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W.P.No.16913 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

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

Writ Petition No.16913 of 2012

N.Kanukaiah

... Petitioner

Vs.

- 1.Union of India,
Rep. by its Secretary to the Government,
Department of Home Affairs,
New Delhi.
- 2.The Director General,
CISF Head Quarters,
No.13, C.G.O. Complex,
Lodhi Road, New Delhi – 110 003.
- 3.The Inspector General,
CISF Head Quarters South Sector,
Chennai Port Trust Campus,
Near War Memorial Chennai – 600 009.
- 4.The Deputy Inspector General,
CISF, DOS Head Quarters,
Antariksh Bhavan, New BEL Road,
Bangalore – 94.
- 5.The Commandant,
CISF Unit, VSSC Thumba,
Thiruvananthapuram,
Kerala – 695 022.

...



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Respondents

Writ Petition has been filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the third respondent dated 31.07.2008 in his order No.V-15014/L&R/SS/Rev/NK/2008-1952 confirming the order of the fourth respondent dated 31.01.2008 in his appellate order No.V-15015/DOS/Disc/NK/08-590 dated 31.01.2008 and modified the order passed by the third respondent dated 20.11.2007 in his final order No.V-15014/VSSC/Maj-04/Disc/NK/2007-9458 dated 20.11.2007 and to quash the same and to direct the respondents and to release the increments reduced by the appellate order of the appellate authority.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents 1 to 5 : Mr.T.L.Thirumalaisamy

ORDER

This writ petition has been filed by the petitioner to call for the records relating to the order passed by the third respondent dated 31.07.2008 in his order No.V-15014/L&R/SS/Rev/NK/2008-1952 confirming the order of the fourth respondent dated 31.01.2008 in his appellate order No.V-15015/DOS/Disc/NK/08-590 dated 31.01.2008 and modified the order



passed by the third respondent dated 20.11.2007 in his final order No.V-15014/VSSC/Maj-04/Disc/NK/2007-9458 dated 20.11.2007 and to quash the same and to direct the respondents and to release the increments reduced by the appellate order of the appellate authority.

2. Learned counsel for the petitioner submitted that the petitioner joined as Constable on 28.03.1996 in the Central Industrial Security Force at Karimnagar and presently serving in the CISF Unit BDL Kanchanbhag. While serving as CISF Unit VSSC Thumba under the fifth respondent, the petitioner applied for Earned Leave on the ground of his mother's seriousness and self treatment and the authority has sanctioned 20 days earned leave for the period from 24.08.2004 to 12.09.2004 and directed him to report for duty on 13.09.2004. However, the petitioner has not turned up due to his self sickness. Moreover, the petitioner went into psychiatric depression and unable to do anything by himself, which made him to overstay on sanctioned leave. As the petitioner was under his treatment at his home town, the disciplinary authority sent the charge memo dated 29.12.2004 under Rule 36 of CISF Rules 2001 and directed him to submit his defence representation against the article of charges within 10 days from the date of receipt of the



said memo.

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3. Learned counsel for the petitioner further submit that the disciplinary authority has appointed an enquiry office to enquire into the article of charges, appointed a presenting officer and directed the petitioner to appear before the enquiry proceedings. But the petitioner was not in a position to understand anything and did not appear before the enquiry officer. Therefore he was made ex-parte and the enquiry officer submitted his report to the disciplinary authority that the charges levelled against the petitioner was held proved. Based on the said report, the disciplinary authority awarded the penalty of “Removal from Service with immediate effect” on 06.08.2005.

4. Learned counsel for the petitioner would further submit that challenging the aforesaid award of removal from service dated 06.08.2005, the petitioner has preferred an appeal before the fourth respondent with a supporting documents to substantiate that he has suffered with psychiatric depression and requested the appellate authority/fourth respondent to reinstate him into service with all benefits and the same was dismissed on



07.08.2006 vide order No.3611. Challenging the dismissal order dated 07.08.2006, the petitioner has preferred revision petition before the third respondent and requested to reinstate him into service by setting aside the order of the fourth respondent dated 07.08.2006. Considering the revision petition, the third respondent reinstated the petitioner into service vide order No.1372 dated 22.03.2007 and further ordered that if the petitioner reports for duty, the disciplinary authority/fifth respondent would take steps to conduct de-novo proceedings from the stage of serving a copy of written brief of the presenting officer to the petitioner.

5. Learned counsel for the petitioner would further contended that as per the direction of the third respondent, the petitioner has joined duty on 06.04.2007 before the fifth respondent and he was taken on strength of the Unit with effect from 06.04.2007 vide order dated 14.07.2007 and subsequently, a de-novo proceedings were also initiated against the petitioner. In this regard, a written brief of presenting officer has been supplied to the petitioner on 25.09.2007 and the petitioner has also submitted his representation against the written brief of the presenting officer on 09.10.2007 along with the medical records. However, without considering



the written brief of the petitioner with due application of mind, the presiding officer simply arrived a conclusion without considering the 69 numbers of the defence exhibits and submitted his enquiry report to the disciplinary authority/fifth respondent that the charge levelled against the petitioner stands proved. Thereafter, the disciplinary authority/fifth respondent directed the petitioner to submit a representation if anything against the enquiry report and as per the direction, the petitioner has also submitted his representation on 09.11.2007. However, without considering the same, the disciplinary authority awarded the punishment of “Removal from Service with immediate effect” by the final order No.9458 dated 20.11.2007. Not satisfied with the final order, the petitioner has preferred an appeal petition before the fourth respondent. After considering the said appeal, the fourth respondent modified the punishment of Removal from service to that of reduction in time scale of pay by two stages from Rs.3500/- to Rs.3350/- for a period of one year and the petitioner will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay on 31.01.2008.

6. Learned counsel for the petitioner would further submit that



challenging the aforesaid order dated 31.01.2008, the petitioner has again preferred a revision petition before the revision authority/third respondent, however, the same was not considered and rejection on 31.07.2008. Aggrieved over the order passed by the respondents 3 to 5, the petitioner has come forward with the present writ petition.

7. Learned counsel appearing for respondents has filed a counter affidavit and submitted that due to shortage of man power he was sanctioned 20 days Earned Leave with effect from 24.08.2004 to 12.09.2004 for mother's treatment. As he has not submitted any medical papers his leave was not extended and in reply to his telegram dated 13.09.2004, the petitioner had been intimated vide Commandant, VSSC Thumba letter No.(5287) dated 16.09.2004 to report for duty forthwith as his extension of leave was not considered which he has not complied with. The petitioner was on OSL for about 11 months without any information of permission from the competent authority. If the petitioner was on medical treatment he should have been intimated to the competent authority and the petitioner has not done the same. The organization which enrolls security personnel on need basis cannot keep on waiting for long OSL cases of 11 months without any intimation/permission. If the petitioner was not in a position at that time to



reply, his dear & near ones could have informed the Department about his health condition.

8. Learned counsel for the respondents would further submit that the petitioner over stayed leave for about 11 months without any information or permission from the competent authority. The medical documents produced by the petitioner in support of his illness and treatment undergone by him were found not satisfactory. The cash memos produced were serially numbered whereas the medicines were purchased on different dates. The medical unfitness certificate obtained from Civil Assistant surgeon Government Civil Hospital, Karim Nagar for the period from 02.09.2004 to 29.05.2006 signed by the same person with same pen reveals that the petitioner had managed the same. The act on the part on the petitioner proves that he is not interested in continuing in service in CISF. The petitioner has submitted unfitness certificate from Civil Assistant Surgeon Government Civil Hospital, Karim Nagar for the period from 02.09.2004 to 29.05.2006. The petitioner has submitted a fitness certificate dated 18.08.2007 stating that he was under T.B. treatment from 08.03.2006 to 10.09.2006 that is contradictory to the unfitness/fitness certificates given by Government Civil



Assistant Surgeon, Karim Nagar. Therefore it is confirmed beyond doubt that the petitioner has managed the medical papers to cover up his unauthorized OSL period. Instead of arranging so many documents the petitioner could have approached the leave sanctioning / competent authority with the problem and if it would have sounded genuine, no authority is so inhuman to leave his own Member of Force to his fate or fend for himself. Here the petitioner has more faith in the exhibits and the same doctor rather than his departmental official and still expects them to wait for him from 28.05.2004 to 29.05.2006. Any person cannot rightly judge whether the unit is facing hardship on account of acute shortage of manpower by such persons going on long OSL's.

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

10. In the case on hand, the charges framed against the petitioner is that he was on unauthorized absence and for the same, an enquiry was conducted. Since the petitioner did not participated in the enquiry, the enquiry officer passed an ex-parte order and based on which, the disciplinary authority has awarded the punishment of removal from service with



immediate effect by order dated 06.08.2005. Challenging the said order dated 06.08.2005, the petitioner has preferred an appeal before the appellate authority on 16.06.2006 and the appellate authority rejected the appeal as devoid of merits vide order dated 07.08.2006. Thereafter, he has preferred revision petition before the revision authority on 27.10.2006 and the revision authority has reasonably considered the case of the petitioner and reinstated him into service vide No.1372 dated 22.03.2007 and it was further ordered that the disciplinary authority/commandant, CISF Thumba would take steps to conduct a de-novo proceedings from the stage of serving a copy of written brief of the Presiding Officer to the petitioner. Subsequently, the petitioner has reported for duty on 06.04.2007 and the enquiry was conducted and again the punishment of removal of service was imposed on the petitioner vide order dated 20.11.2007.

11. Challenging the punishment of removal from service dated 20.11.2007, the petitioner has preferred an appeal and the appellate authority taking sympathy view and on humanitarian grounds modified the punishment of removal from service to that of reduction in time scale of pay by two stages from Rs.3500/- to 3350/- for a period of one year vide order No.590 dated



31.01.2008. Against which, the petitioner has filed a revision petition dated 03.03.2008 before the revision authority and the revision authority by order dated 31.07.2008 confirmed the order passed by the appellate authority and rejected the revision petition filed by the petitioner.

12. It is pertinent to note that initially the disciplinary authority has awarded the punishment of removal of service on two occasions i.e., on 06.08.2005 and on 20.11.2007, however, the appellate authority took a lenient view on humanitarian and sympathetic grounds and modified to the punishment of reduction in time scale of pay by two stages from Rs.3500/- to 3350/- for a period of one year vide order No.590 dated 31.01.2008 and because of the lenient view of the appellate authority, the petitioner is still in service.

13. In view of the above factual matrix of the case, this Court is of the considered view that the order passed by the third respondent dated 31.07.2008 in his order No.V-15014/L&R/SS/Rev/NK/2008-1952 and the order of the fourth respondent dated 31.01.2008 in Order No.V-15015/DOS/Disc/NK/08-59 and the order passed by the fifth respondent



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dated 20.11.2007 in his final order No.V-15014/VSSC/Maj-04/Disc/NK/2007-9458 dated 20.11.2007 does not warrant any interference by this Court and the same is hereby confirmed.

14. In the result, this writ petition stands dismissed. No costs.

13.02.2024

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Index : Yes/No

Speaking Order : Yes/No

J.SATHYA NARAYANA PRASAD,J.

vm

To:

- 1.The Secretary to the Government,
Department of Home Affairs,
New Delhi.
- 2.The Director General,
CISF Head Quarters,
No.13, C.G.O. Complex,
Lodhi Road, New Delhi – 110 003.
- 3.The Inspector General,
CISF Head Quarters South Sector,

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Chennai Port Trust Campus,
Near War Memorial Chennai – 600 009.

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4.The Deputy Inspector General,
CISF, DOS Head Quarters,
Antariksh Bhavan, New BEL Road,
Bangalore – 94.

5.The Commandant,
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