



Writ Appeal No.989 & 1015 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
04.04.2024

PRONOUNCED ON
18.04.2024

CORAM

**THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal Nos.989 & 1015 of 2020
and C.M.P.Nos.12436 & 12093 of 2020**

- 1.Union of India,
Represented by its Secretary to Government,
Ministry of Home Affairs, New Delhi.
- 2.The Director General,
Central Industrial Security Force,
CISF Headquarters,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.
- 3.The Inspector General,
CISF South Sector, SS Headquarters,
CHPT-Complex, Chennai – 600 001.
- 4.The Deputy Inspector General,
CISF South Zone,
D-Block, Rajaji Bhavan,
Besant Nagar, Chennai – 600 090.
- 5.The Group Commandant,
CISF Group Headquarters,



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D-Block, Rajaji Bhavan,
Besant Nagar, Chennai – 600 090.

... Appellants in both W.As.

Vs

N.C.Bhaumik

... Respondent in W.A.No.989 of 2020

R.Jothi Basu

... Respondent in W.A.No.1015 of 2020

PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 19.02.2020 made in W.P.No.12501 of 2012 & W.P.No.12502 of 2012 and pass such further order.

In both W.As.

For Appellants : Mr.A.R.L.Sundaresan
Additional Solicitor General
for Mr.J.Madanagopal Rao

For Respondent : Mr.R.Thiyagarajan

COMMON JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

These Intra-Court appeals had been preferred as against the order of the learned Single Judge, wherein, the learned Single Judge by a common order dated 19.02.2020 had modified the punishment that had been imposed against the respondents herein.



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2. Heard Mr.A.R.L.Sundaresan, learned Additional Solicitor General for Mr.J.Madanagopal Rao, learned counsel appearing on behalf of the appellants and Mr.R.Thiyagarajan, learned counsel for the respondent in both the appeals.

3. The learned Additional Solicitor General appearing for the appellants would submit that the respondents herein had been found in possession of a sum of Rs.230/-which was recovered from the cabin under their control wrapped in a handkerchief. He would submit that the said amount was in excess of the amount that was permitted to be with their persons during the course of their duty. Therefore, the disciplinary proceedings were initiated against them and having not been satisfied with their explanation, an enquiry officer was also appointed, who after detailed enquiry, by examining the necessary witnesses had given a report that the delinquency with which the respondents have been charged to have been proved. Thereafter, the Disciplinary Authority had inflicted a punishment of reduction of pay by three increments in Pay Band-I for a period of three years and that they will not be entitled to earn any increments. He would



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further submit that the learned Single Judge had held that the charges could not be said to have been proved as it was only the respondents who had been proceeded with, whereas, it has been admitted by the witnesses that there are other persons who are also in charge of Gate-A and that they have not been proceeded with, which had violated the Article 14 of the Constitution of India and also in violation of principles of natural justice. But, however, the learned Single Judge taking into account that there has been negligence on the part of the respondents, instead of remitting the matter for fresh enquiry, had gone ahead in modifying the punishment into reduction of time scale of pay by one stage for a period of one year without cumulative effect. He would submit that the learned Single Judge exercising the power of judicial review ought not to have reappreciated the evidence. He would submit that it has been the specific case of the Department, which has also been supported by the witnesses that it was only the respondent in the respective appeals who were incharge of the cabin from which the money had been recovered. The respondents have not disproved the said fact and therefore, it was only the respondents who would be liable to answer or to explain as to how the money was in the cabin. This aspect had



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been completely over-looked by the learned Single Judge. Therefore, he would submit that the order impugned in these Intra-Court Appeals should be interfered with.

4. Countering his arguments, Mr.R.Thigarajan, learned counsel appearing on behalf of the respondent in the respective appeals would submit that the respondents were not the only persons who were incharge of the security at the Gate-A on that day, in the said shift. There were other persons who have also been frequenting in the cabin and therefore, the respondents alone should not be held liable. He would also take us to the deposition of the witnesses as recorded by the enquiry officer to contend that the some of the colleagues have admitted to have been in duty along with the respondents and therefore, singling out the respondents and framing the charge is wholly violative of Article 14 of the Constitution of India. He would further submit that the learned Single Judge had rightly concluded that the delinquency could not have been said to be proved as against the respondents and had given a finding that the respondents being incharge of the cabin had been in negligence for which they could be



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departmentally proceeded. But, however, considering the fact that no purpose would be served in ordering a fresh enquiry, had modified the punishment which according to him need not be interfered with by this Court.

5. We have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record before this Court.

6. The learned Single Judge on analysing the facts had come to a conclusion that even applying the principle of preponderance of probability, the respondents could not be held liable as the money could have been placed by somebody else who were in duty along with the respondents. The presumption as arrived at by the enquiry officer and accepted by the Disciplinary Authority is therefore, wholly baseless, as there is no legal evidence to conclude such a presumption. However, the learned Single Judge had given a finding that there is some negligence on the part of the respondents. But however, without remitting the matter, had modified the



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punishment against which the respondents have not preferred any Intra-Court Appeal.

7. The Court while exercising its jurisdiction under Article 226 of the Constitution of India in judicially reviewing an order passed by an Authority can interfere with an order only when it is found to be perverse, arbitrary, when a colourable exercise of power has been exercised or when the order is smacked by malice in the fact and law.

8. In the present case, the learned Single Judge had not given any finding with regard to the order impugned before him to have been hit by the aforesaid principles. However, the learned Single Judge had gone upon to give a finding of fact that the delinquency with which the respondents have been charged to have not been proved for the reasons that there were also other personnel who are incharge of the Gate-A. Even though the respondents had made a claim that the other persons who were in duty along with them had been frequenting in the cabin for certain purposes, neither they had produced any evidence to support their claim or they have not



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cross-examined the witnesses in that regard.

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9. It is the specific case of the Department that the respondents had been only incharge of the cabin which had also not been disputed by the respondents. When that being so, we are of the view that the learned Single Judge was wrong in coming to a conclusion that the charges have been framed by violating Article 14 of the Constitution of India. It is to be noted that Article 14 could be invoked to claim equality of protection of law. In such an event, we are of the considered view that the order of the learned Single Judge is liable to be interfered with.

10. In view of the above, these Writ Appeals are allowed and the orders passed by the learned Single Judge in W.P.Nos.12501 & 12502 of 2012 is set aside. However, there shall be no order as to costs. consequently, connected miscellaneous petitions are also closed.

(D.K.K.,J.)

(K.B., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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and
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A Pre-delivery order made in
Writ Petition Nos.989 & 1015 of 2020
and C.M.P.Nos.12436 & 12093 of 2020

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