



W.P.Nos.26165 & 26415 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	21.02.2024
Pronounced on	:	14.03.2024

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.Nos.26165 & 26415 of 2011

and

M.P.No.1 & 2 of 2011

W.P.No.26165 of 2011:

Karnail Singh

...Petitioner

Vs.

- 1.The Assistant Commandant/ADM,
Office of the Commandant,
Central Industrial Security Force,
CISF Unit DAE, Kalpakkam,
Kanchipuram District,
Tamil Nadu – 603102.
- 2.The Commandant,
Office of the Commandant,
Central Industrial Security Force,
CISF Unit DAE, Kalpakkam,
Kanchipuram District,
Tamil Nadu – 603102.
- 3.Deputy Inspector General/DAE,
Office of the Deputy Inspector General,
Central Industrial Security Force/
CISF DAE HQRS,
ECIL Post, Hyderabad – 62.



W.P.Nos.26165 & 26415 of 2011

4. The Director General,
Office of the Director General,
CISF FHQ Lodhi Road,
New Delhi – 03.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in No.V-15017/R-3/L & R/DAE/2010 2979 dated 31.05.2010 on the file of the 3rd respondent and quash the same and for directing the respondents to pay the increment in accordance with the rules and procedures.

For Petitioner : Mr.G.Dilip Kumar

For Respondents : Mr.Venkataswamy Babu, SPCG

W.P.No.26415 of 2011:

Karnail Singh

...Petitioner

Vs.

1. The Commandant/ADM,
Office of the Commandant,
Central Industrial Security Force,
CISF Unit DAE, Kalpakkam,
Kanchipuram District,
Tamil Nadu – 603102.

2. The Assistant Commandant,
The Enquiry Officer,
Office of the Commandant,
Central Industrial Security Force,
CISF Unit DAE, Kalpakkam,
Kanchipuram District,
Tamil Nadu – 603102.



W.P.Nos.26165 & 26415 of 2011

3. Deputy Inspector General/DAE,
Office of the Deputy Inspector General,
Central Industrial Security Force/
CISF DAE HQRS,
ECIL Post, Hyderabad – 62.

4. The Inspector General
Office of the CIF DAE,
Head Quarters Western Sectors,
CISF Campus Sector 35, Taloja
Kharghar, Navi Mumbai – 410 210

4. The Director General,
Office of the Directorate General,
Central Industrial Security Force
Block No.13, CGO Complex,
Lodhi Road,
New Delhi – 03.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in No.V-11014/87/L&R/2010-1972 dated 28.12.2010 on the file of the 1st respondent and quash the same and for directing the respondents to reinstate the petitioner with back wages.

For Petitioner : Mr.G.Dilip Kumar

For Respondents : Mr.D.Simon, CGSC



W.P.Nos.26165 & 26415 of 2011

COMMON ORDER

WEB COPY

The Writ Petition in W.P.No.26165 of 2011 is filed calling for the records in No.V-15017/R-3/L & R/DAE/2010 2979 dated 31.05.2010 on the file of the 3rd respondent and quash the same and for directing the respondents to pay the increment in accordance with the rules and procedures.

The Writ Petition in W.P.No.26415 of 2011 is filed calling for the records in No.V-11014/87/L&R/2010-1972 dated 28.12.2010 on the file of the 1st respondent and quash the same and for directing the respondents to reinstate the petitioner with back wages.

2.The case of the petitioner in W.P.No.26165 of 2011, in brief, is as follows,

2.1.Petitioner joined Central Industrial Security Force on 11.11.1988. He was promoted as Inspector in March 2004. On 25.03.2009, he was detailed for election duty at Hyderabad. He was performing as Coy Commander of Coy No.552. He was issued a pistol butt No.12, bearing Register No.15330848 for the election duty. Another Coy Commander accompanied him in Coy No.551 was issued pistol butt No.03 bearing Register No.1640146.



2.2. During the course of election duty, petitioner established a Unit kote for safe custody of all the arms and ammunitions. During the election duty, Assistant Commandant S.S.Sandhu fell ill and another Assistant Commandant was deputed in his place. Assistant Commandant S.S.Sandhu during the enroute at Warangal Railway Station in an urgency and illness had mistakenly received the pistol butt No.12 instead of his own pistol butt No.03 from the Unit Kote and submitted pistol butt No.12 to the relieving authority. Petitioner was neither aware that Unit Kote had mistakenly given his pistol, nor he was informed by the relieved authority, about his pistol given by S.S.Sandhu to the relieving authority.

2.3. Upon coming to know the mistake in change of pistol, it was brought to the knowledge of the higher authority. Assistant Commandant S.S.Sandhu informed over telephone and admitted about the mistake. In the said circumstances, petitioner had to use the pistol butt No.3 instead of his own pistol butt No.12. During the entire election duty, petitioner had received only pistol butt No.3 and it is known to the Disciplinary Authority and Higher Authority. After the election duty was over, all the weapons were returned to the Unit Kote Armourer. Unit Armourer stated that pistol butt No.12 was changed and pistol butt No.3 was handed over and to coverup his mistake,



W.P.Nos.26165 & 26415 of 2011

petitioner tried to make up by overwriting the register. Petitioner had no role in overwriting the register. Because of the change of pistol, he had given the pistol No.3. Though this is known to the Authorities, a memorandum dated 06.07.2009 and Rule 37 of CISF Rules was given for gross negligence, carelessness and indiscipline. Despite his reply, his reply was rejected by 1st respondent by passing an order in N.V-15014/DAE(K))Min.11/Disc/2009/1292 dated 28.07.2009 by imposing the punishment of stoppage of increment for one year without cumulative effect.

2.4.Petitioner filed Appeal and that Appeal was dismissed by Appellate Authority in order No.V-15014/Disc/Min.11/Appeal/DAE(K)/2009/1600, dated 12.09.2009. The Revision filed by him before the 3rd respondent was also not considered favourably. The Appeal and Revision had been rejected even without examining the Assistant Commandant SS.Sandhu, who was responsible for the change of pistol. In such circumstances, this Writ Petition is filed.

3.The case of the respondents is that petitioner along with 81 other ranks of CISF Unit, DAE Kalpakkam were detailed for General Parliamentary Election duty 2009 to Vijayawada City (Coy Identity No.552). Petitioner was issued with pistol butt No.12 bearing Registration No.15330848 with 30 rounds



W.P.Nos.26165 & 26415 of 2011

of ammunition. SS.Sandhu, Assistant Commandant of CISF unit, NFC

Hyderabad was the Supervisory Officer of Coy No.551 and 552 for the election duty. He was issued with pistol butt No.3 bearing Register No.16104146. Necessary instructions were given with regard to DO's and DON'T's during election. After completion of election duty, the same pistol was to be deposited in the Unit. In case of any change/misplace, it has to be informed to the Unit Commander. But the petitioner failed to do so, while depositing the weapon in the Unit kote. The Armourer found that pistol was changed. It is true that Assistant Commandant S.S.Sandhu fell seriously ill and he was replaced by another Assistant Commandant. His physical condition was bad and he cannot be blamed for change of pistol. Since petitioner was Coy commandant 552, it is his duty to ensure Arms and Ammunition are properly handled. However, petitioner had not informed about the change of his pistol to any Authority. During the election duty, temporary Kote was opened from 26.03.2009 and a register was maintained. On 05.04.2009, petitioner deposited the pistol butt.No.3 bearing Register No.16104146 whereas he was issued with pistol butt.No.12 bearing Register No.15330848. On 23.04.2009, the Assistant Commandant S.S.Sandhu had drawn the pistol butt.No.12 and petitioner had drawn pistol butt No.03. But to cover up his careless mistake in handling arms and ammunitions, he tried to over write in the register. He failed to inform the



W.P.Nos.26165 & 26415 of 2011

change of pistol to Unit Commander. Therefore, charge memorandum had been issued to him. Later, he was punished with Stoppage of one increment for one year without cumulative effect. It is to be noted that this is not the first misconduct committed by the petitioner. He was awarded with one major and 8 penalties for his misconduct from 1992-99. He was compulsorily retired from service with full pension and gratuity.

4.The case of the petitioner in W.P.No.26415 of 2011, in brief is as follows,

4.1.While the petitioner worked as Inspector in CISF, he was deployed for election duty at Vijayawada, Andhra Pradesh from 25.03.2009 to 25.04.2009 along with 81 personnel. He discharged the election duty with utmost sincerity and seriousness. He was very much available in the place of deployment and was looking after the company's routine affairs. During the election duty, he received the message that his wife was not well. Therefore, he had taken an out pass for 23 hours starting from 14.04.2009 and 15.04.2009. Though he was offered with out pass, he had not left the place of deployment. However, he was issued a memorandum by 1st respondent proposing to frame the following charges.



ARTICLE OF CHARGE I

"gross misconduct, willful breach of rules, the governing the service and an act of indiscipline on the part of CISF no. 883310058 Insp/Exe Kamall Singh of CISF Unit Kalpakkam, that he had absented from election duty (Company No. 552) from 14.04.2009 to 16.04.2009 while deployed at Vijayawada at Andhra Pradesh, without any authority. This act on the part of above CISF No. 883310058 Insp/Exe Karmail Singh, Tantamounts to an unbecoming member of an Armed Force of the union. Hence the Charge"

ARTICLE OF CHARGE II

"incorrigible attitude in that CISF No. 883310058 Insp/Exe Karnail Singh of CISF Unit DAE Kalpakkam, did not reform himself In spite of being awarded nine penalties for misconduct is and Indiscipline activities. Hence the charge".

4.2. 2nd respondent was appointed as Enquiry Officer. During the course of enquiry, 8 witnesses were examined on the side of the respondents. During the preliminary hearing, the Presenting Officer gave findings that *"the two articles of charges levelled against the petitioner are not established and hence, the case is disproved."* Thereafter, without giving any opportunity of hearing, enquiry was conducted. On seeing the enquiry report, petitioner found that Enquiry Officer had given a conclusion that, charges against him were



W.P.Nos.26165 & 26415 of 2011

proved. He gave representation against the enquiry report to the 3rd respondent.

In his representation, he clearly pointed out about the findings reached by Presiding Officer during the preliminary hearing. There have been several contradictory statements with uncorroborating evidence. None of the witnesses have given any categorical statement that he left the deployment place and unauthorisedly absent.

4.3. With regard to charge 2, petitioner had already suffered punishments. He cannot be punished again. It would amount to double jeopardy. However, 3rd respondent without considering his representation, awarded penalty of compulsory retirement from service with full pension and gratuity by order an dated 07.04.2010 in No.V-15014/Maj-KS/DISC/DAE/2010 1992.

4.4. Petitioner filed an Appeal before the 1st respondent on 22.04.2010. His Appeal was rejected on 15.07.2010 without properly considering his submissions. Petitioner filed Revision before the 1st respondent. That was rejected on 28.12.2010 by an order in No.V-11014/87/L&R/2010-1972. He filed W.P.No.5837 of 2011 before the High Court of Delhi and withdrew it on 12.08.2011 with liberty to refile the Writ Petition. In the said circumstances, this Writ Petition is filed.



W.P.Nos.26165 & 26415 of 2011

WEB COPY

5. The case of the respondents is that petitioner along with 81 other ranks of CISF unit, DAE Kalpakkam were detailed for General Parliamentary Election duty 2009 to Vijayawada city. S.S.Sadhu, Assistant Commandant of CISF unit, NFC Hyderabad was a Supervisory Officer of Coy No.551 and 552. During the preliminary enquiry, petitioner stated that he had been on outpass for 23 hours from 0600 hours on 14.04.2009 to 0500 hours on 15.04.2009. He also admitted that he had not made any General Diary entry before or after coming from outpass. He had not produced any documentary evidence to substantiate his plea. Therefore, he was issued with charge memorandum.

5.1. Petitioner's case that, he was given an outpass is not correct. Petitioner absence from 14.04.2009 and 15.04.2009 was well established. Petitioner was served with Presenting Officer's brief on 29.01.2010 with a request to submit his written brief within 5 days. But the petitioner obtained medical rest from 05.02.2010 and failed to submit his representation. Therefore, the Enquiry Officer completed the enquiry and submitted his findings on 22.02.2010, holding that the charges against the petitioner were proved. The enquiry report sent to his residence through special messenger on 26.02.2010 was refused to be received by him. Then enquiry report was sent through



W.P.Nos.26165 & 26415 of 2011

registered post on 11.03.2010 and received by his wife on 12.03.2010. The diet attendance for 14.04.2009 and 15.04.2009 substantiated that petitioner was not present at the place where his Coy No.552 was deployed in Vijayawada, Andhra Pradesh. Therefore, the absence of the petitioner from the Company has been well established.

5.2.Though PW1 stated in his statement that, he sanctioned out pass to the petitioner for 23 hours, he has not produced any application wherein out pass was sanctioned or any entry in out pass register. PW8 stated that petitioner had gone on out pass for 23 hours but he expressed that he had no idea from what time the out pass was given. He failed to produce any document in support of giving outpass. The absence without leave amount to desertion. The charge No.1 levelled against the petitioner has been conclusively proved from the evidence. Taking into consideration of the fact that misconduct of the petitioner was serious, he was rightly imposed punishment of compulsory retirement from service with full pension and gratuity and the Appeal and Revision filed by him were rejected.



W.P.Nos.26165 & 26415 of 2011

6.Learned counsel for the petitioner submitted that petitioner had rendered service in Central Industrial Security Force for more than 23 years.

The charge in W.P.No.26165 of 2011 with regard to change of pistol was not due to his fault. The fault lies on the Assistant Commandant S.S.Sandhu. S.S.Sandhu suddenly fell ill and had mistakenly received the pistol butt No.12 instead of his own pistol butt No.03 from the Unit Kote and submitted pistol butt No.12 to the relieving authority. Without examining S.S.Sandhu, Assistant Commandant, petitioner was slapped with punishment of Stoppage of one increment for one year without cumulative effect. He was again imposed punishment in a subsequent charge memorandum concerned in W.P.No.26415 of 2011 in article 1 and 2 for this misconduct. This will amount to double jeopardy. In support of this submission, he produced the following judgments,

(i) The judgment of the Hon'ble Supreme Court in the case of ***Roop Singh Negi Vs. Punjab National Bank & ors*** reported in [2009 1 Supreme 438].

(ii) ***W.P.No.19929 of 2009*** in the case of ***Mohammed Sadique Vs. Union of India & ors.***

(iii) ***W.P.No.6753 of 2006*** in the case of ***V.Mavivannan Vs. The Superintending Engineer.***

(iv) ***W.P.(MD).No.8007 of 2018*** in the case of ***N.Muthukrishnan***



W.P.Nos.26165 & 26415 of 2011

Vs. Secretary to Government & ors.

WEB COPY

6.1.Insofar as unauthorised absence alleged in Charge No.1 concerned in W.P.No.26415 of 2011, petitioner has not absented himself from election duty unauthorisdelly. His wife suddenly fell ill and therefore, he got out pass for 23 hours from 14.04.2009 to 15.04.2009. Though, he availed outpass, he had not left the place of deployment. Therefore, there is no question of his remaining unauthorisedly absent during the election duty from 14.04.2009 to 15.04.2009. Enquiry was not properly conducted. His statement was not properly considered by the Enquiry Officer, Disciplinary Authority, Appellate Authority and Revisional Authority. The punishment imposed against him i.e., compulsory retirement with full pension and gratuity is grossly disproportionate to the charges levelled against him. In the said circumstances, learned counsel for the petitioner prays for setting aside the punishment imposed against him.

7.In reply, learned counsel for the respondents submitted that, it is not the first time petitioner had committed a misconduct. He was involved in 9 misconducts and was imposed with punishments prior to the imposition of punishment of compulsory retirement with full pension and gratuity. Petitioner was working in Uniform services requires high degree of honesty, integrity,



W.P.Nos.26165 & 26415 of 2011

discipline and devotion to duty. The fact that petitioner was already imposed 9 punishments show that he has no discipline or devotion to his duty. He is an incorrigible element, not fit to work in Uniform Services. He has not mended his way, despite his previous punishments, leaving no other choice, but to impose punishment of compulsory retirement from service with full pension and gratuity. The punishment imposed is just and appropriate. Thus, learned counsel for the respondent prays for dismissal of this Writ Petition.

8.Considered the rival submissions and perused the records.

9.The charge in Writ Petition in W.P.No.26165 of 2011 is that petitioner was issued pistol butt.12 during the election duty on 25.03.2009. On completion of election duty, instead of pistol butt No.12, he had deposited pistol butt No.03. It is further stated that change of pistol is not informed to the higher authority and he had made correction in the concerned register. The justification given by the petitioner for the change of pistol was that Assistant Commandant S.S.Sandhu had mistakenly taken pistol butt No.12 instead of pistol butt No.03. Assuming that Assistant Commandant SS.Sandhu mistakenly taken pistol No.12 issued to the petitioner, it is the primary responsibility of the petitioner to inform this mistake to his Higher Authority. It appears that



W.P.Nos.26165 & 26415 of 2011

petitioner had not done that. It was found that being a Coy Commander of Coy No.552, he should have been taken the issue seriously. There was also overwriting in the register. He had not informed about the change of pistol. Only when pistol butt No.3 was deposited, the Armourer found and reported to the Unit Commander. The weapon issued to the officer is like an extension of his arm, rather, it is like a body part. He should have handled it with care and caution, giving no room for change or loss. The fact that petitioner had not informed the change of pistol No.3 in the place of pistol 12 to the Superior Authority shows that, he was very casual and careless in dealing with the arm issued to him. Therefore, the punishment of Stoppage of increment for one year without cumulative effect for this misconduct is just and appropriate.

10.Coming to the Article No.1 and 2 of the charges in W.P.No.26415 of 2011, it is stated by the petitioner that he got out pass for 23 years from 14.04.2009 to 15.04.2009. However, he stayed back despite obtaining outpass. He did not leave the place of deployment and remained there. Obtaining outpass, though supported by some of the witnesses, it is not established by a reliable evidence. Out pass will not be issued on an oral request during an election duty. Even in a crucial situation, an appropriate application should be submitted seeking permission to leave the place of duty and for issuance of out



W.P.Nos.26165 & 26415 of 2011

pass. Only after a application is filed, the sanctioning authority would issue orders for outpass.

11.In the case before hand, there is no application from the petitioner or the order passed by Sanctioning Authority, giving permission to the petitioner to leave deployed place. Some witnesses may have given deposition stating that petitioner was given outpass, apparently to help the petitioner. Their oral evidence is not sufficient in the absence of documentary evidence like, the application from the petitioner or orders passed by the Superior Authority.

12.Though the Presiding Officer during the preliminary enquiry found that there are no materials to establish the charges against the petitioner, during elaborate enquiry conducted and from the oral and documentary evidence produced, the Enquiry Officer found that the Article of 1st charge against the petitioner was proved. Despite earlier punishments, petitioner has not mended his ways and changed his attitude. His incorrigible attitude resulted in Article of charge II.

13.With regard to the submission of the learned counsel for the petitioner



W.P.Nos.26165 & 26415 of 2011

that the punishment of stoppage of increment for one year without cumulative effect was again referred in charges concerned in W.P.No.26415 of 2011 and it amounts to double jeopardy. It is necessary to discuss the judgments relied by him,

(i)The judgment in [2009 1 SCC 438] in the case of ***Roop Singh Negi Vs. Punjab National Bank & Ors*** discussed about the management witnesses merely tendering the documents and not proving the contents thereof. That issue has not arisen for consideration in this case.

(ii)The judgment in ***W.P.No.19929 of 2009*** in the case of ***Mohammed Sadique Vs. Union of India & ors*** relates to issuance of 2nd charge memo based on the same set of materials which formed subject matter of first charge resulting in imposition of fine.

(iii)***W.P.No.6753 of 2006*** in the case of ***V.Mavivannan Vs. The Superintending Engineer*** relates to issuance of 2nd charge memo for the production of bogus certificate, for which already a punishment of reversion was ordered.

(iv)The judgment in ***W.P.(MD).No.8007 of 2018*** in the case of



W.P.Nos.26165 & 26415 of 2011

N.Muthukrishnan Vs. Secretary to Government & ors relates to imposition of subsequent punishment, once a punishment of recovery has been ordered and recovered.

However, in this case, facts are totally different.

14.Article of charge II details about 9 earlier punishments imposed against the petitioner, in order to show the nature of misconduct committed by the petitioner and the punishments imposed against him. Despite these punishments, he has not changed his attitude. Merely because the misconduct and punishment imposed in the charges concerned in W.P.No.26165 of 2011 was also referred in Article of charge II, it cannot be construed that this amount to Double Jeopardy. Only to seek stringent punishment, earlier misconducts and punishments were referred in Article of Charge II.

15.Therefore, this Court finds that the submission of the learned counsel for the petitioner that referring to charges concerned in W.P.No.26165 of 2011 in Article of charge II in W.P.No.26415 of 2011 would amount to double jeopardy cannot be accepted. The judgments relied by the learned counsel for the petitioner are not applicable to the facts of this case.

16.From the records produced in W.P.No.26415 of 2011, it is clear that



W.P.Nos.26165 & 26415 of 2011

the enquiry was properly conducted starting from issuance of charge memorandum, giving opportunity to submit his explanation followed by proper oral enquiry. Opportunity to explain enquiry report was followed by opportunity of hearing and passing of final orders. The enquiry was properly conducted and the Disciplinary Authority and the Appellate Authority had taken a decision to impose the punishment of stoppage of one increment for one year without cumulative effect in W.P.No.26165 of 2011 and compulsory retirement from service with full pension and gratuity in W.P.No.26415 of 2011. After noticing his previous misconducts, the punishments imposed against him cannot be held as illegal or shocking disproportionate and against law. Punishments imposed against the petitioner in both the cases are just and appropriate in the facts and circumstances of the case. Petitioner should be happy that he was not dismissed from service but only the punishment of compulsory retirement with pensionary and terminal benefits was ordered. It is informed by the learned counsel for the respondents that petitioner had drawn his terminal benefits including his pension.

17.In view of the reasons aforesaid, this Court finds no reason to differ with the order by the authorities in both the cases. In the result, the order passed by the 3rd respondent in No.V-15017/R-3/L & R/DAE/2010 2979 dated



W.P.Nos.26165 & 26415 of 2011

31.05.2010 in W.P.No.26165 of 2011 and the order passed by the 1st respondent

in No.V-11014/87/L&R/2010-1972 dated 28.12.2010 are confirmed.

18.In the result, both the Writ Petitions are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

14.03.2024

Index:Yes/No

Speaking/Non speaking order
gd

To

- 1.The Assistant Commandant/ADM,
Office of the Commandant,
Central Industrial Security Force,
CISF Unit DAE, Kalpakkam,
Kanchipuram District,
Tamil Nadu – 603102.
- 2.The Commandant,
Office of the Commandant,
Central Industrial Security Force,
CISF Unit DAE, Kalpakkam,
Kanchipuram District,
Tamil Nadu – 603102.
- 3.Deputy Inspector General/DAE,
Office of the Deputy Inspector General,
Central Industrial Security Force/
CISF DAE HQRS,
ECIL Post, Hyderabad – 62.

G.CHANDRASEKHARAN.J.,



W.P.Nos.26165 & 26415 of 2011

gd

WEB COPY

4.The Inspector General
Office of the CIF DAE,
Head Quarters Western Sectors,
CISF Campus Sector 35, Taloja
Kharghar, Navi Mumbai – 410 210

5.The Director General,
Office of the Director General,
CISF FHQ Lodhi Road,
New Delhi – 03.

Pre-Delivery Order in
W.P.Nos.26165 & 26415 of 2011

14.03.2024