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W.P.No.13936 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.13936 of 2019

and

W.M.P.No.13993 of 2019

Biraj Mohan Yogi

... Petitioner

Vs.

1. The Inspector General / APS II,
Office of the Inspector General / Airport Sector II,
Shamsahabad, Hyderabad – 501 218.

2. The Deputy Inspector General,
CASO CISF Unit, ASG Chennai,
Meenambakkam Airport, Chennai.

3. Senior Commandant,
CISF Unit, Airport Security Group,
Meenambakkam Airport, Chennai.

... 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 in the proceedings of the 1st respondent in No.V-15019/APS-II/L&R/Revision-10(BMY)/2019/251 dated 10.01.2019 and quash the same and further direct the 2nd respondent to consider the appeal of the petitioner on merits and pass such



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further or other orders.

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For Petitioner : M/s.V.Raghavachari

For Respondent : Mr.S.Mukesh

ORDER

The petitioner while working as 'Constable', attached to the O Company, Airport Security Group, Meenambakkam Airport, Chennai, the petitioner was subjected to disciplinary proceedings by issuing a charge-memo dated 07.12.2017 containing a solitary charge, which reads as under:-

“CISF No.093630034 Constable/ GD Biraj Mohan Yogi (Under Suspension) of CISF Unit ASG Chennai of 'C' Coy while deployed in night shift duty from 2000 hrs/ 18.11.2017 to 0700hrs/19.11.17 at Perishable Charge Gate No.5 of Chennai Airport failed to detect the entry of a civilian into the Airport Premises from his area of responsibility, who was detected by Mr.Ruban Mathan Singh J Supervisor (AEP No.MAA009187) of M/s.Bhadra Co., at about



2305 hrs near Gate No.5 Airside. This Act of CISF No.093630034 Constable/ GD Biraj Moha Yogi (Under Suspension) tantamount to gross negligence in discharging duty assigned to him which is unbecoming of a member of an Central Armed Police Force of the Union of India. Hence the charge.”

2. As the petitioner denied the said charge, a regular enquiry was conducted by duly appointing an Enquiry Officer and after examining various witnesses, the Disciplinary Authority having concurred with the findings recorded by the Enquiry Officer holding the charge as proved, by an order dated 03.03.2018, imposed a punishment of reduction of pay by one stage from Rs.28,400/- to Rs.27,600/- (Pay Level 3) for a period of two years with immediate effect. Further, it is ordered that during the period of reduction, he will not earn increments of pay and that on expiry of the said period, the reduction will have the effect of postponing his future increments of pay. It is aggrieved by the said punishment, the petitioner preferred an appeal before the Respondent No.2. However, the said appeal was rejected by the Respondent



No.2 by an order dated 01.10.2018, on the ground that the said appeal was preferred beyond the period of limitation and no explanation is offered for the delay of five months in preferring the said appeal. However, aggrieved by the said order passed by the Appellate Authority dated 01.10.2018, the petitioner filed a Revision Petition before the Respondent No.1 and the said Revision Petition was also rejected by the Respondent No.1 by an order dated 10.01.2019. The Revisional Authority considered the matter on merits as well as on the ground of delay and confirmed the order passed by the Disciplinary Authority, as confirmed by the Appellate Authority. It is aggrieved by the said order passed by the Respondent No.3 dated 03.03.2018, as confirmed by the Respondent Nos.1 and 2 by their orders dated 01.10.2018 and 10.01.2019, the petitioner approached this Court by filing the present Writ Petition.

3. The learned counsel for the petitioner contended that the respondents have not followed the due procedure during the course of conducting enquiry and no opportunity was afforded to the petitioner to examine the so-called Civilian, who was found moving in the area of responsibility of the petitioner and therefore, the entire enquiry conducted against the petitioner is vitiated. He



also further contended that the petitioner has not noticed any such person moving in the area of responsibility of the petitioner, but the charge was framed alleging that an unknown person was found moving in the area of responsibility of the petitioner. He also further contended that, without examining any CCTV Camera footage as to from which gate the said unknown person has entered the area of responsibility of the petitioner, the petitioner is subjected to major penalty of stoppage of increments with cumulative effect. He also further contended that during the entire service rendered by the petitioner, there are no charges levelled against the petitioner and it is the first instance that the punishment was imposed against the petitioner. It is also further contended that the punishment that was imposed is shockingly disproportionate to the charges levelled against the petitioner and therefore, the same needs to be interfered with by this Court.

4. The learned counsel for the respondents contended that the entire procedure that is required to be followed in terms of the Discipline and Appeal Rules has been followed and full opportunity has been afforded to the petitioner to cross-examine the witnesses that are examined on behalf of the



Department and it is only basing upon the event that an unknown person has entered the area of responsibility of the petitioner only from Gate No.5, which was noticed by some other supervising officer, but the same was failed to be noticed by the petitioner. He also further contended that the place where the petitioner is posted to attend security is a very important position in the Airport and any mistake on the part of the security staff will have serious repercussions and therefore, the matter was viewed seriously and appropriate punishment was imposed on the petitioner.

5. This Court carefully considered the submissions made on either side and perused the entire material on record.

6. The scope of interference in the matter of disciplinary proceedings by this Court is very limited. This Court while exercising its jurisdiction under Article 226 of the Constitution of India cannot act as an Appellate Authority. It is only in the event of any procedural illegality or violation of natural justice or in case of perversity, this Court will interfere in such matters. In the instant case, though various contentions have been raised, this Court after having



perused the orders passed by the Respondent No.3/ Disciplinary Authority, as confirmed by the Respondent No.1/ Revisional Authority, does not find any procedural illegality or violation of the principles of natural justice. The very fact that the petitioner himself admitted that he has not noticed any person moving in the area of responsibility of the petitioner only strengthens the case of the respondents. It is also not in dispute that the person, who was found moving in the area of responsibility of the petitioner was handed over to the concerned police for taking appropriate action. In the circumstances, the fact that a person has entered in the area of responsibility of the petitioner and he has been handed over to the police and that the petitioner has not noticed any such person before the said person was identified by the supervising staff itself is sufficient to bring home the charge that was levelled against the petitioner. Therefore, the question of affording an opportunity to cross-examine the unknown person who was found moving in the area of responsibility of the petitioner cannot be said to be an aspect that would cause prejudice to the petitioner.

7. Then, coming to the aspect of dis-proportionality of the the



punishment that was imposed against the petitioner in the context of unblemished service said to have been rendered by the petitioner for about eight years is concerned, in the considered view of this Court, that is not the matter to be looked into by this Court, but on the other hand, is of the considered view that this matter can be better looked into by the Respondent No.1. Though in the order dated 10.01.2019, the Respondent No.1 has expressed his satisfaction that the punishment that was awarded on the petitioner is commensurate with the charges framed against the petitioner, the Respondent No.1 has not taken note of the contention of the petitioner that the entire service of the petitioner was unblemished till the date of initiation of the impugned proceedings.

8. In the light of the above, this Court while refusing to interfere with the impugned order passed by the respondent, is of the considered view that the Respondent No.1 should have a re-look into the matter, as to whether the punishment that was imposed on the petitioner is appropriate, considering the gravity of the charge and by duly taking into consideration, the unblemished service said to have been rendered by the petitioner.



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9. Accordingly, the Writ Petition is dismissed with liberty to the petitioner to submit a fresh representation before the Respondent No.1 only on the aspect of dis-proportionality of the punishment within a period of four weeks from the date of receipt of a copy of this order and in case, if any such representation is submitted by the petitioner within the stipulated time, the Respondent No.1 shall consider the same and pass appropriate orders within a further period of eight weeks from the date of submission of representation only on the aspect of punishment and communicate the said order to the petitioner. If the petitioner so desires, opportunity of personal hearing also shall be afforded by the Respondent No.1 while taking decision on the representation submitted by the petitioner. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

24.06.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To



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MUMMINENI SUDHEER KUMAR, J.
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