



W.P.No.11297 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 21.06.2024

Orders pronounced on : **28.06.2024**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.11297 of 2022
and W.M.P.No.10853 of 2022

Shyam Singh

.. Petitioner

Versus

1. The Union of India,
Through the Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi - 110 001.
2. The Director General,
Central Industrial Security Force,
Block No.13, C.G.O. Complex,
Lodhi Road,
New Delhi - 110 003.
3. The Inspector General,
Central Industrial Security Force,
South Sector, Head Quarters,



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New War Memorial,
Chennai - 600 009.

4. The Deputy Inspector General,
Central Industrial Security Force,
South Zone, Head Quarters,
Rajaji Bhavan,
Besant Nagar, Chennai - 600 090.
5. The Senior Commandant,
Central Industrial Security Force Unit,
CISF Unit, ChPT,
Chennai - 600 001.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent, dated 21.01.2022 in his order No.V-15016/CISF/SS/Rev/L&R/SS/2022-950 confirming the order of the 4th respondent dated 26.03.2013 in his order No.V-11014/07/Disc/SZ/2013/2516 confirming the order of the 5th respondent, dated 26.11.2012 in his order No.V-15014/CISF/Disc/Major-SS-01/2012/5323 and quash the same and direct the respondents to take the petitioner into the strength of the CISF with all consequential service cum monetary benefits.

For Petitioner : Mr.R.Thiyagarajan



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For Respondents : Mr.C.Kulanthaivel

ORDER

This Writ Petition is filed challenging the order of the fifth respondent, dated 26.11.2012 imposing a punishment of dismissal from service which was confirmed by the fourth respondent, dated 26.03.2013 in an appeal and further confirmed in revision by the order, dated 21.01.2022.

2. The case of the petitioner is that the petitioner was appointed as a Constable in the Central Industrial Security Force with effect from 25.08.2001. While so, the petitioner was placed under suspension 19.06.2012 and was thereafter issued with the charge memorandum, dated 25.06.2012. The said charge memorandum contained five charges which are as hereunder :-

"ARTICLE OF CHARGE NO. I

An act prejudicial to the good order and discipline of the Force, in that No.No.014270226 Constable Shyam Singh of 'B' Coy., CISF Unit, ChPT Chennai used unparliamentary language against his Coy Commander Inspector/Exe S.K.Meena and Unit administration in the presence of HC/GD E.Rajasekaran on 29.09.2011 at about



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1820 hrs at Coy. Commander "D" coy office. This act on the part of Constable No.014270226 Constable Shyam Singh amounts to gross indiscipline, misconduct and insubordination which is unbecoming of a member of Force. Hence the Charge.

ARTICLE OF CHARGE NO. II

An act prejudicial to the good order and discipline of the Force, in that as per office memorandum Circulated vide OM No.IC-15098/CISF/ChPT/CIW/Misc/2010/644 on the subject "Undesirable activities - Standing Instructions thereon" dated 28.04.2010 and Security Standing procedure dated 01.02.2011 no person shall carry more than Rs.50/- as pocket money during duty hours. In spite of clear instructions, No.014270226 Constable Shyam Singh of CISF Unit, Ch PT Chennai brought a sum of Rs.107/- while reporting for 'A' shift duty on 05.08.2011 and again he brought a sum of Rs.240/- on 14.08.2011 in "C" shift duty which is violation of lawful orders. This act on the part of No.014270226 Constable Shyam Singh tantamounts to gross misconduct, indiscipline, disobeyed the lawful order which is unbecoming of a member of Force. Hence the Charge.

ARTICLE OF CHARGE NO. III

An act of prejudicial to the good order and discipline of the Force, in that No.No.014270226 Constable Shyam Singh of 'B' Coy., CISF Unit, ChPT Chennai who was detailed for Day Shift duty from 0600 hrs to 1800 hrs at CHD Hospital on 29.05.2012, had insisted his shift in-charge SI/Exe Amit Yadav to send reliever to his duty post as he would perform only 0800 hrs duty and intended to leave the duty post, if not sending reliever. This act on the part of Constable No.014270226 Constable Shyam Singh amounts to gross indiscipline, misconduct and dereliction which is unbecoming of a member of Force. Hence the Charge.



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ARTICLE OF CHARGE NO. IV

An act of prejudicial to the good order and discipline of the Force, in that No.No.014270226 Constable Shyam Singh of 'B' Coy., CISF Unit, ChPT Chennai was found absent from PT held on 23.05.2012, Sainik Sammellan on 31.05.2012 and Parade on 01.06.2012 without any intimation/prior permission from the competent authority. This act on the part of No.014270226 Constable Sham Singh tantamounts to gross neglect of regimental duties, indiscipline, disobedience and thus unbecoming of a member of Force. Hence the Charge.

ARTICLE OF CHARGE NO. V

An act of gross misconduct and breach of discipline of the Force in that No.014270226 Constable Shyam Singh of 'B' Coy., of CISF Unit, Ch PT, Chennai had developed an irresistible and incorrigible attitude of committing acts of misconduct and indiscipline and failed to change his attitude and not shown any improvement in his conduct in spite of being charge sheeted and penalized on **Eight (08)** earlier occasions during his service. Out of eight occasions in the previous misconduct, on three occasions he was punished for misbehavior /quarrel /insubordination with seniors. This amounts to an act of gross misconduct and reprehensible attitude, which is unbecoming of a member of the Armed Force on the part of No.014270226 Constable Shyam Singh of 'B' Coy., CISF Unit, ChPT, Chennai. Hence, the charge."

3. The petitioner submitted his written statement of defence denying the charges on 25.06.2012. The Disciplinary Authority did not accept the



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explanation and appointed an Enquiry Officer. After conducting an oral enquiry, the Enquiry Officer submitted a report, dated 20.10.2012 holding all the charges as proved. Thereafter, the second show-cause notice was issued to the petitioner and the order of punishment was imposed. The petitioner preferred an appeal and the appellate authority also confirmed the punishment by the order, dated 26.03.2013. The petitioner approached this Court by challenging the original and appellate orders by way of Writ Petition in W.P.No.19151 of 2013. When the said Writ Petition came up for hearing in the year 2020, after hearing arguments, this Court found that there was a remedy by filing a revision before revisionary authority and gave liberty to the petitioner to file a revision and the revision was directed to be disposed of. Thereupon, the petitioner preferred a revision which is now dismissed by the impugned order, dated 21.01.2022, against which, the present Writ Petition is filed.

4. The Writ Petition is resisted by the respondents by duly filing a



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detailed counter-affidavit.

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5. Heard *Mr.R.Thiyagarajan*, learned Counsel for the petitioner and *Mr.C.Kulanthaivel*, learned Counsel for the respondents.

6. The learned Counsel for the petitioner, taking this Court through the Article of charges and the evidence on record, submits that in none of the occasions which are framed as charges from Article – I to Article – IV, the petitioner is at fault. The normal grievance expressed by the petitioner is taken as offensive. At no point in time, the petitioner refrained from performing his duty nor did he commit any act that can be termed as misconduct. Mere raising of voice of dissent/claiming his right by itself is termed as misconduct and the petitioner is imposed with the capital punishment of dismissal from service. He submits that even the past misconducts which are framed as Article – V, it can be seen that except for two occasions where the petitioner was found sleeping on duty, even taking



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the allegations at its face value, on every occasion, the petitioner only voiced his grievance which is taken offensive by the superiors. Therefore, the very charges and the punishment are unsustainable and are liable to be interfered with by this Court.

7. The other contention of the learned Counsel for the petitioner is that in any event, for the proved charges against him, the respondents have imposed the punishment of dismissal from service which is grossly disproportionate. The respondents ought to have considered that the petitioner is the sole breadwinner of his family. He entered into service in the year 2001. When the petitioner was imposed with the punishment in the year 2012, he was only 28 years. From then on, the petitioner has been running from pillar to post and has been in the office of the superiors prosecuting his appeal and thereafter, the Writ Petition and the Revision Petition. The petitioner is now aged 42 years and has realised and shown remorse towards his past conduct.



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8. Per *contra*, Mr.C.Kulanthaivel, learned Counsel for the respondents submits that even though every misconduct of the petitioner is not serious misconduct warranting dismissal from service, it cannot be contended that those acts never amounted to misconduct. In a uniformed service, if an employee repeatedly indulges in such indiscipline, raising his voice to the superiors and habitually breaching discipline, then, the irresistible and incorrigible attitude by itself would become grave misconduct and that is framed as charge - V and the petitioner had been given due opportunity to explain his past conduct and only taking into account his past conduct that on eight previous occasions, he was imposed with minor punishments and despite the same, the petitioner remained incorrigible and therefore, the authorities have concluded that the petitioner need not be retained in service, then, there is no scope for this Court to interfere with the punishment. According to him, the method of imposition of punishment is prescribed in detail in Rule 36 of the *CISF Rules*, 2011 and the same has been



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meticulously followed by the respondents. Due opportunity has been granted to the petitioner to explain his position as well as to cross-examine the witnesses produced on behalf of the department. He has been duly heard and the Enquiry Officer has come to a conclusion that the charges as proved. The Disciplinary Authority has applied its mind towards the charges and has imposed the punishment which is confirmed by the appellate and revisionary authorities and therefore, there is nothing for this Court to interfere in the matter.

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

10. In the instant case, the first contention which is urged on behalf of the learned Counsel for the petitioner is that none of the acts would amount to misconduct. As far as the first charge is concerned, the learned Counsel for the petitioner contends that when the petitioner was deputed for a 12



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hour duty, he raised his voice that only 8 hour duty should be given for the Security Personnel who have to keep vigil. Thus, raising of voice has been mentioned as a charge. On a perusal of the articles of charge and the statement of imputation of misconduct, it would be clear that it is not as if the very raising of voice or expressing his grievance is termed as misconduct nor his act of questioning the senior which is termed as a misconduct, but, in the said course, he used certain unparliamentary words. Therefore, that is the misconduct that is alleged.

11. In respect of charge No.2, it is stated that there is an instruction that nobody should carry more than Rs.50/ as pocket money, while the petitioner brought a sum of Rs.107/- one day and Rs.240/- on another day. Though it is a minor misconduct, it cannot be accepted that it is not misconduct at all. As far as charge No.3 is concerned, again, it relates to his exit upon sending a reliever upon completion of 8 hours of duty. It can also be seen that though the petitioner insisted on eight hours, he did not leave



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the duty, he completed the duty of 12 hours. Therefore, to an extent, the submission of the learned Counsel for the petitioner can be accepted in respect of charge No.3, especially, when the respondents could not contend that by virtue of any rule they are entitled to impose 12 hour duty. 12-hour duty was imposed only because of a shortage of manpower and to manage the situation. In such a situation, if the employees are having genuine grievances, that cannot be termed as misconduct. As far as charge No.4 is concerned, he was absent from Parade without any intimation and prior permission. Therefore, in a uniform force, the same would amount to misconduct though not a grave misconduct warranting the punishment of dismissal from service.

12. As far as charge No.5 is concerned, the charge is that the petitioner has been penalised on eight previous occasions. This Court also directed the learned Counsel for the petitioner to provide copies of the orders of imposition of earlier punishment and the same are also provided. The



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tabular statement which is given in the statement of the imputation of misconduct in respect of the delinquencies committed and the penalties narrated is produced as hereunder:-

Sl. No	Offence committed	Penalties awarded by the Disciplinary authority
01.	Found sleeping at Heavy Cargo Airside duty post along with rifle at 0408 hrs on 23.09.03	Pay fine equivalent to Seven days pay vide DC/Domestic Sector, CISF Unit, CSI Airport, Mumbai final order No. (10109) dated 21.11.2003.
02.	Misbehaved with Airport Director, CSIA, Mumbai by using rude and abrupt language on 17.02.2005.	Pay fine equivalent to Three days pay vide AC CSIA, Mumbai order No.602 dated 18.06.2005.
03.	Left the duty post of Apron guarding at 1220 hrs on 06.01.2006 without information and came to the control room and shouted at Insp/Exe M.Shankar and SI/Exe S.P.Srivastava	"CENSURE" vide AC APSU Bangalore vide order No.1424 dated 05.04.2006.
04.	AWL from 29.08.2006 (A/N) to 01.09.2006 (F/N) while on IS duty at DMRC, New Delhi.	Pay fine equivalent to Two days pay vide DC, CISF Unit, NNP Mysore order No.(2823) dated 21.12.2006
05.	While on duty he was wearing shabby uniform	Pay fine equivalent to One day pay vide. DC, CISF Unit, NNP Mysore



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	without formation sign & Identity Card on 01.06.2007.	order No.(2127) dated 15.06.2007
06.	i) While on consignment duty for RBI, he was misbehaved with party in-charge on 03.04.2008. ii) Absent from duty and sleeping on his bed at about 0430 hrs on 04.04.2008	Withholding of one increment for a period two years without cumulative effect vide DC, CISF Unit, NNP, Myore order No.(1876) dated 02.06.2008.
07	Quarreled and misbehaved with Constable/Armr on 29.05.2008 at about 0615 hrs while depositing Arms & Ammunitions at Unit Kote.	Pay fine equivalent to Two days pay vide DC, CISF Unit, NNP Mysore order No.(2472) dated 10.08.2008.
08	Found sleeping at duty post at 0500 hrs on 11.09.2011	Pay fine equivalent to Three days pay vide AC, CISF Unit, Ch.P.T.Chennai order No.(4014) dated 30.11.2011.

13. This Court also carefully gone through the respective charges and also the findings of the Disciplinary Authority while running the punishment. Of the eight occasions mentioned again, it can be found that on two occasions he was found sleeping. On one occasion, he slept in his bed



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up to 4:30 hours even up to the start of duty time and did not even report for duty. Again on some occasions, he was raising his voice regarding duty allocation etc.

14. The only question is that whether the punishment of dismissal from service is shockingly disproportionate with reference to the charges levelled against the petitioner. But for charge No.5 i.e., in respect of his past conduct, the Court would easily conclude that the punishment of dismissal from service would be grossly disproportionate to the delinquencies complained. But, the past conduct has been levelled as the charge No.5 and the same is taken into account. Even on a perusal of the order of punishment and appellate and revisionary authority, it can be seen that only because of the past conduct, the punishment of dismissal from service was imposed on the petitioner.

15. However, the only factor which is glaring in the instant case is that



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while finding the petitioner guilty of the various charges and taking into account his past conduct, the fact that there are two types of misconduct, alleged against the petitioner. Firstly there are certain misconducts, whereunder, the petitioner has raised his voice whenever he has been directed to perform extra duty, not being sanctioned Casual Leave etc., where the reason is genuine, but, it is only the manner, in which the petitioner voiced his grievance, is treated as exceptional. Secondly, there are misconducts such as sleeping, not reporting to Parade etc., which are minor misconducts attributed to the petitioner. It is clear from the order of the respondent authorities including the revisionary authority that it is only the cumulative total of all these that has led to their decision to impose the capital punishment of dismissal from service. This Court, on a perusal of the impugned orders, finds that on the one hand, the rebellious attitude is taken into consideration, neither there is the application of mind nor there is any answer on the part of the respondent organisation the justification to impose 12 hours duty, not sanctioning of Casual Leave etc., as it would be a



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mitigating factor in weighing the balance of determining the quantum of punishment.

16. The respondent organisation should also consider the fact that the petitioner was aged 28 years at the time of imposition of punishment and after protracted the legal battle, his revision was taken up in the year 2022 when he is aged 40 years. The Revisionary Authority did not consider whether the petitioner was showing remorse and can be granted one more opportunity. Therefore, this Court, without deciding the question as to whether the punishment of dismissal from service imposed on the petitioner would be grossly disproportionate to the misconduct alleged, considers it fit to set aside the order of the Revisionary Authority dated 21.01.2022 and remand the matter back to the said authority to consider the question of proportionality by taking into account the relevant factors. It is also made clear that in the event of the petitioner being reinstated with any other major/minor punishment, he cannot claim back wages as this would be a



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case on mere procedural reconsideration and the back wages can be denied in entirety to the petitioner. Such a course can very well also be considered by the Revisionary Authority.

17. Given the above findings, the order of Revisionary Authority, dated 21.01.2022 is set aside. The matter is remitted back to the Revisionary Authority/the third respondent to reconsider the issue of proportionality of punishment on the factors which are indicated above and in the further backdrop of the findings of this Court in respect of charge No.3, the revisionary authority shall reconsider the issue within two weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

28.06.2024

Neutral Citation: yes
grs

To



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1. The Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi - 110 001.
2. The Director General,
Central Industrial Security Force,
Block No.13, C.G.O. Complex,
Lodhi Road,
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3. The Inspector General,
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Rajaji Bhavan,
Besant Nagar, Chennai - 600 090.
5. The Senior Commandant,
Central Industrial Security Force Unit,
CISF Unit, ChPT,
Chennai - 600 001.

D.BHARATHA CHAKRAVARTHY, J.

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