



WP(MD)No.1176 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved On	Order Pronounced On
26.04.2023	06.06.2023

CORAM

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

W.P.(MD)No.1176 of 2019

and

W.M.P.(MD)No.980 of 2019

S.Raja

...Petitioner

Vs.

- 1.The Union of India,
Through – The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi – 110 001.
- 2.The Director General,
Central Industrial Security Force,
Block No.13, C.G.O.Complex,
Lodhi Road,
New Delhi – 110 003.
- 3.The Inspector General / SS,
South Sector HQRS,
Opp. War Memorial,
Chennai Port Trust Campus,
Chennai.



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WP(MD)No.1176 of 2019

4.The Deputy Inspector General,
CISF, 'D' Block,
Besant Nagar,
Chennai – 600 090.

5.The Senior Commandant,
CIST, 4th RB,
Amaravathiputhur Post,
Karaikudi,
Sivagangai District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent in No.V-15016/CISF/SS/L&R/Rev/SR/22/2018-8764 dated 15.10.2018 and quash the same and direct the respondents to appoint the petitioner with all attendant benefits.

For Petitioner	: Mr. Isaac Mohanlal Senior Counsel for Mr.B.Vijay Karthikeyan
For Respondents	: Mr.M.Ashok Kumar Senior Central Government Standing Counsel



WP(MD)No.1176 of 2019

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ORDER

This Writ Petition has been filed challenging the order passed by the third respondent in No.V-15016/CISF/SS/L&R/Rev/SR/22/2018-8764 dated 15.10.2018 with a consequential direction to the respondents to appoint the petitioner with all attendant benefits.

2. The brief facts as stated in the affidavit are that the petitioner was originally appointed as Constable in Central Industrial Security Force (hereinafter referred to as 'CISF' for the sake of brevity) on 01.08.1992. Subsequently, he passed the departmental examination and was directly appointed as Assistant Sub Inspector Clerk cum Typist in CISF on 27.01.2011. Thereafter, he was transferred to various places and lastly, he was functioning as ASI Clerk. Apart from the above duty it was also in-charge of Non-Governmental Fund (for the sake of brevity hereinafter referred to as 'NGF') Section along with other Sections.

3. A charge memo dated 12.04.2017 was issued against the petitioner containing five articles of charge as if the petitioner had misappropriated NGF to



WP(MD)No.1176 of 2019

WEB COPY

the tune of Rs.4,33,802/-. The petitioner submitted an explanation dated 21.04.2017 and an enquiry was conducted. After the examination of witnesses, the petitioner was directed to file a written statement and the same was submitted on 07.08.2017. Then, the Presenting Officer submitted his report on 17.08.2017. For said enquiry report, the petitioner submitted his response on 29.08.2017. The enquiry report was forwarded to the fifth respondent vide proceedings dated 07.09.2017 and the petitioner was also directed to submit his comments on the enquiry report. The petitioner submitted his representation dated 25.09.2017. Thereafter, the fifth respondent passed the impugned order of punishment of dismissal from service on 14.11.2017.

4. The petitioner was provided with an opportunity to file an appeal to the fourth respondent. However, the entire incident happened only in the fourth respondent office and the fourth respondent earlier instructed the fifth respondent to take action against the petitioner and only thereafter, he was suspended by the fifth respondent on 02.11.2016 and hence, the petitioner was not inclined to file an appeal before the fourth respondent at that point of time.



WP(MD)No.1176 of 2019

WEB COPY

5. The contention of the petitioner is that he had submitted an application to the enquiry officer on 11.07.2017 asking for certain documents. Again on 15.07.2017 requesting for some more documents to cross examine the witnesses in order to defend his case. The said documents are in the fourth respondent's office. Hence, the enquiry officer wrote a letter to the fourth respondent to provide the said documents. But the fourth respondent turned down the request of the petitioner by stating that those documents are not relevant. For this reason also, the petitioner did not prefer an appeal to the fourth respondent at that point of time.

6. Without filing an appeal, the petitioner preferred a writ petition in W.P.(MD)No.21905 of 2017 and the same was also withdrawn on 29.11.2017 with liberty to file an appeal before the fourth respondent. The petitioner filed an appeal before the fourth respondent on 08.12.2017 and the fourth respondent, vide proceedings dated 25.03.2018 rejected the appeal and thereafter, a revision petition dated 21.05.2018 was preferred before the third respondent and the same was rejected on 15.10.2018.



WP(MD)No.1176 of 2019

WEB COPY

7. The further contention of the petitioner is that before passing the order of dismissal, the fifth respondent, in his communication dated 13.10.2017, has sought for a clarification from the fourth respondent about the sum of Rs.4,33,802/- alleged to have been misappropriated by the petitioner. The fourth respondent, in his proceedings dated 17.10.2017, in turn sought for a clarification from the third respondent about the said recovery stating that Rs.1,87,500/- has been recovered and Rs.83,106/- was outstanding and a further sum of Rs.63,196/- was also outstanding towards temporary advance and thereby, he asked as to whether a total sum of Rs.1,43,802/- can be recovered from the petitioner. For this, the third respondent, vide proceedings dated 08.11.2017, has directed that out of the said amount of Rs.1,43,802/-, Rs.80,606/- can be recovered from the concerned CISF Personnel and the outstanding amount of Rs.63,196/- towards temporary advance may be disposed of by the Managing Committee of the Zonal Welfare Fund of South Zone Headquarters in accordance with Welfare Fund Manual, 2015. As such, there is no loss at all. Even then, the respondents have imposed the punishment and hence, the petitioner has filed the present writ petition before this Court.



WP(MD)No.1176 of 2019

WEB COPY

8. The fifth respondent filed a counter stating that the first respondent, who is the Union of India, is an unnecessary party and prayed to delete the first respondent as one of the parties. In the counter, it was further stated that the petitioner was in charge of NGF Section from 23.06.2003 to 05.08.2016. After handing over the charge on 05.08.2016, one Rajesh Kumar had noticed irregularities in the statement of accounts. Thereafter, a Board was constituted to enquire into the same and the Board found that the petitioner has misappropriated the amount for a total sum of Rs.4,33,802/- belonging to the Zonal Welfare Board. Thereafter, the disciplinary proceeding was initiated, based on the Enquiry Officer's report, the petitioner was imposed with the punishment of dismissal from service.

9. It is further stated in the counter that the petitioner, being in-charge of NGF Section, was responsible for maintaining proper accounts and records pertaining to cash transactions involving huge amount. The petitioner has misled the superiors about the capital balance, outstanding loans. The said irregularities were found out by the subsequent incumbent officer, namely, Rajesh Kumar. Subsequently, a Special Audit was conducted and the petitioner was placed under



WP(MD)No.1176 of 2019

WEB COPY

suspension. Based on the enquiry report the petitioner was dismissed from service. On appeal and revision, the order of punishment was confirmed.

10. As far as the allegation of non-supply of documents, the petitioner was supplied with the copy of cash book page pertaining to the entries made by the petitioner. Thereafter, the copies of quarterly report and balance sheets were also supplied on 22.05.2017. The temporary advance register and note sheet were not supplied to the petitioner, as they are not relevant to the charges framed against the petitioner. The petitioner, without filing an appeal, preferred a writ petition in W.P.(MD)No.21905 of 2017, wherein the petitioner was directed to prefer an appeal to redress his grievance. The petitioner's appeal and revision were rejected, because it devoid of merits and moreover, there is no procedural flaw in the proceedings.

11. It is also stated that during the course of enquiry, Zonal Welfare Loan of Rs.2,20,000/- was sanctioned to nine CISF personnel including the petitioner on two occasions during the period from 19.09.2011 to 01.07.2014. The said transaction was neither intimated to the parent units for recovery nor disclosed to



WP(MD)No.1176 of 2019

WEB COPY

the successor, when the petitioner handed over the charge of NGF to his successor. Also, a sum of Rs.1,50,606/-, outstanding loan amount in respect of seven other CISF personnel was also not disclosed to the successor for effecting recovery. Further, there was no record for approval of competent authority for a total sum of Rs.63,196/- paid out of the Zonal Welfare Fund as temporary advance. Hence, the petitioner cannot rebut his act of misappropriation of funds to the tune of Rs.4,33,802/-.

12. The petitioner as a Treasurer was supposed to maintain the funds properly according to the Manuals. Therefore, the plea of the petitioner that framing of charges and passing dismissal order under the CISF Rules, 2001 is untenable, since there are Manuals and the Rules and Regulations prescribed for maintaining NGF. Due to the act of non-maintenance of proper records, misplacement of the records and the sheer negligent attitude of the petitioner, the Enquiry Team, who audited the NGF records found that there was a difference amount of Rs.1,01,659/- between inflow and outflow of Miscellaneous funds and also found that the amount for a sum of Rs.1,04,253/- was found to be excess recovery made carelessly by the petitioner himself, but the petitioner cannot take



WP(MD)No.1176 of 2019

WEB COPY

advantage of this excess amount to nullify his act of misappropriation of funds to the tune of Rs.4,33,802/-.

13. Moreover, during the departmental enquiry, the petitioner has admitted that he has not maintained temporary advance register after 31.03.2011 and also admitted that he has failed in monitoring the funds completely in respect of his Zonal Welfare Loans and temporary advances after 2011 onwards. Moreover, the petitioner did not hand over the list of 298 loaners, who have been sanctioned loans from Zonal Welfare Fund. Therefore, the respondents prayed to dismiss the writ petition.

14. Heard Mr.Isaac Mohanlal, the Learned Senior Counsel appearing for the petitioner and Mr.M.Ashok Kumar, learned Senior Central Government Standing Counsel appearing for the respondents. Perused the material documents available on record.

15. The first contention of the petitioner is that the petitioner was serving as Assistant Sub Inspector Clerk cum Typist in CISF. He was holding an



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additional post of in-charge to manage the NGF welfare fund along with other regular duty. Managing of NGF is not statutory duty for the petitioner, but only an additional charge. The NGF Fund is welfare fund of CISF and created by the officers for the welfare of the members of the CISF force. CISF Welfare Fund Rules are not framed under CISF Act. The NGF (Non-Government Fund) is only a private fund and has no connection with the CISF duty and has no statutory backing and hence the respondents cannot initiate action under the CISF Service Rules, 2001. On hearing this submission, it is seen that the in-charge work is that the petitioner ought to disburse the loan or financial assistance to the employees in CISF. Admittedly the amount is disbursed from the subscriptions collected from the officials of CISF. As per the Welfare Fund Manual the amount is collected among the officers of the CISF. The Sources of Fund is stated under clause (5) of the aforesaid manual, wherein it is stated that the fund shall be constituted from and supported by the subscription on half yearly basis and shall be collected from the members at the following rates:

Pay Band-4 - Rs.100/- per month

Pay Band-3 - Rs.70/- per month

Pay Band-2 - Rs.40/- per month

Pay Band-1 - Rs.30/- per month



WP(MD)No.1176 of 2019

WEB COPY

And also states donations and grants from the central and state government and other government and quasi government bodies including public undertakings. Voluntary contributions and donations from private persons or bodies with the approval of the higher authorities. Interest deposits and other investments etc. From this it is evident that the NGF is an internal arrangement among the CISF officials and it is nothing to do with the statutory duty. When the activity is not statutory duty, then initiation of disciplinary proceeding under CISF Rules cannot be sustained and this Court is of the considered opinion that the respondents is not empowered to take action under CISF rules when there is any violation in managing the NGF fund.

16. The next contention of the petitioner is that the respondents have not supplied the relevant documents, especially the documents, which the petitioner demanded. The reply of the respondents is that the copy of the cash book pertaining to the entries made by the petitioner, the copy of the quarterly report and the balance sheets were supplied to the petitioner. But the petitioner requested the copy of temporary advance register and note sheets and the entries made by the subsequent officer to prove that the allegations are not correct. A



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specific stand has been taken by the respondents that Temporary Advance Register and note sheets were not supplied, since they were not relevant to the charges framed against the petitioner. This is evident from the reply dated 17.05.2017, wherein it is stated as follows:

1. The petitioner has sought for “copy of cash book pages with effect from 02.08.2016 to 08.08.2016”. The reply is “the entries which were not made by him are not enclosed.”
3. The petitioner has sought for the “Temporary Advance Register 2016 first 5 pages”, but the reply is “ASI / CIK S.Raja had not maintained Temporary Advance Register for the year 2016.”
4. The petitioner has sought for “copy of the note page No.1 and No.2 (witness given by the ASI / CIK Rajesh Kumar)”. The reply is cannot be supplied as the same is not relevant.”

In another letter dated 11.07.2017 the petitioner has sought for further information and in reply dated 14.07.2017 it has been replied as under:

5. The petitioner has sought the “copy of the loan register which was maintained by Const. Muthukumaran (atleast 30 pages)”. The reply is “Const. Muthukumaran was directed to assist in the work of ASI/Clik but he is not responsible for maintenance of loan Register as it was the responsibility of dealing clerk of NGF ASI/Clik S.Raja. As such it is not be relevant.”
6. The petitioner has sought for “Balance sheet for the month of 08/2016



WP(MD)No.1176 of 2019

WEB COPY

and 09/2016”. The reply is “The balance sheet for the month of 08/2016 and 09/2016 was not prepared by ASI/Clik S.Raja. As such it is not relevant”.

It is seen that the allegation against the petitioner is that there was no record for approval of competent authority for a total sum of Rs.63,196/- paid out of the Zonal Welfare Fund as temporary advance. When the allegation against the petitioner is that he has not obtained approval from higher authority to pay the amount of temporary advance, but the contention of the petitioner that he had obtained approval, then the temporary advance register is a necessary document. It is seen that the petitioner has sought for first 5 pages. When the copy of temporary advance register was not supplied to the petitioner, this is clearly violating the principles of natural justice. Further on perusing the reply, especially the reply dated 14.07.2017 it gives an impression that the respondents are trying to protect somebody. The reply that the “Const. Muthukumaran was directed to assist in the work of petitioner, but the Muthukumaran is not responsible for maintenance of loan Register as it was the responsibility of dealing clerk i.e. the petitioner”. If the said Muthukumaran was posted to assistant the petitioner, then



WP(MD)No.1176 of 2019

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he would have prepared the register. The petitioner is seeking the copy prepared and maintained by the said Muthukumaran. But the reply of the respondents that it is the petitioner's responsibility cannot be a correct answer. Likewise, the reply that the balance sheet for 08/2016 and 09/2016 is not prepared by the petitioner, hence it is not relevant is also an absurd answer. The petitioner is intended to rely on the said balance sheet, for which is it not necessary that the petitioner ought to have prepared the same. Infact the petitioner is trying to rely on the same and prove that when there is excess recovery, there is no misappropriation. More so when the petitioner is imposed with a major punishment of dismissal then the respondents are bound to give all documents, which the petitioner is demanding. Therefore, this Court is of the considered opinion that there is clear violation of principles of Natural Justice.

17. Further the petitioner submitted that the charge memo states that the respondents are relying on the statements of various Inspectors and has stated Serial No.4 to 7, 9 to 15,25, 27, and 28 are the statements would be relied on, but the said statements were not served to the petitioner. It is seen from the enquiry report that such statements were read out to the petitioner and the relevant portion



WP(MD)No.1176 of 2019

WEB COPY

is extracted hereunder:

“1. Statement of Shri S.L.Reddy AC (Exe) PW-1

The earlier recorded statement dated 28.11.2016, 29.11.2016 and 30.11.2016 made during investigation by the PW-1 has been read in presence of charged official, presenting officer and enquiry officer and confirmed that it was correctly recorded and admitted as correct.”

Likewise, it has been recorded when each and every statement was relied on, but the copy of the statement was not served to the petitioner. But the respondents claimed that the same is read out to the petitioner and hence the same is sufficient and further submitted that non supply of documents will not prejudice the entire departmental enquiry. The same is refuted by the Learned Senior Counsel appearing for the petitioner and submitted that non supply of documents demanded by the delinquent is violating the principles of natural justice. More so, when the documents were required by the delinquent for effective defence, non-supply of the said documents would prejudice the entire departmental enquiry and has relied on the judgment rendered by the Hon'ble Supreme Court of India in the case of **Shobha Sinha vs. State of Bihar and Others** reported in **2013 16 SCC 456**, wherein in Paragraph No.19 it has been held as under:



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“19. Coming to the merits of the decision of the Division Bench, there was a heated debate before us about the validity of the observations of the Division Bench for non-supply of the documents and whether non-supply prejudiced the case of the appellant or not, Mr. Sinha, learned senior counsel for the appellant had referred to the judgment authored by one of us (S.S.Nijjar,J.) in the case of State of Uttar Pradesh & Ors. v. V.Saroj Kumar Sinha (2010) 2 SCC 772, wherein the departmental enquiry was set aside on finding that there was non-supply of essential documents to the delinquent. The court observed that when a departmental enquiry is conducted against the Government servant, it cannot be treated as a casual exercise and procedural fairness is to be shown while conducting the enquiry. Learned senior counsel for the respondents, on the other hand, had attempted to argue the non-supply of documents had not prejudiced the case of the appellant and the Division Bench was right in holding that the charge against the appellant was proved in view of her own notings. Though, we may make tentative observation that non-supply of documents could still be necessary for the appellant to give justification and explain the circumstances in which she had made the notings in question, it is not necessary to go any further to deal with this argument as this exercise is already undertaken by the Review Committee itself. Even if we proceed on the basis that there is some kind of dereliction of duty in making the notings by the appellant made on 28th October 1993 and 17th January 1994, the more pertinent and important issue is as to what kind of charge and to what extent it is proved. That is already reflected in the report of the Review Committee in exercise which could not be ignored or glossed over by the High Court.”



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18. The Hon'ble Supreme Court had categorically held that the departmental enquiry cannot be treated as casual exercise and procedural fairness is to be shown, while conducting enquiry. In the present case, the allegation against the petitioner is regarding the temporary advance transactions. Then the temporary advance register is an essential document and one of the most important documents to rebut the allegation against the petitioner. In the enquiry report it is held in internal page 101 of the report, that “during the examination of CO by the duly constituted Board PW12/Exh.P-7, CO admitted to have not obtained receipts for having paid Temporary Advance from NGF from the concerned sections”. This would clearly indicate that the respondents are relying on the Temporary Advance Register. Therefore, this is Court is of the considered opinion if the delinquent is demanding any documents, that has to be supplied. It is the prerogative right of the delinquent to decide which document is relevant and which is not relevant, in order to prove his innocence. The employers/respondents cannot curtail the defence of the delinquent. Therefore, non-supply of the documents, more so, when the delinquent demanded to supply the copy of the temporary advance register, relevant note sheets, then the entire departmental proceedings is vitiated and it is against the principles of natural



WP(MD)No.1176 of 2019

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justice. Moreover, non-supply of statements stated in the charge memo also is vitiated and the same is violating of principles of natural justice.

19. The charge against the petitioner is that he has misappropriated the amount of Rs.4,33,802/- and the petitioner is the root cause for creating loss. The contention of the petitioner is that on one hand, the respondent alleges the petitioner has created loss to the Zonal Welfare Fund of Rs.4,33,802/- and on the other hand, the balance sheet for the month of 08/2016 and 09/2016 shows that there is an excess recovery of Rs.1,04,253/-. Hence when the respondent states excess recovery, then the allegation of misappropriation cannot exist. The learned Senior Counsel appearing for the petitioner submitted that when there is an excess recovery, then at the most, it can only be mistake of maintaining records and there cannot be the allegation of misappropriation. For the mistake of not maintaining proper records the punishment of dismissal is disproportionate and relied on the judgment rendered by the Hon'ble Supreme Court of India in **Union of India and others vs. P.Balasubrahmanayam** reported in **2021 (5) SCC 662**. The relevant portion is extracted hereunder:



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“22. The question is whether the Tribunal proceeded correctly in passing the final direction to impose appropriate minor penalty. The Tribunal itself did not impose the punishment but left it to the authority concerned (for appropriate course of action). It was of the view that considering the findings of procedural lapses against the respondent, the appropriate punishment could only be a minor penalty and not a major penalty. With this again, we are in agreement with the course of action adopted. The nature of charges found against the respondent can hardly be one to call for a major penalty, keeping in mind that there was no bribery charge. Anyone can make mistakes. The consequences of mistakes should not be unduly harsh. We are, thus, of the view that the direction of the Tribunal is what is liable to be sustained.”

On perusing the charges, the connected documents and the enquiry report, the respondents have discussed about the charge of not informing the higher officials, has not maintained proper accounts and has not mentioned the reference number before depositing in the bank etc. On perusing the enquiry report there is no evidence to state there is misappropriation. Moreover, as rightly pointed out by the Learned Senior Counsel for the petitioner that when the respondents themselves admit that there is excess recovery, then there cannot be misappropriation. The petitioner has also taken a specific stand that the amount Rs.2,00,000/- would have been recovered with penal interest by now and if so, there would not be any misappropriation at all. This stand of the petitioner would



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clearly indicate, that the amount ought to be recovered from the persons who availed the interest free loans (for which purpose the NGF was formulated), and further indicates there is no misappropriation. Therefore, this Court is of the considered opinion that the basis of the charge of misappropriation itself is erroneous and hence the charge of misappropriation has to fail. When there is no misappropriation, then the punishment of dismissal would be disproportionate. In the present case, when the respondents alleged that the excess recovery was made by the petitioner, this would prove that there is no ill-motive and therefore, this Court is of the considered opinion that the punishment of dismissal is disproportionate.

20. The next contention is that the allegation of misappropriation was against the petitioner as well as one another co-delinquent, higher authority to the petitioner, namely, S.Baskar. The charges against the co-delinquent stated that the act of misconduct was committed, while discharging the duties of In-charge of Accounts Section in CISF South Zone Headquarters Chennai, wherein he has failed to exercise proper supervision over his subordinate, for which the respondents have imposed punishment of fine equivalent to three days salary



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from the said delinquent and the said co-delinquent has preferred an appeal. In the appeal, the said punishment was further reduced to censure. When the co-delinquent was imposed lesser punishment, the punishment imposed on the petitioner is on the higher side. For which the learned Senior Counsel appearing for the petitioner relied on the Judgment rendered by the Supreme Court in **Man Singh vs. State of Haryana and Others** reported in **2008 (12) SCC 331**. The relevant portion is extracted hereunder:

“20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness.

21. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real



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culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service.

22. In the backdrop of the above-mentioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the Second Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-`-vis HC Vijay Pal, the driver of the vehicle.”



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When two delinquents are involving in same transactions, the co-delinquent was imposed with lesser punishment, whereas the writ petitioner was imposed with highest punishment of dismissal from service, which cannot be sustained. Therefore, this Court is of the considered opinion that the punishment imposed on the petitioner is on the higher side and therefore, the punishment imposed on the petitioner has to be inferred with.

21. The further contention of the petitioner is that based on the audit report by the Audit Board, the Disciplinary proceedings were initiated, but none of the officials of the said Audit Board was examined in the proceedings. Moreover, the basis for initiation of the departmental proceedings is the report of the Audit Board. But the said Audit report was not supplied to the petitioner. Infact, some portions of the said audit report were exclusively relied on by the Presenting Officer as well as the Enquiry Officer. Without supplying the audit report and without examining the Audit Board, framing the charges cannot be sustained. But the respondents submitted that the statement of the members of the Audit Board need not be served on the delinquent and it is not necessary that the statements of the audit report should be supplied to the delinquent. The learned Senior Counsel



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appearing for the petitioner submitted that the said defence of the respondents cannot be entertained, since the defence is totally against the ratio rendered by the three Judges Bench of the Hon'ble Supreme Court in the case of **The State of Punjab vs. Bhagat Ram** reported in **1975 (1) SCC 155** and the relevant portion is extracted hereunder:

“6. The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. 'He can do so by cross examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken.”



WP(MD)No.1176 of 2019

WEB COPY

On perusing the Enquiry Officer's report, it is seen that the respondents have exclusively relied on the audit report and proceeded with the case. Infact, the basis of the enquiry itself is on the audit report. Therefore, this Court is of the considered opinion that without supplying the audit report, the enquiry is vitiated by following the principles of natural justice. As far as not enquiring the audit personnel, the said audit report cannot be marked. This is the basis for recording any evidence. The documents relied on by the respondents ought to be marked by the persons, who have executed the same. In the present case, when the members of audit report have prepared the audit report, they are bound to appear before the enquiry officer to substantiate the audit report to mark the audit report as one of the evidences. Therefore, on this basis also, the petitioner is bound to gain. In view of the above, this Court is of the considered opinion that without statements, the enquiry is vitiated and a summary of the audit report is also not sufficient. On this ground also, the petitioner is bound to gain.

22. Finally, the respondents submitted that some of the documents, the petitioner was allowed to peruse and the petitioner has also perused the same and



WP(MD)No.1176 of 2019

WEB COPY

has made his submissions. It is seen that the alleged transactions are during 2003-2016. Therefore, by perusing the documents from the year 2003 to the year 2016, the petitioner may not remember certain transactions. Therefore, the copies of transactions ought to be supplied and merely perusing the documents will not be sufficient. Moreover, the transaction was from the year 2003 onwards. Therefore, the very initiation of the proceedings is a belated one. On this ground also, this Court accepts the plea of the petitioner and is inclined to grant relief in favour of the petitioner.

23. Hence, the impugned order dated 15.10.2018 passed by the third respondent in No. V-15016/CISF/SS/L&R/Rev/SR/22/2018-8764 is quashed and the petitioner is having two more years of service. Therefore, the respondents are directed to reinstate the petitioner within a period of four weeks from the date of receipt of a copy of this order. The petitioner is entitled to continuity of service for the entire period and other service benefits. But the petitioner is entitled to 50% of backwages. The petitioner is not entitled to any interest for the belated payment of backwages.



WP(MD)No.1176 of 2019

WEB COPY

24. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
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06.06.2023



WP(MD)No.1176 of 2019

WEB COPY

To

- 1.The Union of India,
Through – The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi – 110 001.
- 2.The Director General,
Central Industrial Security Force,
Block No.13, C.G.O.Complex,
Lodhi Road,
New Delhi – 110 003.
- 3.The Inspector General / SS,
South Sector HQRS,
Opp. War Memorial,
Chennai Port Trust Campus,
Chennai.
- 4.The Deputy Inspector General,
CISF, 'D' Block,
Besant Nagar,
Chennai – 600 090.
- 5.The Senior Commandant,
CIST, 4th RB,
Amaravathiputhur Post,
Karaikudi,
Sivagangai District.



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WP(MD)No.1176 of 2019

S.SRIMATHY, J.

Sm

Pre-delivery Order made in
W.P.(MD)No.1176 of 2019

Dated
06.06.2023