

M.A.Rahman Vs. Dept. Commandant

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Court : Kerala

Decided On : Sep-17-2014

Judge : Honourable the Ag.Chief Justice Mr.Ashok Bhushan

Appellant : M.A.Rahman

Respondent : Dept. Commandant

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE WEDNESDAY, THE 17TH DAY OF SEPTEMBER 2014 26TH BHADRA, 1936 WA.No. 1243 of 2014 () IN WP(C).24225/2011 ----- AGAINST THE

JUDGMENT

IN WP(C) 24225/2011 DATED 02-07-2014 APPELLANT/PETITIONER: ----- M.A.RAHMAN (EX-CONSTABLE) CISF, AGED 63 YEARS, S/O.V.V. ABOOBAKER, VEETUVALIPPIL HOUSE, P.O. OTTAPALAM, PALAKKAD DISTRICT. BY ADV. SRI.T.O.XAVIER RESPONDENTS/RESPONDENTS : ----- 1. OFFICER IN-CHARGE, OFFICE OF THE DEPUTY COMMANDANT C.I.S.F. UNIT, COCHIN SHIPYARD LTD., P.O. PERUMANNUR, COCHIN-682 015.

2. DIRECTOR GENERAL, C.I.S.F FORCE HEAD QUARTERS, BLOCK NO.13, C.G.O'S COMPLEX, LODHI ROAD, NEW DELHI - 110 003.

3. INSPECTOR GENERAL SOUTH SECTOR, C.I.S.F (S.S) HEAD QUARTERS, CHENNAI PORT TRUST CAMPUS, NEAR WAR MEMORIAL, CHENNAI - 600 001.

4. UNION OF INDIA, MINISTRY OF HOME AFFAIRS, NEW DELHI, REPRESENTED BY ITS SECRETARY. R1 TO R4 BY SRI.T.SANJAY, CGC THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17-09-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ASHOK BHUSHAN, Ag.C.J.

& A.M. SHAFFIQUE, J.

----- W.A. No. 1243 OF 2014-----
----- Dated this the 17th day of September, 2014

JUDGMENT

Ashok Bhushan, Ag.C.J.

Heard learned counsel for the appellant as well as learned counsel appearing for the respondents.

2. This appeal has been filed against the judgment dated 02.07.2014 in W.P.(C) No.24225 of 2011 by which the challenge, to the order dismissing the petitioner from service, has been repelled. The appellant/petitioner, who was working as Head Constable under the 1st respondent, was proceeded with disciplinary enquiry. He was charge sheeted vide charge memorandum dated 17.09.2009. Charge memo was acknowledged and reply was submitted on 28.09.2009 denying the charges framed against him by the enquiry officer and the present officer was appointed by the disciplinary authority to enquire into the charges. The enquiry officer conducted the enquiry under the Central Industrial Security Force Rules, 2001. Appellant/petitioner did not respond to the notices WA No. 1243 of 2014 - :2:- issued by the enquiry officer. Enquiry officer proceeded to award ex-parte enquiry and charges are proved. Copy of the enquiry report was served on the

petitioner with a direction to submit a representation. But the appellant did not submit any representation against the enquiry report. The disciplinary authority, after considering all the materials, passed an order dated 15.03.2010 dismissing the petitioner from service. Against the same, an appeal was filed on 17.05.2010 which was dismissed by order dated 31.08.2010. The Revision Petition met with the same fate.

3. Learned counsel for the appellant/petitioner submitted that the petitioner was not given an opportunity to choose the enquiry officer and further, the enquiry was not conducted in 'Hindi' language as requested by him. He further submits that no proper opportunity was given to him in the disciplinary proceedings.

4. We have considered the submissions of learned counsel for the appellant and perused the records. The appellate authority has considered the above submission of appellant for choosing the enquiry officer. The enquiry officer, whom the WA No. 1243 of 2014 -:3:- appellant requested to continue with the disciplinary proceedings, was an officer, who was deputed with certain other assignments which insisted the authority to appoint another enquiry officer. The appellant was informed the said fact by letter dated 10.12.2009. The appellate authority has rightly observed that the delinquent has no right to choose an enquiry officer. In so far as the request of the appellant to choose the language in which the enquiry was to be conducted, it has been observed by the appellate authority that the appellant did not attend to the enquiry fixed by the enquiry officer and had not requested for conducting the enquiry in Hindi. The appellate authority has rightly rejected the said plea also.

5. While dismissing the writ petition filed by the appellant, the learned Single Judge noticed that the petitioner was awarded with 22 different charges on different occasions which have been detailed and the charges were found proved by the enquiry officer. The disciplinary authority imposed the punishment of 'dismissal from service' after serving a copy of the enquiry report on the petitioner. A fair procedure was followed WA No. 1243 of 2014 -:4:- by the authorities. The petitioner himself has to blame since he did not attend the enquiry.

6. The scope of judicial review in the disciplinary proceedings is very limited. This Court, exercising the jurisdiction under Article 226 of the Constitution, cannot interfere with the enquiry proceedings and the punishment awarded. This Court can interfere with the punishment only if it is shockingly disproportionate. Here, series of charges were mentioned against the petitioner which have been found true. The fact that 22 punishments were awarded, indicate the conduct of the petitioner, which was taken note of by the authorities. We do not find any error in the judgment of the learned Single Judge dismissing the writ petition. Hence, this Writ Appeal is dismissed. Ashok Bhushan, Acting Chief Justice. A.M. Shaffique, Judge. ttb/19/09 WA No. 1243 of 2014 -:5:-

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