



Writ Petition No. 22111 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2023

PRONOUNCED ON: 23 .04.2024

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THE HONOURABLE DR.JUSTICE D.NAGARJUN

Writ Petition No.22111 of 2014

& MP.No.2 of 2014

G.C.D.Chiranjeevi

..Petitioner

Vs.

1.The Union of India,
Ministry of Railways,
rep. by the Director General, RPF,
Rail Bhavan, New Delhi.

2.The Chief Security Commissioner,
Office of the Railway Protection Force,
Moor Market Complex,
Southern Railway, Chennai-3

3.The Assistant Security Commissioner,
Office of the Sr.Divisional Security Commissioner
Moor Market Complex,
Southern Railway, Chennai-3

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the proceedings dated 16.09.2011 having reference no.M/XP/227/16/2011 issued by the third respondent, quash the same and consequently direct the



respondents to consider the petitioner's representation dated 11.04.2011 detailing out his reasons along with Medical Certificates for the absence in duty during the period from 07.12.2010 to 10.04.2011.

For Petitioner : Ms.D.Geetha

For Respondents : Mr.M.T.Arunan, ACGSC for RR1 to 3

ORDER

This Writ Petition is filed, praying for the issuance of a Writ of *Certiorarified Mandamus*, to call for the records of the proceedings dated 16.09.2011 having reference no.M/XP/227/16/2011 issued by the third respondent, quash the same and consequently direct the respondents to consider the petitioner's representation dated 11.04.2011 detailing out his reasons along with Medical Certificates for the absence in duty during the period from 07.12.2010 to 10.04.2011.

2.The brief facts of the case as narrated in the affidavit filed in support of the Writ Petition, are stated below:

The petitioner has been working as Constable in Railway Protection Force (RPF) from 01.12.1998. While he was working at GOP, RPF post, departmental proceedings were initiated for the charge that he had absented



from duty unauthorizedly from 07.12.2010 to 10.04.2011 (125) days on his own accord without any intimation to his superior Officers. After the enquiry, the Enquiry Officer sent his report, holding that the charges were proved. Based on the said report, the disciplinary authority, the 3rd respondent herein, vide proceedings dated 16.09.2011 imposed a punishment of withholding annual increment for a period of three years.

3. According to the petitioner, during the course of escort duty, he fell unconscious at his residence due to high fever and back pain and as there was no one to look after him either at GPD post or at his residence, he was forced to go to his native place and took treatment at Gandhi hospital, Secunderabad from 07.02.2010. It is submitted further that ignoring the same, the 3rd respondent proceeded with the disciplinary proceedings and imposed the punishment and challenging the same, the petitioner has come forward with the present Writ Petition.

4. A detailed counter affidavit has been filed on behalf of the respondents stating that after providing sufficient opportunity to the petitioner, enquiry was conducted and based on the enquiry report as well as



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the representation made by the petitioner dated 29.08.2011, the disciplinary authority, the 3rd respondent herein, vide its order dated 16.09.2011 had imposed a punishment of withholding of annual increment for a period of three years. It is stated that on earlier occasions, the petitioner was already awarded a punishment of withholding of annual increment for a period of three years and the present impugned punishment was imposed during subsisting of the earlier punishment and hence, it cannot be considered as arbitrary and illegal as contended by the petitioner.

5. It is further stated in the counter affidavit that the 3rd respondent is competent authority to institute disciplinary proceedings against the petitioner and as such, he has rightly imposed the impugned punishment by adhering to the provisions of the RPF Rules, 1987 since it has been proved that the petitioner had absented unauthorizedly from duty for a period of 125 days, vide order dated 16.09.2011, which requires no interference. It is also mentioned that in a disciplined force like Railway Protection Force, absenting unauthorizedly from duty by a member of a Force for a long period is a serious offence and hence, the petitioner has been rightly imposed the punishment. With these averments, the respondents sought for dismissal



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of the Writ Petition.

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6. Heard the learned counsel for the petitioner and the learned Additional Central Government Standing counsel for respondents and perused the entire materials available on record.

7. The petitioner is challenging the impugned orders passed by the respondent of withholding increment for a period of three years as punishment for misconduct proved against him as per charge sheet/Memorandum dated 15.06.2011 on the ground that the respondent has imposed minor punishment by following procedure laid down in major punishment without following due process under Rule 152 RPF Rules which prescribes the procedure for initiating disciplinary proceedings and not passing of final orders thereby violates Article 14 of the Constitution of India.

8. It is further submitted that enquiry officer was appointed without affording reasonable opportunity to the petitioner. The third respondent has not followed the rules while imposing punishment on the petitioner.



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9. It is true that charges have been framed by following procedure laid down for imposing of major punishment. However, the disciplinary authority in its discretion after finding the petitioner guilty has imposed minor punishment. However, it will not in any way violates the Article 14 of the Constitution of India.

10. It is submitted by the learned counsel for the petitioner that while disciplinary proceedings were enquiry officer was also appointed without affording reasonable opportunity. There is no bar for initiating disciplinary proceedings and simultaneously appointing enquiry officer. In fact in most of the times, enquiry officer will be appointed, simultaneously while issuing proceedings of initiation of disciplinary proceedings. Therefore, the petitioner failed to convince this Court what prejudice is caused for appointing the enquiry officer simultaneously while issuing proceedings for initiation of disciplinary proceedings.

11. There is no dispute that the petitioner was absent for a period of 120 days with effect from 07.12.2010 and 10.04.2011 without obtaining



prior permission from superior officers, thereby violated rule 147(VI) of RPF Rules 1987. The petitioner has also admitted that he was absent for 125 days without taking prior permission. However the petitioner has explained that when he was in Train escort duty, he felt unconscious at his residence due to high fever and back pain and there was no one to look after him either at GPD Post or his residence, thereby, he was forced to go to his native place and took treatment at Gandhi hospital, Secundrabad from 07.12.2010.

12. In case, if the petitioner suffers sickness, certainly he is entitle to avail applicable leave, however, the petitioner has to demonstrate that he suffered severe sickness and he cannot attend the office and that there was no opportunity for him to take leave permission from the appropriate authorities. The enquiry officer during the course of enquiry has recorded the statements of departmental witnesses and permitted to file documents. However, on behalf of the petitioner, no witness was examined except recording the statements, of the petitioner to the effect that he has suffered with high fever and back pain and has taken treatment at Gandhi hospital, Secundrabad. The petitioner has filed documents to show that he has taken



treatment on 25.02.2011. A report from Railway Protection Force, dated 15.07.2011 is filed to the effect that the petitioner was admitted as inpatient RH/PER in surgical ward male and under going physiotherapy 20.04.2011. These documents, would go to show that the petitioner was sick and he has undertaken treatment in the hospital. However, on considering the material available, the enquiry officer, concluded that misconduct of absenting himself for 125 days in violation of Rule 147 (vi) of RPF Rules, 1987 was proved.

13. On going through the records including the report of enquiry officer, this Court finds no abnormality, illegality or violation of procedure while conducting the disciplinary proceedings. One of the grounds raised by the petitioner in this Writ Petition is that the third respondent without following the rules imposed the punishment of the petitioner by withholding future increments falling after three years from the date of such order. The final orders passed by Assistant Security Commissioner go to show that he has gone through the documents and records carefully and observed that even if the petitioner found to be sick, he would have approached the Senior Divisional Medical Officer/Health Unit/ Tiruvottiyur after reporting sick and



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get transfer to his sick list to Railway Hospital, Secundrebad or nearest Health Unit of his native, but he failed to do so. Thereby, the enquiry officer imposed punishment of withholding annual increments for a period of three years with warning.

14. On going the orders passed by the third respondent of imposing the punishment, this Court does not find any abnormality as contended by the petitioner that the third respondent has imposed punishment of withholding the future increments falling after three years from the date of such orders. As per the final orders passed, the annual increments were withheld for a period of three years. That means, the increment of petitioner will be withheld for a period of three years and subsequently, it will be released. It is not clear from the order whether those withholding of increments for three years is with cumulative effect or without cumulative effect.

15. In any case, this Court after going through entire material on record is of the firm view that there is no irregularity or illegality in the orders passed by the disciplinary authority in the impugned order basing on



report of the enquiry officer. In order interfere with the orders of the disciplinary authority of imposing punishment, normally the Court will not inclined to interfere under Article 226 of Constitution of India unless apparently on the face of it, the enquiry report and the consequent orders are perverse or finding was recorded basing either on without evidence or totally against the recorded evidence. In case, if the enquiry officer has taken view basing on the evidence available before him and if other interpretation is possible, the petitioner cannot say that the opinion of the enquiry officer of finding the petitioner guilty is erroneous. The scope of the Writ Court in interfering with the disciplinary proceedings is very limited.

16. Further, the disciplinary authority in the impugned order while observing that the petitioner has committed misconduct has stated that he is taking lenient view and thereby imposed withholding of increments for a period of three years. When the disciplinary authority has observed that the petitioner deserves sympathetic consideration and lenient view has to be taken, this Court is of the view that withholding of annual increment for a period of three years with cumulative effect is bit harsh. Though the petitioner was in the disciplined force who is expected to be highly



disciplined, in respect of his duties and responsibilities, he should have taken prior permission before absenting. It is not the case of the department that the petitioner has misguided the department by falsely saying that he was sick during the said period.

17. The petitioner was admittedly taken treatment at Gandhi hospital, Secundrabad. Once, the reason for absence of the petitioner is sickness. This Court is the opinion that punishment imposed of withholding of annual increment for a period three years appears to be too harsh.

18. Normally, this Court will not venture into altering the punishment imposed by the disciplinary authority. However this Court is of the opinion that the punishment imposed, is disproportionate to the proved misconduct. In normal course, this Court is expected to refer the matter back to disciplinary authority for consideration of imposing of lesser punishment. However as seen from the records, the alleged misconduct was from 07.11.2010 to 10.04.2011 which is about 13 years ago. The petitioner and the department have spent lot of time in taking up and concluding the disciplinary proceedings. In case, if this matter is remanded to the



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disciplinary authority, again it will take lot of valuable time of both the department and of the petitioner whose service is certainly required elsewhere for better purposes. Therefore, this Court is of the opinion that instead of remanding the matter back to disciplinary authority, imposing of lesser punishment than what was imposed by the disciplinary authority will meet the ends of justice.

19. In the result, this Writ Petition is disposed of by confirming the finding in respect of misconduct of the petitioner in absenting himself unauthorizedly for a period of 136 days. However, the punishment of withholding the annual increment for a period of three years is modified as withholding the annual increment for a period of one years from the date of passing of orders by the disciplinary authority. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Speaking order: Yes/No
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Dr.D. NAGARJUN, J

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