

G.Chinnasamy Vs. the Assistant Commandant

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Court : Chennai

Decided On : Jun-19-2014

Judge : N.Paul Vasanthakumar

Appellant : G.Chinnasamy

Respondent : The Assistant Commandant

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED : 19-6-2014
CORAM THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR AND
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN WRIT PETITION
No.28929 of 2010 and M.P.No.1 of 2010 G.Chinnasamy .Petitioner vs The
Assistant Commandant Mine II CISF UNIT NLC Neyveli .Respondent Writ petition
filed under Article 226 of the Constitution of India praying for issuance of a writ of
certiorarified mandamus calling for the records relating to the order passed by the
respondent in his final order No.V-15014/CISF/AC-M-II/Disc/GCS/10-565 dated
30.11.2010/2.12.2010 and the amendment dated 9.12.2010, in No.V-
15014/CISF/AC-M-II/Disc/GCS/10-580 and quashing the same and directing the
respondent to conduct enquiry under Rule 37 of the CISF Rule.

For Petitioner : Mr.A.S.Mujibur Rahman For Respondent : Mr.S.R.Sundaram
Senior Panel Counsel

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.) The petitioner while working as Head Constable in the services of Central Industrial Security Force (CISF) at Neyveli Lignite Corporation, Neyveli, was issued with a Disciplinary Proceedings in the form of charge memo, alleging that after completion of duty (C Shift) on 15.9.2010, the duty personnel boarded in the shift bus to leave for fertilizer camp and when the Assistant Sub Inspector of Police (ASI)/Executive Mr.K.B.Ramulu, shift in-charge got into the bus, the petitioner used filthy and unparliamentary language viz.

Lungada Maather chooth Nawab Bangaya, Abihak Nahi yara against him and thereby, the said act amounts to gross misconduct, indiscipline and unbecoming member of the Force.

2.The petitioner in response to the charge memo dated 10.11.2010, submitted his reply dated 25.11.2010, denying the charge and further stated that the ASI/Executive has boarded the bus and started arguing with him and he never used any filthy language against him and also stated that the testimony of any of the night shift personnel, who boarded the bus on the said night, if considered, the charge would not have been framed against him.

Since the disciplinary proceedings were initiated under Rule 37 of the CISF Rules, 2001, for imposition of minor penalty, the Disciplinary Authority has taken into consideration the statement of the witnesses and found that the charge framed against the petitioner, has been proved and vide order dated 30.11.2010/2.12.2010, has originally imposed the punishment of withholding of two increments for a period of one year without cumulative effect and also indicated that the petitioner if aggrieved, can prefer an appeal to the Senior Commandant, CISF Unit, NLC, Neyveli within 30 days from the date of receipt of the order.

An amendment was issued on 9.12.2010, stating that the original punishment of withholding of two increments for a period of one year without cumulative effect should be read as withholding of two increments for a period of two years without cumulative effect and aggrieved by the same, the petitioner has preferred this writ petition.

3.Mr.A.S.Mujibur Rahman, learned Counsel appearing for the petitioner, would submit that since the charge pertains to using of unparliamentary words against the senior officials, which has been denied by the petitioner, in all fairness, the Disciplinary Authority ought to have conducted an oral enquiry and examined the witnesses in his presence and since it has not been done, it amounts to violation of principles of natural justice and therefore, without availing the appeal remedy, he has straight-away filed this writ petition.

4.Per contra, Mr.S.R.Sundaram, leaned Senior Panel Counsel appearing for the respondent, has invited the attention of this Court to the counter affidavit filed by the respondent, and would contend that the petitioner has not made any specific request for conducting an oral enquiry and since the Departmental Proceedings came to be initiated under Rule 37 of CISF Rules, 2001, for imposition of minor penalty, there is no need to hold oral enquiry in the presence of the petitioner/delinquent and taking into consideration the statements of the witnesses recorded, the charge framed against the petitioner, was found to be proved and therefore, the penalty was imposed proportionate to the delinquency committed by him.

5.It was further contended by the learned Senior Panel Counsel appearing for the respondent, that though the petitioner after imposition of penalty, sought two weeks' time to prefer an appeal, has straight-away invoked the jurisdiction of this Court under Article 226 of the Constitution of India and filed this writ petition and since he is having an effective alternative remedy in the form of appeal and also revision against the order to be passed in the appeal, the present writ petition is not at all maintainable and he prays for dismissal of the writ petition.

6.This Court has carefully considered the rival submissions and also perused the typed-set of documents.

7.Admittedly, the petitioner did not specifically ask for oral enquiry and examination of witnesses in his presence and though he denied the charge of using unparliamentary language against the senior officials, it was an admitted fact that he has lost temper at the relevant point of time and even in his response to the charge memo, he has not specifically asked for any oral enquiry.

That apart, in the affidavit filed in support of the writ petition also, he has not specifically raised such a ground.

8.As rightly contended by the learned Senior Panel Counsel appearing for the respondent, since the petitioner is having an effective alternative remedy in the form of appeal and that the petitioner after imposition of penalty, has also sought two weeks' time to file an appeal, which was also granted, he ought not to have invoked the jurisdiction of this Court by filing the writ petition on account of effective alternative remedy.

At the same time, since the petitioner was under genuine impression that there was violation of principles of natural justice and was diligently prosecuting the writ petition, the time limit for preferring the appeal, need not be put against him.

9.In the result, the writ petition is disposed of and the petitioner if so advised, can prefer an appeal against the order of punishment within two weeks from the date of receipt of copy of this order to the Appellate Authority and the Appellate Authority on receipt of such appeal, shall not put the question of limitation against him and shall dispose of the appeal on merits and in accordance with law within a period of four weeks thereafter.

No costs.

Consequently, connected MP is closed.

(N.P.V.,J.) (M.S.N.,J.) 19-6-2014 Index: yes/no Note to Office: Registry is directed to return the original impugned order to the learned Counsel appearing for the petitioner, after retaining a copy thereof, under proper acknowledgement nsv To: The Assistant Commandant Mine II CISF UNIT NLC Neyveli N.PAUL VASANTHAKUMAR, J.

AND M.SATHYANARAYANAN, J.

nsv W.P.No.28929 of 2010 Dt: 19-6-2014

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