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W.P. No.28521 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.28521 of 2015

S.Ankit Kumar

... Petitioner

Vs

- 1.The Union of India,
Rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi 110 003.
2. The Director General,
Central Industrial Security Force,
CGO Complex, New Delhi.
3. The Inspector General,
Central Industrial Security Force,
Southern Sector, Near War Memorial,
Chennai 600 009.
4. The Deputy Inspector General,
Central Industrial Security Force,
South Zone Head Quarters,
Rajaji Bhawan, Besant Nagar,
Chennai 600 090.
5. The Senior Commandant,
Central Industrial Security Force Unit,
Chennai Port Trust,
Chennai 600 001.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the Order passed by the 3rd Respondent dated 30.06.2014 in his Order No.V-15014/L&R/SS/Rev/AK/2014/150 confirming the Order passed by the 4th Respondent dated 06.11.2013 in his Order No.V-11014/44/Disc/SZ/2013/8235 and modifying the order dated 26.07.2013 passed by the 5th respondent in his final order No.V-15014/ChPT/MAJOR/AK-05/Disc/2013-5174 and quash the same and to direct the respondents to pay all monetary benefits and promotion and all other monetary benefits.

For Petitioner : M/s.A.S.Mujibur Rahman

For Respondents : M/s.P.J.Anitha
Central Government Standing Counsel

ORDER

The writ petition is filed challenging the Revision Order dated 30.06.2014 primarily on the ground that the punishment of reduction of pay by one stage for a period of six months in appeal affirmed by the revisional authority inter alia for the charge of assault on civilian tantamounting to misconduct, indiscipline and tarnishing the image of the disciplined force was disproportionate.



WEB COPY 2. The petitioner joined as Constable in the Central Industrial Security Force (CISF) on 02.10.2007 and was transferred from NTPC Kehlogan, Bihar to Chennai, Port Trust on 04.12.2010 and was subsequently transferred to VPT, Vishakapattinam with effect from 10.08.2014. While the petitioner was serving under the 5th Respondent, a Memorandum under Rule 36 of the CISF Rules was issued on 17.04.2013 with the following Articles of Charges :

“(i) ARTICLE OF CHARGE-I

"An act prejudicial to the good order and discipline of the Force, in that No.074270257 Constable /GD Ankit Kumar (U/S) of "B" Coy of CISF Unit, ChPT Chennai who was deployed at Pas Section ChPT Chennai assaulted Mr.Murugan of M/s. Subramanya Transports from behind by beating Mr.Murugan on his back with a Lathi in a public place on 12.04.2013 at about 1730 hours at Petrol Pump near outside of "B" Coy Pass Section of CISF Unit, ChPT Chennai. This act on the part of No.074270257 Constable/GD Ankit Kumar (U/S tantamount to gross misconduct, indiscipline and tarnishing the image of the Force in public which is unbecoming of a member of the Disciplined Force. Hence, the charge.

(ii) ARTICLE OF CHARGE-II

"An act prejudicial to the good order and discipline of the Force, in that No.074270257 Constable /GD Ankit Kumar (U/S) of "B" Coy of CISF Unit, ChPT Chennai had developed an irresistible and incorrigible attitude of committing acts of misconduct and



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indiscipline and failed to change his attitude and not shown any improvement in his conduct in spite of being charge sheeted and penalized on one (01) earlier occasion during his service for various misconduct. The above acts tantamount to gross misconduct and indiscipline of on the part of No.074270257 Constable/GD Ankit Kumar (U/S "B" Coy of CISF Unit, ChPT Chennai. Hence, the charge."

3. The above Memorandum was issued based on the incident which occurred on 12.04.2013. The petitioner submitted his written statement of defence denying the Articles of Charge on 27.04.2013 and a departmental enquiry was ordered. The enquiry officer submitted its report holding that the articles of charges are proved. Thereafter, the 5th Respondent issued a 2nd show cause notice on 22.06.2013 directing the petitioner to file his response which was accordingly made by the petitioner on 24.06.2013 wherein it was inter alia stated that on 12.04.2013 a civilian viz., Murugan parked his scooter in his duty post without permission and did not show his pass to the petitioner on being enquired. Though the petitioner attempted to inform the control room, as there was no response the petitioner warned the civilian that the scooter tyre will be deflated. However, Mr.Murugan refused to move the two wheeler, instead abused and threatened the petitioner before moving from



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the spot. The petitioner with an alleged intent of stopping him had thrown the latti at the two wheeler which accidentally hit Mr.Murugan.

It was submitted that the above incident was never intentional however the petitioner was awarded a punishment of reduction of pay by one (01) stage from Rs.7,830/- BP + Rs.2000/- GP to Rs.7540/- BP + Rs.2000/- GP in PB-I of Rs.5200-20200/- plus Grade Pay of Rs.2000/- for a period of one year with immediate effect. It was further ordered that during the reduction he will not earn increment of pay and on expiry of punishment period the reduction will have effect of postponing his future increments of pay on 26.07.2013.

4. The petitioner carried the matter in appeal before the 4th respondent, whereby, the punishment was modified into the reduction of pay by one stage for a period of six months with a further direction that during the period of reduction he will not earn any increment and on expiry of this period the reduction will have the effect of postponing his future increments of pay. The matter was carried by way of revision wherein the revisional authority had confirmed the order of the appellate authority.



5. The only limited ground that was urged before this Court was that the above punishment was disproportionate. In this regard the finding of the appellate authority may be relevant and it is extracted hereunder:

"5. From the foregoing discussion, it is evident that the appellant was deployed in 'B' shift duty from 1300 hrs to 2100 hrs on 12.04.2013 at Computer Pass Section duty post in "B" Coy. While on duty, the appellant had some altercation / arguments with a civilian namely Mr Murugan on the issue of parking two wheeler at pass section. Later on, at about 1730 hrs on 12.04.13 the appellant had beaten the civilian on his back with a short lathi in a public place i.e outside the pass section near petrol pump. PW-01, PW-02 and PW-03 in their statement has deposed that they have seen the scar of red mark on the back of the civilian which was caused by the appellant. Thereafter, the local crowd supporting the civilian gathered at pass section and demanded to take action against the appellant. When the situation was going out of control. Insp/ERxe K R Raju (PW-01) reached on the spot and asked SI/Exe JS Pandey (PW- 02) to change the duty post of the appellant. Accordingly, PW-02 interchanged the duty post of the appellant with that of Constable/GD Suman Kumar who was deployed at Call point in the same shift. It is also on record that when PW-01 asked the appellant about the reasons of beating that civilian, the appellant could not give satisfactory answer and only replied that he could not tolerate the abuse of the civilian. SI/Exe JS Pandey (PW-02) has deposed that Mr Murugan came to Gate No.5 after visiting Police station and told that he did not lodge any complaint against the appellant thinking that on doing so the career of the appellant would be spoiled. As such, the matter was resolved in the



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presence of Coy Commander, CIW In-charge, CIW 2nd In-charge after making compromise between the appellant and civilian Mr. Murugan."

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6.It is trite law that in disciplined / uniformed services highest degree of discipline is required to be maintained any laxity in this regard would erode public confidence. In this regard it may be relevant to refer to the judgment of the Supreme Court in *State of Punjab v. Ex-Constable Ram Singh*, reported in (1992) 4 SCC 54, wherein it was held as under:

"6.The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

7. While dealing with a plea of the punishment being disproportionate it is necessary to bear in mind that it is settled that the nature and extent of punishment must be left to the discretion of the disciplinary authority. Courts would normally exercise restraint in interfering with such discretion unless it is shown that the punishment granted / meted out was wholly disproportionate in the sense that it shocks the conscience of the Court and manifestly arbitrary. In this regard it may be relevant to refer to the following judgments:

(i) Kendriya Vidyalaya Sangathan v. J. Hussain, (2013) 10 SCC



"14. ...The penalty should not only be excessive but disproportionate as well, that too to the extent that it shocks the conscience of the court and the court is forced to find it as totally unreasonable and arbitrary thereby offending the provision of Article 14 of the Constitution. It is stated at the cost of the repetition that discretion lies with the disciplinary/appellate authority to impose a particular penalty keeping in view the nature and gravity of charge. Once it is found that the penalty is not shockingly disproportionate, merely because in the opinion of the Court lesser punishment could have been more justified, cannot be a reason to interfere with the said penalty."

(ii) Regional Manager & Disciplinary Authority v. S. Mohammed Gaffar, (2002) 7 SCC 168

"10. The High Court seems to have overlooked the settled position that in departmental proceedings, insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or Appellate Authority is either impermissible or such that it shocks the conscience of the High Court, it should not normally interfere with the same or substitute its own opinion and either impose some other punishment or penalty or direct the authority to impose a particular nature or category of punishment of its choice. It is for this reason we cannot accord our approval to the view taken by the High Court in disregard of this settled principle."

Applying the above principles to the facts of the case, this Court does not find that this is one of the cases where one could apply the doctrine of proportionality in the sense that the punishment is disproportionate so as to shock the conscience of the Court. More so the appellate authority has



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already reduced the punishment.

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8. In view of the foregoing discussion, this Court sees no reason to interfere with the order of the revisional authority modifying the punishment.

9. In view thereof, I find no reason to interfere with the impugned order. The writ petition stands dismissed.

24.07.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
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MOHAMMED SHAFFIQ, J.

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