



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.10273 of 2015

WEB COPY

P.K.Sonkar

... Petitioner

vs

1.The Union of India,
Represented 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 Inspector General,
Central Industrial Security Force,
South Sector Head Quarters,
Chennai-600 009.

4.The Deputy Inspector General,
Central Industrial Security Force,
Rajaji Bhawan, Besant Nagar,
Chennai-600 090.

5.The Commandant,
Central Industrial Security Force,
VOCPT, Tuticorin.

6.The Commandant,
Central Industrial Security Force,
4th Reserve Battalion,
Tuticorin.

... 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 3rd respondent dated 19.09.2014 in his Order No.V-15014/L&R/SS/Rev/PKS/2014-192 in so far as the portion relating to the punishment of Reduction of Pay to the minimum stage for a period of 5 years and the Impugned Order dated 15.11.2014 passed by the 3rd respondent in his Order No.V-15014/L&R/SS/Rev/PKS/2014-268 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 : No appearance



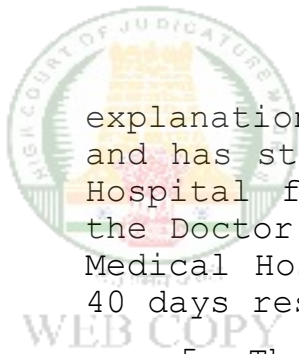
O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the 3rd respondent dated 19.09.2014 in his Order No.V-15014/L&R/SS/Rev/PKS/2014-192 in so far as the portion relating to the punishment of Reduction of Pay to the minimum stage for a period of 5 years and the Impugned Order dated 15.11.2014 passed by the 3rd respondent in his Order No.V-15014/L&R/SS/Rev/PKS/2014-268 and to direct the respondents to pay all monetary benefits to the petitioner.

2. The petitioner joined as Constable in the Central Industrial Security Force on 19.04.2003. While the petitioner was serving at VOC Port Trust, Tuticorin, a Charge Memo, dated 06.03.2013 was issued imputing three charges. The first charge is for unauthorized absence for 53 days, the second charge for disobedience for not co-operating for checking anti-corruption and the third charge is he has been awarded with ten punishments for his insubordination, negligence of duty, violation of orders etc., The petitioner submitted the written explanation on 21.03.2013. An Enquiry Officer was appointed and the Enquiry Officer has held charges to be proved. The petitioner submitted an explanation for the enquiry report on 10.08.2013. But without considering the same punishment of removal from service was imposed on 19.08.2013. The petitioner preferred an appeal and was rejected on 13.12.2013. The petitioner has filed a revision petition and vide order, dated 19.06.2014 punishment was modified from removal from service to reduction of pay to the minimum stage of Rs.6460/- + GP Rs.2000/- for a period of five years and further ordered that he will not earn increments during the period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increments of pay.

3. The petitioner joined duty on 15.10.2014 and the third respondent passed an order on 15.11.2014, stating that the period from 20.08.2013 to 14.10.2014, as DIES-NON under Rule 55 of the CISF Rule. Aggrieved over the same, the impugned orders passed by the third respondent, dated 19.09.2014 and 15.11.2014 are challenged in the present writ petition is filed.

4. The brief facts of the case are that the petitioner was granted seven days medical rest from 25.07.2012 to 31.07.2012. One Constable, namely, T.S. Velu was assigned for his help, however, the petitioner left the Unit on 25.07.2012 without escort of the said T.S. Velu and remained absent without leave from 26.07.2012 to 16.09.2012 for a period of 53 days without any authority. The contention of the petitioner is that he tried his best to avail the escort of T.S.Velu but he was not available, because of the urgency of the treatment, the applicant went and got treatment from Dr.K.P.Ganta Ganesh Waran (M.D), who was the nearest available Doctor. However, the respondents are not convinced with the said



explanation. The respondents disbelieved the case of the petitioner and has stated that the petitioner was referred to V.O.C Port Trust Hospital for further specialized treatment, but he has approached the Doctor in Thoothukudi Medical College Hospital. The Thoothukudi Medical Hospital has given a certificate as if the petitioner needs 40 days rest.

5. The contention of the respondents are that no Doctor would give 40 days medical rest without any periodical review / examination of patient and the respondents contended that in all probabilities the appellant has managed to get medical certificate to escape from the charges. The petitioner deliberately avoided the escort of the said T.S. Velu and invoked *malafide* intention to desert the Unit. As far as the second charge is concerned, the respondents have stated that there was a surprise physical search of the CISF personnel of duty in order to carry out to maintain zero tolerance of corruption. But the petitioner deliberately refused to participate in the surprise checkup. As far as the third charge is concerned, the petitioner has already been imposed with punishment for ten times.

6. The respondents have filed a detailed counter stating that the petitioner has submitted a medical certificate from the Doctor in a private capacity and it is not supported by any medical prescription of medicines, Diagnose report etc. Therefore, the said medical certificate cannot be believed. Moreover, no Government hospital would advise 40 days of rest for the depression and that too without any periodical review/examination. The petitioner was granted several opportunities to mend his attitude, but the petitioner repeatedly indulged in misconducts even after awarding ten penalties. All the three charges were proved and there is no violation of principle of natural justice and therefore the present writ petition is liable to be dismissed.

7. Heard learned Counsel appearing for the petitioner and perused the counter affidavit and the typed set filed by both the parties.

8. The respondents have admitted in para 11 of their counter affidavit that the petitioner was having medical problem and that is why the respondents have appointed an escort, namely, T.S.Velu and has given medical rest for seven days. The contention of the respondents is that the petitioner had overstayed leave for undergoing medical treatment and that is why the revisioning authority, while disposing the revision petition has took lenient view and passed order to reinstate the petitioner into service. Now the petitioner is continuing in the service from 15.10.2014 onwards. Admittedly, the petitioner was mentally disturbed and was under depression. Therefore the allegations of the respondents cannot be appreciated. A person under depression cannot be dealt with a sword of Damocles hanging etc., but dealt with sympathetically. Therefore,



unauthorized absence for 53 days for having mental issues, which ought to be condoned.

9. The contention of the respondents that the revisional authority have taken a very lenient view and has reduced the punishment of removal from service to reduction of pay and given consequential impact for the reduction of pay but this Court is of the considered opinion that this punishment is also on the higher side. The petitioner was also imposed with the punishment of DIES-NON from 20.08.2013 to 14.10.2014 i.e., for nearly one year of service was removed from his service. However the respondents may be right in stating that already the petitioner was granted punishment for ten occasions, in spite of the same, the petitioner has not mend his way. Therefore, this Court is of the considered view that the punishment of reduction of pay and consequentially effect of postponing his future increments of pay ought to be modified and also the imposing another punishment as DIES-NON would certainly come under the principles of double punishment.

10. Therefore, this Court set aside the DIES-NON punishment imposed, vide impugned order, dated 15.11.2014. The punishment imposed, vide impugned order, dated 19.09.2014, is modified as stoppage of increment for the period of three years without cumulative effect.

11. Before concluding, the mental health of any human being is vital and in India the mental health is not given due importance. Men in uniform are the people we go to for help when we are in trouble. But where do they go in their times of need? We often associate uniform services as the bravest people in the community but most of us fail to acknowledge the hardships some of them battle in their minds. They are praised and admired for the physical health, when really, the harrowing sights they endure as their job is likely to take a toll on their mental health. After being exposed to trauma as a part of their everyday life, it is common for many personal to experience depression and anxiety. This Court hopes that the respondents would give adequate support to their people who undergo mental health issues and deal sympathetically.

12. With the above direction, the Writ Petition is allowed. No costs.

Sd/-

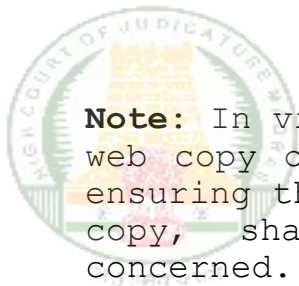
Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

jbr



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- 6.The Commandant,
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Order made in
W.P. (MD) No.10273 of 2015
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SB (CO)
GC(16.02.2022) 5P 7C