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W.P.No. 32429 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.32429 of 2013

A.Rajkumar

... Petitioner

Vs.

1. Union of India,
rep. By its Secretary to the Government,
Department of Home Affairs,
New Delhi.
2. The Director General,
CISF Head Quarters,
No.13, C.G.O. Complex,
Lodhi Road, New Delhi-110 003.
3. The Inspector General,
CISF Head Quarters South Sector,
Chennai Port Trust Campus,
Near War Memorial,
Chennai-600 009.
4. The Deputy Inspector General,
CISF DOS Head Quarters,
Antariksh Bhavan New BEL Road,
Bangalore, Karnataka – 560 064.
5. The Commandant,



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CISF Unit, VSSC Thumba,
District : Trivandrum,
State : Kerala – 695 022.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 3rd respondent dated 25.04.2012 in his order No.V-15014/L&R/SS/Rev./AR/2012-130 confirming the order of the 4th respondent dated 20.12.2012 in his appellate order No.11014/CISF/DOS/Appeal-ARK/2011/4178 and confirming the order passed by the 5th respondent dated 07.09.2011 in his final order No. V.15014/CISF/VSSC/Disc/CP/2011-5406 dated 07.09.2011 and to quash the same and to direct the respondents to take the petitioner into the strength of the CISF as Constable/GD with all monetary benefits and other service benefits.

For Petitioner : Mr. A.S.Mujibur Rahman

For Respondents : Mr. Soundar Vijay Arulram

ORDER



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The Writ Petition is filed challenging the impugned order of the third respondent dated 25.04.2012, the orders of the fourth respondent dated 20.12.2011 and the fifth respondent dated 07.09.2011. By the original impugned order, the punishment of compulsory retirement was imposed, which was confirmed on appeal and review. Hence, the Writ Petition.

2. The case of the petitioner is that the petitioner was working as a Constable in the Central Industrial Security Force. While so, disciplinary proceedings were initiated against him on the following two articles of charge:-

“Article – I

“In that No. 884330305, Constable A.Rajkumar of CISF Unit, SAC/PRL Ahmedabad was detailed for election duty in Bihar in Coy.No.431. On the intervening night of 26/27.11.2010 at Patna Junction Railway Station, he boarded the wrong train and reached Patna Saheb Railway Station. On realising that he had got separated from the rest of his Coy. Constable/GD Rajkumar did not raise an alarm and report himself to the GRP Authorities immediately for being reunited with his Coy.



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No.431. Instead, he remained at Patna Sahab Railway Station with his Arms and Ammunition. Subsequently, he was restored to Coy.No.431 on 27.11.2010 at 09.00 hrs. By doing so, he has committed an act of indiscipline, dereliction and irresponsible behaviour leading to severe inconvenience to the Election Coy, who were in the midst of de-induction and return.” Hence, the charge.

Article-II

“Incorrigible attitude in that No. 884330305, constable A.Raj Kumar of CISF Unit, SAC, Ahmedabad did not reform himself even after being awarded 07 minor punishments for various misconduct and indiscipline activities”. Hence, the charge.

3. The petitioner submitted his explanation and thereafter, a departmental enquiry was conducted and the enquiry officer held that both charges were proved. After the same, a second show cause notice was issued and after considering further explanation of the petitioner, third respondent by the impugned order dated 07.09.2011 imposed a punishment of compulsory retirement from service with full pensionary benefits. Aggrieved by the same, the petitioner filed an appeal, the appellate authority rejected the appeal and



confirmed the punishment by an order dated 20.12.2011. As against the same, a revision petition was preferred before the fifth respondent, who also confirmed the punishment order dated 25.04.2012. Hence, the Writ Petition.

4. The Writ Petition is resisted by the respondent by filing a counter. It is their case that proper opportunity has been given in the domestic enquiry and upon consideration of charges and the explanation thereof and evidence on record, the impugned orders are passed, which does not call for any interference of this court.

5. Heard *Mr.A.S.Mujibur Rahman*, learned counsel for the petitioner and *Mr.Soundar Vijay Arulram*, learned counsel for respondents.

6. The learned counsel for the petitioner would first contend that the very charge No.2 relates to the earlier punishments. When certain delinquencies were alleged minor punishments were said imposed against the petitioner, considering the minor nature of punishment, the petitioner did not contest the same and underwent the punishment, such as payment of a fine etc. When for the said delinquencies when already punishments were imposed on the petitioner, once again, the second charge would amount to double



jeopardy.

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7. As far as first article of charge is concerned, by oversight, the petitioner missed the train and got into the wrong train. The same can never be a misconduct to attract punishment of compulsory retirement. The petitioner was at the prime of his career and was aged 46 years at the time of punishment. The petitioner had already put in more than 23 years at the time of imposing punishment. The respondents without noting the arduous nature of the petitioner's service requiring to work in various parts of the country, imposed the major punishment of compulsory retirement. The learned counsel would place strong reliance on the judgment of this court in ***W.P.No.10519 of 2014 in Subodh Kumar Singh vs. Union of India, Department of Home Affairs, New Delhi and others***, and plead that in respect of similar charges, this court found that the punishment was grossly disproportionate to the misconduct alleged and interfered in the matter. Therefore, he would submit that in the present case also, this court should interfere with the disproportionate punishment and the Writ Petition deserves to be allowed.

8. *Per contra*, learned counsel for respondents by relying upon detailed



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counter affidavit would submit that the quantum of punishment by taking into account both charges. The employer can also take into account the past conduct of the petitioner provided that the same has been put to the petitioner and due opportunity has been given to him to explain about the same. In this case, since the petitioner was repeatedly involved in misconduct. The habitual conduct made as charge No.2 would not amount to double jeopardy. Only because it came to a situation that the petitioner shall no longer continue in service that too taking a lenient view by imposing compulsory retirement with a full pension, the impugned order has been passed.

9. I have considered rival submissions made on either side and perused the material records of the case.

10. Had it been the punishment for article No.1 alone, the contention of the petitioner that punishment is grossly disproportionate to the charge would be good, because charge No.1 is that on the particular day, the petitioner missed the train. Even after missing the train, he did not raise any alarm and came by subsequent train lethargically and was in the waiting room without joining with other colleagues in the company. Charge No.2 is more serious, it



alleges the incorrigible attitude of the petitioner, that he did not reform himself even after being awarded seven minor punishments for various misconduct and indiscipline.

11. The contention of learned counsel for petitioner is that it would amount to double jeopardy and I am unable to accept the said contention. The punishment being imposed on the petitioner for the same offence a second time is different. Punishing for an incorrigible attitude and being habitually involved in delinquencies cannot be termed as double jeopardy. Incorrigible attitude and habitual delinquency is a distinct charge. Once this Court rejects the contention of the petitioner in respect of Article-II, then the reliance placed by the petitioner on the judgment of this court in ***W.P.No.10519 of 2014 in Subodh Kumar Singh vs. Union of India, Department of Home Affairs, New Delhi and others*** is not correct.

12. I have also gone through the instances, in which the petitioner has been punished seven times. Even though every one of the misconducts is minor and even the eighth delinquency mentioned in Article I is also minor,



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the repeated indulgence of the petitioner would entitle the respondents to exercise their discretion and impose major punishment. I am unable to hold that the punishment is grossly disproportionate or that it shocks the conscience of the Court to interfere under Art. 226 of the Constitution of India. When the petitioner has been imposed with the punishment of compulsory retirement with full pensionary benefits, I am not able to grant further relief.

13. Accordingly, finding no merit, this Writ Petition stands dismissed.

There shall be no order as to costs.

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Index: Yes/No
Internet: Yes/No
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To

1. Secretary to the Government,
Union of India,
Department of Home Affairs,
New Delhi.
2. The Director General,
CISF Head Quarters,
No.13, C.G.O. Complex,



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Lodhi Road, New Delhi-110 003.

3. The Inspector General,
CISF Head Quarters South Sector,
Chennai Port Trust Campus,
Near War Memorial,
Chennai-600 009.
4. The Deputy Inspector General,
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Antariksh Bhavan New BEL Road,
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D.BHARATHA CHAKRAVARTHY, J.

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