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W.P.No.16646 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20/11/2023
Delivered on	11/12/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.16646 of 2013

Sanjeev Kumar ... Petitioner

Vs

1. The Union of India
rep. 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.
3. The Inspector General
Central Industrial Security Force
Southern Sector, Near War Memorial
Chennai 600 009.
4. The Deputy Inspector General
Central Industrial Security Force
South Zone, Rajaji Bhawan
Besant Nagar
Chennai 600 090



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5. The Commandant
Central Industrial Security Force Unit
Tuticorin Port Trust
Tuticorin.

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records relating to the order No.V-15014/L & R/SS/Rev/SK/2012-211 dated 27/6/2012 passed by the third respondent confirming the order of the fourth respondent in his order No.V-11014/79/Maj/SS/2011/1817 dated 20/2/2012 confirming the order of the fifth respondent in his order No.V-15014/VOCPT/Disc/Maj-01/SK/2011/4011 dated 19/10/2011 and quash the same and consequently direct the respondents to pay all benefits.

For petitioner

...

Mr.A.S.Mujibur Rahman

For respondents

...

Ms.N.K.Nithila Vani

Central Government Standing Counsel

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ORDER

This writ petition is filed to quash the order dated 27/6/2012 passed by the third respondent, confirming the order of the fourth respondent dated 20/2/2012, confirming the order of the fifth respondent dated 19/10/2011 and consequently direct the respondents to pay all benefits.



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2. The brief facts which are necessary for the disposal of this writ petition are as follows:-

In the year 2000, the petitioner had joined the Central Industrial Security Force as Constable and during February 2010, he was transferred to Tuticorin to work in fifth respondent unit. Basing on the CCTV footages of the control room of Tuticorin Port Trust, dated 3/2/2011, fifth respondent has issued a charge memo on 21/3/2011, under Rule 36 of the CISF Rule to the petitioner. As the explanation submitted by the petitioner was not satisfactory, the disciplinary authority, has initiated enquiry. During the course of enquiry, the petitioner has participated and submitted his defence.

3. After conclusion of enquiry, fifth respondent has awarded the punishment of reduction of pay of the petitioner by three increments for a period of five years. Appeal filed by the petitioner before the fourth respondent was rejected on 20/2/2012 and revision filed before the third respondent was also rejected on 27/6/2012. Being aggrieved by the same, the petitioner has come forward with the instant writ petition.



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4. Heard Mr.A.S.Mujibur Rahman, learned counsel for the petitioner and Mr.N.K.Nithila Vani, learned Central Government Standing Counsel for the respondents.

5. The Commandant, Central Industrial Security Force Unit, Tuticorin Port Trust, Tuticorin/fifth respondent has initiated disciplinary proceeding against the petitioner under Rule 36 of CISF Rules, on two charges, viz., (i). While the petitioner was on duty, he was collecting illegal gratification from the port users and (ii). Even though the petitioner was awarded six minor punishments for various misconducts, during his past service in CISF, he remained incorrigible and did not amend his ways which is evident from his past service records.

6. The learned counsel appearing for the petitioner has submitted that CCTV footage is not an original and has no clarity and that Enquiry Officer has failed to establish that illegal gratification was received by the petitioner from the port users. It is further submitted that witnesses have deposed that they have not paid money to the petitioner, however, the Enquiry Officer and the disciplinary authority have



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assumed that petitioner has accepted illegal gratification from the port users.

7. The learned Central Government Standing Counsel for the respondents submitted that video clippings are more effective than an eye witness, wherein activities of the petitioner were clearly recorded to the effect that he has received illegal gratification. He further submitted that since the charges were proved against the petitioner, basing on the evidence adduced during the course of enquiry, petitioner was awarded the penalty of reduction of pay by three increments from Rs.6,040/- + GP Rs.2,000/- to Rs.7,170/- + G.P Rs.2,000/- in Pay Band 1, for a period of five years, w.e.f. 1/11/2011.

8. Heard both sides. Perused the materials available on record.

9. On considering the submissions advanced by either side, it is clear that Enquiry Officer and disciplinary authority, basing on the materials available before them have assumed themselves that in the CCTV footages what all given by the port users to the petitioner is only



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illegal gratification. If at all the petitioner has taken illegal gratification, either money or article, same should have been placed before the Enquiry Officer. Further, the persons who stated to have given illegal gratification have not deposed in the enquiry that they have given either money or anything to the petitioner seeking some favour. However, according to the records, CCTV footage show that the petitioner has accepted something from port users. However, during the course of enquiry, the petitioner has not disclosed the details as to what he has received from the Port users. Hence, the conclusion of the Enquiry Officer, that what all the petitioner has received is only illegal gratification is erroneous and without any cogent evidence.

10. Though there is a material to hold that the petitioner has accepted something from the port users, there is no material to conclude that he has collected illegal gratification. However, the petitioner is not coming forward to disclose as to what he has received, it can only be presumed that he has received something from the port users which he is not expected to.



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11. In view of the above, this Court is of the opinion that the findings of the disciplinary authority as confirmed by the appellate authority in so far as finding him guilty cannot be interfered with. However, since there is no material to hold that he has accepted illegal gratification and that there is a material to the effect that he has received something from the port users, the punishment imposed is too harsh and disproportionate.

12. Normally, Courts may not interfere with the quantum of punishment, as it is the purview of the disciplinary authority. However, considering that there is no material to show the petitioner has accepted illegal gratification and that CCTV footage shows that he received something from port user the punishment awarded is disproportionate to the proved misconduct, this Court can intervene and that the punishment can be modified.

13. In the result, this writ petition is partly allowed, and the punishment of major penalty of stoppage of three increments with



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cumulative effect is modified as stoppage of three increments without
cumulative effect. No costs.

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mvs.

Index: Yes/No

Neutral Citation: Yes/No



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order in
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