IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.08.2024	Pronounced on : 29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.25251 of 2012

K.Daniel ... Petitioner

Vs.

1. The Union of India, Represented by its Secretary to Government, Ministry of Home Affairs, New Delhi.

2. The Director General, Central Industrial Security Force, CGO Complex, Lodhi Road, New Delhi – 11.

3. The Inspector General, Central Industrial Security Force, Southern Sector, Head Quarters, Chennai – 600 090.

4. The Deputy Inspector General, Central Industrial Security Force, South Zone, Head Quarters, Rajaji Bhavan, Besant Nagar, Chennai – 600 090.

5. The Group Commandant, Central Industrial Security Force, Rajaji Bhavan, Besant Nagar, Chennai – 600 090. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the order passed by the second respondent dated 05.06.2012 in his order No.V-11014/29/L&R/2012-654 confirming the order of the third respondent in his order No.V10514/L&R/Appeals/Daniel/SS/2011-542 dated 16.11.2011 confirming the order of the 4th respondent dated 30.06.2011 in his order No.V-11014/03/Daniel/SS/2011/802 and the orderd dated 20.09.2011 passed by the 4th respondent in his order No.V-15014/03/Disc/K.D/2011/7382 and quash the same and to direct the respondents.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.T.L.Thirumalai Samy

O R D E R

The brief facts that are relevant for disposal of this writ petition are as under:-

While the petitioner was working as HC/ GD of CIF Unit, CPCL, Manali, he was detailed in General Shift duty at Pass Section on 08.06.2010. During the discharge of his duties on that particular day, at about 17:00 hrs, CISF SZ Vigilence Team entered the Pass Section and frisked the petitioner, and, during the course of frisking, an amount of Rs.100/- fell down from the petitioner's shirt, the petitioner was subjected to disciplinary proceedings on the ground of unauthorized possession of Rs.100/-, by issuing a memorandum of charges dated 01.01.2010 consisting of a solitary charge, which reads as under:-

> "*No.834340936 HC/GD K Daniel of CISF Unit CPCL Manali, Chennai who was in General Shift Duty at pass section on 08.06.2010 was in unauthorised possession of Rs.100/- when he was checked by the CISF SZ Vigilance team at about 1700 hrs on 08.06.2010. This act of HC/GD K Daniel tantamount to gross misconduct, indiscipline and an act unbecoming of a member of the*

disciplined force." Hence the Charge."

2. It was thereafter, the petitioner submitted an explanation denying the charge and specifically taking a plea that the said amount of Rs.100/- recovered from the bathroom does not belong to him and also further contended that no such amount was recovered from the petitioner and the entire incident is a concocted story. It was thereafter, an Enquiry Officer was appointed and a detailed enquiry was conducted into the charge. The Enquiry Officer, after concluding the enquiry, submitted his report dated 12.10.2010 holding that the charge against the petitioner as not proved. It was thereafter the report of the Enquiry Officer was furnished to the petitioner and, on considering the further representation of the petitioner, a final order was passed on 31.12.2010 by the Respondent No.5 exonerating the petitioner from the charges.

3. While so, the Respondent No.4 herein, who is the Appellate Authority against the orders passed by the Respondent No.5, issued a show-cause notice, dated 30.05.2011, *suo motu* reviewing the case under Rule 54 of CISF Rules, 2001, proposing to imposing a penalty of "*reduction of pay by three increments*

in the pay band-1 for a period of two years with furhte direction that during the period of reduction, he will earn increments of pay and on expiry of this period, the reduction will not have the effect of postponing his future increments of pay" on the ground that the Enquiry Officer failed to consider the fact that the amount of Rs.100/- has fallen from his shirt at the toilet room of Pass Section, which comes under the area of responsibility of the petitioner and therefore, he is not accountable for the said amount and the Disciplinary Authority also failed to observe the said aspect and exonerated the petitioner from the charges.

4. Thus, the petitioner was afforded an opportunity to submit his explanation to the show-cause notice. Accordingly, the petitioner submitted his explanation dated 20.06.2011 and thereafter, the Respondent No.4 passed an order through Proceedings No.V-11014/03/Daniel/SS/2011/802, dated 30.06.2011, imposing the punishment as proposed. It was thereafter, the petitioner filed an appeal before the Respondent No.3 against the order dated 30.06.2011 and the Respondent No.3 by an order dated 20.09.2011 rejected the said appeal and thereafter, the petitioner filed a further appeal before the Respondent No.2 and the said appeal also ended in rejection by passing an order

dated 05.06.2012. It is aggrieved by the said orders dated 30.06.2011, as confirmed by orders dated 16.11.2011 and 05.06.2012, the petitioner approached this court by filing the present writ petitions.

5. A perusal of the order dated 30.06.2011, passed by the Respondent No.4, on the face of it, would disclose that the Respondent No.4 failed to appreciate the matter in proper perspective and grossly erred in exercising power under Rule 54 of CISF Rules.

6. In this connection, it is necessary to notice the exact charge that is levelled against the petitioner. The charge levelled against the petitioner is that, while he was in General Shift at Pass Section on 08.06.2010, he was in unauthorized possession of Rs.100/-, tantamount to gross misconduct, indiscipline and an act unbecoming a member of Disciplined Forces.

7.As already noted above, the said charge was held as 'not proved' by the Enquiry Officer and such findings of the Enquiry Officer was accepted by the Respondent No.5/ Disciplinary Authority. The Respondent No.4 proceeded on the footing that the said Rs.100/- was fallen from the shirt of the petitioner at the toilet room of the Pass Section and the petitioner did not deny the recovery of Rs.100/- from the bathroom of the Pass Section, which comes under his area of responsibility and therefore, he was found accountable for the same.

8. From the explanation submitted by the petitioner, it is evident that the petitioner was thoroughly checked by the SZ vigilance team at the Pass Section at 17:00 hrs on 08.06.2010 and they found nothing, even after removing his shirt, pant, socks and shoes. However, it was only after the petitioner was taken to the bathroom there, Mr.D.Palani, Head Constable, shouted saying that an amount of Rs.100/- note was found.

9. As already noted above, the said allegation was held as not proved. But, the Respondent No.4, having taken note of the contention of the petitioner, only repeated the charge that is levelled against the petitioner, instead of considering the explanation submitted by the petitioner, specifically contending that, inspite of thorough check by removing his shirt, pant, shoes and socks, nothing was found in the Pass Section. But it was in the Bathroom, when he removed his shirt, Rs.100/- note alleged to have fallen from the shirt of the

petitioner. That is the allegation against the petitioner. The mere allegation cannot take the place of proof. But the Respondent No.4, by repeating the charge, denied the contention of the petitioner. Further, the Respondent No.4 has also came to the conclusion that the charge proved on the ground that the charged official never denied the recovery of Rs.100/- from the bathroom of the Pass Section, which comes under the area of responsibility of the petitioner's jurisdiction.

10. As already noted above, the charge against the petitioner is that he was found in possession of Rs.100/- and such an action of the petitioner was found to be an act amounting to gross misconduct. But finding Rs.100/- in bathroom of the Pass Section within the jurisdiction/ area of responsibility of the petitioner is not the charge, nor the petitioner was ever called upon to show-cause, as to why he should not be punished on having found Rs.100/- in the bathroom of the Pass Section. Once, the charge is held to be not proved by the Enquiry Officer and the Disciplinary Authority, it is only on coming to the conclusion that the charge alleged against the petitioner as proved, the Respondent No.4/ Appellate Authority can exercise power under Rule 54 of the

CISF Rules. But the Respondent No.4, on coming to the conclusion that the petitioner has not denied the recovery of Rs.100/- from the bathroom of the Pass Section, which falls within the area of responsibility of the petitioner, held the charge as proved.

11. As already noted above, the conclusion arrived at by the Respondent No.4 is not the charge levelled against the petitioner. Therefore, any punishment that is imposed on the petitioner basing upon such a conclusion, which is not the subject matter of the charge is totally beyond the scope of the disciplinary proceedings in question and any punishment that is imposed on such a conclusion, which is alean to the charge cannot be sustained.

12. Be that as it may, though this court is not supposed to re-appreciate the evidence, as an Appellate Authority, while exercising its jurisdiction under Article 226 of the Constitution of India, this court having already arrived at a conclusion that the order passed by the Respondent No.4 cannot be sustained, intends to refer to the cross-examination of P.W-3, who frisked the petitioner in the bathroom and claims to have found Rs.100/- falling from the shirt of the petitioner, as is reflected from the report of the Enquiry Officer, which reads as under:-

"On cross-examination by Charged Official, PW 3 replied that the team in charge Insp/Exe C. Ganesh Pandi ordered him to frisk HC/GD K. Daniel. Accordingly he frisked him at about 1700 hrs on 08.06.2010. During the frisking Insp/Exe P. Praksam was 02 or 03 steps away from him, Insp/exe C. Ganesh Pandi was 02 steps away from HC/GD K. Daniel and ASI/Exe J. Kennady was 02 steps away from him while he checked Charged Official inside the pass section toilet entrance and door was opened. During the checking HC/GD K. Daniel was inside the toilet and he was outside the toilet at entrance gate. Further he replied that on 08.06.2010 during checking of HC/GD K. Daniel the money was fell down outside the toilet room, inside the pass section while removing of his shirt from the belt while he was standing just outside the toilet and HC/GD K. Daniel was at frisking distance about one feet from him. Further on questioning he has also replied that as per order of team in-charge Insp/Exe C. Ganesh Pandi he took the Charged Official in to the toilet room and the charged official removed his shirt in front of PW-3 and rupees hundred Indian currency note was fell down just outside the toilet in the pass section and after that Insp/Exe C. Ganesh Pandi brought Const. HC/GD K. Daniel in the pass section room and checked his shirt, pant, pockets as per normal frisking but no money other than Rs 100/- was found."

It is interesting to note the contents of the above paragraph. From the above, it is evident that the petitioner was inside the toilet and P.W-3 was standing outside the toilet, while frisking the petitioner and the so-called Rs.100/- note fell down outside the toilet room and inside the Pass Section, while removing the shirt of the petitioner. Thus, it is evident that Rs.100/- note was found outside the toilet room, where the P.W-3 was standing and whereas, the petitioner was inside the toilet.

13. In this connection, it is also necessary to notice that the petitioner was already frisked in the Pass Section itself by removing his pant, shirt, shoes and socks. But nothing was found inspite of, the entire team frisked the petitioner. But surprisingly, Rs.100/- is alleged to have been fallen from the shirt of the petitioner, that too outside the toilet room, while the petitioner was standing inside the toilet room. This creates any amount of doubt in the mind of the court, especially in the context of the fact that the Enquiry Officer as well as the Disciplinary Authority arrived at a conclusion that the charge against the petitioner, as not proved and the petitioner was discharged from the charge.

14. Thus, this court is unhesitant to come to the conclusion that the

Respondent No.4 grossly erred in exercising his power under Rule 54 of CISF Rules and in *suo motu* reviewing the proceedings and passing an order, imposing the punishment against the petitioner. Such an exercise of power is liable to be declared as arbitrary and illegal. Though, the petitioner has filed an appeal and further appeal against the orders passed by the Respondent No.4, the Respondents 2 and 3 rejected the appeals in a mechanical manner without proper application of mind.

15. In the light of the above, this court is of the considered view that the impugned punishment imposed on the petitioner through proceedings bearing No.V-11014/03/Daniel/SS/2011/802 dated 30.06.2011, as confirmed by orders bearing No.V-15014/L&R/Appeal/Daniel/SS/2011-542, dated, 16.11.2011 and No.V-11014/29/L&R/2012-654, dated, 05.06.2012 is liable to be quashed and the same is accordingly quashed. Consequently, the Respondent No.5 is directed to pass appropriate consequential orders duly regularising the period of suspension of the petitioner as 'on duty' with all consequential benefits as expeditiously as possible at any rate within a period of eight weeks from the date of receipt of a copy of this order.

16. Accordingly, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions, if any, shall stand closed.

29.11.2024

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

1. The Union of India, Represented by its Secretary to Government, Ministry of Home Affairs, New Delhi.

2. The Director General, Central Industrial Security Force, CGO Complex, Lodhi Road, New Delhi – 11.

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5. The Group Commandant, Central Industrial Security Force, Rajaji Bhavan, Besant Nagar, Chennai – 600 090.

MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
W.P.No.25251 of 2012

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