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W.P.No.14574 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.14574 of 2011

Birbal Mahey

...Petitioner

Vs.

1.The Director General
Central Industrial Security Force,
Block No.13, CGO Complex,
Lodi Road, New Delhi.

2.The Inspector General,
Central Industrial Security Force,
Southern Sector, Head Quarters,
Chennai Port Trust, Chennai – 1.

3.The Deputy Inspector General,
Central Industrial Security Force Unit,
Neyveli Lignite Corporation, Neyveli.

4.The Senior Commandant,
Central Industrial Security Force Unit,
Neyveli Lignite Corporation, Neyveli.

5.The Group commandant,
Central Industrial Security Force,
Group Head Quarters, Block – D, Rajaji Bhavan,
Besant Nagar, Chennai – 600 090.

6.The Deputy Commandant,
Central Industrial Security Force Unit,
Salem Steel Plant, Salem.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records relating to the order passed by the first respondent dated 03/05.04.2011 in his order No.V – 11014/105/L&R/2010 confirming the order passed by the second respondent dated 30.09.2010 in his order No.V – 15014/L&R/Suo-Moto/BM/SS/2010-716 and quash the same and direct the respondents to promote the petitioner as Assistant Commandant with effect from 2010 and to pay all benefits.

For Petitioner : Mr.A.S.Mujibur rahman

For Respondents : M/s.Dr.D.Simon.

ORDER

This Writ Petition has been filed to call for the records relating to the order passed by the first respondent, dated 03/05.04.2011, in order No.V – 11014/105/L&R/2010, confirming the order passed by the second respondent, dated 30.09.2010, in order No.V – 15014/L&R/Suo-Moto/BM/SS/2010-716 and quash the same and direct the respondents to promote the petitioner as Assistant Commandant with effect from 2010 and to pay all benefits.



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2.The case of the petitioner is that the petitioner joined as Sub Inspector Executive in the Central Industrial Security Force on 30.06.1987. He was posted at KSTEP Korba Madhya Pradesh with effect from August 1988. He was promoted as Inspector Executive with effect from 30.06.1997. He was transferred to SSP Salem unit under the sixth respondent. The sixth respondent issued a memorandum under Rule 37 of the CISF Rule with an article of charge. This memorandum was cancelled by the 5th respondent by an order dated 26.06.2009. Petitioner was transferred to NLC Neyveli with effect from August 2009. Fourth respondent had again issued a memorandum under Rule - 37 on 14.09.2009, 3 months after the order passed by the fifth respondent. Petitioner submitted a detailed representation with a request to furnish certain documents for him to submit a detailed representation for the charge memo. His representation was rejected by the fourth respondent by an order dated 28.09.2009. The fourth respondent appointed an enquiry officer. The enquiry officer submitted an enquiry report on 31.01.2010 holding that the article of charge framed against the petitioner is proved. Petitioner submitted a detailed representation to the enquiry officer's report. However, without considering his representation, fourth



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respondent passed a final order dated 13.03.2010 awarding the punishment of censure. Aggrieved by the same, the petitioner filed an appeal before the third respondent on 07.04.2010. The third respondent by an order dated 06.05.2010, allowed the Appeal holding that the act of the petitioner was not a gross indiscipline, disobedience and insubordination. The second respondent under the powers vested under Rule 54 of the CISF Rules, issued a show cause notice on 10.08.2010, proposing to revise the order passed by the third respondent and invited objections. A detailed representation dated 30.08.2010 was submitted to the second respondent. Without considering the representation, the second respondent revised the order passed by the third respondent and awarded the penalty of censure. Petitioner filed an appeal to the first respondent on 24.10.2010 and that was rejected by the first respondent on 03.05.2011. In the said circumstances this writ petition is filed.

3.The learned counsel for the petitioner submitted that without considering the petitioner's representation, fourth respondent imposed the punishment of censure. This punishment was set aside in the Appeal by the third respondent, later to be restored by the second respondent. Thus,



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he prayed that the order passed by the second respondent as confirmed by the first respondent is not acceptable in law.

4.In response, the learned counsel for the respondents submitted that the petitioner's misconduct amounts to gross misconduct, indiscipline, disobedience, insubordination and unbecoming the member of armed force. If this kind of act is permitted to be continued or is exonerated, armed forces cannot maintain discipline among its members. Discipline is the Paramount consideration in the armed forces. If that is not enforced, things will turn out to be bad to worst in maintaining discipline and running the armed forces. Taking these factors into consideration, the second respondent passed the impugned order and that was confirmed by the first respondent.

5.Consider the rival submissions and perused the records.

6.The article of the charges against the petitioner reads as follows:

"No 872210035 Insp/Exe Birbal Mahey of CISF Unit

SSP Salem was called for meeting held in the office of



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Deputy Commandant on 09.03.2009 at 11.00 hrs in connection with arrangements for celebration of CISF Day. He reported for the meeting 15 minutes late. During the meeting he argued in a loud voice with the Dy. Commandant in an insubordinate manner in the presence of Shri Dhyan Singh, AC/Fire and Ins/Fire R.S.Bains No.872210035 Insp/Exe Birbal Mahey stubbornly claimed conditional discharge of his duties in that if all the CIW personnel are not attending parade, he will not include Coy. Writer and CHM in the parade. Without permission he got up and left the DC's chamber despite the Deputy Commandant instructing him to sit down and attend the meeting. This act tantamounts to gross misconduct, disobedience and insubordination on his part which is unbecoming of a member of disciplined Force like CISF. Hence the charge.

7. On these charge, oral enquiry was conducted. Enquiry officer, on the basis of the oral and documentary evidence, found that the petitioner



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attended late for the meeting and argued with the Deputy Commandant, SSP Salem in a loud voice and in an insubordinate manner in the presence of Shri Dhyan Singh, AC/Fire and Insp/Fire R.S.Bains. Steno Ranjan Kumar also heard the loud voice inside the Deputy Commandant's chamber. After some time, petitioner came out from the Deputy Commandant's room despite the directions by the Deputy Commandant to sit and attend the meeting. Petitioner submitted his detailed representation. It is his grievance that the fourth respondent had not properly considered his representation and passed final orders on 13.03.2010 awarding the punishment of censure.

8.In appeal, the third respondent considered the submissions of both parties and found that the petitioner's act was not to be of gross misconduct, indiscipline, disobedience and insubordination. Therefore, the punishment of censure awarded was quashed and the petitioner was exonerated from the charges. The reasons attributed for this decision are that, during the discussions, petitioner gave suggestion for inclusion of CIW personnel to increase the strength for raising Day parade so as to form 4th platoon in the better interest of the unit, but the DC started



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talking in loud voice and asked the petitioner to conduct the parade with the available strength. On seeing the reaction of DC SSP, Salem, petitioner had left the chamber to avoid further complication of the issue and to maintain discipline and peace in the office. The act of leaving the chamber of the Deputy Commandant without any permission amounts to an act of indiscipline, but considering that particular moment and to avoid the altercation and to maintain peace & discipline of the office, the gravity can't sustain to that level which amounts to indiscipline act. Therefore, the appellate authority believed that the petitioner's act was not to be a gross misconduct, indiscipline, disobedience, insubordination. It is thus the punishment of censure was set aside. This was again reversed by the second respondent by the impugned proceedings.

9.The second respondent found that the reasons stated in the representation dated 30.08.2010 of the petitioner are not acceptable. The Deputy Commandant as Unit Commander granted exemption to CIW personnel from attending the parade. Petitioner being a subordinate officer should have accepted and obeyed the orders of the Deputy Commandant. If he was facing any problems in carrying out the lawful



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orders given by his superior, he should have sought for redressal from the higher authorities. But he had made an argument with DC, SSP Salem in an insubordinate manner. Petitioner left the chamber of the Deputy Commandant without following his directions to sit and attend the meeting. Therefore, the second respondent found the petitioner guilty of the charges and awarded the punishment of censure.

10. There are two different views taken by the third respondent and the second respondent with regard to the enquiry report and the finding of guilty. The third respondent found that in the then prevailing circumstances that exist on the date of the incident when the petitioner gave suggestion for inclusion of CIW personnel to increase the strength for raising Day parade, there was a tense moment because of raising of voice by the Deputy Commandant. Only to avoid escalation of tense moment, petitioner left the place. In the said circumstances, third respondent deemed it fit to come to the conclusion that the petitioner's conduct cannot be considered as misconduct and thus, set aside the punishment of the censure.



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11.On considering the materials available and the submissions of the counsel appearing for the parties, this Court is inclined to accept the views expressed by the third respondent than the views expressed by the second respondent. The third respondent considered all the aspects taking into account the then prevailing circumstances in the room of DC, SSP Salem. Probably that was not considered by the second respondent. Therefore, this Court while accepting the order of the third respondent, sets aside the punishment of censure passed by the second respondent which was confirmed by the first respondent. This punishment would no way come in the way of petitioner's further promotion, especially, to the post of Assistant Commandant.

12.Accordingly, this Writ Petition is allowed. No costs.
Consequently, connected miscellaneous petition, if any, is also closed.

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order
NCC: Yes/No

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