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W.P.No.23822 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	26.02.2024
Pronounced on	:	04.04.2024

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.23822 of 2011

and

M.P.No.1 of 2011

Swapan Paul

...Petitioner

Vs.

1.Union of India,
Rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi – 110 001.

2.The Deputy Inspector General,
Central Industrial Security Force (SZ),
Head Quarters,
Rajaji Bhavan, 'D' Block, 1st Floor,
Besant Nagar,
Chennai – 600 090.

3.The Commandant,
Central Industrial Security Force,
Visakhapatnam Port Trust,
Visakhapatnam – 530 035
Andhra Pradesh.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to



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issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 3rd respondent in Memo No.V-15104/CISF/VPT/DISC/MAJ- 01/SP/2010/456 dated 06.08.2010 and that of the proceedings of the 2nd respondent bearing Memo No.V-11014/66/2010/7115 dated 12.11.2010 and quash the same and consequently, direct the respondents to reinstate the Petitioner into the services as a Cook with all consequential benefits.

For Petitioner : Mr.V.Kalyana Raman

For Respondents : Mr.N.Ramesh, Senior Panel counsel

ORDER

This Writ Petition is filed calling for the records relating to the proceedings of the 3rd respondent in Memo No.V-15104/CISF/VPT/DISC/MAJ- 01/SP/2010/456 dated 06.08.2010 and that of the proceedings of the 2nd respondent bearing Memo No.V-11014/66/2010/7115 dated 12.11.2010 and quash the same and consequently, direct the respondents to reinstate the Petitioner into the services as a Cook with all consequential benefits.

2.The case of the petitioner is that petitioner was appointed as Cook in Central Industrial Security Force on 05.08.1999. During December 2009, his uncle passed away and therefore, he took 4 days Earned Leave from 07.12.2009 to 10.12.2009. He participated in the final rites of his uncle and then fell ill. He



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could not report to duty on 11.12.2009 and took medical treatment. On

17.12.2009, he took treatment in a hospital at Santipur. His physician instructed to come for check-up on 31.12.2009 and as per his instructions, he went to check-up on 31.12.2009. But, his health condition did not improve. He went to hospital for treatment again on 01.02.2010 and was under treatment till 08.02.2010. The Doctor told him that his sufferings were due to prolonged Blood pressure and he was advised to take rest before joining duty. After recovering from illness, he went to join duty and was allowed to join duty on 03.07.2010. He worked till 06.08.2010. To his shock and surprise, he was issued charge sheet dated 02.03.2010, stating that “He did not report for duty on 11.12.2009 and remained absent from 11.12.2009.” An enquiry was conducted. On the basis of the findings of the Enquiry Officer, the 3rd respondent imposed a punishment of “Removal from service” by a proceedings dated 06.08.2010 in Memo No.V-15104/CISF/VPT/DISC/MAJ- 01/SP/2010/456. Unauthorised leave for 240 days was regularised vide proceedings dated 31.08.2010. Petitioner preferred an Appeal before the 2nd respondent. 2nd respondent rejected his Appeal on 12.11.2010. The authorities have not considered the petitioner’s medical condition before passing the order of “Removal from service”. In the said circumstances, this Writ Petition is filed.



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3.Learned counsel for the petitioner submitted that petitioner was really not well and that is the reason why he was not able to attend duty on 11.12.2009. Despite production of medical records to show his illness, the Enquiry Officer, Disciplinary Authority and Appellate Authority have not considered the medical records produced by him. In the said circumstances, the order of “Removal from service” is not justified. That apart, it is submitted by the learned counsel for the petitioner that punishment of removal from service for unauthorized absence is disproportionate and too harsh a punishment.

3.1.Petitioner still has 10 years of service. He is not pressing the claim of backwages. He prays for setting aside the punishment imposed and impose minor punishment with reinstatement into services with continuity of service. In support of his submissions, he produced the orders passed in **W.P.No.33542 of 2007** in the case of ***J.B.J.Alexander Vs. The Secretary to Government*** and **W.P.No.17275 of 2019** in the case of ***M.Ganesan VS. The Management of Hyundai Motor India Limited.***

4.In reply, learned counsel for the respondents submitted that this is not the first occasion petitioner remained unauthorisedly absent. He was already imposed 5 punishments for overstaying. Despite that, he has not changed his



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ways and continued to remain unauthorisedly absent. The medical certificate produced by him are not true, but created only for the purpose of justifying his unauthorised absence. He had not submitted any medical records to the respondents or sought extension of leave. The medical certificate produced by him shows that, he was fit to resume duty, however, he did not join duty. When there are free medical facilities available in the respondents' unit, petitioner could have taken treatment with the respondents' unit, for the alleged illness. The illness stated by him is not so serious. There are no materials available to show that he was treated as in-patient. It is thus clear that, medical records are created for the purpose of justifying his unauthorised absence. In the light of the frequent overstaying, he was imposed with the punishment of removal from service.

4.1.Learned counsel for the respondents relied on the following judgments for the proposition that person who remain unauthorisedly absent deserves no sympathy from the Court.

1. ***Ex Sepoy Madan Prasan VS. Union of India and ors*** reported in [2023 Livelaw SC 580]
2. ***S.Alex Pandian Vs. The Inspector General, South Sector Head Quarters, CISF and ors*** in W.P.No.34976 of 2023



WEB COPY 5. Considered the rival submissions and perused the records.

6. It is seen from the records produced that petitioner was slapped with the following charges,

"ARTICLE OF CHARGE-I:

"No.994130011 Cook Swapam Paul of CISF Unit VPT Visakhapatnam was sanctioned 04 days Earned Leave from 07.12.2009 to 10.12.2009 along with eligible permissions. On expiry of sanctioned leave, he was supposed to report for duty on 11.12.2009(FN), but he did not report for duty on due date and continued to remain overstay on sanctioned leave from 11.12.2009 to till date without any intimation/permission to/of the competent authority. He also did not respond to the call up notices sent to him. Thus, the act committed by Cook Swapam Paul amounts to gross misconduct, grave indiscipline, dereliction of duty and violation of lawful orders, being a member of disciplined Force.

ARTICLE OF CHARGE-II:

That CISF No.994130011 Cook Swapam Paul of CISF Unit VPT Visakhapatnam is found to be a habitual offender for overstaying on leave on various occasions in his past service in CISF for which he has been awarded with 05 punishments as per his service records. Despite receipt of these punishments, he did



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not rectify and improve himself so far. Hence, the disciplinary authority intends to consider the past bad record of service of CISF No. 994130011 Cook Swapan Paul while deciding the case on merit."

7.During the course of enquiry on the charges, it appears that petitioner had produced the medical records to justify his absence. Medical records have been considered by the Disciplinary Authority. The Disciplinary Authority, on going through the medical records, found that petitioner complained of fever and was found that he was fit to join duty with effect from 20.12.2009. The medical certificate issued by Santipur State Government Hospital shows that "he was suffering from Low Blood Pressure for the last 1 1/2 months. After taking medication, he was declared fit to join duty." It appears that petitioner has not produced any medical records to show that, he was taken treatment as in-patient. Petitioner has failed to submit medical records such as test conducted for blood, urine, stool sample etc. He has also not sent his medical treatment records to the Unit for seeking extension of leave. Therefore, the Enquiry Officer found that the medical records cannot be relied.

8.In the absence of any acceptable and clinching evidence i.e., medical records to the Unit, the Enquiry officer found that petitioner remained



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unauthorisedly absent without proper permission and held that Article of charge No.1 was proved. It was also found that petitioner was awarded 5 punishments during his short span of service in Central Industrial Security Force for overstaying after leave. This was proved by production of necessary service records. Therefore, it is clear from the Enquiry report and order of the Disciplinary Authority that petitioner was not able to prove his claim of illness. It was found that he had deliberately overstayed after the expiry of the leave.

9.Though the petitioner is a Cook in Central Industrial Security Force, Central Industrial Security Force is an uniform service. Unauthorised absence of any person, especially a Cook in Central Industrial Security Force will affect its day today function.

10.The judgments produced by the learned counsel for the petitioner in **W.P.No.17275 of 2019** in the case of ***M.Ganesan VS. The Management of Hyundai Motor India Limited***, it was found that documentary evidence produced in support of the petitioner's case has not been considered. That was the reason why the punishment was set aside and imposed lesser punishment. In the case before hand, medical records were properly considered by the authorities and therefore, this judgment cannot be made applicable to the facts



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of the case. The judgment in **W.P.No.33542 of 2007** in the case of

J.B.J.Alexander Vs. The Secretary to Government, discussed with excessive

and shockingly disproportionate punishment. In the case before hand, it is the 1st misconduct of overstaying. Petitioner was punished 5 times earlier for over staying. Left with no option, he was imposed the punishment of “Removal from service”. In the facts and circumstances of the case, this punishment cannot be considered as excessive and shockingly disproportionate.

11.In the case of **Ex Sepoy Madan Prasan VS. Union of India and ors** reported in [2023 Livelaw SC 580]

"10.It is apparent from the above table that the appellant was a habitual offender. There were four red ink entries and one black ink entry against him before the present incident cited at serial number (f) above. Such gross indiscipline on the part of the appellant who was a member of the Armed Forces could not be countenanced. He remained out of line far too often for seeking condonation of his absence of leave, this time, for a prolonged period of 108 days which if accepted, would have sent a wrong signal to others in service. One must be mindful of the fact that discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service."

12.In the case of **S.Alex Pandian Vs. The Inspector General, South**



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Sector Head Quarters, CISF and ors in W.P.No.34976 of 2023, this Court

observed as follows,

"6.It is apparent from the above table that the appellant was a habitual offender. There were four red ink entries and one black ink entry against him before the present incident cited at serial number (f) above. Such gross indiscipline on the part of the appellant who was a member of the Armed Forces could not be countenanced. He remained out of line far too often for seeking condonation of his absence of leave, this time, for a prolonged period of 108 days which if accepted, would have sent a wrong signal to others in service. One must be mindful of the fact that discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service."

From these judgments, it is made clear that indiscipline in armed force cannot be countenanced, especially the charge of long absence. More so, when petitioner was already punished 5 times for similar misconduct.

13.In the said circumstances, this Court is not inclined to interfere with the proceedings of the 3rd respondent in Memo No.V-15104/CISF/VPT/DISC/MAJ- 01/SP/2010/456 dated 06.08.2010 and that of the proceedings of the 2nd respondent bearing Memo No.V-11014/66/2010/7115 dated 12.11.2010. Accordingly, this Writ Petition is dismissed. Consequently,



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the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

Speaking/Non speaking order
gd

To

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Rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi – 110 001.
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Central Industrial Security Force (SZ),
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Rajaji Bhavan, 'D' Block, 1st Floor,
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3. The Commandant,
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Visakhapatnam – 530 035
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G.CHANDRASEKHARAN.J.,

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Pre-Delivery Order in
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