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W.P.No.19805 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.19805 of 2010

M.Shakthivel

....Petitioner

Vs

1. Union of India
Represented 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 Zone,
'D'Block First Floor Rajaji Bhavan,
Besant Nagar,
Chennai – 600 009.
4. The Deputy Inspector General,
CISF Head Quarters South Zone,
'D' Block first floor Rajaji Bhavan,
Besant Nagar,
Chennai – 600 090.
5. The Commandant,
CISF Unit Ch.P.T,
Chennai Port Trust,
Chennai 600 009.

....Respondents



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PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 3rd respondent dated 23.10.2009 in his Order No.V-14013/Rev/MS/SS/2009-2054 confirming the order of the 4th respondent dated 27.01.2009 in his appellate order No.V-11014/36/2008/L&R (SZ)-216 27.01.2009 and confirming the order passed by the 5th respondent dated 09.01.2007 in his final order No.V-15014/Estt.I/MS-MAJ-10/06-163 dated 09.01.2007 and to quash the same and to direct the respondents to take the petitioner into the strength of the CISF as Constable/GD with all monetary benefits and other service benefits.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Dr.D.Simon
CGSC

ORDER

The Writ Petition has been filed to call for the records relating to the order passed by the 3rd respondent dated 23.10.2009 in his Order No.V-14013/Rev/MS/SS/2009-2054 confirming the order of the 4th respondent dated 27.01.2009 in his appellate order No.V-11014/36/2008/L&R (SZ)-216 27.01.2009 and confirming the order passed by the 5th respondent dated 09.01.2007 in his final order No.V-15014/Estt.I/MS-MAJ-10/06-163 dated



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09.01.2007 and to quash the same and to direct the respondents to take the petitioner into the strength of the CISF as Constable/GD with all monetary benefits and other service benefits.

2. The case of the petitioner is that, petitioner joined as Constable in the Central Industrial Security Force at Chennai on 10.04.1989. He served all over India with unblemished record of service for the past 18 years. While serving at CISF Unit under the 5th respondent, a charge memo under Rule 36 of CISF Rules was issued alleging that, petitioner while on shift duty from 05.00 hrs to 17.00 hrs on 28.03.2006 failed to discharge his duty and abstained himself from taking any effort to prevent the pilfer committed by some labourers. He was found in possession of Rs.100/- and refused to co-operate in the enquiry etc., He submitted his defence statement on 24.04.2006 denying the charges against him. Preliminary enquiry was scheduled on 03.06.2006. Petitioner appeared before the preliminary enquiry and made his submissions. He was placed under suspension with effect from 30.03.2006. Since, petitioner's daughter was suffering from Thyroid, he requested the disciplinary authority to grant permission to leave the Head Quarters for 5 days from 10.07.2006. He was granted permission to leave the Head Quarters from 13.07.2006. Since, petitioner was not



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feeling well and advised treatment for 15 days, he intimated the disciplinary authority on 17.07.2006 through telegram about the extension of leave.

However, the notice fixing enquiry on 17.08.2006 was received by him only on 21.08.2006. He intimated the disciplinary authority about his leave.

However, without considering the same, enquiry was conducted and petitioner was not able to participate in the enquiry. The Enquiry Officer found him guilty of the charges. The disciplinary authority imposed punishment of removal from service and that was confirmed by the 4th & 5th respondents. Therefore, this Writ Petition.

3. It is submitted by the learned counsel for the petitioner that, enquiry was conducted without giving opportunity to the petitioner to participate in the enquiry. It is against the principles of natural justice and law. The documents produced by him were not properly considered during the appeal proceedings and the appeal was dismissed. Thus, he prays for dismissal of this petition.

4. In response, the learned counsel for the respondents submitted that, petitioner is a Habitual Offender and he was slapped with 26 charges. Out of which, 24 charges for minor misconducts and 2 charges for major



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misconducts. He deliberately not participated in the enquiry and therefore he cannot claim that, he was denied opportunity. Considering his past misconducts and the present one, which is serious one, the punishment of removal from service was rightly imposed. Thus, he prays for dismissal of this petition.

5. Considered the rival submissions and perused the records. The articles of charges imposed against the petitioner are as follows:

ARTICLE OF CHARGE NO.1

An act prejudicial to the good order and discipline of the Force in that No.892331521 Constable M.Shakthivel of 'D' Coy. CISF Unit, Ch PT Chennai, who was detailed for An act prejudicial to the good day shift duty on 28.03.2006 from 0500 hrs to 1700 hrs at DC stores to Wall side patrolling, failed to discharge his lawful duty in that he deliberately allowed some lady laborers to pilfer iron scrap, stuffed in gunny bags, through the boundary wall from inside the Port area, at about 1650 hrs and abstained himself from taking any effort to prevent and thwart them from committing such an act. This act on the part of No. 892331521 Constable M. Sakthivel exhibits moral turpitude, connivance in illegal activity, gross misconduct, dereliction of duty, which is



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unbecoming of a member of Force.

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ARTICLE OF CHARGE NO.II

An act prejudicial to the good order and discipline in that No.892331521 Constable M.Shakthivel of 'D' Coy. CISF Unit, Ch PT Chennai, who was detailed for day shift duty on 28.03.2006 from 0500 hrs to 1700 hrs at DC stores to Wall side patrolling, refused to offer himself for physical search when directed to do so by Inspector/Exe Sumer Singh and Inspector Exe Subash Sen on 28.03.2006 and misbehaved with them. This act on the part of NO.892331521 Constable M.Sakthivel exhibits his defiant attitude towards superiors, which amounts to gross misconduct. Indiscipline act and disobeyal of lawful orders.

ARTICLE OF CHARGE NO.III

An act prejudicial to the good order and discipline of the Force in that No.892331521 Constable M.Shakthivel of 'D' Coy. CISF Unit, Ch PT Chennai, who was detailed for day shift duty on 28.03.2006 from 0500 hrs to 1700 hrs at DC Stores to Wall Side patrolling, refused to present himself for physical frisking/checking, when directed to do so by Shri S.Jaya Prasad, Dy.Commandant on 28.03.2006, instead misbehaved and indulged in needless argument with him, at the first instance. This act on the part of No.892331521



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Constable M.Sakthivel exhibits his defiant attitude towards his superiors which amounts to gross misconduct, indiscipline act and disobeyal of lawful orders.

ARTICLE OF CHARGE NO.IV

An act prejudicial to the good order and discipline of the Force in that No 892331521 Constable M.Shakthivel of 'D' Coy. CISF Unit, Ch FT Chennai, who was detailed for day shift durty on 28.03.2006 from 0500 hrs to 1700 hrs at DC stores to Wall side patrolling was found to possess unaccounted money to the tune of Rs. 100/- (Rupees one Hundred only) in the denomination of one hundred rupee note, when checked by Inspector/ Exe Summer Singh in the presence of witnesses at about 1715 hrs. i.e immediately after completion of the duty hours. This act on the part No. 892331521 Constable M.Sakthivel exhibits suspicious conduct on his part, which amounts to misconduct, moral turpitude and violation of lawful instructions.

ARTICLE OF CHARGE NO.V

An act prejudicial to the good order and discipline of the Force in that No.892331521 Constable M.Sakthivel of 'D' Coy. CISF Unit, Ch PT Chennai, who was detailed for day shift duty on 28.03.2006 from 0500 hrs to 1700 hrs at DC stores to Wall side patrolling, refused to pur his sign in the



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seizure memo after an unaccounted money to the tune of Rs.100/-was sized from him when checked by Inspector/Exe Sumer Singh and refused to give his statement of the incident when told to do so. This act on the part of No.892331521 Constable M Sakthivel exhibits his defiant attitude towards his superiors which amounts to gross misconduct, indiscipline act and disobeyal of lawful orders.

ARTICLE OF CHARGE [NO.VI](#)

An act prejudicial to the good order and discipline of the Force in that No.892331521 Constable M.Sakthivel of 'D' Coy. CISF Unit, Ch PT Chennai has developed an irresistible and incorrigible attitude of committing similar offence of disobeying lawful orders and instructions and failed to redeem himself and show improvement in his work and conduct inspite of charge sheeted and penalized on 18(eighteen) earlier similar occasions during his service. This amounts to an act of gross misconduct and reprehensible attitude on the part of No.892331521 Constable M.Sakthivel.

The gist of charges are that, he failed to discharge his lawful duty and he deliberately allowed some lady laborers to pilfer iron scrap, stuffed in gunny bags in the area where he was patrolling. When physical check was demanded he did not co-operate. A sum of Rs.100/-, which is



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unaccounted was found in possession of the petitioner. He did not co-operate with the enquiry and refused to give statement. That apart, despite being penalised for 18 earlier occasions he has not redeemed himself. On these charges, oral enquiry was conducted. It is not as though notice was not properly served on the petitioner for oral enquiry. He knew the date of the enquiry. Instead of participating in the enquiry, he sent a communication stating that he fell sick and wanted to extend his leave. His leave request was not accepted and leave was not sanctioned. When there is a duty cast upon the petitioner to appear for enquiry, he cannot just by sending an extension of leave letter, remain at home and fail to participate in the oral enquiry and then complain that he was not given opportunity to participate in the enquiry.

6. This Court finds that sufficient opportunity was given to the petitioner to participate in the oral enquiry. Proper oral enquiry was conducted and report was filed. Charges against the petitioner had been proved. Thereafter, the disciplinary authority on going through the proved charges imposed penalty of removal from service with immediate effect and his appeal was also rejected. Proper procedure had been followed from the inception of departmental proceedings by issuance of memo and through out



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the conduct of enquiry and at the time of passing the final orders. Thus, this Court finds that there is nothing available in favour of the petitioner to interfere with the findings of the enquiry Officer or the Orders passed by the Disciplinary Authority or Appellate Authority.

7. Accordingly, this Writ Petition is dismissed. No costs.

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G.CHANDRASEKHARAN, J

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