



W.P.No.7465 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM

THE HON'BLE MRS. JUSTICE N. MALA

W.P.No.7465 of 2016

D.P.Kumar,HC/GD
No.821180051
CISF Unit, FACT UDL,
Cochin, Kerala State.

... Petitioner

Vs.

1. The Union of India,
Rep.by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi – 110 003.
3. The Inspector General,
Central Industrial Security Force,
Southern Sector Headquarters,
Near War Memorial, Chennai – 600 009.
4. The Deputy Inspector General,
Central Industrial Security Force,



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South Zone, Head Quarters,
D-Wing, Rajaji Bhawan,
Besant Nagar, Chennai – 600 090.
5. The Deputy Commandant,
Central Industrial Security Force Unit,
Ministry of Home Affairs,
New Mangalore Post Trust,
Panambur, Mangalore-10

...Respondents

PRAYER: The Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the fourth respondent in Order No.V-14013/2825/SZ/L&R/2015-6950 dated 15.10.2015 and quash the same and direct the respondents to pay increments for the year 1989 and 1990 with all benefits.

For petitioner : Mr.A.S.Mujibur Rahman
For respondents : Mr.N.Ramesh, Sr.Panel Counsel

ORDER

The Writ Petition is filed challenging the order dated 15.10.2015 passed by the fourth respondent in Order No.V-14013/2825/SZ/L&R/2015-6950 to quash the same and direct the respondents to pay increments for the year 1989 and 1990 with all benefits.

2. Heard the learned counsel for the petitioner and the learned Senior



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Counsel appearing for the respondents.

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3. The case of the petitioner is as follows:

(i) The petitioner joined in the Central Industrial Security Force (CISF) as Constable on 14.12.1982, completed his probation on 13.12.1984, and later was promoted as Head Constable on 26.04.2002. The petitioner submitted a representation to the fourth respondent for stepping up his pay on par with his juniors. The sixth respondent vide letter dated 19.06.2004, informed the petitioner that he was not promoted to the rank of Lance Nayak in the year 1996 and hence, he was not found fit for financial up-gradation during the year 2000. Thereafter, the petitioner gave a representation to the fifth respondent on 14.02.2005, praying to recall the order declaring him unfit for crossing of EB and to release the attendant benefits.

(ii) According to the petitioner, there was no justification to declare him unfit for crossing EB during 1989 and 1990 as there was no major penalty imposed during that period. The petitioner therefore filed a Writ Petition in W.P.No.18956 of 2015 before this Court seeking direction to the respondents to pass orders on his representation dated 14.02.2005. This



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Court vide order dated 01.07.2015, directed the fourth respondent to pass orders on the petitioner's representation in accordance with law within a period of twelve weeks. The fourth respondent, in pursuance of the said order of this Court, passed the impugned order dated 15.10.2015, rejecting the petitioner's representation. Hence, the petitioner has filed the present writ petition for the abovesaid relief.

4. The respondents filed a detailed counter reiterating the facts stated in the impugned order. The respondents stated that the petitioner was appointed as temporary security guard in the CISF with effect from 14.12.1982. The petitioner was confirmed in the rank of constable/GD on 01.04.1988. The petitioner was due for crossing EB only in the year 1989 and not in the year 1988 as contended by the petitioner. The petitioner was graded as “satisfactory/average” from the year 1984 to 1987 and graded “Good” for the year 1988 and he was having one minor punishment during the relevant period. Hence, the Departmental Promotion Committee (DPC) found the petitioner unfit to cross EB w.e.f 01.12.1989. Subsequently his



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case was considered during the year 1990 w.e.f 01.12.1990 by the (DPC).

The DPC found that the performance of the petitioner was graded as Satisfactory/Average from the year 1985 to 1987 and “Good” for the year 1988 & 1989. However, as the petitioner was having three minor penalties during the year 1989 & 1990, the DPC found the petitioner unfit for crossing EB w.e.f 01.12.1990. Thereafter, the case of the petitioner for crossing EB was considered once again w.e.f. 01.12.1991 by the DPC taking into account the period from 1986 to 1990. Though he was found fit to cross EB by the DPC, as the petitioner was awarded the penalty of “Withholding of one increment for one year without cumulative”, the increment due w.e.f 01.12.1991 was withheld. After completion of currency of penalty, the petitioner was allowed increments for the year 1991 and 1992 w.e.f 01.12.1992. The petitioner's contention that he was kept in darkness about his unfitness for crossing EB was denied. The respondents stated that the petitioner had verified his service document, signed the same and certified that he checked all the entries therefore the petitioner was very well aware of the punishments imposed on him from the year 1989 to 1991, but for



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reasons best known to him the petitioner did not object to the same at the relevant time. The respondents stated that as the DPC rightly considered the case of the petitioner, there was no merit in the writ petition and the same deserved to be dismissed.

5. Learned counsel for the petitioner submitted that the petitioner was eligible for crossing EB the year 1988 itself, but, the respondents considered the same only in the year 1989. He further submitted that there was no major punishment imposed on the petitioner during the relevant period and therefore the impugned order declaring that the petitioner was unfit to cross EB in the year 1989 - 1990 was illegal and inviolation of principles of natural justice.

6. The learned counsel for the respondent submitted that the petitioner was initially appointed on temporary basis on 14.12.1982, and he was subsequently confirmed in the rank of constable on 01.04.1988, vide proceedings dated 02.04.1992, and hence, the petitioner was due for



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crossing EB only on 01.12.1989, as per service record. He further submitted that the petitioner was found unfit to cross EB during the year 1989 and so the annual increment was not granted to the petitioner at the EB stage for the year 1989-1990. The non-payment of annual increment at the EB stage for the relevant period was justified and hence , prayed for dismissal of the writ petition.

7. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

8. It is undisputed that the petitioner joined as temporary security guard in CISF on 14.12.1982 and that the petitioner was confirmed as constable /GD on 01.04.1988. Whiles, the petitioner was denied annual increments at EB stage during the year 1989 and 1990, as he was found unfit to cross EB. The petitioner therefore submitted a representation to the fourth respondent to set-aside the order declaring him unfit for crossing EB during 1989 and 1990. The petitioner filed W.P.No.18956 of 2015 for a direction to the respondents to dispose the petitioner's aforesaid



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representation. This Hon'ble Court by order dated 01.07.2015 directed the fourth respondent to dispose the petitioner's representation within 12 weeks. Thereafter, the fourth respondent passed the impugned order dated 15.10.2015, rejecting the petitioner's representation. Hence the above writ petition for the aforesaid relief.

9. The counsel for the petitioner raised threefold objections to the impugned order. Firstly, that the petitioner was eligible for crossing EB in the year 1988 itself, secondly that there was no major punishment awarded to the petitioner during the relevant period and therefore the order declaring the petitioner unfit for crossing EB for two consecutive years was illegal and arbitrary and thirdly, there was violation of principles of natural justice inasmuch as the order declaring him unfit for crossing EB was not provided to him.

10. With respect to the first objection that the petitioner was eligible for crossing EB even in the year 1988, is concerned, it is seen that the said objection was considered by the respondents and the same was rejected on



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the ground that the petitioner was confirmed in the rank of constable with pay of Rs.900/- with effect from 01.12.1988 in the scale of pay of Rs.210-4-250-EB-5-270 and so he was due for crossing EB only in the year 1989. As the pay of Rs.900/- was extended to the petitioner only from 01.12.1988, the petitioner was rightly considered for crossing EB only from 01.12.1989 and therefore the respondents are justified in rejecting his claim in this regard.

11. The second objection of the petitioner is that that there was no major punishment awarded to him during the relevant period and so the order declaring him unfit for crossing EB for two consecutive years was illegal and arbitrary. It is seen that the grant of increment at EB stage is based on a review of ACR's of past 5 years. The DPC on consideration of the petitioner's ACR's from 1984-1988 found that the petitioner's performance for 1984 to 1987 was graded as satisfactory/average and for 1988 alone was graded as good. Hence the DPC concluded that the petitioner was unfit for crossing EB in 1989. So also for 1990, the ACR's from 1985 to 1989 were considered and it was found that the petitioner's



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performance from 1985 to 1987 was graded as satisfactory/average and Good for 1988 and 1989. The DCP though found that the petitioner's performance had improved, however, because he was imposed with three minor penalties during 1989/1990, the DPC found him unfit for crossing EB. Admittedly, crossing EB is based on performance for past 5 years and as the petitioner's performance was found to be satisfactory/average for 4 years, in 1989 and 3 years in 1990, the DPC found him unfit. I find no perversity in the DPC's finding of “unfitness to cross EB” for 1989 and 1990, as it is based on the petitioner's lackadaisical performance for major part of the relevant period. As the decision is based on a consideration of all the materials, I find that the second objection of the petitioner cannot also be sustained.

12. The third objection is that there was violation of natural justice because the petitioner was not provided with a copy of the order declaring him unfit to cross EB and also that he was not intimated details of such order. Even in the impugned order, it is categorically stated that the DPC's



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proceedings, finding the petitioner unfit for crossing the EB was published vide service order No.775/1989 dated 07.12.1989 by the group commandant CISF, group Head Quarters, Bombay for 1989. So also for the period 1990 it was published vide service order No.486 of 1991 dated 05.08.1991 by the group commandant CISF, Head quarters, Bombay. It is clear from the impugned order itself that the petitioner was well aware of the denial of increments during 1989 and 1990, but he did not choose to question the same. The petitioner has not denied the averments of the respondents in the counter affidavit that he was informed and aware of the denial of increments. In the light of the categorical stand taken by the respondents in the impugned order as well as the counter affidavit and in view of the general and stereotypical ground raised in the writ petition on the denial of the natural justice, I am not inclined to accept the same. In this regard, useful reference can be made to the judgment of the Hon'ble – Court in Haryana Ware Housing Company Vs. Ram Avatar reported in 1996(2) SCC 198, The relevant para reads as follows:

“... The main contention which has been urged on



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behalf of the respondent was that the principles of natural justice were attracted and that no opportunity has been given before passing the orders whereby the respondent was communicated the decision of the appellant not to allow him to cross the efficiency bar.”

“....The validity of the aforesaid instructions had not been challenged and, in any case, it appears to us that the stoppage of an employee at the efficiency bar is not by way of punishment and does not cause any stigma on an employee. When an efficiency bar is inserted in a time scale it only means that at that stage annual increment is not as of right but the bar will be removed, and an employee allowed further increments, if the authority concerned comes to the conclusion that such an employee is not inefficient. An opinion to this effect has necessarily to be subjective one though it must be based on relevant



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facts. It is further seen that in the aforesaid instructions, it has been stated that an order stopping an employee at an efficiency bar should be by speaking order and sufficient details should be given so that an employee can, if he so desires, make a representation against the same. Besides providing for a post facto hearing, a concept which is not unknown to the principles of natural justice, the speaking order which is passed can also be subjected to judicial review, as has been done in the present case. The passing of speaking order, however, does not mean that before the authority concerned comes to the conclusion of stopping of a person at the efficiency bar stage, an opportunity of hearing must be given to him. Consideration of all materials before taking the decision is sufficient compliance of the requirement.

13. In the light of the above discussions, I find no merit in the writ



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petition and hence the same is dismissed.

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Index : Yes/No
Neutral Citation : Yes /No
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N.MALA , J

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