



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.01.2022

Pronounced on : 09.02.2022

WEB COPY

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.10274 of 2015

A.Samraj

... Petitioner

vs.

- 1.The Director General,
Central Industrial Security Force,
Block No.13, CGO's Complex,
Lodhi Road, New Delhi-110 003.
- 2.The Inspector General,
Central Industrial Security Force,
South Zone Head Quarters,
Chennai Port Trust, Chennai-600 001.
- 3.The Deputy Inspector General,
Central Industrial Security Force,
DOS Head Quarters,
Antariksh Bhavan,
New BEL Road, Bangalore.
- 4.The Commandant,
Central Industrial Security Force Unit,
VSSC, Thumba,
Thiruvananthapuram, Kerala.

... 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 2nd respondent, dated 31.07.2012, in his order No.V-15014/L &R/SS/Rev/AS/2012-276 received by the petitioner on 24.8.2012, confirming the order of the 3rd respondent in his Appellate order No.V-11014/CISF/DOS/Appeal-AS/2012/521, dated 13.02.2012, confirming the order passed by the 4th respondent in his original order No.V-15014/CISF/BSSC/DISC/AS/2011-7157, dated 22.11.2011 and quash the same and to direct the respondent to pay all benefits.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.S.Pillai Monicantan



ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call quash for the records relating to the order passed by the 2nd respondent dated 31.07.2012 in his order No.V-15014/L &R/SS/Rev/AS/2012-276 received by the petitioner on 24.8.2012 confirming the order of the 3rd respondent in his Appellate order No.V-11014/CISF/DOS/Appeal-AS/2012/521, dated 13.02.2012, confirming the order passed by the 4th respondent in his original order No.V-15014/CISF/BSSC/DISC/AS/2011-7157, dated 22.11.2011 and quash the same and to direct the respondent to pay all benefits.

2.The petitioner has challenged the impugned punishment order, wherein it has imposed a reduction of pay by two stages from Rs.8520/- to Rs.7890/- in the pay band of Rs.5200-Rs.20,200/- Grade Pay of Rs.2400/- for a period of two years with effect from the date of issue of the order and consequentially the petitioner was not entitled to increments during the period of reduction and also the reduction will have the effect of postponing his future increments of pay. Aggrieved over the said punishment, the petitioner has preferred this Writ Petition.

3.The brief facts of the case are that the petitioner was appointed in the Central Internal Security Force as Constable. A charge sheet, dated 23.08.2011 was issued under Rule 36 for the articles of charge that the petitioner was on duty on 11.08.2011 and on 12.08.2011 was allotted a striking reserve duty with Arms and Ammunition. On being checked by the 'C' shift in-charge, it was noticed that the petitioner was not behaving normally and reported for duty after consuming alcohol, as smell of alcohol was coming from his breath. Then, the matter was reported to the higher officials who also checked the petitioner and found him to have consumed alcohol and it was stated that the petitioner had committed an act of gross misconduct, indiscipline and dereliction of duty.

4.The petitioner submitted a written statement of defence and denied the article of charge, then the respondents had appointed an Enquiry Officer and the petitioner had attended the enquiry and he was allowed to cross examine the respondents witness and the principles of natural justice was followed. After completion of the enquiry, the report was submitted to the disciplinary authority and the disciplinary authority called for an explanation to the enquiry report and thereafter, the respondents have imposed the said punishment. The petitioner preferred an appeal and the same was rejected on 13.02.2012. Then, the petitioner filed a revision and the same was rejected on 31.07.2012. Aggrieved over the same, the present Writ Petition is filed.



5.The respondents have filed a detailed counter affidavit stating that since it is a disciplined service, the petitioner is expected to follow all the rules and regulations in a strict way. The petitioner was granted ample opportunity and there is no violation of principles of natural justice. All the points raised by the petitioner are considered in accordance to law. Since the charge against the petitioner was proved during the departmental enquiry, the appeal and revision authorities did not find any cogent reason to interfere and hence, the petitioner's appeal and revision were rejected.

6.The contention of the petitioner that the petitioner was not being heard cannot be construed as personal hearing in appellate stage, since rules does not contemplate personal hearing in appellate stage. Therefore, it is not mandatory that the opportunity of personal hearing has to be given at the appeal stage. Therefore, there is no infirmity in the punishment imposed. The petitioner was taken to the Doctor and on seeing his breath the Doctor has given a certificate that the petitioner had consumed alcohol. The Doctor is an expert person, who can differentiate cough syrup and alcohol. Therefore, the contention of the petitioner that he had taken cough syrup cannot be accepted and the Writ Petition deserves to be dismissed and prayed to dismiss the Writ Petition.

7. Heard Mr. A.S. Mujibur Rahman, learned Counsel appearing for the petitioner and Mr. S. Pillai Monicantan, learned Counsel appearing for the respondents.

8.The allegation against the petitioner is that the petitioner had consumed alcohol and attended the duty. The petitioner submitted that he had taken cough syrup because he was unwell. The petitioner has also stated that if there was any allegation of consumption of liquor then, the respondents ought to prove by taking blood sample and based on the report alone the respondents are bound to take further action. The respondents and the petitioner have admitted that the blood sample was not taken and the blood test was not carried out. In the certificate from the doctor after examination it has been certified "breath smell of alcohol". The certificate is in a format and the Serial No. 2 was marked which reads as "consumed liquor but is not under its influence". In the format, in Serial No.1 consumed liquor and under the influence of liquor and it shows stages of the influence, like talks incoherently, unable to appreciate the objects, unable to stand or walk steadily, unable to recollect the past events. In the counter it has been stated that the petitioner was not behaving normally, there is no allegation that he talks incoherently, not able to walk, not able to identify the objects etc. therefore the benefit of doubt ought to be granted to the petitioner.



9. There are several judgments wherein it has been held that for any allegation for drunk then blood test is mandatory to prove the same. If there is an allegation of consumption of alcohol, then, the only method to prove the case is to take blood sample, examine the blood and based on the blood report alone, it can be concluded whether the delinquent have consumed alcohol or not. In a similar case in Munna Lal Vs. Union of India & Another reported in (2010) 15 SCC 399 a Sub-Inspector of Police was charged with being in a drunken condition at the Indian Airlines Cargo Gate in Indira Gandhi International Airport, New Delhi. The delinquent was taken to the Airport dispensary where on examination there appeared to be a mild smell of alcohol from his body and was referred to the Safdarjung Hospital, but he was not taken to that hospital. The Supreme Court ruled that in the absence of a proper test for alcohol in the blood or urine of the delinquent it could not be established that he was under the influence of alcohol while on duty

10. Admittedly, in this case blood or urine test was carried out. Therefore, the benefit of doubt shall be granted to the petitioner. Therefore, the punishment of the reduction of time scale of pay is harsh and on higher side. Therefore this Court deems it fit to reduce the punishment alone and hence the punishment is modified as stoppage of increment for one year without cumulative effect.

11. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

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

WEB COPY

- 1.The Director General,
Central Industrial Security Force,
Block No.13, CGO's Complex,
Lodhi Road, New Delhi-110 003.
- 2.The Inspector General,
Central Industrial Security Force,
South Zone Head Quarters,
Chennai Port Trust, Chennai-600 001.
- 3.The Deputy Inspector General,
Central Industrial Security Force,
DOS Head Quarters,
Antariksh Bhavan,
New BEL Road, Bangalore.
- 4.The Commandant,
Central Industrial Security Force Unit,
VSSC, Thumba,
Thiruvananthapuram, Kerala.

+1 CC to M/s.A.S.MUJIBUR RAHMAN, Advocate (SR-5256[F] dated 10/02/2022)

+1 CC to M/s.SPL GP (SR-5301[F] dated 10/02/2022)

Order made in
W.P. (MD) No.10274 of 2015
09.02.2022

sk(CO)
TR(17.02.2022) 5P 7C