



W.P.No.32106



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.09.2024

Pronounced on : 27.09.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.32106 of 2015

H.K.Mohapatra

... Petitioner

Vs.

1. The Union of India,
Represented 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 Group Commandant,
Central Industrial Security Force,



Group Head Quarters,
Cochin, Kerala State.

6. The Assistant Commandant,
Central Industrial Security Force Unit,
MRPL Mangalore – 575 030.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order passed by the 2nd respondent dated 17.03.2015 in his Order No.V-11014/27/petition/2015/704, communicated by the 6th respondent dated 09.04.2015 in his Office Memorandum No.V-15099/ DISC/MRPL/ Misc/ 2015-464 and the Order passed by the 3rd respondent dated 24.03.2014 in his Order No.V-15014/L&R/S&S/Rev/HKM/2014-76 and the order dated 03.02.2014 in his Order No. v-15014/L&R/S&S/Rev/HKM/2014-45 in so far as the modification awarding the punishment and the order dated 08.10.2013 confirming the order of the 4th respondent dated 08.10.2013 in his Appellate Order No.V-11014/34/Disc/SZ/2013-7413 confirming the order of the 5th respondent dated 06.06.2013 in his Final Order No.V-15014/HKM/MAJ/NMPT/GHC/2013/2985 and quash the same and to direct the respondents to pay all the monetary benefits and promotion and all other monetary benefits.

For Petitioner : Mr.P.Thiyagarajan

For Respondents : Mr.J.Madana Gopal Rao,
Senior Central Government Standing Counsel

ORDER

While the petitioner was working as Constable/ GD with ID.No.901405959 at CISF Unit, NMPT Mangalore, he was subjected to disciplinary proceedings by issuing a Memorandum of Charge dated 09.03.2013 containing a solitary charge, which reads as under:-

“That No. 901405959 Constable/GD Hemanta Kumar



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Mohapatra of SF Unit, NMPT Mangalore was detailed for "General" Shift duty from 0900 hrs to 1800 hrs on 25.02.2013 at Silver Jubilee gate. On 25.02.2013 at about 1540 hrs during surprise check carried out by Insp/Exe Ravindra J. found that an amount of Rs.765/- [Rupees seven hundred sixty five only] in various denominations which had collected by Constable/GD Hemanta Kumar Mohapatra during duty and kept in the black coloured pouch beneath the stone. The same was recovered from 05 to 06 metres behind the material entry duty post during surprise checking. The act of No. 901405959 Constable/GD Hemanta Kumar Mohapatra tantamounts to gross misconduct, indiscipline, dereliction of duty, violation of lawful instructions and unbecoming of a member of a disciplined force like CISF."

2. The statement of imputation of misconduct in support of the charge framed against the petitioner, as narrated in the Memorandum of Charge reads as under:-

"That No. 901405959 Constable/GD Hemanta Kumar Mohapatra of CISF Unit, NMPT Mangalore was detailed for "General Shift duty from 0900 hrs to 1800 hrs on 25.02.2013 at Silver Jubilee Gate. On 25.02.2013 at about 1540 hrs while surprise checking was carried out by Inspector/Exe/Coy. Commander Ravindra J at Silver Jubilee Gate, noticed that



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Constable Hemanta Kumar Mohapatra stopped the entry in the long coal material register and ran towards back side about 05 to 06 meters and kept something beneath the stone, his activities was found suspicious Insp/Exe Ravindra J directed Shift I/C K Laxmi Naryana to lift the stone and on lifting it was found that a black coloured pouch contains Indian currency of various denomination of Rs. 765/- (Rupees Seven Hundred Sixty five only) which was collected unauthorizedly and kept in the pouch during his duty hours in 'General Shift' duty at Silver Jubilee gate of NMPT Mangalore. The amount of Rs.765/- (Rupees Seven hundred sixty five only] was recovered and seized under Seizure list dated 25.02.2013 from 1540 hours to 1610 Hours at Silver Jubilee Gate. As per Unit standing instructions, duty personnel are permitted to keep pocket money maximum of Rs. 20/- for refreshment purpose during duty hours. He should not have indulged in any type of corruption and perform his Duties honestly which is being regularly briefed during shift briefings and Roll Calls. In spite of this, he cosected an amount of Rs. 765/- by means of illegal gratification for his wrongful gain which is in violation of the standing instructions and regular briefings. The above act on the part of No. 901405959 Constable/GD Hemanta Kumar Mohapatra tantamount to gross misconduct, indiscipline, dereliction of duty violation of lawful instructions and unbecoming of a member of a disciplined force like CISF. Hence the Charge.”



3. Thereafter, the petitioner submitted a written statement of defence in response to the above charge-memo on 09.03.2013, denying the charge in detail.

Thereafter, an enquiry was conducted and a report was submitted by the Enquiry Officer on 03.05.2013. The petitioner was afforded an opportunity of raising objections on the report of the Enquiry Officer and thereafter, the Respondent No.5 passed a final order in Proceedings bearing No.15014/HKM/MAJ/NMPT/GHC/2013/2985 dated 06.06.2013, concurring with the findings recorded by the Enquiry Officer and imposed the punishment of *'Compulsory Retirement from service with 5% cut in monthly pension payable to No.901405959 Constable/ GD Hemanta Kumar Mohapatra of CISF unit, NMPT Mangalore for a period of one year in accordance with Rule 40(1) of CCS Pension Rules, 1972. The gratuity of the charged official be paid in full'*. Aggrieved by the same, the petitioner filed an appeal before the Respondent No.4 unsuccessfully and the said appeal was rejected by the Respondent No.4 by an order dated 08.10.2013. Aggrieved by the said order dated 08.10.2013 confirming the order dated 06.06.2013, the petitioner filed a Revision Petition on 06.11.2013 before the Respondent No.3. The Respondent No.3, having considered the said Revision Petition, concurred with the views of the



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Disciplinary Authority and the Appellate Authority, insofar as the findings recorded on the charge levelled against the petitioner is concerned, but on considering the submissions made by the petitioner-in-person, reduced the punishment imposed by an order dated 06.06.2013 of *“reduction of pay by three stages from Rs.10060/- +GP Rs.2800/- to Rs.8980/- with Grade Pay of Rs.2800/- in the pay band-I i.e., Rs.5200-20200 + GP – Rs.2800/- for a period of three years. It is further ordered 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”*. Thereafter also, the petitioner filed a Mercy Petition before the Respondent No.2 on 28.10.2014 and the Respondent No.2, having considered the said Mercy Petition, refused to interfere with the order passed by the Respondent No.3 by passing an order dated 17.03.2015. It is aggrieved by the said order dated 17.03.2015 passed by the Respondent No.2 and the order dated 24.03.2014 passed by the Respondent No.3 as well as the orders dated 08.10.2013 and 06.06.2013 passed by the Respondents 4 and 5 respectively, the petitioner approached this Court.

4. Heard Mr.P.Thiyagarajan, learned counsel for the petitioner and Mr.J.Madana Gopal Rao, Senior Central Government Standing Counsel



appearing for the respondents and also perused the entire material on record.

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5. From the perusal of the charge and the statement of imputation contained in the Memorandum of Charge, the allegation of misconduct against the petitioner is that the petitioner had made an attempt to conceal an amount of Rs.765/- beneath a stone, about five six meters away from the place of his seat and on seeing the inspection team he has not allowed the inspection team to remove the said stone to take out the money concealed beneath the stone. The further allegation is that the petitioner is not supposed to keep an amount over and above Rs.20/- in terms of the instructions issued from time to time and the said amount of Rs.765/- is considered as an illegal gratification collected by the petitioner. The said action of the petitioner was found to be misconduct and the charge was held to have been proved by the Enquiry Officer and the same was concurred by the Appellate, Revisional and other authorities, resulting in finally imposing the punishment of 'reduction of pay by three stages' as noted herein above.

6. From the perusal of the material on record, it is noticed that there is sufficient material to show that the petitioner, on seeing the inspection team has



concealed the said amount of Rs.765/- in a black pouch beneath a stone behind his seat of work. Further, as against the detailed imputation of misconduct, as contained in the Memorandum of Charge itself, there is no specific denial of the said averment in the written statement of defence submitted by the petitioner. Though, the petitioner has submitted the statement of defence in so much detail denying the minute aspects contained in the charge-memo, there is nothing in the said statement of defence denying the allegation of the petitioner running behind his seat of work and concealing the black pouch beneath a stone and recovery of the said amount from that place by the inspection team. In the absence of any denial of the same by the petitioner at the first instance read with the statement of the witnesses examined during the course of enquiry, it cannot be said that the findings of the Enquiry Officer in this regard suffer from any defect. In such view of the matter, the said amount of Rs.765/- can be said to be the money available with the petitioner at the relevant point of time.

7. There is no dispute that the petitioner is not supposed to keep money over and above Rs.20/-, while he was at duty. But, he is in possession of Rs.765/- when the inspection took place.



8. Then, the next question that would arise for consideration is as to whether the said amount of Rs.765/- belongs to the petitioner or the said amount was collected by the petitioner as an illegal gratification while discharging his duties in the general shift. Though, it was alleged in the imputation of charge that the petitioner has collected the said amount as an illegal gratification, there is nothing brought on record to show as to from whom the petitioner has collected such amounts nor any of the witness examined by the Department stated about collection of such amounts towards illegal gratification. The charge itself is vague to that extent for want of furnishing the basic particulars or details of the persons from whom the petitioner could have collected the said amount. However, without there being any evidence in this regard, the Enquiry Officer held the charge as proved in its entirety and the same was accepted by the Respondents 3 and 4 in a mechanical manner. As there is absolutely no evidence in support of the said imputation of misconduct of collecting illegal gratification by the petitioner, the findings recorded by the Enquiry Officer to that extent, as confirmed by the Respondent 3 and 4 is liable to be declared as perverse.

9. The Respondent No.3, while exercising his revisional jurisdiction, thought fit to interfere with the quantum of punishment and reduced the



punishment that was imposed by the original disciplinary authority. The relevant paragraphs from the revisional order dated 03.02.2014 reads as under:-

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“6. In view of the above, the petitioner was rightly held guilty of the charge by the E.O based on material evidences adduced during the course of enquiry. The Disciplinary Authority has also rightly judged the misconduct staged by the petitioner and awarded the impugned penalty. There is no procedural lacuna either in the conduct of enquiry or in the passing orders. However, on the other hand, I am taking the lenient view as the petitioner had appeared before me and acknowledged his guilt as well as repentance for the misdeed committed by him. The fact that his children would suffer for the consequences of his wrong action was factored into as well while arriving at this lenient decision.

7. In view of the foregoing discussion, although the facts discussed at para 06 above will not absolve the petitioner fully from the charge, I am of the considered view that the penalty awarded by the disciplinary authority and confirmed by the appellate authority deserves some leniency in the quantum of punishment, I am, therefore, inclined to take a lenient view this time only and interfere only on the quantum of punishment and re- instate the petitioner into service with the modified punishment of



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REDUCTION OF PAY BY THREE STAGES FROM Rs. 10060 /- + GP Rs.2800/- to Rs 8980/- WITH GRADE PAY OF Rs.2800/- IN THE PAY BAND-I i.e. Rs.5200-20200 + GP-Rs..2800/- FOR A PERIOD OF THREE YEARS. IT IS FURTHER ORDERED THAT HE WILL NOT EARN OF PAY DURING THE PERIOD OF REDUCTION AND THAT ON EXPIRY OF THIS PERIOD, REDUCTION WILL HAVE THE EFFECT OF POSTPONING HIS FUTURE INCREMENTS OF PAY to meet the ends of justice.

8. It is, therefore, ordered that if the petitioner agrees with the above of punishment, he will report for duty at CISF Unit, MRPL Mangalore within 15 (fifteen) days from the date of receipt of this order. If the petitioner fails to report for duty within the stipulated time as ordered above, it will be presumed that the petitioner is not interested in rejoining the service and this order will automatically be treated as canceled without giving him any further notice or time extension.

9. It is further ordered that the intervening period (i.e.) from the date of "Compulsory Retirement from service" to the date of reinstatement into service is proposed to be treated as 'dies-non' for purposes of service as per rule 55 of CISF Rules, 2001 with the direction that



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the service rendered by the petitioner prior to the compulsory retirement from service will not be forfeited and will count for future service benefits. The petitioner is, therefore, given an opportunity to represent against the proposal, if any, within 15(fifteen) days from the date of joining duty on reinstatement. If the petitioner fails to submit any representation against the proposal within the stipulated time from the date of joining duty on reinstatement, the proposal will be confirmed without giving him any further notice or time.”

From the above, it is noticed that the Respondent No.3/ Revisional Authority, having considered the facts and circumstances of the case as well as the submissions made by the petitioner-in-person, acknowledging his guilt as well as the repentance for the misdeed committed by him, thought it fit to take a lenient view and reduced the quantum of punishment.

10. As already noted above, the imputation of misconduct, insofar as the collection of illegal gratification is concerned, the same has not been substantiated with proper evidence either during the course of enquiry or thereafter, by the Respondents 3 to 5.



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11. In the light of the conclusion arrived at by this Court on this aspect as noted above, the only misconduct that remains is being in possession of an amount over and above Rs.20/-, contrary to the Unit Standing Instructions. If that be the case, the imposition of modified punishment of *“reduction of pay by three stages from Rs. 10060 /- + GP Rs.2800/- to Rs 8980/- with grade pay of Rs.2800/- in the pay band-i i.e. Rs.5200-20200 + GP - Rs..2800/- for a period of three years. it is further ordered that he will not earn of pay during the period of reduction and that on expiry of this period, reduction will have the effect of postponing his future increments of pay”*, by the Respondent No.3 by an order dated 03.02.2014 also, on the face of it, appears to be shockingly disproportionate, especially in the context of the services that was rendered by the petitioner by then of 22 years as Constable/ GD in CISF.

12. The reliance placed by the learned counsel appearing for the respondent on the decision of a learned Division Bench of this Court in W.A.No.989 of 2020 dated 18.04.2024 and W.A.No.1742 of 2021 dated 27.06.2024 are concerned, there is no quarrel on the legal position that the scope



of interference in the matter of disciplinary proceedings by this Court while exercising its jurisdiction under Article 226 of the Constitution of India is very limited and it is only under certain circumstances, this Court can interfere with the punishments imposed in the disciplinary proceedings.

13. As already noted above, absolutely there is no material or evidence in support of imputation of misconduct in connection of receipt of illegal gratification by the petitioner. The report of the Enquiry Officer is also totally silent on this aspect, but the Enquiry Officer suddenly jumped to the conclusion of holding the charge as proved in its entirety. As the findings of the Enquiry Officer on the misconduct against the petitioner are found to be based on no evidence, the conclusions that are arrived at by the Respondents 3 to 5 to the extent of this aspect is bound to be treated as perverse.

14. As already noted above, the Respondent No.3 have already taken note of various circumstances, has taken a lenient view and reduced the punishment. But the findings of the Respondent No.3 to the extent of holding the charge levelled against the petitioner, as proved in its entirety cannot be sustained. In such circumstances, this Court has to examine as to whether the modified



punishment imposed by the Respondent No.3 by an order dated 03.02.2014 is justified or not. The said punishment was imposed by treating the charge in its entirety as established. But in the light of the conclusion arrived at by this Court on the second limb of the imputation of misconduct, the said modified punishment imposed by the Respondent No.3 cannot be allowed to stand, as it is.

15. In the light of the above and also taking into consideration the overall facts and circumstances of the case, especially the long service of 22 years rendered by the petitioner in CISF, this Court is of the considered view that the punishment that was imposed by the Respondent No.3 needs to be modified appropriately. Accordingly, the punishment of *“reduction of pay by one stage with grade pay of Rs.2800/- in the pay band-I for a period of three years. It is further ordered that he will not earn of pay during the period of reduction and that on expiry of this period, reduction will have the effect of postponing his future increments of pay”* shall stand imposed on the petitioner in the place of the punishment imposed under the impugned order. The Respondent No.5 is directed to issue consequential proceedings consequent upon the modification of the punishment as above within a period of eight weeks from the date of receipt of a copy of this order.



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16. Accordingly, the Writ Petition is partly allowed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions, if any shall stand closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Secretary to Government of India,
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 Group Commandant, Central Industrial Security Force,
Group Head Quarters, Cochin, Kerala State.
6. The Assistant Commandant, Central Industrial
Security Force Unit, MRPL Mangalore – 575 030.



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MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
W.P.No.32106 of 2015

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