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W.A.No.2045 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

Writ Appeal No.2045 of 2021
and
C.M.P.No.13019 of 2021

1. CASO and Commandant,
CISF-ASG Mangalore,
Office of the CASO and Commandant,
Central Industrial Security Force,
Mangalore Airport,
PO:BAJPE 574 142.
2. The Deputy Inspector General/AP-SZ,
Office of the Deputy Inspector General/AP-SZ,
Central Industrial Security Force,
Rajaji Bhawan,
Besant Nagar,
Chennai - 600 090.



W.A.No.2045 of 2021

WEB COPY

3. Inspector General/Airport Sector,
Office of the Special Director General/Airport Sector,
Central Industrial Security Force,
Block No.13, CGO Complex,
Loadhi Road,
New Delhi - 03.

... Appellants

Vs.

R.Srinivasan

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed in W.P.No.33857 of 2013 dated 30.11.2020.

For Appellants : Mr.V.Ashokkumar
Central Government Standing Counsel

For Respondent : Mr.R.Thiyagarajan

J U D G M E N T

(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**)

The intra-court appeal has been instituted by CASO and Commandant, CISF challenging the writ order dated 30.11.2020 passed in W.P.No.33857 of 2013.



W.A.No.2045 of 2021

2. The respondent was working as a Constable in CISF-ASG, Mangalore and he was posted to serve in Mangalore Airport. A Charge Memorandum was issued to the respondent in proceedings dated 21.05.2012. Two article of charges were framed and they are as under:

ARTICLE OF CHARGE-I

An act prejudicial to good order and discipline of the Force in that No.912294526 Const.R.Srinivasan of CISF Unit ASG Mangalore who was detailed in "C" shift duty on 09.05.2012 at Departure Gate of NITB and issue with AK-47 butt No.06 Reg.No.AD 510215 along with 60 rounds of 7.62 x 39mm and other accessories after proper briefing, accidentally fired one round from his AK-47 duty rifle in the Control Room of CISF ASG Mangalore at about 2320 hrs. This act on the part of No.912294526 Const. R.Srinivasan tantamounts to gross misconduct, indiscipline, dereliction of duty, violation of instructions and unbecoming of a member of a disciplined Force i.e. CISF. Hence, the charge.

ARTICLE OF CHARGE-II

An act prejudicial to good order and discipline of the Force in that No.912294526 Const.R.Srinivasan of CISF Unit ASG Mangalore who was



W.A.No.2045 of 2021

WEB COPY

detailed in "C" shift duty on 09.05.2012 at Departure Gate of NITB and was relieved from duty post by the Shift I/C to attend to a nature call, instead of returning to his duty post after attending to the nature call in the bathroom, unauthorisedly entered the Control Room without permission from the competent authority, wherein he mishandled the weapon. This act on the part of No.912294526 Const.R.Srinivasan tantamounts to gross misconduct, indiscipline, dereliction of duty, violation of instructions and un becoming of a member of a disciplined Force i.e. CISF. Hence, the charge.

3. Annexure -II to the Charge Memorandum provides statement of imputations of misconduct. Annexure -III provides list of documents and Annexure - IV provides list of witnesses to be examined. Thus, we do not find any infirmity in respect of the charge memorandum issued to the respondent, which is in consonance with the Discipline and Appeal Rules.

4. On receipt of Charge Memorandum, the respondent submitted his statement of defense denying the charges. Not satisfied with the explanation, the Disciplinary Authority appointed an Enquiry Officer, who in turn conducted an enquiry and the respondent participated in the process of



W.A.No.2045 of 2021

Enquiry and defended his case. The Enquiry Officer submitted his Final Report holding that the charges are proved. The finding of the Enquiry Officer has been accepted by the Disciplinary Authority and a final order has been passed in proceedings dated 15.06.2012, imposing the punishment of reduction to the lowest stage(i.e., minimum scale of pay) in the time scale of pay for a period of 03 (three) years with immediate effect. Further, it is ordered that the respondent will not earn increments of pay during the period of reduction and that on expiry of that period, the reduction will have the effect of postponing his future increments of pay. The respondent preferred an appeal before the Appellate Authority. The Appellate Authority passed final orders rejecting the appeal in proceedings dated 14.02.2013. The respondent preferred a revision petition. The Revisional Authority i.e Special Director General/Airport Sector Central Industrial Security Force, New Delhi modified the punishment to that of *"Reduction of pay by one stage from Rs.9110 + G.P Rs.2400/- to Rs.8770/- + CP Rs.2400/- for a period of three (03) years in the pay band of Rs.5200 - 20200 + GP Rs.2400/- with further order 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."*



W.A.No.2045 of 2021

5. The modified punishment imposed by the Revisional Authority is under challenge in the writ petition filed by the respondent. The writ court allowed the writ petition by holding that the punishment imposed on the respondent is disproportionate to the gravity of the charges framed against him. The writ court considered the explanations submitted by the respondent that he noticed that the oil was leaking from his duty rifle and only to clean the same he entered the Control Room. At the time of cleaning the rifle, he had inadvertently cocked the rifle and pressed the trigger, in which, suddenly one round was fired on air. In paragraph no.12 of the order impugned, the learned Single Judge made a finding that imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority. At this stage, it is appropriate to mention that, the Supreme Court has time and again held that, the court can interfere where the penalty imposed is arbitrary or grossly excessive or out of all proportion to the offence committed.

6. With reference to the findings made by the writ court, Mr.V.Ashokkumar, learned Government Standing Counsel appearing on behalf of the appellants would submit that the finding is running counter to



W.A.No.2045 of 2021

the legal principles settled by the Hon'ble Supreme Court of India. The learned Single Judge considered the explanations submitted by the respondent, which is beyond the scope of the powers of Judicial Review. The Revisional Authority has modified the punishment of postponement of increment is consequential to the punishment of reduction of pay. Therefore, the same cannot be construed as double punishment. Thus, the writ appeal is to be allowed.

7. Mr.R.Thiyagarajan, learned Counsel appearing on behalf of the respondent would strenuously oppose by stating that the respondent is having unblemished record of service. He found that there was an oil leakage in the rifle and to clean the same, he entered into the control room. It is a bonafide action of the respondent to clean the rifle and to stop the oil leakage. He has not made anything beyond his position as a Constable. Therefore, the punishment is excess and the writ court has interfered with the portion of the punishment. Therefore, the writ appeal is to be rejected.



W.A.No.2045 of 2021

8. In the present case, there is no dispute that the Rules of natural justice has been complied with. The procedures governing the disciplinary proceedings are also followed by the Authorities. Regarding the quantum of punishment, High court in exercise of the powers of Judicial Review is not expected to interfere except in extraordinary cases, where the punishment imposed by the Disciplinary Authority is shocking to the conscious of the Court.

9. The powers of High Court of Judicial Review under Article 226 of the Constitution of India is to ensure that the process through which a decision has been taken by the competent Authority is in consonance with the Statutes and Rules, but not a decision itself. Therefore, in disciplinary matters, High Court is not expected to sit as an Appellate Authority and re-appreciate the evidences recorded by the Disciplinary Authority and considered by the Appellate Authority or Revisional Authority. It is the power vested on the Disciplinary Authority to impose any one of the penalties as contemplated under the Rules in force. High Court by re-appreciating the facts, cannot modify the punishment in exercise of the powers of Judicial Review, unless it is shocking to the conscious of the Court.



W.A.No.2045 of 2021

10. In the presence case, the proved charges against the respondent are undoubtedly serious with regard to handling of AK-47 rifle on duty hours. Though, no intention or motive has been established against the respondent, the manner in which he behaved was considered as a misconduct and consequently, the Disciplinary Authority imposed the penalty. The said penalty was further modified to that of lesser penalty by the Revision Authority. Therefore, further reduction by the High court in exercise of the powers of the Judicial Review is impermissible and beyond the scope.

11. The punishment imposed in the present case in a disciplinary proceedings cannot be construed as excess. Therefore, we are inclined to interfere with the order impugned. Accordingly, the writ order dated 30.11.2020 passed in W.P.No.33857 of 2013 is set aside and the Writ Appeal stands **allowed**. No costs. Connected M.P. is closed.

[S.M.S.,J.] [C.K.,J.]
14.06.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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