

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.04.2022

DELIVERED ON : 04.08.2022

CORAM

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

W.P.(MD)No.18861 of 2015
and
M.P.(MD)Nos.1 and 2 of 2015

R.G.Kirupananth

... 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 Port Trust Campus,
Chennai – 600 009.

4. The Deputy Inspector,
Central Industrial Security Force,
CISF, DOS, Head Quarters,
Bangalore – 560 094.
5. The Senior Commandant,
Central Industrial Security Force unit,
V.S.S.C. Thumba,
Thiruvananthapuram,
Kerala – 6950 022.
6. The Assistant Commandant,
Central Industrial Security Force,
LPSC, Mahendragiri,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order passed by the third respondent dated 19.12.2014 in his order No.V-15014/L&R/SS/Rev/RGK/2014-13871 and the order dated 01.11.2014 of the third respondent in his order No.V-15014/L&R/SS/Rev/RGK/2014-246 modifying the order of the fourth respondent dated 18.08.2014 in his appellate order No.V-11014/CISF/L&R/Apl(RGK-IPRC(M)/06/14)/14/5110, modifying the order of the fifth respondent dated 21.05.2014, in his original order No.V-15014/CSIF/VSSC/(T)/Disc/RGK/2014-3348 and quash the same in so far as the punishment of reduction of pay by three stages from Rs.8760 + GP Rs.2400 to Rs.7830 + GP Rs.2400 in the pay Band-I i.e., Rs.5200-Rs.20200 + GP Rs.2400

for a period of three years and to direct the respondents to pay all monetary benefits for the period from 22.05.2014 to 16.11.2014.

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

For Respondents : Mr.K.R.Laxman

ORDER

This Writ Petition is filed challenging the impugned order dated 19.12.2014 and order dated 01.11.2014 and modifying the order of the fourth respondent dated 18.08.2014 and order dated 21.05.2014 and quash the same in so far reduction of pay by three stages from Rs.8760 + GP Rs.2400 to Rs.7830 + GP Rs. 2400 in the pay Band-I for a period of three years and to direct the respondents to pay all monetary benefits for the period from 22.05.2014 to 16.11.2014.

2. The brief facts of the case are that the petitioner has joined in the Central Industrial Security Force on 21.04.2003 and the petitioner has served in various States from 2004 onwards and has put in 11 years of service. Finally, the

petitioner was transferred from Neyveli to Mahendragiri on request on the ground that the petitioner's aged mother is suffering from Osteoarthritis and the petitioner's father is a heart patient. One R.Thankarajan has lodged a complaint on 27.01.2014 that the petitioner has assaulted the said R.Thankarajan with a mosquito net tying rod on his head while he was sleeping in bed during non-duty hours. The petitioner was placed under suspension on 08.02.2014. The second respondent on 11.02.2014 issued the memorandum under Rule-36, wherein, he has specifically alleged that the petitioner entered into the barrack in front of Quarter Guard and assaulted R.Thankarajan with mosquito net tying rod on his head while he was sleeping on bed at about 14.15 hours on 27.01.2014. The said Thankarajan was medically examined and after examining, it was reported that the said R.Thankarajan has blunt injury on his forehead (3 numbers of soft tissue swellings on his forehead) thereby, the petitioner has committed an act of gross misconduct, misbehavior and indiscipline that amounts to unbecoming of a member of CISF. The petitioner has submitted a written statement on 20.02.2014 denying the charges and the same was rejected vide order dated 12.03.2014. Thereafter, an enquiry was ordered and the enquiry officer has submitted an enquiry report after examining the statement of witness. Thereafter the petitioner

has submitted detailed representation on 11.05.2014 for the enquiry report. But, the fifth respondent without considering the representation of the petitioner, awarded the punishment of removal from service.

3. On appeal, the fourth respondent vide order dated 18.08.2014 has modified the punishment of removal from service into compulsory retirement with full pension and gratuity benefits. The petitioner has submitted a revision petition before the third respondent on 25.08.2014. The third respondent has modified the punishment to that of reduction of pay by three stages for a period of three years. Further, the third respondent has directed to reinstate with effect from 16.11.2014. Further the period from 22.05.2014 to 16.11.2014 has been regularized as dies-non by order dated 19.12.2014. Aggrieved over the punishment, the petitioner has preferred this writ petition.

4. The respondents have filed counter stating that a complaint was received from one R.Thankarajan, wherein, it was alleged that the petitioner had assaulted him with mosquito net tying rod on his head while he was sleeping on bed on 27.01.2014, which resulted in injury and swelling on his forehead.

Initially, the punishment was removal from service, subsequently, it was modified into compulsory retirement with full pension and gratuity benefits. Then the petitioner has preferred a revision petition and the punishment was again modified. The contention of the respondents is that since no one else was present in the barrack except the said R.Thankarajan and at the time of incident, circumstantial evidence was taken into for consideration. In this case, it clearly indicates that the petitioner had entered into the barrack and assaulted the complainant namely R.Thankarajan. The departmental proceedings being quasi-judicial in nature, in which the standard of proof is preponderance of probability, circumstantial evidence is sufficient to prove the charges. Even though there is no eye witness, based on the circumstantial evidence, the petitioner was enquired by the enquiry officer. Hence the respondents prayed to dismiss the writ petition.

5. Heard Mr.K.Vadivel, for Mr.A.S.Mujibur Rahman the Learned Counsel for the petitioner and Mr.K.R.Laxman, the Learned Counsel for the respondents and perused the records.

6. It is seen from the records that the disciplinary authority has imposed punishment of dismissal from service. On appeal, it was modified to compulsory retirement with full Pension and Gratuity benefits and further, it was revised and the punishment was modified as reduction of pay by three stages for a period of three years and the period from 22.05.2014 to 16.11.2014 has been regularized as dies-non. The contention of the petitioner is that there is no evidence that the petitioner has assaulted the said Thankarajan. But the contention of the respondents is that the petitioner has assaulted the said Thankarajan because of the wordy quarrel between the said Thankarajan and the petitioner. This Court is of the considered opinion that the alleged incident has happened during the non-duty time. It is also seen that the allegation against the petitioner is that the said Thankarajan was assaulted by the mosquito net tying rod, but the alleged injury is only minor injury. Therefore, this Court is of the considered opinion that the punishment of stoppage of increment for five years with cumulative effect and dies non is disproportionate. Therefore, this Court is inclined to further modify the punishment as stoppage of increment for two years with cumulative effect. The punishment of dies-non for the period from 22.05.2014 to 16.11.2014 is also set aside. The monetary benefits shall be paid. The respondents are directed to

implement the punishment within a period of 6 weeks from the date of receipt of copy of this order.

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

04.08.2022

Index : Yes / No

Internet : Yes

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To

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S.SRIMATHY, J

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