



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.04.2022

Delivered On: 02.06.2022

CORAM:

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

W.P. (MD)No.6110 of 2016

WEB COPY

G.Vettivel

.. Petitioner

Vs

1.The Union of India,
Rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi - 110 001.

2.The Director General,
Central Industrial Security Force,
CGO Complex,
Lodhi Road,
New Delhi - 110 003.

3.The Inspector General,
Central Industrial Security Force,
Airport Sector, Head Quarters,
CGO Complex,
Lodhi Road, New Delhi - 110 003.

4.The Deputy Inspector General,
Central Industrial Security Force,
Airport Sector, South Zone,
2nd Floor, D-Block,
Rajaji Bhawan, Chennai - 600 090.

5.The Senior Commandant,
Central Industrial Security Force,
Airport Security Guard,
Meenambakkam, Chennai - 600 027.

6.The Deputy Commandant,
Central Industrial Security Force,
Airport Security Guard,
Meenambakkam, Chennai - 600 027.

7.The Assistant Commandant,
Central Industrial Security Force,
Airport Security Guard,
Meenambakkam, Chennai - 600 027.

.. Respondents



PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 3rd respondent in his Order No.V-11014/APS/APL-13/GV/LC/2015-11665, dated 30.12.2015, and confirming the order passed by the 4th respondent in his Final Order No.V-15014/CISF/APSZ/Maj-01/CNI/GV/2014-4024, dated 24.06.2014 and quash the same and to direct the respondents to take the petitioner into the strength of Sub-Inspector Executive in the Central Industrial Security Force with all monetary benefits.

For Petitioner : Mr.K.Vadivelu for
M/s.A.S.Mujibur Rahman

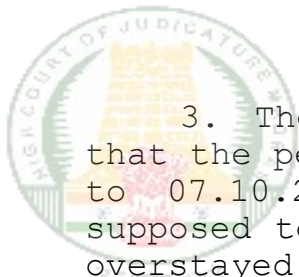
For Respondents : Mr.J.Alaguram Jothi

ORDER

This writ petition has been filed to quash the impugned orders, dated 30.12.2015 and 24.06.2014 passed by the 3rd and 4th respondents respectively and direct the respondents to take the petitioner into the strength of Sub-Inspector Executive in the Central Industrial Security Force with all monetary benefits.

2.The brief facts of the writ petition are as follows:

The petitioner has joined duty as Constable in the year 2003 and had served all over India up to the year 2008. Thereafter, he was selected and posted as Sub Inspector, through the Limited Departmental Competitive Examination held in the year 2008 and appointment order was issued on 21.01.2008. While the petitioner was serving under the 7th respondent, he was granted four days earned leave from 16.11.2013 to 19.11.2013. After availing the leave, the petitioner sent an E-mail on 19.11.2013 seeking extension of fifteen days leave from 20.11.2013. But the 7th respondent by letter, dated 25.11.2013 had informed and directed the petitioner to report for duty, failing which, disciplinary action will be initiated. Again on 02.12.2013, the petitioner has sent another E-mail to permit the petitioner to report for duty on 05.12.2013. Thereafter, again on 03.12.2013, the petitioner has sent an E-mail with the request to extend the leave till 19.12.2013, on health ground. The 7th respondent again issued a call up notice on 06.12.2013, directing the petitioner to report for duty immediately. On 16.12.2013, the petitioner has sent an E-mail with request to extend the leave on the ground that he was suffering from Jaundice and was taking treatment. Again the 7th respondent sent a call letter on 16.12.2013, 19.12.2013 and 21.12.2013 with a direction to the petitioner to report for duty. On 02.01.2014, the petitioner has submitted his reply.



3. The respondents have issued Articles of Charges alleging that the petitioner was granted 11 days earned leave from 26.09.2013 to 07.10.2013. After completion of sanctioned leave, he was supposed to join for duty on 07.10.2013. But he failed to do so and overstayed on 07.10.2013 for one day unauthorizedly without any intimation/valid permission from the competent authority. The second charge dated 10.10.2013, is that the petitioner was directed to submit explanation on the misleading facts that his father was ill and another memo, dated 10.10.2013 and seeking explanation for his one day overstayed of leave with direction to submit a reply by 15.10.2013. But the petitioner failed to reply and according to the respondents, the act of the petitioner tantamount to disobedience, indiscipline, negligence and dereliction of duty. Hence the present charges.

4. The petitioner contended that he has submitted his detailed explanation on 20.01.2014. But without considering the same and without any authority the 5th respondent has appointed Enquiry Officer to conduct an enquiry upon the charges framed against the petitioner. The Enquiry Officer without giving any opportunity of hearing to the petitioner has conducted exparte enquiry and based on the exparte enquiry report, punishment of 'Removal from service with immediate effect' was awarded upon the petitioner by the fourth respondent. Against which, the petitioner has filed an appeal before the third respondent. The third respondent by his order, dated 30.12.2015, rejecting the appeal, has confirmed the order of punishment passed by the third respondent. Hence, the writ petition.

5. The respondents have filed counter statement. The charge was served on the petitioner on 14.01.2014 through a special messenger to his home address and the petitioner has replied on 20.01.2014. The petitioner in his representation has denied the charges framed against the petitioner. Therefore, an Enquiry Officer was appointed. The Enquiry Officers made efforts to send several letters. In spite of several notices, the petitioner has not attended the enquiry. Due to the absence of the petitioner, the Enquiry Officer has no other option except to proceed with the Departmental Enquiry ex-parte. After completion of the ex-parte departmental enquiry, the Enquiry Officer has submitted his report along with the case files to the Disciplinary Authority, on 31.03.2014.

6. A copy of the enquiry report was sent to the petitioner's home as per the procedure, with direction to submit his explanation to the same within 15 days from the date of receipt of the same. The respondents have also sent the enquiry report through special messenger through the Office Movement Order No.640, dated 02.04.2014, with direction to serve the enquiry report to the petitioner's home. Since the petitioner is not available in the
<https://www.secreports.gov.in/home> another namely Smt. G. Ratnawathi, had received the



enquiry report under the proper receipt on 05.04.2014. His representation, dated 12.04.2014 against the enquiry report was received by the respondents.

7.The Disciplinary Authority after due consideration of his representation against the enquiry report and all other documents held in case file, awarded the penalty of 'Removal from service with immediate effect' upon the petitioner. Later on due to technical error, the same order was cancelled vide order, dated 30.04.2014, subsequently, the case files A & B were sent to DIG, for passing orders against the petitioner. The appointing authority namely the DIG, after giving the petitioner another opportunity to make representation against the enquiry report, within 15 days of receipt of the same vide letter, dated 30.05.2014, directed the petitioner to submit his reply. But the petitioner did not submit any representation against the enquiry report on due date. Since at the time of consideration, the time granted to the petitioner to submit representation was elapsed, it was presumed that the petitioner had nothing to state and hence, the Appointing Authority finalized the proceedings by awarding the penalty of 'Removal from Service with immediate effect'. Thereafter, an appeal was preferred and the same was rejected on 30.12.2015. Aggrieved over the Disciplinary proceedings, the present writ petition is filed.

8.The respondents prayed to dismiss the writ petition on the ground that the petitioner has absented from service for more than 200 days and his representation was scrutinized and after considering his representation and the facts of the case, the petitioner was imposed with punishment of dismissal from service.

9.Heard the learned counsel appearing for the petitioner and the respondents.

10. It is seen from the records that the petitioner has absented for more than 215 days. Admittedly, the petitioner has not attended the enquiry and an *ex-parte* enquiry was passed and based on the *ex-parte* enquiry, the petitioner was granted the punishment of dismissal from service. Even the Appellate Authority did not grant adequate opportunity to the petitioner. The next contention of the petitioner is that the 5th respondent has appointed the Enquiry Officer and the 5th respondent is not competent to pass orders under CISF Acts and Rules and the punishment for absence for more 200 days is disproportionate. The next contention of the petitioner is that the petitioner was not granted sufficient opportunity to substantiate his case. By considering all these grounds, it is admitted fact that an *exparte* order was passed. In the domestic enquiry, sufficient and effective opportunity should be granted to the delinquent, especially when there has been a contemplation to impose a major punishment, then the respondents are duty bound to give sufficient opportunity to the petitioner in order to establish his case. Therefore, this Court is of the considered opinion that ~~and~~ sufficient opportunity should be granted to the petitioner.



11. Accordingly, the impugned orders passed by the 3rd and 4th respondents are hereby set aside. The respondents are directed to conduct de-novo enquiry, after giving sufficient opportunity to the petitioner and pass final orders on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order. The petitioner shall cooperate in the disciplinary proceedings without fail.

12. With the aforesaid directions, this writ petition is allowed. No costs.

Sd/-

Assistant Registrar (AD-II)

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/ /2022

Sub Assistant Registrar(CS)

TM

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+1CCtoM/s.MOHAMED IBRAHIM ALI, Advocate(SR-24298[F]dated 03/06/2022)

ORDER MADE IN
W.P. (MD)No.6110 of 2016
02.06.2022

PKP/09.06.2022/6P/9C