



W.P.(MD)No.655 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.10.2022**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.655 of 2015

and

W.M.P.(MD)Nos.6280 & 8426 of 2017

V.Sundar Raj

... 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,
CGOs Complex,
Lodhi Road,
New Delhi – 110 003.
3. The Additional Director General/Airport Sector,
Central Industrial Security Force,
Block No.16, CGO's Complex,
ParyavarnBhavan, 4th Floor,
Lodhi Road,
New Delhi – 110 003.



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4. The Deputy Inspector General,
Airport, South Zone, Head Quarters,
Central Industrial Security Force,
Besant Nagar,
Chennai – 600 090.
5. The Senior Commandant,
Central Industrial Security Force Unit,
Airport Security Guard,
Chennai – 600 027.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a 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/REV-30/VSR/LC/2014/9738, dated 14.11.2014 confirming the order of the fourth respondent in his Order NO.v-15019/1 & R /AP-SZ/Apl-05/2014/4025, dated 24.06.2014 and confirming the order of the fifth respondent in his order NO. V-15014/CISF/ASG(Ch) Maj-12/VSR/Disc/2014/1662, dated 03.03.2014 and quash the same and to direct the respondents to take the petitioner into the strength of CISF as constable with all monetary benefits and thus render justice.



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For Petitioner : Mr.L.George Paul Anto

For Respondents : Mr.R.Murugappan

ORDER

This Writ Petition is filed for Writ of Certiorarified Mandamus, to quash the impugned order passed by the third respondent dated 14.11.201, confirming the fourth respondent order, dated 24.06.2014 and confirming the fifth respondent order, dated 03.03.2014 and to direct the respondents to take the petitioner into the strength of CISF as constable with all monetary benefits.

2. The petitioner joined the Central Industrial Security Force in the year 2001. On 04.10.2013, when he was in the B shift duty from 12.30 hours to 20.30 hours the petitioner was imputed with charges of misconduct and the respondents have issued the impugned Articles of Charge dated 26.11.2013. The Articles of Charge are that the petitioner has smuggled liquor from the “duty free shop”. The Articles of Charge



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are extracted hereunder:

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Articles of charge-I

“Force No.012540158 Const/GD V.Sundar Raj of CISF Unit ASG Chennai was detailed for C/W duty in B shift from 1230 hrs to 2030 hrs on 04.10.2013 at Anna International Terminal Chennai Airport. During his Duty on 04.10.2013 from 1300 hrs to 1330 hrs he was actively involved in smuggling of duty-free liquor bottles in connivance with duty free staff from the duty free shop in the International SHA of New International Terminal to the city side. This act on the part of No.012540158 Const/GD V/Sundar Raj of CISF Unit ASG Chennai tantamount to gross indiscipline, misconduct negligence and dereliction of duty by misusing the powers as CIW member. Hence the charge.

Article of Charge -I

No.012540158 Const.GD V.Sundar Raj of CISF Unit ASG Chennai was detailed for CIW duty (as India-3) in B shift from 1230 hrs to 2030 hrs on 04.10.2013 at Anna International Terminal Chennai Airport. During his duty at about 1320 hrs he managed 24 bottles of Johnny walker black table whiskey from the duty free shop located in SHA of NIT with the connivance of the Fierningo Duty Free shop. He took the bottles in two carton boxes of Kinley Mineral Water out of terminal through gate No.03 (Arrival Exit Gate) of IT arrival area with the help of the duty free staff in a trolley by misguiding the floor in charge and other duty personnel and taking the advantage as a CIW member. Further he met CISF No.994850595 Const R.Prem Kumar of NDRF Bn.Arakkonam on the city side and loaded the cartons boxes in NDRF Red beacon fitted Toyato Qualis No.TN-23 AZ-6413 waiting in departure city side. After the departure of NDRF Red Beacon fitted vehicle from NIT departure area, he along with Const.R.Prem Kumar finally left arrival city side on a



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motor bike. This act on the part of No.012540158 Const/GD V.Sundar Raj of CISF Unit ASG Chennai being a member of CIE, tantamount to gross indiscipline involvement in smuggling of liquor, misconduct, misusing the official capacity as a CIW member and dereliction of duty, which is unbecoming to a member of disciplined Force. Hence, the charge.”

3. The petitioner had denied that the charges are false and submitted that the charges are based on the CCTV footage recorded footage on 04.10.2013. The contention of the petitioner is that the articles of charges refer to one Prem Kumar, Constable, but the respondents have not enquired the said Prem Kumar. Moreover, the charges also states that two carton boxes of Kinley Mineral Water were carried on by using the trolley and hence, there is no information about as to how the Johnny Walker Black Label Whisky was detected in the mineral water cartons. There is no valid evidence to show that the mineral water carton contains only the whisky bottles. Moreover, the Articles of Charge alleges that Gate No.3 of NIT arrival area was crossed by misguiding the floor in charge with help of duty-free staff and other duty personnel by taking advantage of CIW member. According to the



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petitioner, the Gate No.3 cannot be opened without operating key which was in possession of the Inspector. The duty-free Inspector ought to explain as to why he ordered to open the gate No.3 through his subordinates. The respondents have not obtained any explanation from the concerned Inspector who was in possession of the Gate No.3 keys. The petitioner further contended that the said Prem Kumar statement was not recorded. Moreover, the Officer who was alleged with the Red Beacon fitted Toyota Qualis No.TN-23-AZ-6413, Arakkonam was not questioned. Hence the disciplinary proceeding is violative of principles of natural justice and prayed to allow the writ petition.

4. The respondents have filed a detailed counter affidavit substantiating the disciplinary proceedings stating that through CCTV footage, the conduct of the petitioner was exposed. Based on such evidence, the disciplinary proceeding was initiated. The petitioner has also accepted the guilt and has submitted a detailed explanation. Since the petitioner has accepted the same, the petitioner was inflicted with punishment of removal from service. The petitioner preferred appeal and



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the same was dismissed. Then preferred review petitioner and the same was dismissed. Aggrieved over the same, the present writ petition has been filed. Since the punishment order was confirmed, the respondents prayed to dismiss the writ petition.

5. Heard Mr.L.George Paul Anto, learned Counsel appearing for the petitioner, Mr.R.Murugappan, learned Counsel appearing for the respondents and perused the records.

6. The learned Counsel appearing for the respondent submitted that the statement of the petitioner was recorded. In that the petitioner has submitted his submission on his own handwriting and admitted that he had committed the offence. To this effect the respondents had produced the file and the relevant portion is extracted hereunder:

“To

The Senior Commandant,
CISF, ASG,
Chennai.



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Respected Sir,

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I Constable V.Sundar Raj CISF No.012540158 work in CIW Section under your kind control.

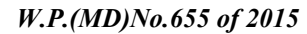
Sir, I came in "B" shift duty of Airport at 12.00 hrs. At the time I meet this Unit previous staff namely Constable Pream Kumar and asked How are and any work in Airport? He say my senior officer Shri Verma (Commandant) sir want some duty free Bottles. I say I collect the Bottle in Airport sir. Then I asked How I can collect it, he say already talk to senior officials and collect the vehicle of NDRF, CISF-Re2 colour qualies. And asked me to help it. I saw the vehicle of CISF and believed it. Then arrange one duty free staff and collect the Bottle and handed over it to Pream Kumar. I know very well in Pream Kumar he work in Chennai Airport, he did not say any time for the bottle matter. But he said first time for his Commandant's some party regarding. So I am help to the department of NDRF CISF. This is my first mistake. I agree to help Constable Pream Kumar without my senior official permission. Sorry sir.

Place: ASG Chennai
Date 04.10.2013

Yours obediently
sd"

The respondents submitted since the petitioner had accepted the allegation of misconduct the petitioner is guilty of the misconduct and he deserves the punishment.

7. The Learned Counsel for the petitioner relied on the



extracted hereunder:

2) The Article of charge proceeds that while he was detailed for B shift duty from 1230 hrs to 2030 hrs on 04.10.13 at AIT, Chennai Airport, he allegedly involved in smuggling of duty-free shop in the International SHA of NIT to city side. It is pertinent point out here that the name of the staff of the duty-free shop was not mentioned in the charge further no statement has been recorded from the above said person.

3) He alleges that 24 bottles of Johnny Walker Black Label Whisky from the duty-free shop was smuggled. It is also vital to note that in the article of charge it was alleged that the two carton boxes of Kinley Mineral water carried on by using the trolley. Therefore, the article of charge contain no information about as to how the Jonny Waler Black Lable Whisky was detected in the mineral water cartons. Therefore, without any valid evidence to show that mineral cartons contains only whisky bottle.

4) The article of charge alleges that the gate No.03 of NIT arrival area was crossed by misguiding the floor in-charge with the help of duty-free staff and other duty personnel by taking advantage of CIW member. The gate No.3 cannot be opened without operating key which was in possession of the inspector. Therefore, it is the duty of



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Inspector to explain as to why he ordered to open the gate No.03 through his subordinate. Therefore, without getting any explanation from the concerned Inspector who is having the key of gate No.3, there is no point in blaming the delinquent.

5) Const. R.Prek Kumar of NDRF Battalion Arakkonam on the city side loaded the cartons boxes in NDRF Red Bacon Fitted Toyota Qualis No.TN-23-AZ-6413 waiting in departure city side. Here any layman can raise two questions. Namely why the statement of Const.R.Prem Kumar of NDRF was not recorded. Secondly why no attempt was made to find out the senior officer who was allotted with the above vehicle of NDRF Bn.Arakkonam.

6) The vehicle bearing registration No.TN-23-AZ-6413, accordingly to the article of charge having the read beacon and the Constable R.PremKumar, accordingly to the Article of Charge is working NDRF Arakkonam and formerly posted at ASG Meenambakkam. Therefore, it is primary duty of the CISF Unit to find out as to the vehicle belongs to the NDRF Arakkonam through CISF Const. R.Prem Kumar. In the absence of any attempt being made to find out the above facts, the article of charge frames against delinquent is very vague in nature and contains no definite as contemplated under Rule-36 of CISF Rules.

7) In spite of above written statement of defence submitted for the memorandum issued under Rule-36 of CISF rules the enquiry was ordered by appointing presenting officer and enquiry officer for conducting the enquiry. The enquiry officer has recorded the statement of Pws 1 to 4 and CW-1 namely HC/Dvr Mahipal (CISF Unit, NDRF 4th BN. CW-2 AQC/LR Rajesh Thappa and SI/Exe M.Ravichandran. In the charge memo dated 26.11.13 in the Annexure 1, V the manage Fleming duty free shop NIT Chennai airport but the EO not summoned for enquiry to



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give the statement which is very vital of the article of charge framed against him.

8) The main witnesses of this cases are Const.R.Prem Kumar of 4th Battalion NDRF and employees of duty free shop. But the E.O. In spite of request made in the defence statement by the delinquent, has not taken any effective step to summon the above said witnesses to give statement and afford an opportunity to cross examine them.

9) The presenting officer has submitted the brief note with respect of the enquiry conducted by the E.O. In the brief note PW-1 stated that the information was received from that the delinquent has taken out duty free liquor bottles, further he stated that he was informed by NIDFS Mr.Sobhanbaby that the delinquent was requesting them for liquor bottle for last 01 or 2 days, so toady he handed over 24 Nos. of liquor bottle to delinquent. The PW-1 is not an eye witness for the alleged taken over 24 Nos of liquor bottles. The PW-1 relies on the statement given by the delinquent in the preliminary hearing.

10) The statement of PW-2 is self contradictory. In the first statement he stated that he has not given any permission to the delinquent. But in the second statement he stated that he believed the delinquent and granted permission. It is pertinent to mention here that PW-2 has not stated anything about the contents of parcel.

11) PW-3 in his statement confirmed that the HC/GD Satyaprakash has come and asked the key of trolley gate. HE told him to contact PW-2. Thereafter the HC/GD Satyaprakash approach PW-2 and discussed about the parcel kept in the trolley gate. After an hour Inspector Raj Ranjan PW-1 and SI/Exe Jayvel approached P-2 and left to duty free shop SHA Departure NIT.



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12) PW-4 has stated that the delinquent approached him and opened the trolley gate and informed the matter to PW-2. In the cross examination the PW-4 has stated that he does not know whether the parcel contains liquor or not. The Court witness-1 also has stated that the parcel was in closed condition and he does not know what was inside. The CW-2 is PEO who conducted enquiry on 05.10.13. Therefore the PEO cant be a witness in Departmental enquiry. CW-3 in his statement has stated that the information he received about the alleged incident dated 04.10.13 at about 1445 hrs.

13) TH EO has taken more pain to record the statement of preliminary enquiry office and no step he had taken to record the statement of Const.R.Prem Kumar of NDRF Battalion Arakkonam. According to the findings of the EO as per directions the delinquent acted. The statement of employees of Duty-Free Shop and Manager flamingo duty-free shop were not recorded.”

8. On perusal, this Court is of the considered opinion that the petitioner has categorically stated that the said Prem Kumar carried out the duty in the first shift. Based on the Prem Kumar request and based on the concerned Officer, namely, Sriverma, the petitioner had collected the bottles and has helped the said Prem Kumar. The petitioner has also stated that he had carried out the bottles for the said Officer Sriverma, since he had requested to carry the bottles. However, the respondents



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have ignored this statement. When the petitioner had submitted that he had acted for and on behalf of the said Prem Kumar and the said Officer Sriverma it is incumbent on the part of the respondents to enquire the said Prem Kumar and officer Sriverma. The petitioner has also categorically stated that the carton was loaded in the vehicle with Registration No.TN-23-AZ-6413, then the respondents ought to have further enquired and ought to have ascertained the owner of the car. The enquiry officer has held since the petitioner is aware of the contents in the carton, but has come out with the concocted stories to cover the charge leveled against the petitioner. From this it is evident that the enquiry officer disbelieved the version of the petitioner and has declined to call the said Prem Kumar and officer Sriverma. Moreover, it is seen that the enquiry officer has proceeded that with the enquiry as if the petitioner has admitted the allegations in the preliminary enquiry and hence concluded that the petitioner had committed the misconduct. But the enquiry failed to consider that the petitioner had committed, since the said Prem Kumar and the officer Sriverma had requested to carry the bottles. If the respondents are fair, then the respondents ought to have



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charged the said Prem Kumar and the officer Sriverma. Hence there is clear discriminatory in initiating the disciplinary proceedings. Hence this Court is of the considered opinion that the disciplinary proceedings are truncated, discriminatory and should be interfered with.

9. The respondents have not questioned and sought any explanation from the said Prem Kumar. As rightly pointed out by the Learned Counsel appearing for the petitioner, the respondents have not explained the reason for not summoning the said Prem Kumar as witness before the enquiry officer. The said Officer Srivarma was also not questioned and his statement was not obtained. The claim of the petitioner is that he had helped the said officer Srivarma to take the bottles from the shop and handed over in the vehicle. On considering this submission this Court is of the considered opinion that the respondents failure to enquiry the said Srivarma and Prem Kumar is fatal to the case and it amounts to violative of principles of natural justice.

10. Having held that the enquiry is violative of principles



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biased, this Court is of the considered opinion that the punishment ought to be interfered with. This Court is inclined to remit the case for modifying the punishment, but at this juncture the Learned Counsel appearing for the petitioner submitted that the petitioner is out of employment from 03.03.2014 i.e. for the past eight years and he is now 42 years and hence prayed to direct the respondents to reinstate the petitioner.

11. Therefore, this Court is inclined to reduce the punishment and the following orders are passed:

- (i) The punishment of stuck off from the service of CISF is quashed.
- (ii) The respondents are directed to take the petitioner into the strength of CISF as constable.
- (iii) The punishment is modified as stoppage of increment for 2 years with cumulative effect.
- (iv) The respondents shall implement this punishment and confer all service benefits to the petitioner.
- (v) The respondents are directed to disburse 20% of the backwages for the period of absence.

12. With the above said direction, this Writ Petition is allowed.



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No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Internet : Yes / No

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represented by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Industrial Security Force,
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5. The Senior Commandant,
Central Industrial Security Force Unit,
Airport Security Guard,
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S.SRIMATHY, J

jbr

Order made in
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