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W.P.No.27214 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

W.P.No.27214 of 2013

and

M.P.No.1 of 2013

Karmenge Narendra Hulasram ... Petitioner
Vs.

1. The Union of India,
Rep.by the Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Industrial Security Force,
CISF Headquarters,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.
3. The Deputy Inspector General,
CISF, South Zone Headquarters,
Rajaji Bhavan,
Besant Nagar,
Chennai-600 090.
4. The Group Commandant,
Central Industrial Security Force,
Group Headquarters,
Rajaji Bhavan,
Besant Nagar,
Chennai-600 090.
5. The Deputy Commandant,



W.P.No.27214 of 2013

WEB COPY

Central Industrial Security Force Unit,
CPCI, Manali, Chennai.

6. The Assistant Commandant,
CISF Unit,
EPL, Ennore,
Chennai-600 120.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 3rd respondent dated 24.09.2013 in his order no V-15015/08/2013/L&R(SZ)7033 enhancing the punishment ordered by the 4th respondent in his final order No V-15014/GHC/AD.VI/Maj/(ST)CPCL/2013/876 dated 28.02.2013 and quash the same and to direct the respondents to take the petitioner into the strength of Central Industrial Security Force as Constable and pay all monetary benefits and thus render justice.

For Petitioner : Mr.A.S.Mujibur Rahman
For Respondents : Mr.Rajesh Vivekananthan
Deputy Solicitor General of India

ORDER

Order passed by the 3rd respondent dated 24.09.2013 in Order No.V-15015/08/2013/L & R (SZ)/7033 enhancing the punishment ordered by the 4th respondent in his final order No.V.15014/GHC/AD.VI/Maj/(ST)CPCL/2013/876 dated 28.02.2013 are under challenge and a further direction is sought for to direct the



W.P.No.27214 of 2013

WEB COPY

respondents to take the petitioner into service of CISF as Constable and pay all the monetary benefits.

2. The facts led to the filing of this writ petition is summed up as given under:

The petitioner joined as Constable in CISF on 16.06.2007. He underwent training for 7 ½ months. He was posted at Neyveli Lignite Corporation, Neyveli and transferred to CPCL, Manali in the month of November 2009 and for attachment duty to EPL, Ennore under the 6th respondent. The petitioner further submitted that on the alleged incident dated 09.10.2012, the order of suspension was passed on 10.10.2012. The Enquiry Officer conducted enquiry in a biased manner and without following the procedures, he submitted the report. After issuance of Show Cause Notice, he gave a reply on 23.08.2013 to the 3rd respondent and the 3rd respondent by Order dated 24.09.2013 passed the order awarding punishment of removal from service.

3. Heard Mr.A.S.Mujibur Rahman, learned counsel appearing for the petitioner and Mr.Rajesh Vivekananthan, learned Deputy Solicitor General of India, appearing for the respondents.



W.P.No.27214 of 2013

WEB COPY

4. Mr.A.S.Mujibur Rahman, learned counsel appearing for the petitioner would vehemently argue that as per rule 54(d) of the CISF Rules, the revision order should have been passed within 6 months from the date of impugned order. As it was not complied with, the order has to be held as passed without no jurisdiction.

5. The learned counsel for the petitioner would further contend that the 3rd respondent namely the revisional authority, in the Show Cause Notice has indicated the punishment of removal from service. Hence, it suffers from premeditation and the order is liable to be set aside.

6. It was further contended that when the charge details were partly said to have been proved and based on the same, the punishment awarded by the 4th respondent is highly arbitrary and illegal. He would further argue that the punishment awarded by the Original Authority is disproportionate to the alleged misconduct. The Appellate Authority without promptly perusing the records awarded the punishment of removal from service which is liable to be quashed. To buttress his



W.P.No.27214 of 2013

arguments, the following judgments was referred to:

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S.Rajasekara Reddy v. Union of India and others in W.P.No.18905 of 2019 dated 08.08.2012.

7. Per contra, the learned standing counsel appearing for the respondents would strenuously contend that the petitioner has not exhausted the appeal remedy available under the CISF Act. Section 9 of CISF Rules deals with appeal and revision. He would also further contend that as per Rule 54 (1)(d) of CISF Rules, 2001, Revisional Authority has to pass orders within six months from the date of communication of the order to the charged official. He would further argue that unless the punishment suffers from perversity, the power of judicial review has got its own restrictions. In support of his arguments, he has placed reliance on the following judgments:

(i) Union of India and others v. Managobinda Samantaray reported in 2022 SCC OnLine 284.

(ii) Ex-Const / DVR Mukesh Kumar Raigar v. Union of India reported in (2023)11 SCC 159.

8. As regards scope of judicial review, it is relevant to refer the



W.P.No.27214 of 2013

WEB COPY

observations made by the Apex Court in State of **Orissa v. Bidyabhujsan Mohapatra** reported in AIR 1963 SC 779, held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226.

9. In *Union of India vs. H.C.Goel* reported in AIR 1964 SC 364, it has been held that if the conclusion, upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

10. In *B.C.Chaturvedi v. Union of India* reported in (1995) 6 SCC 749, wherein, it has been observed that :

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the



WEB COPY



W.P.No.27214 of 2013

inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."



W.P.No.27214 of 2013

WEB COPY

11. Judicial review is not an appeal from a decision but it is a review of the manner in which a decision has been made. Whether principles of natural justice is followed and whether the punishment awarded is proportionate to the details of delinquency can be looked into. Besides that if any procedural irregularities are referred to, that can also be incidentally gone into.

12. The charge details are extracted hereunder:

ARTICLE-I

"An act prejudicial to good order and discipline in that on 09.10.2012 at about 20.35 hrs No.07447115 Constable/GD Karmenge Narendra Hulasram along with No.074500732 Constable/GD Patil Sambhaji Ananda of CISF Unit EPL Ennore, entered into the SO's Recreation Room of CISF Unit EPL(E) and threatened with dire consequences and further physically assaulted No.085273366 SI/Exe Niraj Kashyap of CISF Unit EPL Ennore in the presence of No.733280269 SI/Exe K.Kaliyar, No.814462513 HC/GD P.M.Ashokan and No.922291023 Constable/GD G.V.S.Reddy, thereby inflicting injury on his Left Eye & Right fore finger. The above act on the part of No.074471175 Constable/GD Karmenga Narendra Hulasram



W.P.No.27214 of 2013

WEB COPY

tantamount to gross misconduct, indiscipline, hooliganism, insubordination and unbecoming of a member of disciplined Force. Hence the charge."

13. From a careful perusal of the final order dated 28.02.2013, passed by the Group Commandant, CISF, that the charge memorandum was served upon the charged official on 03.11.2012 after granting him 10 days time to submit his reply. The reply was submitted by the charged official on 09.11.2012. The explanation was not accepted and an Enquiry Officer was appointed to enquire into the charges framed against the charged official by an order dated 28.11.2012. The enquiry officer has conducted preliminary enquiry on 20.12.2012 and conducted regular enquiry on different dates and he submitted his written brief on 21.01.2013. It is relevant to note that a copy of his written brief was served to the charged official on 23.01.2013. The very next day, the petitioner has submitted his representation. Thereafter, the enquiry officer has drawn up his findings and submitted his enquiry report to the Disciplinary Authority on 13.02.2013. The enquiry report was also sent to the charged official on 13.02.2013 and he submitted his report against the enquiry report on 21.01.2013.



W.P.No.27214 of 2013

WEB COPY

14. The Disciplinary Authority after analysing the oral and documentary evidence in extenso formed the conclusion. A part of Article I of the charge was proved and "as per Rule 32(1) of CISF Rules, and Schedule I read in conjunction with Rule 34 (v) of CISF Rules, 2001, imposed the penalty of "Reduction of pay by 02(Two) stages i.e., from Rs.7540/- + 2000/-(GP) to Rs.6990/- +2000/-(GP) in the Pay Band-I for a period of 03(three) years with immediate effect. It is further directed that he will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay."

15. There is no grievance about the conduction of disciplinary enquiry. The only point to be seen is that whether the punishment is proportionate to the penalty imposed. The sum and substance of the charge is that the petitioner along with Constable/GD Patil Sambhaji Ananda of CISF Unit EPL Ennore, entered into the SO's Recreation Room of CISF Unit EPL(E) and (i) threatened with dire consequences and (ii) further physically assaulted No.085273366 SI/Exe Niraj Kashyap of CISF Unit EPL Ennore in the presence of No.733280269 SI/Exe



W.P.No.27214 of 2013

K.Kaliyar, No.814462513 HC/GD P.M.Ashokan and No.922291023

Constable/GD G.V.S.Reddy, thereby inflicting injury on his Left Eye & Right fore finger.

16. It transpires that the charged official entered into SO's Recreation Room of CISF Unit EPL(E) and abused in filthy language and The petitioner was in aggressive state had a wordy altercation. In the given circumstances, I am of the considered view that the punishment imposed by the Disciplinary Authority is not disproportionate to the charges made.

17. As regards the other limb of the argument of the petitioner counsel is that as per Rule 54(1)(d) of CISF Rules, the revision authority that not passed the order within the limitation and the order passed in defiance to Rule 54 (1)(d) of CISF Rules. In order to have a proper understanding, Rule 54(1)(d) of CISF Rules, 2001 is extracted hereunder:

54. Revision.

*(1) Any authority superior to the authority making
the order may either on his own motion or otherwise*



WEB COPY



W.P.No.27214 of 2013

call for the records of any inquiry and revise any order made under these rules, and may--

(d) pass such order as it may deem fit, within six months of the date of communication of the order proposed to be revised:

18. Mr.Rajesh Vivekanandan, learned Deputy Solicitor General of India, appearing for the respondents would vehemently contend that the date of the order of disciplinary authority is dated 28.02.2013. The petitioner availed 10 days Casual Leave from 24.02.2013 to 10.03.2013 and thereafter he did not rejoin the duty. He would further contend that the petitioner over stayed from 11.03.2013 to 06.06.2013 for 88 days and rejoined duty on 07.06.2013. The order of the disciplinary authority was communicated to the petitioner on 10.06.2013.

19. The petitioner was on leave from 24.02.2013 itself, 4 days prior to the order of disciplinary authority and rejoined on 07.06.2013. The revisional authority passed the order on 24.09.2013. Six months has to be reckoned from 07.06.2013. The revisional authority has passed its order within six months from the date of communication of the



W.P.No.27214 of 2013

order. The revisional authority has issued Show Cause Notice on 11.07.2013 for which, the petitioner has sent reply on 23.08.2013.

WEB COPY

20. The revisional authority has passed the order on 24.09.2013. In my considered opinion, the order has been passed in fully compliance with rule 54(1)(d) of CISF Rules.

21. Reverting back to the facts of this case, it is pellucid that based on the article of Charge, the petitioner was imposed with minor penalty by order dated 28.02.2013 within the meaning of Rule 34(viii) of CISF Rules. This order was not at all challenged by the petitioner and it became final. Thereafter, the Deputy Inspector General of CISF in exercise of revisional jurisdiction under Section 9 of (ii) r/w. Rule 54 (1) of CISF Rules, issued Show Cause Notice to the petitioner on 11.07.2013. In the said process of revision, the authority has to give a reasonable opportunity of making representation against the penalty proved and if it is proposed to impose any of the penalties mentioned in Cl-i-(v) of Rule 34 or in case of enhancement of penalty is proposed to be imposed then, the enquiry has to be held as per Rule 36 of CISF Rules (Rule 36 - procedure for imposing major penalties) and the



W.P.No.27214 of 2013

revisional authority has to *mutatis mutandis* follow the procedure enshrined in Rule 52 of CISF Rules.

22. From a perusal of the order of revisional authority, it is clear that punishment of removal from service was ordered. Undoubtedly, removal from service is a major penalty. Therefore, the moot question is whether the revisional authority followed the due procedure of law as adumbrated in Rule 54 of CISF Rules or not is to be seen. Though the Show Cause Notice dated 11.07.2013 was issued, as per Rule 36 (procedure for imposing major penalties) a personal enquiry has to be conducted. As per Section 9 of CISF Act, 1968, and as per Rule 36(7) a personal hearing has to be given to the charged official and thereafter as per Rule 36(8) and (9), the charged official has to be given opportunity to present his case. From a perusal of the entire Rule 36, CISF Rules, the revisional authority has to conduct the revision of the case as that of the enquiry. Rule 36 would apply in case of revisional authority imposes major penalties. In this case, after issuance of Show Cause Notice, dated 11.07.2013, the revisional authority issued corrigendum on 15.07.2013. Meanwhile, his resignation letter dated 29.07.2013 was not accepted by the Appellate Authority by order dated 07.08.2013. A



W.P.No.27214 of 2013

WEB COPY

thorough perusal of the Show Cause Notice dated 11.07.2013 explicates the authority has predetermined to remove the petitioner from service which is not tenable.

23. Based on the aforestated discussions, I am of the considered view that the revisional authority has failed to apply the principles enshrined in Section 9 of CISF Act r/w. Rule 54 of CISF Rules.

24. In the result, the impugned order passed by the revisional authority namely removal from the service stands set aside, which is passed without jurisdiction. However, the impugned order passed by the disciplinary authority stands restored.

25. The Writ Petition stands allowed to the extent indicated above and with a direction to the revisional authority as per Section 9 r/w. Rule 54 of CISF Rules after following due procedure adumbrated therein and to pass orders within twelve (12) weeks from the date of receipt of copy of this order. Consequently connected miscellaneous petition is closed. There is no order as to costs.

29.07.2024



W.P.No.27214 of 2013

Index : Yes / No
Neutral Citation Case : Yes / No
Speaking Order / Non-Speaking Order
ssn

To

1. The Secretary,
Union of India,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Industrial Security Force,
CISF Headquarters,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.
3. The Deputy Inspector General,
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W.P.No.27214 of 2013

WEB COPY

6. The Assistant Commandant,
CISF Unit,
EPL, Ennore,
Chennai-600 120.

R.KALAIMATHI, J.,

ssn

W.P.No.27214 of 2013
and
M.P.No.1 of 2013

29.07.2024