



W.P.No.23893 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|               |                   |
|---------------|-------------------|
| Reserved on   | <b>05.02.2024</b> |
| Pronounced on | <b>14.03.2024</b> |

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

W.P.No.23893 of 2021

Nagaraja N

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Petitioner

Vs.

1. The Inspector General,  
Central Industrial Security Force,  
South Sector, Head Quarters,  
New War Memorial, Chennai 600 009.

2. The Deputy Inspector General,  
Central Industrial Security Force,  
South Zone, Head Quarters,  
Rajaji Bhavan, Besant Nagar,  
Chennai- 600 090.

3. The Commandant,  
Central Industrial Security Force unit,  
4th Reserve Battalion,  
Amaravathipudur-Post,  
Sivagangai District,  
Tamil Nadu- 638 152.

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Respondents



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**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 1st respondent dated 27.01.2020 in his order No. V-15016/CISF/SS/L&R/NG/Rev/2020/1211 confirming the order of the 2nd respondent dated 20.09.2019 in his order No.V-11014(1)/Appeal-13/NN-4<sup>TH</sup>RB(S)/SZ/L&R/2019-7679 confirming the order of 3rd respondent dated 13.07.2019 in his order No.V-15014/CISF/4<sup>TH</sup>RB(S)/MAJ-36/DISC/N.N./2019/3038, quash the same and direct the 1 to 3 respondents to take the Petitioner into the strength of the CISF with all consequential service cum monetary benefits.

For Petitioner : Mr.R.Thiyagarajan

For Respondents : M/S.ME.Sarashuvathy,  
Standing Panel Counsel

### **ORDER**

Heard, Mr.R.Thiyagarajan, learned Counsel for the petitioner and M/S.ME.Sarashuvathy, learned Standing Panel Counsel for the respondents and perused the materials available on records.

2. A Writ of Certiorarified Mandamus has been filed by the petitioner to call for the records relating to the impugned order passed by the 1st respondent dated 27.01.2020 in his order No. V-



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15016/CISF/SS/L&R/NG/Rev/2020/1211 confirming the order of the 2nd respondent dated 20.09.2019 in his order No.V-11014(1)/Appeal-13/NN-4<sup>TH</sup>RB(S)/SZ/L&R/2019-7679 confirming the order of 3rd respondent dated 13.07.2019 in his order No. V- 15014/CISF/4<sup>TH</sup>RB(S)/MAJ-36/DISC/N.N./2019/3038, quash the same and direct the 1 to 3 respondents to take the Petitioner into service in the strength of the CISF with all consequential and monetary benefits.

3. The petitioner who was working as a constable in the Central Industrial Security Force (CISF) was slapped with certain charges for having been overstayed for 36 days without permission from the 3rd respondent and not mending his conduct of committing misconduct of frequent overstaying, despite being awarded with previous one major and 16 minor punishments.

4. As per the submission of Mr.R.Thiyagarajan, learned counsel for the petitioner, the petitioner was suffering from Fistula and hence, he rushed to urgent treatment as per the medical advice; he had taken leave from 14.02.2019 to 28.02.2019; when he went for medical review he was advised to continue his leave for another two weeks on account of his



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health condition. Only on 21.03.2019 he was given with medical fitness certificate and thereafter the petitioner joined duty on 23.03.2019. It is further submitted that a major penalty of removal from service was imposed for having overstayed leave due to medical conditions and it is im-proportionate. The next ground on which the petitioner attacks the impugned order is that he was not given the documents that he wanted to rely upon during the enquiry and he was not given a fair opportunity to cross-examine the witnesses.

5. At the conclusion of the enquiry, both the charges raised against the petitioner were proved and the very same submissions appeared to have been made by the petitioner before the enquiry officer in this regard as well. When the casual leave was sanctioned to the petitioner only between the period from 14.02.2019 to 28.02.2019, the petitioner ought to have reported to his superior about his inability to join duty after the expiry of the leave sanctioned to him. For the reasons best known to the petitioner, he did not opt to report his inconvenience while he overstayed after the expiry of the leave already sanctioned.

6. It is not disputed by the petitioner that he overstayed; no



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intimation was given to his superiors immediately after the sanctioned leave expired. No satisfactory explanation has been given to him as to why he opted not to report to the authorities immediately after the sanctioned leave period got expired. The petitioner was given the same charges on eight occasions, and he was even punished for the very same misconduct of overstaying leave.

7. Out of the total 16 minor punishments and one major punishment imposed upon the petitioner during his past service, eight of them were only for the purpose of overstaying. With the petitioner's earlier conduct of not reporting duty immediately after the expiry of the leave period was not taken lightly by the employer, the petitioner ought to have been vigilant in either joining duty after the leave period or at least have given intimation to his employer about the alleged health inconvenience. Even if the petitioner's health condition warranted leave; that cannot be the reason for not informing the third respondent. When the leave rules mandate how an employee should conduct himself in the matters of leave, he has to follow the rules without any compromise.

8. For the charges of overstaying, it is sufficient to establish that the



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petitioner was staying absent during the relevant period without permission. The petitioner, who is aware of his own doings, cannot blame the respondents for not being given sufficient documents. The next charge is only in respect of his earlier punishments. The petitioner was aware that the said charge levelled against him is of something that is well within his knowledge and that does not require any elaborate oral evidence.

9. It is not the submission of the petitioner that he had not been imposed with any punishment at any earlier point of time. However, in the instant case, a fair enquiry was conducted, and the petitioner was allowed to participate by offering his explanation and raising his objections. The petitioner, who is in the habit of overstaying his service each time, cannot be best utilized by the CISF unit. The conduct of the petitioner was tolerated on earlier occasions, and he was given minor punishments, but the petitioner was not in a mood to listen to such warning signals, and he continued to repeat such misconducts.

10. Even the petitioner's overstay might be for medical reasons that



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cannot be allowed to be presumed by his employer. The only grievance that can be now raised by the petitioner is that the punishment of removal from service is arbitrary and disproportionate to the charges levelled against him. The Appellate Authority and the Revisional Authority have also taken a similar stand that they did not opt to revise the punishment of removal from service, and it is clearly because such conduct of a repeated overstay of duty should be discouraged, and taking a lenient view in the case of the petitioner should not influence other employers to commit the same misconduct.

11. With these observations, this Writ Petition is **disposed** and the impugned order passed by the 1st respondent dated 27.01.2020 in his order No. V-15016/CISF/SS/L&R/NG/Rev/2020/1211, confirming the order of the 2nd respondent dated 20.09.2019 in his order No.V-11014(1)/Appeal-13/NN-4THRB(S)/SZ/L&R/2019-7679, confirming the order of 3rd respondent dated 13.07.2019 in his order No.V-15014/CISF/4THRB(S)/MAJ-36/DISC/N.N./2019/3038 are set-aside, for the purpose of considering the punishment aspect on mercy grounds, without changing the present status of the removal. Even though the



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petitioner has no merits, the first respondent shall reconsider the punishment of removal on mercy grounds and pass orders within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

**14.03.2024**

Index : Yes/No  
Internet : Yes/No  
Speaking/Non-speaking  
Neutral Citation : Yes/No

jrs



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WEB COPY

To

1. The Inspector General,  
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South Sector, Head Quarters,  
New War Memorial, Chennai 600 009.
  
2. The Deputy Inspector General,  
Central Industrial Security Force,  
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**R.N.MANJULA, J.**

jrs

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