



W.P.No.34748 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

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R.Babu

.....Petitioner

Vs.

1.The Director General
Central Industrial Security Force,
Block-13, C.G.O.Complex,
Lodhi Road,
New Delhi.

2.The Deputy Inspector General,
CISF Unit,
Rajaji Bhavan,
Chennai.

3.The Commissioner,
CISF Unit,
NLF, Neyveli,
Cuddalore District.

..... Respondents



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Prayer: Writ Petition filed under Article 226 of the Indian Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent herein in No.V-15014/CISF/NLC/APPEAL/IRB/2008/12530 dated 13.11.2008, quash the same and direct the respondents herein to reinstate the petitioner into service with all monetary and service benefits.

For Petitioner : S.V.Karthikeyan

For Respondents : Mr.Veeramani,
Central Government Counsel

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 1st Respondent No.V-15014/ CISF/ NLC/ APPEAL /IRB/ 2008/ 12530 dated 13.11.2008, quash the same and consequently direct the respondents herein to reinstate the petitioner into service with all monetary and service benefits.

2. It is the case of the petitioner that he joined service as constable in the Central Industrial Security Force on 16.07.1991 and on transfer he was working in the third respondent Unit from 17.07.1998 and had an unflemished service record. On 05.09.2001, a complaint was lodged with



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the Mandarakuppam Police Station stating theft of certain mining equipments in SME Zone Shed No.12, for which he was charge sheeted by the third respondent and the criminal case was also registered against him.

3. Learned counsel appearing for the petitioner would submit that the charge framed against the petitioner is that CISF No.912293420 constable I.R.Babu while posted at CISF Unit NLC Neyveli indulged himself inwoing Shri K.Subramanian, Village Kaliarkuppam Taluk: Virudhachalam, a driver of truck No.TN31 V7500 and engaged with the said truck for removing 3 nos Fluid coupling shell made on aluminium and one no of bearing from specialized mining equipment/re-conditioning yard NLC on 03.09.2021 at about 2300 hrs with the intention of wrongful gain. The said act on the part of constable I.R.Bbu amounts to gross misconduct and unbecoming of a member of the force. Hence the charge.

4. During the enquiry, the petitioner made representations to the third respondent to change the enquiry officer and to promote him for having an assistance during enquiry for which no order has been passed. While the



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application of the petitioner for change of enquiry officer from other unit was under consideration, the enquiry officer submitted his exparte enquiry report. The petitioner had clearly stated that he was not on duty on the place of theft and he cannot hold responsibility for the same. But the proved minutes of the Enquiry Officer was accepted and the petitioner was dismissed from service by the 3rd Respondent herein by the order dated 05.09.2002. Aggrieved by the dismissal order passed by the third respondent, the petitioner filed an appeal before the second respondent who also confirmed the order of dismissal.

5. Learned counsel would further submit that the subsequent to the order of dismissal, learned Judicial, Neyveli in C.C.No.181 of 2003 dated 05.05.2008 passed an order honorarily acquitting the petitioner from charges holding the charge was not proved. The petitioner made a representation to the first respondent including the order passed by the Criminal Court i.e., Learned Judicial Magistrate, Neyveli in C.C.No.181 of 2003 requesting to set aside the order of dismissal and take the petitioner into service in view of the order of acquittal in a criminal case. The charges



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in the criminal case and department proceedings are one and the same. The first respondent have not passed order on the representation of the petitioner. Hence, the petitioner filed a Writ Petition No.23675 of 2008 for mandamus directing the first respondent herein to considering his representation dated 14.07.2008 and take him into service. This Court dismissed the Writ Petition since batta was not filed. After that the application for restoration was filed and when the matter was taken up for hearing, the respondents filed the counter affidavit stating that the representation for reinstatement of the petitioner was rejected by the first respondent on 13.11.2008 and recording the same, the W.P.No.23675 of 2008 was dismissed as infructuous by this Court. The first respondent rejected the representation of the petitioner without proper appreciating and application of mind for the reason that the petitioner acquitted from the criminal proceedings is due to lack of evidence cannot vitiate the departmental proceedings in which the charge against him was proved with adequate evidence. The departmental charge was for that he connived one K.Subramaniam the driver of the truck but the said driver was never examined in the departmental enquiry. Further the complainant



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Mr.P.Radhakrishnan was never examined in the departmental enquiry it was not considered by the first respondent herein.

6. Learned counsel would further submit that on the said day of incident, he was deployed for duty in weapon cleaning, quarter guard inside and the distance between the place of theft and the place of duty of the petitioner is nearly 8 Kms, being so, while he was on duty it is highly impossible for the driver to be along with the said driver at the spot of the theft. It is further submitted that no complaint was lodged on the day of death and it is only two days later, the driver was arrested and on alleged theft against the driver, a case was foisted against the petitioner. These issues were considered by the criminal court and an honorary acquittal was given to the petitioner and without taking into account the above facts, the first respondent herein have rejected the plea of the petitioner for reinstatement. The first respondent being the ultimate authority to decide the case of the petitioner have rejected is plea for reinstate. Aggrieved by which, the petitioner has come forward with the present Writ Petition.



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7. Learned counsel would further submit that the criminal charges initiated for the same allegation and based on the same set of facts with the departmental enquiry have ended acquittal and the list of witnesses and documents perused are one and the same. That being the same, the verdict of the Criminal Court is binding on the departmental proceedings and the petitioner is entitled for reinstatement. The first respondent held that the charge against the petitioner levelled in the departmental proceeding have been proved for the reason that the enquiry officer conducted an ex-parte enquiry and concluded that the charge has been proved without examining any of the competent persons. The person said to have committed the theft is the Driver of the Truck bearing Registration No. TN31 V7500, namely Subramaniam and he was never examined as witness and even according to the statement of P.W.5, Tamilmaran, Executive Engineer who is the only eye witness near the spot or the Truck.

8. The first respondent failed in appreciating the fact that the entire charge on the petitioner raised on the statement of P.Radhakrishnan, Sub-Inspector of Police, Mandarakuppam Police Station but he was never



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examined as a witness in the department enquiry and even the alleged statement of the driver in stating the involvement of the petitioner in theft was produced. The non-examination and the vital witness and non-production of the documents by which the petitioner was involved in the theft vitiates entire departmental proceedings.

9. Learned counsel further submits that the complaint regarding the theft was not found in the General Diary Entry on 03.09.2002 and the same was allotted only on 05.09.2002 based on which the enquiry was made, the truck was seized and the driver of the truck was arrested. But, nowhere in the complaint and the manner in which the materials removed was mentioned. The criminal court has discussed this issue and had concluded that the alleged theft itself is highly doubtful. The enquiry officer has failed on his part to give a finding with regard to the role of the petitioner in the alleged theft criminal court had also acquitted the petitioner in honorary and hence the first respondent ought to have considered the representation of the petitioner on merits which was not done in the case of the petitioner. He further submitted that the pending trial in the criminal case, the



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departmental enquiry was concluded and the petitioner was dismissed from service.

10. The counter affidavit was also filed on behalf of the respondents in the year 2016. The learned Central Government Standing Counsel appearing for the respondents would submit that the petitioner was posted to CISF Unit, NLC, Neyveli 17.07.1998. The petitioner was arrested for theft of local police and he was placed under deemed suspension with effect from 06.09.2001 vide order No.V-15014/CISF/NLC/Disc/Maj/IRB/2001/9619 dated 11.09.2001 and Charge memorandum under Rule-34 of CISF Rules 1969 was issued to him vide Commandant CISF Unit NLC Neyveli Memorandum No.V-15014/CISF/NLC/Maj-21/IRB/2001/13125 dated 23/24.11.2001 and the petitioner refused to receive the charge memorandum which was sent through Registered Post with Acknowledgment due at his quarters at NLC Neyveli. Hence, the same was sent through special messenger on 29.02.2001 and on 12.12.2001. But he refused to receive the same and finally it was served through registered post. The petitioner did not submit any reply against the charge memorandum within the stipulated



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time. Therefore the disciplinary authority ordered departmental enquiry.

The petitioner was arrested pending enquiry by the local police in another case of theft of undertaking the property and was sent for Judicial custody w.e.f 10.01.2002 and subsequently released on conditional bail on 15.02.2002. The enquiry officer issued the enquiry notice dated 29.12.2001 fixing the date of preliminary hearing on 08.01.2002 and the petitioner preferred an application dated 03.01.2002 requesting to postpone the enquiry of another two weeks to enable him to submit the willingness certificate of his Defence Assistance. The E.O considered his request and fixed enquiry dated 08.01.2002 and 15.03.2002. The petitioner appeared before the enquiry on 27.03.2002 raised an objection on the appointment of Shri D.S.Mahla, Assistant Commandant as Enquiry Officer and requested for another unit since his request was without any valid ground his request was rejected by the disciplinary authority vide order 03.04.2002. Enquiry officer issued another notice by fixing the date of enquiry on 25.02.2002 and did not attend the enquiry for change of officer and the same was considered and registered vide order dated 11.05.2002. The above order was received by the petitioner but he refused to acknowledge the receipt on the



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duplicate copy when it was served on him on 16.05.2002 in presence of constable S.Dhanushkodi thereafter the enquiry officer issued enquiry notices fixing the date of notice on 20.05.2002 and 23.05.2002. But the petitioner did not turn up for enquiry on both the days. Since the petitioner was adopting delaying tactics without any valid reasons, the enquiry officer was constrained to conduct the enquiry as ex-parte and recorded the depositions of prosecution witnesses. On finalization of ex-parte Enquiry proceedings, the Enquiry officer submitted his enquiry report with his findings to the disciplinary authority on 01.08.2002 holding the charge levelled against the petitioner as proved. Subsequently, a copy of enquiry report and copy of prosecution statements/exhibits were supplied to the petitioner with a direction to submit his representation if any against the E.O within 15 days vide commandant CISF Unit NLC Neyveli letter No.V-15014/CISF/NLC/Maj.21/IRB/2002/8396 dated 06.08.2002. The petitioner received the same on 16.08.2002 and submitted his representation against the enquiry report on 27.08.2002. The disciplinary authority considering the case on merit and after careful examination of the case and evidences adduced during the course of enquiry, vis-à-vis representation of the



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petitioner, awarded him the penalty of “Dismissal from service” vide order No.V-15014/CISF/NLC/Maj.21/IRB/2002/9722 dated 05.09.2002 and his suspension period from 06.09.2001 to 06.09.2002 (F/N) was regularized as period not spent on duty for all purposes vide USO Part-II No.284/2002 dated 17.09.2002.

11. Learned counsel would further submitted that the petitioner had submitted a representation dated 14.07.2008 addressed to DG/CISF, requesting to set aside the Final Order dated 05.09.2008 passed by the Commandant, CISF Unit NLC Neyveli and order passed by the DIG.CISF SZ Chennai on appeal and to issue a direction to the disciplinary authority to reinstate him in service in the light of the judgment order dated 05.05.2008 passed by the District Munsif-Cum-Judicial Magistrate, Neyveli in CC No.181/2003 dated 05.05.2008. The CISF Headquarters has issued a direction to dispose of the representation of the petitioner dated 14.07.2002 by the concerned Disciplinary Authority. Accordingly the same was considered by the disciplinary authority and rejected vide order dated 13.11.2008 being devoid of merit. The criminal proceedings are different



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from department proceedings and the standard of proof in departmental proceedings to preponderance of probability whereas in the criminal case, the charge has to be proved beyond reasonable doubts. As such, there is no relevancy to consider the case of the petitioner in the light of the judgement passed in the criminal proceedings.

12. Learned counsel would further submitted that the petitioner was suspected in major theft case which took place during the night of 07/0804.2001 at Mine-I of NLC Neyveli for which he was dealt under rule 37 and was awarded to pay fine. Since his activities/conduct were found to be suspicious in nature, he was subsequently shifted to Unit Kote for Arms cleaning in General shift. On that particular day when the alleged theft took place on 03.09.2001, the petitioner was detailed for duty at Unit Kote for weapon cleaning in General Shift from 0800 hours to 1700 hrs with a lunch break of one hour and he was free to go anywhere after 1700 hrs. Moreover, he was in possession of a Motor Cycle and therefore visiting Re-conditioning plant after his duty hours from his quarter is absolutely possible as the alleged theft as the place of occurrence from the Quarter



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Guard deserves no consideration. These facts were not considered by the disciplinary authority while passing the order of punishment on the petitioner.

13. Learned counsel would submit that the petitioner was not on duty in the place of occurrence of the theft and the driver of the truck namely K.Subramaniam was not examined in the enquiry and his statement was also not recorded the case in the criminal court ended in acquittal and it is a honarary acquittal by the criminal court that is District Munsif cum Judicial Magistrate involved C.C.No.181 of 2003 dated 05.05.2008. He further submitted that the enquiry was not fair and the witnessess were not examined moreover the criminal charges and the departmental charges are one and the same since the petitioner was acquitted in the criminal charge and the same is applicable to the departmental charge and the respondent ought to have considered this and reinstated the petitioner. It is pertinent to note that the theft took place on 03.09.2001 and the recovery of the articles was made on 04.09.2001 and the complaint was lodged only on 05.09.2001. Thereafter, the enquiry was conducted and the report was submitted on



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01.08.2002.

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14. Learned counsel would further submit that the Division Bench of this Court dismissed the earlier Writ Petition No.1551 of 2003 filed by the petitioner on 07.12.2006 but this order is passed before the acquittal of the petitioner by the criminal court on 05.05.2008.

15. Heard both sides and perused the materials available on record.

16. The charge against the petitioner is that he was engaged with driver of the truck bearing Reg.No.TN31 V7500 namely K.Subramaniam for removing 3 nos of fluid coupling shell made of aluminum and one no of bearing from specialized Mining Equipment/Re-conditioning yard NLC on 03.09.2001 at about 2300 hrs with the intention of wrongful gain. The said act on the part of the petitioner amounts to gross misconduct and unbecoming of a member of the force. Hence the charge memorandum was served to him. Subsequently, the enquiry was conducted and the petitioner was dismissed from service by the third respondent by order dated

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05.09.2002. The Criminal case was also filed before the learned Judicial Magistrate, Neyveli for the same theft case in C.C.No.181 of 2003 and the petitioner was acquitted by the criminal court by order dated 05.05.2008 holding that the charges against the petitioner was not proved by the prosecution. The enquiry notice was issued to the petitioner on many occasions from 29.02.2001 to 23.05.2002 but the petitioner did not turn up for the enquiry. Hence, the enquiry officer was constrained to conduct enquiry as ex-parte enquiry and recorded the deposition of prosecution witness and submitted report on 01.08.2001 holding the charges levelled against the petitioner is proved. Thereafter, the enquiry report was furnished to the petitioner and he was directed to submit his representation if any within 15 days and the petitioner submitted his representation on 27.08.2002 and the same was considered on merits by the Disciplinary Authority and awarded the penalty of dismissal from service vide order dated 05.09.2002. Thereafter the appeal filed before the DIG,CISF SZ Chennai and thereafter, he submitted a representation to the Director General, CISF on 14.07.2008 at New Delhi. CISF, Headquarters directed the Disciplinary Authority to dispose off the representation of the petitioner



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dated 14.07.2008 and the same was considered on merit by the Disciplinary

Authority and rejected vide order dated 13.11.2008 being devoid of merit.

The petitioner has not chosen to appear before the enquiry despite various hearing dates fixed by the enquiry officer from 29.12.2002 to 23.05.2002.

Hence, he cannot make a plea that the enquiry proceedings is an ex-parte proceedings and the findings based on such proceedings, the charges against the petitioner has been proved. The petitioner is a member of a unit force and he should be a person of high integrity and honesty. It is the duty of the petitioner to protect the properties of the PSU in this case namely Neyveli Lignite Corporation (NLC). The petitioner being a Police man, he has committed a gross misconduct by involving in the theft of the property. This Court is not inclined to show any leniency to the petitioner.

17. The petitioner cannot take a plea at this juncture after the conclusion of the enquiry proceedings by not participating in the said proceedings. He ought to have participated in the proceedings and should have given a statement to this effect but it is not done so by the petitioner.



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This apart, the driver namely K.Subramaniam was not examined, his statement was not recorded and no witnessess were examined in the enquiry and the enquiry is not fair and proper.

18. In view of the above factual matrix of the case, this Court is of the considered view that the penalty of dismissal from service awarded to the petitioner vide order No.V-15014/CISF/NLC/Maj.21/IRB/2002/9722 dated 05.09.2002 which was subsequently confirmed by the second respondent vide Order No.V- 15014/ CISF/ NLC/ APPEAL / IRB/ 20078/ 12530 dated 13.11.2008 is hereby confirmed and the same does not warrant any interference by this Court.

19. In the result, the Writ Petition stands dismissed. There shall be no order as to costs.

21.03.2024

Nhs

Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

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To

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Central Industrial Security Force,
Block-13, C.G.O.Complex,
Lodhi Road,
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J.SATHYA NARAYANA PRASAD, J.

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