



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.04.2022

DELIVERED ON : 02.06.2022

CORAM

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

**W.P. (MD)No.19906 of 2016**

P.Shanmugaraja ... 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,  
Block No.13, C.G.O's Complex,  
Lodhi Road, New Delhi 110 003.

3. The Inspector General,  
Central Industrial Security Force,  
Chennai Port Trust, Near War Memorial,  
Chennai 600 009.

4. The Deputy Inspector General (SZ),  
Central Industrial Security Force Campus,  
Rajajibhavan, Besant Nagar,  
Chennai - 90.

5. The Commandant,  
Central Industrial Security Force Unit,  
VOCPT, 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 fourth respondent in his Order No.V-11014/01/2010/Disc/SZ/2010/3198, dated 03.06.2010 modifying the Order passed by the fifth respondent in his Final Order No.V-15014/CISF/TPT/Disc/Maj-02/PSR/2009/4155, dated 30.09.2009 in so far as the portion relating to the Punishment alone



is concerned and the order dated 24.08.2010 passed by the fourth respondent in his Order No.V-11014/01/2010/L&R(SZ)/1363, regularizing the period from 30.09.2009 to 17.06.2010 as dies-non and quash the same.

For Petitioner : Mr.K.Vadivelu  
for Mr.M.Mohammed Ibrahim Ali

For Respondents : Mr.C.Nandagopal

### **O R D E R**

This Writ Petition is filed to quash the impugned order dated 03.06.2010 modifying the order passed by the fifth respondent dated 30.09.2009 in so far as the portion relating to the punishment alone and the order dated 24.08.2010 passed by the fourth respondent regularizing the period from 30.09.2009 to 17.06.2010 as dies non and directing the respondents to all monetary benefits.

2. The brief facts of the case are that the petitioner joined as Constable in the Central Industrial Security Force in the year 1993. On 03.04.2009 an article of charge was issued. The Charge against the petitioner is that on 05.03.2009, while the petitioner was working at the Check-post-I along with Constable T. Chandrakant, a surprise check was carried out and it was seen that the said Chandrakant was counting currency notes and Constable P.S.Raja was watching it. When Inspector Annamali asked the delinquent to hand over the amount, he refused and the said Constables ran away in two directions. The search yielded a bundle of coins tied up in a piece of cloth and three crumbled ten rupee notes, total Rs.130.50/-. The fraudulent act on the part of the petitioner's amount to gross misconduct, indiscipline, dereliction of duty and unbecoming a member of a discipline force. The petitioner submitted a written reply on 25.04.2009 and denied all the charge and pleaded not guilty. Thereafter, a disciplinary authority was appointed and the enquiry report was submitted on 07.09.2009 holding that that petitioner was feeling guilty of charges. Thereafter, a copy of the report was served to the petitioner on 07.09.2009 and the petitioner submitted his objection to the enquiry report on 22.09.2009. In the objection it was pointed out that there was a failure on the part of the enquiry authority in assessing the defence version and the actions on the part of the enquiry officer were clearly biased and the findings are not acceptable. The disciplinary authority, after receiving the objection has not consider the objections but imposed penalty of removal from service. Aggrieved over, the petitioner submitted a detailed appeal on 12.10.2009. The contention of the



petitioner is that the said Annamalai had used unparliamentary words against the Constable N. Periyaswamy of TPT Tuticorin and in the complaint sent by the said Constable, the petitioner was a witness. On that pretext, Inspector Annamalai had threaten the petitioner that the petitioner would meet dire consequences and thus the present incident had been a frame up to trap the petitioner. On 03.06.2010, orders were passed by the Appellate Authority, wherein, the penalty was modified to that of reduction of pay by three increments in the Pay Band (with GP 2400) for a period of three years with further direction that the petitioner will not earn increments during the period of reduction and the reduction will have the effect of postponing future increments of pay. The petitioner was directed to reinstate into service. However, the intervening period from the date of removal to the date of reinstatement was directed to be treated as dies-non. The petitioner was reinstated into service on 18.06.2010.

3. The contention of the petitioner is that there was a previous enmity between the Annamalai and the petitioner because the petitioner has acted as a witness in a complaint against the said Annamalai. The same was not taken into account either by the Enquiry officer or by the Appellate Authority. The contention of the petitioner is that on the date of alleged incident, after making all the entries in register effectively dutifully performing the duty at Check Post No.1, the petitioner had along with the said Chandrakant hand over the duties to HC/GD U.R.Singh and the Constable K.S.Rajan. The petitioner, after being relieved gone to the wash room, while the said Chandrakant was tying up the challans. At that stage, the said Annamalai barked in and was making phone calls. Later Inspector K.G.Prakash, HC/GD G.Ramaswamy and Constable D.Maharajan arrived and searched the surrounding areas. The Inspector K.G. Prakash searched the petitioner's body but could not find any incriminating things. Later, the Inspector Annamalai and the Inspector K.G. Prakash went behind the building and came out with the bundle tied with a piece of cloth. The petitioner was asked to leave the duty post. Later a concocted and fabricated story was built up and the charge sheet was issued to the petitioner. An enquiry was conducted in a biased manner and there is no evidence adduced to hold that the petitioner was guilty. The evidence relied on by the respondent was full of material contradictions. Therefore, penalty imposed on the petitioner cannot sustain in the eye of law.

4. The respondents have filed a counter affidavit stating that the present writ petition is not maintainable since there is an alternative remedy of revision. Moreover, the appellate order was served to the petitioner on 13.06.2010 and the writ petitioner is



filed after a lapse of six years, therefore, the petition is hit by delay and laches. The departmental proceeding was conducted after giving adequate opportunity to prove his innocence. Therefore, there is no violation of principle of natural justice. CISF is a disciplinary service and the personnel serving in CISF are also expected to maintain same degree of discipline and loyal to the Force. Illegal gratification of money made by the petitioner for his wrongful gain cannot be tolerated. The previous enmity between the Inspector Annamalai and the petitioner is totally irrelevant and it is a past incident and the relationship was not were related to the present incident. On appeal, the Appellate Authority has considered the case meticulously and thereafter, the punishment was modified. Based on the Appellate Authority order, the petitioner was reinstated into service. The enquiry authority has elaborately discussed on relevant facts in detail and after examining the statement of the witness and the defence version has held that the charges are proved. The contention of the petitioner is that the evidence full of material contradictions is totally incorrect. The charges are grave in nature and the CISF Personnel deployed at the port area and was authorized carry out anti-corruption checking/surprise checking to curb any corrupt practice by the CISF Personnel while performing the security duties. Therefore, the respondents submitted that there is no ambiguity that the Appellate Authority order is perfect in nature and the same is a self-explanatory. Therefore, the respondents prayed to dismiss the writ petition.

5. The respondents relied on writ appeal order in W.A.(MD) No.1205 of 2019 dated 12.11.2019, wherein, the Division Bench has held if the delinquent has not exhausted the provision of revision then the matter ought to be remitted back to the authority for consideration of granting liberty to the delinquent to file Revision Petition before the appropriate authority. While considering the case by the Appellate Authority, the Appellate Authority has held as under:

*"05. On the other hand, I also do not fail to note that Constable K.S Rajan (PW-6) who along with HC/GD UR Singh (PW-4) reported for 'C' shift duty at check post on the date of incident, deposed to a clarificatory question asked by the EO in the enquiry held against the co-accused (Constable T Chandrakant) that Constables PS Raja and T Chandrakant did not run here and there during the surprise checking carried out by PW-I and therefrom he cannot give false statement of having seen them running here and there. Unfortunately, PW-4 expired prior to the enquiry proceedings and PW-6 is the only witness to*



the incident. Statement of PW-6 with regard to this particular part of the charge, therefore, does not corroborate with the statement of prime witness PW-1. This aspect of the enquiry proceedings was not properly discussed either in the enquiry report or in the final order. Therefore, it does dilute the evidence against the appellant, though to a limited extent. It also reflects that the surprise checking was not properly organized by the unit administration and therefore, failed to produce best witness. It is also on record that the appellant has maintained a clean defaulter sheet for more than 16 years of his entire career."

6. It is seen from the records that there is a finding by the Appellate Authority that the Constable did not run here and there during the surprise check. Also the appellate authority states that the statement of PW-1 does not corroborate with the statement of PW-6 and this part of the aspect was not properly discussed in the enquiry report. It has also been held in Appellate Authority order that the delinquent writ petitioner has maintained a clean service record for more than 16 years in his entire career. In such circumstances the modified punishment is disproportionate and this Court is inclined to modify the punishment.

7. The respondents submitted that the petitioner has not filed a Revision Petition and has filed a Writ Petition before this Court that too after a lapse of six years. The petitioner was also reinstated in the year 2010. If the matter is remitted back then the petitioner would be facing the disciplinary proceedings for the next four or five years. The petitioner is already 51 years old and therefore, this Court is of the considered opinion that the petitioner in order to have a peaceful service for his rest of the service period until his retirement, this Court is rejecting the plea and the writ petition is entertained.

8. Therefore, this Court set aside the punishment of reduction of increments and the punishment of dies-non. Further the punishment of "reduction of pay by three increments in the Pay Band (with GP 2400) for a period of three years with further direction that the petitioner will not earn increments during the period of reduction and the reduction will have the effect of postponing future increments of pay" is modified as "stoppage of increment for two years without cumulative effect". The respondents are directed to implement the order within a period of six weeks from the date of receipt of a copy of this order.



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

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Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

**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

1. The Secretary to Government,  
Union of India  
Ministry of Home Affairs,  
New Delhi.
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Block No.13, C.G.O's Complex,  
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4. The Deputy Inspector General (SZ),  
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Chennai - 90.
5. The Commandant,  
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VOCPT, Tuticorin.

+1 CC to M/s.MOHAMED IBRAHIM ALI, Advocate ( SR-24297[F] dated  
03/06/2022 )

**W.P. (MD) No.19906 of 2016**  
**02.06.2022**

MGJ(09.06.2022) 6P 7C