and dereliction of duty. The petitioner was directed to deposit the said plastic chair inside the Quarter Guard and perform duty in standing position. But the petitioner refused to carry out the lawful orders of his seniors and which amounts to gross misconduct and dereliction of duty. The petitioner had an argument with the said Sohan Singh, Guard Commander in front of Constable Ramamurthy. The petitioner assaulted the Guard Commander, Sohan Singh and the said Sohan Singh sustained injury above his left eyebrow and below left eye and such assault amounts to serious misconduct, gross in-subordination and dereliction of duty. For these three charges, the petitioner was directed to submit an explanation and the petitioner submitted an explanation on 11.09.2011. The petitioner has denied all the charges.

3. Thereafter, an Enquiry Officer was appointed. The petitioner alleges that the Enquiry Officer has not given reasonable time of ten days for the explanation and which is violative of the procedure laid down for the departmental enquiry. The Enquiry Officer has conducted the enquiry by recording the statement of the



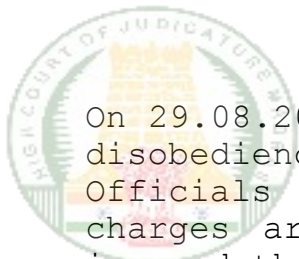
witness and allow the delinquent petitioner to cross-examine the said witness. The Enquiry Officer has held that the charges are proved. Based on the enquiry report, the disciplinary authority directed the petitioner to submit an explanation. The petitioner submitted an explanation on 02.12.2011. Thereafter, the disciplinary authority has imposed the punishment of dismissal from service. Aggrieved over the same, the petitioner has preferred an appeal and the appeal was dismissed. Thereafter, a Revision Petition was filed and the Revision Petition was also dismissed. Aggrieved over the same, the petitioner has preferred this present writ petition, challenging the orders passed by the Disciplinary authority, Appellate authority and the Revision authority with a consequential prayer to reinstate the petitioner into service and grant monetary benefits including seniority.

4. The respondents have filed a counter affidavit stating that adequate opportunity was granted to the petitioner. The petitioner was directed to appear before the Enquiry Officer and after attending the preliminary hearing the petitioner had submitted an application on 17.06.2011, wherein, he has alleged that the Enquiry Officer has not granted ten days time from the date of issue of enquiry notice. However, the same was granted and it is wrong to state that adequate opportunity was not granted. Infact the Enquiry Officer after the receipt of such representation from the petitioner, the Enquiry Officer has directed all the previous enquiry proceedings conducted on 17.09.2011 and subsequent dates may be treated as cancelled. Accordingly, the fresh enquiry notice was issued on 19.09.2011, fixing the date of preliminary hearing on 30.09.2011. This would enact that the opportunity was granted to the petitioner and there is no violation of principles of natural justice.

5. As far as the charges are concerned, it is grave in nature. The petitioner being an Armed Force of the Union, he has to carry out as per the instructions given by the higher officials. The petitioner was sitting on a plastic chair in front beat of Quarter Guard cannot be allowed and it was directed by the higher officials to perform his duty in standing position and directed to deposit the plastic chair in the Guard Room which the petitioner refused and had an argument with his Higher Officials. Therefore, the three charges are very grave and the petitioner cannot be shown any mercy at all. Since all the charges were proved, the petitioner was dismissed from service. The Appellate Authority has considered all the argument put forth by the petitioner and the punishment was confirmed.

6. Heard Mr.K.Vadivelu, learned Counsel appearing for the petitioner and Mr.K.R.Laxman, learned Counsel appearing for the respondents.

7. It is seen from the records, the petitioner joined the services on 14.12.2002 and was dismissed from service on 14.12.2011.



On 29.08.2011, the petitioner was issued with a Charge Memo alleging disobedience and in-subordination and assaulting on the Higher Officials on 18.08.2011. In the enquiry, it was held that the charges are proved and thereafter, the disciplined authority has imposed the punishment of dismissal from service. The contention of the respondents are that the three charges of assaulting the Higher Officials are serious in nature. The person who is imposed with such duties should follow the discipline in a strict way and the petitioner has acted in-disciplined way.

8. When the case was heard on earlier day, this Court directed the respondents to take instructions whether any compulsory retirement shall be imposed on the petitioner, since the petitioner was serving for more than nine years. The respondents have submitted that the petitioner was inflicted with the punishment in previous occasion also for six times, where there was a stoppage of increments without cumulative effect for two years and reduction of pay for one stage, fine for three days, fine for seven days and fine for one day. Moreover, the petitioner was inflicted with Dies-Non for the period from 16.04.2005 to 28.04.2005 for 65 days, again from 29.04.2005 to 02.07.2005 for 65 days and again on 19.10.2005 to 16.03.2006 for 145 days. If all these are taken into consideration, the petitioner would have served around eight years only, since Dies-non are considered as non-serving period which amounts to 279 days. Therefore, the petitioner cannot be considered for compulsory retirement also. The respondents relied on a judgment rendered by the Supreme Court in Union of India Vs. Pradeep Sharma, where it has been stated that the delinquent if not questioned the order passed for Dies-Non, the said Dies-Non period cannot be regularized. As far as the punishment of dismissal from service is concerned, the petitioner has not put forth any ground for consideration. Therefore, there is no merits in the writ petition.

9. Hence, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

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Kerala - 695 008.

6. The Deputy Commandant,
CISF Unit, ASG Madurai Airport,
Madurai.

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-11341[F] dated 10/03/2022)

+1 CC to M/s.A.S.MUJIBUR RAHMAN, Advocate (SR-10802[F] dated
09/03/2022)

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