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W.P.No.11116 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **VIVEK KUMAR SINGH**

W.P.No.11116 of 2021 and
W.M.P.No.11764 of 2021

S.Nagarathinam

...Petitioner

-Vs-

1.Union of India Rep by

The Secretary,

Ministry of Personnel, Public Grievances and Pensions,

Department of Personnel and Training,

North Block,

New Delhi 110 001.

2.The Director General,

Central Industrial Security Force,

No.13, CGO Complex, Lodhi Road,

New Delhi 110 003.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned Final Order No.V-11014/43/L&R/2014-74, dated 22.01.2020, passed by the second respondent and quash the same and to direct the second respondent to reconsider the matter in the light of the advice given by the UPSC dated 16.04.2008 and as per the Laws and the Rules on the subject matter.



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For Petitioner : Mr.S.Ramaswamyrajarajan
For Respondents : Mr.R.Rajesh Vivekananthan
Deputy Solicitor General

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 22.01.2020 and to direct the second respondent to reconsider the matter in the light of the advice given by the UPSC dated 16.04.2008, as per the Laws and the Rules on the subject matter.

2. Heard the learned counsel appearing on either side and also perused the materials available on record.

3. The petitioner had joined in Central Industrial Security Force as Constable in the year 1970. While he was working under the second respondent in the year 2006, he was served with the charge memo consisting four charges, which are as follows :-

ARTICLE OF CHARGE I: No.704501454 SI/Exe S.Nagarathinam of CSIF Unit ChPT Chennai, while detailed for duty as In-charge at Gate No.7 along with



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No.832190133 HC/GD A.K.Sarkar and No.934523226 Constable K.Sarathi of 'B' Coy from 1300 hrs to 2100 hrs on 03.06.2006, allowed one Maruti Van bearing Regd. No.TN 04 A 5418 along with driver and another occupant to enter Port area through Gate No.7 at about 1552 hrs without vehicle pass for the vehicle and entry pass for the occupants, which amounts to an act of dereliction of duty, violation of instructions and unbecoming of a member of Force on the part of No.704501454 SI/Exe S.Nagarathinam.

ARTICLE OF CHARGE II: *CISF No.704501454 SI/Exe S.Nagarathinam of CSIF Unit ChPT Chennai, while detailed for duty as In-charge at Gate No.7 along with No.832190133 HC/GD A.K.Sarkar and No.934523226 Constable K.Sarathi of 'B' Coy from 1300 hrs to 2100 hrs on 03.06.2006, allowed one Maruti Van bearing Regd. No.TN 04 A 5418 to go out of the Port area at about 1634 hrs through Gate No.7 without proper checking thereby facilitating the occupants of the Maruti Van to smuggle out 10 cartons each containing 10 bottles of foreign made liquor unauthorizedly brought from Bond Duty free shop Port Trust. This act on the part of SI/Exe S.Nagarathinam, amounts to dereliction of duty, violation of instructions, moral turpitude and an act unbecoming of a member of Force.*

ARTICLE OF CHARGE III: *CISF No.704501454*



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SI/Exe S.Nagarathinam of CSIF Unit ChPT Chennai, while detailed for duty as In-charge at Gate No.7 from 1300 hrs to 2100 hrs on 03.06.2006, totally failed to supervise the duty of his subordinates namely No.832190133 HC/GD A.K.Sarkar and No.934523226 Constable K.Sarathi who were also detailed with him at Gate No.7 in 'B' shift from 1300 hrs to 2100 hrs on 03.06.2006 which resulted in one Maruthi Van bearing Regd. No.TN 04 A 5418 along with its driver and one more occupant, to enter into the Port without vehicle pass and individual pass at about 1552 hrs on 03.06.2006 and later at about 1634 hrs the same vehicle went out of the Port area, without proper checking, carrying 10 cartons, each containing 10 bottles of foreign liquor, unauthorizedly. This act on the part of SI/Exe S.Nagarathinam amount to dereliction of duty, improper supervision and an act unbecoming of a member of Force.

ARTICLE OF CHARGE IV: CISF No.704501454

SI/Exe S.Nagarathinam of CSIF Unit ChPT Chennai, while detailed for duty as In-charge at Gate No.7 along with No.832190133 HC/GD A.K.Sarkar and No.934523226 Constable K.Sarathi of 'B' Coy from 1300 hrs to 2100 hrs on 03.06.2006, tampered the records/entries of the incoming/outgoing vehicle entry register maintained at Gate No.7, on 03.06.2006 with



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malafide intention to mislead the authorities regarding entry/ exit of vehicles, particularly the entry pertaining to a Maruthi Van bearing Regd. No.TN 04 A 5418 which went out of the Port area at about 1634 hrs with smuggled item of 10 Cartons each containing 10 bottles of foreign made liquor unauthorizedly. This act on the part of No.704501454 SI/Exe S.Nagarathinam, amounts to gross misconduct, deceit, moral turpitude and an act unbecoming of a member of Force.

4. On denial of the charges by the petitioner, enquiry proceedings were conducted against him and while the enquiry proceedings were under process, the petitioner was allowed to retire from service on attaining the age of superannuation and the enquiry proceedings were converted under Rule 9 of CCS Pension Rules and after completion of the enquiry, the enquiry report was served to the petitioner. Thereafter, the petitioner had challenged the same by way of Writ Petition in W.P. No.45408 of 2006 before this Court and on hearing the parties, this Court had allowed the Writ Petition on 23.04.2009. Aggrieved over the same, the Department had filed SLP before the Hon'ble Supreme Court which was later converted as Civil Appeal Nos.10440 and 10441 of 2011. The Hon'ble Supreme Court, on hearing



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the parties, had allowed the Civil Appeal in favour of the department.

Thereafter, the second respondent had sought advice from the UPSC and the UPSC advised to impose the penalty of 25% pension cut for two years. But the second respondent had passed an order in disagreement with the UPSC advice, stating that he proposed to impose the penalty of 25% pension cut on permanent basis as per the advice given by the DOPT. On receiving the same, the petitioner had given his representation to the second respondent. But the second respondent had passed the impugned final order dated 22.01.2020 imposing the penalty of 25% pension cut on permanent basis. Aggrieved over the same, the petitioner has filed the present petition.

5. The learned counsel for the petitioner would submit that the Union Public Service Commission was to be consulted in fixing the penalty with regard to pension, but the same has not been considered inspite of the fact that it is mandatory for the Department to continue to consult the UPSC before passing any order with regard to holding of increment or pension or decreasing the pension.



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6. The learned Deputy Solicitor General appearing for the respondents would vehemently oppose the prayer for maintenance of this petition on the ground that the charges levelled against the petitioner are very serious in nature and because of this, the Department had taken appropriate action as per the law.

7. The learned counsel for the petitioner has drawn the attention of this Court to Rule 9(3) of CCS (Pension) Rules which reads as follows:

“9(3). Final order under Rule 9 will be issued in the name of President. It has been clarified in consultation with the Ministry of Home Affairs and the Law Ministry that the function of the Disciplinary Authority is only to reach a finding on the charges and to submit a report recording its finding to the Government. It is then for the Government to consider the findings and take a final decision under Article 351-A, CSRs (Rule-9). In case Government decide to take action under Article 351-A, CSRs (Rule 9), in the light of the findings of the Disciplinary Authority, the Government will consult the



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Union Public Service Commission. If as a result of such consideration in consultation with the Commission, it is decided to pass an order, necessary orders will be issued in the name of the President.”

8.A perusal of the records reveals that proper procedure has been followed by conducting an enquiry in the case of the petitioner and as the consultation with the Union Public Service Commission is advisory in nature and not mandatory, the order has been passed by the Department. That apart, the Appellate Authority found that the charges were proved and confirmed the order of punishment.

9. In view of the above, this Court finds no infirmity or illegality in the order passed by the second respondent. Thus, the writ petition is devoid of merits and it is liable to be dismissed. Accordingly, this Writ Petition stands dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

05.08.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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To

- 1.Union of India Rep by
The Secretary,
Ministry of Personnel, Public Grievances and Pensions,
Department of Personnel and Training,
North Block,
New Delhi 110 001.
- 2.The Director General,
Central Industrial Security Force,
No.13, CGO Complex, Lodhi Road,
New Delhi 110 003.



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