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W.P.No.20196 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE MR. JUSTICE Dr.D.NAGARJUN

W.P.No.20196 of 2013

C.Kamatagi

... 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 Dlehi-3.

3. The Deputy Inspector General,
Central Industrial Security Force,
Disaster Management,
Cisf Head Quartes, Cgo Complex,
Lodhi Road, New Delhi-3.

4. The Commandant,
4 Bn Ndrf Arakkonam,
Vellore Dist. 631 152.

5. The Deputy Commandant,
4 Bn Ndrf Arakkonam,
Vellore Dist- 631 152.

... Respondents



W.P.No.20196 of 2013

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 5th respondent dated 4.7.2013 in his order V-150144Bn/NDRF/Disc/CKT/Minor/04/13/5279 and quash the same and direct the respondents to pay all benefits.

For Petitioner : Mr.R.Thiyagarajan

For Respondents : M/s.Venkatasamy Babu

ORDER

This writ petition is filed simply for questioning the orders passed by the 5th respondent dated 04.07.2013 vide proceeding V-150144Bn/NDRF/Disc/CKT/Minor/04/13/5279 and quash the same and direct the respondents to pay all benefits.

2. The petitioner joined as a Constable on 05.07.1989 in the Central Industrial Security Force. Subsequently, the petitioner passed the Driver Examination in the year 2001 and he was promoted as Head Constable/Driver and was transferred to NDRF Arakkonam in 2006.



W.P.No.20196 of 2013

WEB COPY 3. On 13.04.2013, the 5th respondent issued a memorandum under

Ruel 37 of the CISF Ruel with the following article of charge:

“No.891402008, HC/Dvr. C.Kamatagi of 4 Bn NDRF/CISF Arakkonam was detailed for “ON WHEEL DUTY” in day' shift from 0500 to 1700 hrs on 13.03.2013. At about 1000 hours when he was directed by 2 I/C to MTO SI/Exe V.Krishna Kumar to go to the family quarters in ambulance and bring the patients to NDRF M.I. Room he refused to do so and argued with him. Thus, the act committed by the HC/Dvr. C.Kamatagi amounts to misconduct and disobedience of lawful orders. Hence the Charge.”

4. On receiving the subject charge, the petitioner, on on 22.04.2013, made a representation to the 5th respondent and requested to furnish the following documents:

- a) Copy of duty deployment of all drivers on 13.03.2013 in day shift and general shift,
- b) Fissure of total drivers present in this battalion on 13.03.2013,
- c) A copy of P.E. Report conducted in this case,
- d)A copy of standing order procedure for on wheel duty drivers.



W.P.No.20196 of 2013

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5. On 02.05.2013, a communication was sent to the petitioner rejecting his request. The petitioner has made another representation to the 5th respondent. However, the said representation was also rejected and subsequent representation of the petitioner to the 5th respondent dated 16.06.2013 and 25.06.2013 also were rejected and thereafter, 5th respondent passed an order on 04.07.2013 awarding the punishment of reduction of pay by one stage from Rs.9830+G.P. Rs.2800 to 9460 +G.P. Rs.2800, for a period of three years with cumulative effect. Aggrieved by the impugned orders passed by the 5th respondent dated 04.07.2013, the petitioner filed this writ petition.

6. Learned counsel for the petitioner would submit that on that day, the petitioner was asked by the Sub Inspector to go on patient duty from his residential quarters to the hospital but at that time he was already on another duty as directed by the Inspector, of bringing a patient from the quarters to the hospital he could not attend the duty as directed by the Sub Inspector.



W.P.No.20196 of 2013

7. It is further submitted that the petitioner was employed as a Driver for Disaster Management and even then he accepted the request of the Inspector, to bring the patient from the residential quarter to the hospital, though he was not bound to accept it. Since he was on other duty already, he could not attend the subsequently ordered duty hence a Memorandum under Rule 37 was issued against him.

8. It is submitted that the petitioner had sought for four documents from the management for filing the representation which the Management has refused to provide. As per the letter dated 13.04.2013, the petitioner was served with substance of the charge and was asked to submit his explanations by the 5th respondent. Since the documents have were not furnished to the petitioner, the petitioner could not effectively reply the memorandum issued on him. Thus, it is clear that non-supply of the documents which became the basis of forming charges and not permitting the petitioner to submit proper representation amounts to violation of principles of natural justice. Merely because, documents have not been provided, it does not mean that enquiry has to be set aside. But in the case on hand, the documents which are sought for by the petitioner are the documents, basing on which enquiry charges have been framed and the



W.P.No.20196 of 2013

petitioner is asked to give the explanation. How can the petitioner given explanation without providing the documents. Hence, prejudice has been caused to the petitioner for not providing the copies of the documents. Thereby, the impugned final orders passed by the 5th respondent dated 04.07.2013 suffers from irregularity, accordingly, liable to be set aside.

9. In the result, the writ petition is **allowed**, directing the 5th respondent to provide all the four documents which the petitioner has sought for within three (3) weeks from the date of receipt of a copy of this order, and two (2) weeks thereafter, the petitioner is permitted to submit the explanation and on considering the explanation, the 5th respondent is directed to pass appropriate orders by following the procedures known to law within a period of eight (8) weeks thereafter.

10. Accordingly, with the above directions, the writ petition stands **allowed**. No costs.

06.11.2023

Index : Yes
Speaking Order
Neutral Citation : Yes
(sha)



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Dr.D.NAGARJUN. J.,

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