IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.06.2023**

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.17263 of 2011

K.S.Thimmaiah ... Petitioner

Vs.

1.The Group Commandant,
CISF Group Head Quarters,
Block D, Rajaji Bhavan,
Besant Nagar,
Chennai – 90.

2.The Deputy Inspector General,
CISF South Zone Head Quarters,
Besant Nagar, Chennai – 90.

3.The Inspector General,
CISF, South Sector,
Near War Memorial,
Chennai Port Complex,
Chennai – 600 009. … Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari, calling for the records pertaining to the order of the third respondent in No.V-15014/L&R/SS/Rev/KST/2011/3731 dated 29.04.2011 confirming the order of the appellate authority i.e. the second respondent in V-11014/64/ANU/KST/2010/6744 dated 29.10.2010 and Disciplinary Authority i.e. the first respondent in No.V-15014/GHC/AD.V1/KST/SSP/MAJ/2010-4217 dated 31.07.2010 and quash the same.

For Petitioner : Mr.Sudharshana Sundar

For Respondents 1 to 3 : Mr.Dr.D.Simon,
Central Govt. Standing Counsel

ORDER

The relief sought by the petitioner in this writ petition is to call for the records pertaining to the order of the third respondent in No.V-15014/L&R/SS/Rev/KST/2011/3731 dated 29.04.2011 confirming the order of the appellate authority i.e. the second respondent in V-11014/64/ANU/KST/2010/6744 dated 29.10.2010 and Disciplinary Authority i.e. the first respondent in No.V-15014/GHC/AD.V1/KST/SSP/MAJ/2010-4217 dated 31.07.2010 and quash the same.

2. The facts of the case in a nutshell:

The petitioner was working as a Constable in CISF unit and presently posted at Salem Steel Plant, Salem. When, he was working on “B” shift duty at the Truck gate on 18.03.2010 from 13.00 hours to 21.00 hours and performing the duty of checking of gate pass for incoming labourers and frisking outgoing labourers and checking in and out going vehicles with and without material. The petitioner having an old bicycle and on 14.03.2010, he sold the same to one P.Arumugam, a contract labourer in the steel plant for a sum of Rs.350/-. Though the said Arumugam purchased the bicycle, he did not give him the money immediately but sought time for settling amount. On 18.03.2010, when the said Arumugam was going out through the truck gate, the petitioner called him and asked about the money payable to the petitioner. Since, the petitioner being a native of Karnataka and not conversant with Tamil language, he sought the help of HC/GD C.Selvam and he in turn explained it to Arumugam. Thereafter, the said Arumugam went out and came back with Rs.350/-. On enquiry, the petitioner found that he borrowed money from his brother, who is running a tea stall out side the truck gate.

2.1. At about 20.30 hours four persons in civilian dress were trying to enter the truck gate and the petitioner stopped them. They replied that they are from vigilance team of CISF South Zone. Hence, the petitioner verified their identity cards and allowed them inside. After entering the truck gate, they said that they want to search the petitioner and he readily consented for the same. Immediately, the petitioner removed his shirt and also handed over Rs.350/-(35 notes of Rs.10 denomination), which was received from P.Arumugam to the vigilance team. Thereafter, they obtained his signature in a form stating that Rs.350/- was seized from his pocket.

2.2. consequent to the seizure, the Deputy Commandant CISF Unit, SSP, Salem has placed the petitioner under suspension by his order No.V-15014/DISC/CISF/SSP/2010 dated 24-03-2010 with immediate effect. Thereafter, a charge memo was issued by the first respondent herein dated 27-04-2010, wherein the petitioner was charged with possessing illegal gratification to the tune of Rs.350/- alleged to have been collected from truck drivers/supervisors, entering through the truck gate, during duty hours, while the petitioner was on duty on 18-03-2010. In response to the charge memo, the petitioner gave a detailed reply dated 13-05-2010, categorically denied the charges and requested the first respondent to revoke my suspension.

2.3. Thereafter, enquiry was conducted and the charges framed against the petitioner and the enquiry officer issued a notice dated 31.05.2010 in his proceedings No.V-15014/Disc/FW/SSP/2010/2173. During the enquiry, the petitioner has categorically denied all the charges, levelled against the petitioner with proof. The contract worker P.Arumugam was deposed on the side of the petitioner as D.W.1 and a statement was obtained from him. The Arumugam has stated clearly that he gave Rs.350/-(35/- Nos of Rs.10/- denomination notes) being the sale consideration of the bicycle, but this fact was not considered by the enquiry officer on a proper perspective. Subsequently, the enquiry officer submitted his report dated 09.07.2010 and the first respondent has slapped a penalty on petitioner as per Rule 32(1) of CISF Rules and Schedule I read in conjunction with Rule 34 (V) of CISF Rules and the penalty reads us under, "Reduction of Pay to a lower stage from Rs.7750/- to Rs.6380/- in the Pay Ban-1 of Rs.5200-20200 + GP Rs.2400 for a period of four years with immediate effect. It is further directed that during the period of reduction the petitioner will not earn increment of pay and on expiry of the punishment period, the reduction will have effect in postponing his future increments in pay.

2.4. Aggrieved by the order of the first respondent, the petitioner has preferred an appeal before the second respondent on 31.08.2010. But, the second respondent by his proceeding in -11014/64/ANU/KST/2010/6744 dated 29.10.2010, dismissed the appeal and thereby confirmed the order of the first respondent. As against the dismissal of appeal, the petitioner has preferred a Revision Petition before the third respondent on 18.02.2011. The third respondent in his proceedings No.V-15014/L&R/SS/Rev/KST/2011/3731 dated 29.04.2011, dismissed the Revision Petition on the ground that the petitioner did not produce any documentary evidence to support his claim that he has received money from Mr.P.Arumugam for the bicycle sold by him, therefore, no cogent reason was found to interfere with the penalty awarded by the Disciplinary Authority and Appellate Authority. Challenging the said orders, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner submitted that it is an admitted fact that a sum of Rs.350/- (35/- Nos of Rs.10/- denomination notes) was in possession of the petitioner and the same was received from one

P.Arumugam, to whom, the petitioner has sold the bicycle. During the examination of P.Arumugam dated 22.06.2010, it is stated that " on 14.03.2010, he purchased a Bicycle from the petitioner viz., K.S.Thimmaiah, since he had no money, he requested permission for one week. On 18.03.2010, after completing his work, he was going out of plant, he gave a sum of Rs.350/- (35/- Nos of Rs.10/- denomination notes) to the petitioner". It is pertinent to extract the Article of Charge-1 and the same is reads as follows:

> *"No.963511647 CT/GD K.S.Thimmaiah, was charge sheeted for "Gross misconduct undiscipline and unbecoming a disciplined member force" in that he was on B shift at truck gate duty post on 18.03.2010 from 13.00 hrs to 21.00 hrs performing material in/out checking. On 18.03.2010 at about 20.30 hrs, the SZ Vigilance team identified themselves and checked Constable K.S.Thimmaih and recovered Rs.350/- from his possession. Constable K.S.Thimmaiah, had collected the amount as illegal gratification during his duty hours."*

4. Learned counsel for the petitioner drew the attention of this Court to the statements given by the persons during the enquiry. Inspector C.Ganesh Pandi, during cross examination has replied to Q-1 that he had no information about const.K.S.Thimmaiah that he is collecting money from

contractor/driver but he got source information about the illegal gratification practice is going on in SSP, Salem Gate. In reply to Q-4, he said Const.K.S.thimmaiah said nothing, when Rs.350/- was seized from him. Another statement given by D.Palani, CISF personnel that he produced a copy of his earlier statement as P.W.2 Exhibit P-5. During cross examination answering to Q-1, he did not see Const.K.S.Thimmaiah taking money but he had source information that CISF Personnel are involved in illegal gratification at truck gate. During re-examination, he replied that Const.K.S.Thimmaiah did not say anything when he took out money from his pocket. Constable S.J.Edison produced his statement copy as P.W.3 Exhibit P-6 during cross examination, replying Q-2, he did not see Const.K.S.Thimmaiah taking money from one but Rs.350/- was in pocket and possession of the petitioner. Another statement of Constable P.Manickam in reply to Q-1, he said No body reported about Const.K.S.Thimmaiah taking illegal gratification but they had source information that corruption is going on truck gate of SSP, Salem. When answering to Q-4, he said that they carried out surprise checking at the truck gate, their team I/c asked him to come for checking and at that time, the petitioner took some money from shirt pocket, which was counted by Head Constable C.Selvam and it was Rs.350/-. Another statement given by ASI M.Chidambaram, he signed seizure list of Rs.350 (35/- Nos of Rs.10/- denomination notes) and he was not informed by Const.K.S.Thimmaiah about excess possession of money during cross examination.

5. Learned counsel for the petitioner referred to the discussion on disputed facts, it is stated that P.W.1 has said that he had source information that illegal gratification is going on in SSP Salem gate. Also P.W.2 said that he had source information that CISF personnel are involved in illegal gratification at truck gate. P.W.4 has said that nobody has reported about Const.K.S.Thimmaiah, taking illegal gratification but they had source information that corruption is going on truck gate of SSP, Salem. On 18.03.2010 at 20.30 hrs, when SZ Vigilance team checked No.963511647 CT/GD K.S.Thimmaiah was in possession of Rs.350/- that is excess amount from Rs.20/- declared by him, while mounting on duty proves violation of unit office order dated 04.05.2009.

6. Learned counsel for the petitioner relied on Section 34, Clause 8 (Minor Penalties) of the Central Industrial Security Force Act, 1968. For better appreciation, the said clause is extracted hereunder:

> *(viii) Reduction to a lower stage in the time scale of pay one stage for a period of not exceeding three years, without cumulative effect and not adversely affecting the pension.*

7. Per contra, learned counsel appearing for the respondents has filed a counter affidavit dated 18.01.2012. For better appreciation, the relevant paragraph of the counter affidavit is extracted hereunder:

> *"7. I respectfully submit that it is a fact that on completion of the DE duty following the procedure laid down in the relevant rule and after giving sufficient opportunity during the course of disciplinary proceeding, the petitioner was awarded the punishment of "Reduction of pay to a lower stage from Rs.7750/- to Rs.6380/- in the Pay Band-1 of Rs.5200-20200 + GP Rs.2400/- for a period of four years with immediate effect. It is further directed that during the period of reduction he will not earn increment of pay and on expiry of the punishment period, the reduction will have the effect in postponing his future increments in pay" to meet the ends of justice as the charge framed against him stands proved."*

8. Learned counsel appearing for the respondents further submitted that the petitioner was issued with charge sheet under Rule 36 of CISF Rules, 2001 vide memo No.(1586) dated 27.06.2010 and since, the petitioner was involved in illegal gratification while on duty, a disciplinary proceeding under Rule 36 of CISF Rules 2001 was contemplated against him and was awarded the punishment to meet the ends of justice.

9. Learned counsel appearing for the respondents contended that the petitioner was well aware that the personnel while on duty should not keep more than Rs.20/-. If anybody possesses more than Rs.20/-, they themselves should inform to the duty officer to record the same in the GD, but he failed to do so and on searching, the Vigilance team has recovered an amount of Rs.350/- (35/- Nos of Rs.10/- denomination notes) from the possession of the petitioner and prepared a seizure list for that amount before two witnesses and the petitioner has also signed therein as a token of having Rs.350/- as illegal gratification while on duty.

10. Learned counsel appearing for the respondents further contended

that while the Zonal Vigilance team carried out checking at Truck Gate post, the petitioner failed to produce the sale receipt of bicycle given by P.Arumugam. So, the amount seized from the petitioner is not related to the sale of his bicycle. In order to protect the amount of bribe, he called for local witness HC/GD C.Selvam to explain in Tamil language and collected Rs.350/- from P.Arumugam, which is a fabricated one and tends to escape from the guilty of illegal gratification while one duty. Further, he arranged a written statement in Tamil version to prove as the petitioner had collected money for Rs.350/- from P.Arumugam without quoting any witness and time of receipt.

11. Heard the learned counsel on either side and perused the materials available on record.

12. In this case, the petitioner was in possession of sum of Rs.350/- -(35/- Nos of Rs.10/- denomination notes) during the duty hours at the truck gate. According to the Unit Officer order in dated the petitioner is not

supposed to have more than a sum of Rs.20. If, any amount in excess of Rs.20, he is bound to report to the duty officer. In the present case, though he was in possession of Rs.350/-, he has failed to inform the same to the duty officer and on the other hand, he has submitted his explanation by stating that he has sold his bicycle to P.Arumugam and a sale consideration of Rs.350/- (35 Notes of Rs.10/- denomination) was belatedly paid to the petitioner on 18.03.2010, while he was on duty in the entry gate, SSP, Salem Unit. However, there is no proof that he has sold his bicycle to said P.Arumugam, however, all the Police personnel during the enquiry has categorically stated that they have not seen the petitioner collecting money from the conductors and truck drivers. Even in the cross examination of P.W.1, he has stated that nobody has reported about the petitioner has taken illegal gratification, but they had source information about the gratification in the SSP, Salem Unit.

13. According to the Unit Officer order No.1693 dated 14.05.2009, the petitioner is not supposed to have Rs.20 in excess and if the said money of Rs.350/- was sale consideration of the bicycle, he could have filed some documents to prove the same. But having failed to do so, it cannot be

construed that amount of Rs.350/- is the sale consideration of the bicycle, rather, it can be illegal gratification amount by applying preponderance of probability. Thereafter, enquiry was conducted and the charge was also proved and punishment was imposed by the first respondent as per Rule 32(1) of CISF Rules, and Schedule I read in conjunction with Rule 34 (v) of CISF Rules, 2001, imposed the penalty of "Reduction of pay to a lower stage from Rs.7750/- to Rs.6380/- in the Pay Band-1 of Rs.5200-20200+G.P. Rs.2400 for a period of four years with immediate effect. It is further directed that during the period of reduction, he will not earn increment of pay and on expiry of the punishment period, the reduction will have effect in postponing his future increments of pay". Challenging the same, the petitioner has preferred an appeal before the second respondent on 31.08.2010 and the second respondent vide his proceeding in V-11014/64/ANU/KST/2010/6744 dated 29.10.2010, dismissed the appeal, as against, Revision Petition was filed before the third respondent on 18.02.2011 and the same was also dismissed on the ground that the petitioner did not produce any documentary evidence to support his claim.

14. It is pertinent to note that the punishment imposed on the petitioner for reduction to a lower stage for a period of four years with immediate effect is contrary to Rule 34, Clause 5 and 8 of CISF, Rules 2001 and for better appreciation, the same is extracted hereunder:

> *34.(v) save as provided for in clause (viii) below- reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not the enrolled member will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay.*
>
> *34. (viii) Reduction to a lower stage in the time scale of pay one stage for a period of not exceeding three years, without cumulative effect and not adversely affecting the pension.*

15. Hence, this Court is of the considered view that the order passed by the first respondent granting the punishment of reduction of pay with immediate effect is in violation of Rule 34, Clause 5 and 8 of the CISF Rules, 2001.

16. The punishment not contemplated in the rules cannot be imposed

according to the judgment of the Hon'ble Supreme Court of India in the case of ***Vijay Singh Vs. State of Uttarpradesh reported in 2012 (5) SCC 242.*** Therefore, the above punishment is modified as under:

"Reduction to a lower stage in the time scale of pay one stage for a period of not exceeding to three years, without cumulative effect and not adversely affecting his pension."

17. In view of the above modification order passed by this Court, the respondents are directed to pay all the consequential benefits for the period of one year, which is excess period according to Rule 34, Clause 8 of the CISF Rules, 2001, within a period of eight weeks from the date of receipt of a copy of the order.

18. In the result, this writ petition stands disposed of with the above direction. No costs.

01.06.2023

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Index : Yes/No
Speaking Order : Yes/No

J.SATHYA NARAYANA PRASAD,J.

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To:

1.The Group Commandant,
CISF Group Head Quarters,
Block D, Rajaji Bhavan,
Besant Nagar,
Chennai – 90.

2.The Deputy Inspector General,
CISF South Zone Head Quarters,
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3.The Inspector General,
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