



W.P.No.3627 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
11.12.2023

PRONOUNCED ON
26.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.3627 of 2010
and M.P.Nos. 1 & 1 of 2014

Suresh Patil

... Petitioner

Vs

1.The Senior Commandant,
Central Industry Security Force Unit NLC Neyveli,

2.Deputy Inspector General,
Central Industry Security Force Unit,
NLC Neyveli.

3.Inspector General/SS,
Office of IG Central Industry Security Force Unit,
Ministry of Home Affairs,
Central Industry Security Force SS Hqrs., Chennai.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records No.V-15014/CISF/NLC/Maj/SP/2007-11180 order dated 20.08.2007 on the file of 1st respondent and file No.V-14014/NLC/DISC/APPEAL/SP/2007/1488 order dated 16.02.2008 on the



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file of the 2nd respondent and in file No.V-15014/L&R/SS/Rev/SP/2009-1944 order dated 31.08.2009 on the file of 3rd respondent and to quash the same and may also be pleased to issue a consequently to direct the respondents to reinstate the petitioner in service with all the backwages, promotion and regulation of service from the date of removal from service to the date of reinstated in service and pass such further orders.

For Petitioner : Dr.G.Krishnamurthy

For Respondents : Mr.D.Simon
CGSC

ORDER

The Writ Petition had been filed challenging the order dated 20.08.2007 passed by the first respondent in awarding the punishment of removal from service, as confirmed by the second and third respondents dated 16.02.2008 and 31.08.2009.

2. Heard, Dr.G.Krishnamurthy, learned counsel appearing for the petitioner and Mr.Dr.D.Simon, learned Central Government Standing Counsel appearing for the respondents.



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3. Dr.G.Krishnamurthy, the learned counsel appearing for the petitioner would submit that, the petitioner had joined in the CISF as a constable in the year 1993. The petitioner had availed casual leave with prior permission from the Superior Officer from the period 10.09.2006 to 30.09.2006. The petitioner should have reported back to the duty on 01.10.2006. He would contend that during the said period the petitioner was in his native place he had been diagnosed with Jaundice and that the petitioner was advised to take complete bed rest and hence, the petitioner was under treatment from 29.09.2006 to 07.01.2007. Thereafter on 10.01.2007 the petitioner joined his duty. He would submit that when the petitioner was hospitalized the same and his wife had intimated his extension of leave to the authorities through a fax message.

4. He would submit that the petitioner was served with a charge memo, dated 12.01.2007 and that the CISF Officials had stated that the petitioner had overstayed for a period of 101 days and that is a misconduct committed by the petitioner. The act of over stay of the petitioner amounts to



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willful withdrawal from the duties and thereby un-becoming a member of the Armed Force. He would further submit that the petitioner came to know that his name has appeared in one of the Tamil Daily news paper (Dinakaran) as that the petitioner along with four other Constables of CISF Unit, NLC Neyveli had alleged to have involved in a case of theft of a conveyor belt from Mine -1 unit of NLC, Neyveli. He would further submit that one of the constable named Nagesh Naik was arrested by the police officers of NLC, Neyveli Unit on 28.09.2006. He would further contend that the higher officials of the CISF Unit alleged to have been stated that the petitioner has to evade from the police action and not to render cooperation to the police investigation in a theft case, the petitioner had intentionally remained absent for the duty and therefore, the higher officials of the CISF Unit issued call-up notices dated 09.10.2006, 26.10.2006 and 10.11.2006 respectively directing the petitioner to report to duty with immediate effect.

5. He would further submit that with regard to the charge of theft of conveyor belt, such an incident occurred in Mines-1, second shift on



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01.09.2006 but the petitioner was working in Mines -II. J coy, CISF Unit, at Neyveli and there is about 20 kilometres distance between these two Mines.

So the presence of the petitioner at the place of occurrence is only an alleged offence. He would contend that no action was taken against the petitioner for the alleged offence of theft. The petitioner came to know about such an incident only when his name has appeared in the Tamil Daily. He would further submit that the petitioner has submitted all the facts before the disciplinary authority in oral and also in writing.

6. He would further submit that despite the explanation given by the petitioner to the disciplinary authority, the first respondent dated 20.08.2007 had awarded the punishment of removal from service and the second and third respondents confirmed the order of the first respondent dated 16.02.2008 and 31.08.2009 respectively. Therefore, he would seek interference of this Court to set aside the orders of the respondents and to allow this Writ Petition.



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7. Countering his arguments the learned Central Government Standing

Counsel would submit that, the petitioner was working as a constable in the CISF Unit and had availed 15 days Casual leave w.e.f. 10.09.2006 to 30.09.2006. He would contend that on expiry of the leave the petitioner was supposed to rejoin his duty on 01.10.2006 (F/N). Meanwhile on 30.09.2006, the wife of the petitioner had sent a fax message to the authorities seeking for an extension of 10 days leave stating that the petitioner was hospitalized on 29.09.2006 due to stomach pain and fever. He would submit that to substantiate the claim of the petitioner he had not given any medical certificates and therefore, the petitioner was directed to report for duty through call up notice dated 09.10.2006, despite receiving such a notice the petitioner did not turn up for reporting to duty. He would further submit that the petitioner during his period of service, was awarded with 11 minor punishments and 01 major punishment for various misconducts including overstaying on earlier six occasions, absent for duty for 02 times, and disobedience of lawful orders of senior officers and the major punishment was for assaulting one HC/GD.



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8. He would submit that the charge against the petitioner in the charge memo was that the petitioner overstayed from 01.10.2006 unauthorisedly, and the same was issued to the petitioner under Rule 36 of CISF Rules 2001, vide No. V-15014/CISF/NLC/Maj/SP/2006/14438 dated 04.12.2006 stating that the act of overstay would amounts to willful withdrawal from his duties and unbecoming of a member of an armed Force. He would contend that the petitioner reported to the Unit on 11.01.2007 and he had acknowledged the charge memo on 12.01.2007 and submitted his written representation on 21.01.2007. The petitioner had denied the charge framed against him and an departmental enquiry was conducted and the petitioner was awarded a punishment of removal from service dated 20.08.2007.

9. He would further submit that against the order of removal, the petitioner had preferred an appeal before the second respondent and the same was also rejected by order dated 16.02.2008. Thereafter, the petitioner had filed an revision petition before the third respondent dated 24.04.2008. The third respondent/Revisional Authority had found that there were procedural infirmity in the departmental proceedings conducted against the



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petitioner and the order of removal awarded was set aside by order dated 17.09.2008. Further, the Revisional Authority had directed the disciplinary authority to draw a *de novo* proceedings from the stage of appointment of enquiry officer after giving due opportunity to the petitioner to defend his case, on the charge memorandum dated 04.12.2006. He would further submit that on receipt of the order from the Revisional Authority, the petitioner had reported to duty at CISF Unit, on 25.09.2008 (FN) and he was taken on the strength of CISF Unit, NLC (N) w.e.f. 25.09.2008.

10. He would further submit that the enquiry officer was appointed and an enquiry has been conducted strictly as per the procedure laid down under CISF Rules and the petitioner was also given an opportunity to defend his case. During the course of departmental enquiry, the petitioner had produced medical unfit/fitness certificate dated 29.09.2006 and marked it as Exhibit-1, which shows that the petitioner was suffering from "Jaundice" and the medical officer had issued unfit certificate on 29.09.2006 for the period from 29.09.2006 to 07.01.2007 in one stretch presuming that he would be fit on 08.01.2007 without conducting any pathological tests and



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giving any specialized treatments. He would contend that the petitioner has not produced any medical documents in support of the certificate such as admission ticket, prescription slips, cash memos for purchase of medicines, discharge slip, pathological report, etc to prove that the petitioner was hospitalized and undergone medical treatment during the period of overstay due to his illness.

11. He would further submit that as per Rule 19(5) and (6) of CCS Leave Rules, the grant of medical certificate does not in itself confer upon the government servant any right to take leave. The medical certificate shall be forwarded to the competent authority to grant leave and orders of that authority is required, but the petitioner has not sent the medical certificate to the leave sanctioning authority for its sanction. He would submit that the petitioner's name was highlighted in the news article in one of the Tamil daily, dated 09.11.2006, stating that the petitioner along with two others involved in a theft of conveyor belt worth Rs.21 lakhs on 01.09.2006. He would submit that the petitioner might have overstayed in order to evade the police investigation in the theft case. But the charge levelled against the



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petitioner was only for unauthorised overstay, so the respondents had not given any evidentiary value for the news article.

12. He would submit that the enquiry officer had established that the charge framed against the petitioner as proved and submitted the enquiry report with the findings to the disciplinary authority dated 28.02.2009 and a copy of the enquiry officer's report was served to the petitioner on 09.03.2009 and the petitioner had also submitted his representation on 28.03.2009. The disciplinary authority imposed a penalty of removal from service with immediate effect by the order of the first respondent dated 15.04.2009. Against the order of the first respondent, the petitioner preferred an appeal before the second respondent and the same was also rejected being devoid of merits on 21.05.2009. The petitioner had also preferred an revision before the third respondent and the revision petition was also rejected by order dated 31.08.2009.

13. Therefore, he would submit that the order of removal from service awarded by the disciplinary authority, confirmed by the respondents is based



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on the enquiry report and the disciplinary authority has fully agreed with the findings of the enquiry officer, as that the petitioner had overstayed unauthorisedly for a prolonged period of 102 days, which is a serious misconduct which had made the petitioner unbecoming member of a armed Force (CISF). Hence, he seeks to dismiss the Writ Petition.

14. I have considered the submissions made by the learned counsel appearing on either side and perused the materials available on record before this Court.

15. The petitioner had been issued with a charge memo for unauthorised absence/ over stay of the leave period. The claim of the petitioner is that he was infected with Jaundice and had been adviced bed rest. Even though, disciplinary proceedings was originally concluded in the year 2007, the petitioner had not produced any material evidence to show that he was infected with jaundice except for a fax message by his wife that too as early as in the October, 2016, claiming that the petitioner was suffering from fever and stomach ache. Only when the matter was remanded



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by the Revisional Authority to conduct a fresh denova enquiry, the petitioner seems to have produced a certificate dated 29.09.2006 by stating that he was suffering from Jaundice and that he would be fit to join duty on 08.01.2007. The said certificate had been disbelieved by the disciplinary authority as well as the Appellate and the Revisional Authority and he had been inflicted with a punishment of removal from service.

16. The petitioner is working as a Constable in the CISF. The said Force had been providing security for various Establishments. When the petitioner knows his duties and responsibilities as a Constable of the Force, he is bound to conduct himself in a disciplined manner. He should also intimate his non-availability even if he had any medical reasons to not to attend to his duties. It is an admitted case that the petitioner had over stayed for 102 days without any intimation except for a fax message by his wife seeking 10 days extension of his leave. The Department had been kept in dark.

17. Even though various allegations has been made against him as



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regards to his involvement of theft during his period of absence, I do not propose to enter upon the same as the charge memo is not based upon such involvement. Likewise, I am also not satisfied with the reasons given by the petitioner. To substantiate his medical incapability, he had produced a certificate before the respondents issued on 29.09.2006. The said medical certificate issued on 29.09.2006 envisages that the petitioner would be cured on 07.01.2007 and will be fit to join duty on 08.01.2007. I am not inclined to accept the said medical certificate, which had been issued in September 2006, declaring that the petitioner would be fit to join duty on 08.01.2007. The said medical certificate is more almanac than a medical certificate. For such reasons, I do not find any reasons to interfere with the orders impugned in this Writ Petition.

18. In fine, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition are closed.

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Index: Yes/No
Speaking Order/Non Speaking Order



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Neutral Citation:Yes/No

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To

- 1.The Senior Commandant,
Central Industry Security Force Unit NLC Neyveli,
- 2.Deputy Inspector General,
Central Industry Security Force Unit,
NLC Neyveli.
- 3.Inspector General/SS,
Office of IG Central Industry Security Force Unit,
Ministry of Home Affairs,
Central Industry Security Force SS Hqrs., Chennai.



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K.KUMARESH BABU.,J.

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A Pre-delivery order made in
W.P.No.3627 of 2010
and M.P.Nos. 1 & 1 of 2014

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