

P.Ramachandran Vs. Senior Commandant of Disciplinary Authority for Cisf

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Court : Chennai

Decided On : Dec-10-2013

Judge : T.RAJA

Appellant : P.Ramachandran

Respondent : Senior Commandant of Disciplinary Authority for Cisf

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

10. 12.2013 CORAM THE HONOURABLE MR. JUSTICE T.RAJA W.P.No.26898 of 2010 P.Ramachandran ... Petitioner Vs. 1.The Senior Commandant, Disciplinary Authority, CISF, Unit CISA, Mumbai. 2.The Deputy Inspector General, Central Industrial Security Force, C-301, CBD Belapur, Navi Mumbai 614. 3.The Inspector General, Lodi Road, Block No.:15, New Delhi. 4.The Union of India, Rep. by the Home Secretary, New Delhi. ... Respondents PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorarified mandamus to quash the order of removal of the petitioner from service passed by the first respondent vide order No.V-15014/CISF/CSIA (M)L&R(PR)06-3623, dated 15.06.2006 and appellate order No.V-11014/AP-W/(PR)/L&r/2007-1804, dated 26.04.2007 of the second respondent and the revision petition order No.V-11014/09/APS/LS/2007/12522, dated 08.11.2007 and to direct the respondents to reinstate the petitioner to the post of Washer man with full backwages and pass such further orders. For Petitioner : Mr.K.Kannan For Respondents :

ORDER

Learned counsel appearing for the petitioner submitted that the petitioner was originally appointed as Washer-man in Central Industrial Security Force (CISF), Mumbai, on 30.10.1996. After serving for about 9 years, he fell ill and thereafter, he took treatment for jaundice and mental depression. Whiles, he was issued with a charge memo dated 27.12.2005, stating that he was wilfully absented from duty between 11.07.2005 and 02.12.2005. On receipt of the same, the petitioner has filed his detailed representation mentioning that he is living with HIV and his wife is also having the same problem. But, the respondents, without even accepting the said explanation, proceeded to conduct the enquiry and passed ex-parte order, removing him from service. Aggrieved by the said order, he has preferred an appeal before the second respondent, whereby, the second respondent also simply following the order passed by the first respondent, dismissed the appeal. As against the same, when a revision petition was preferred before the third respondent, taking a stand that the petitioner was denied fair and reasonable opportunity, the third respondent, without even considering the stand taken by petitioner, dismissed the revision petition. Thus, the present writ petition has been filed seeking to quash the impugned orders passed by the respondents.

2. Further, it was contended by the learned counsel for the petitioner that he was removed from service without even a proper notice, since notice has been sent to his wrong address and therefore, it cannot be construed as a proper notice, hence, the final order passed by the respondents removing him from service are erroneous, for, he was not given any opportunity to put forward or defend his case and hence, it was against the principles of natural justice. On that basis, he prayed for setting aside of the impugned orders passed by the respondents.

3. Per contra, learned counsel for the respondents, by filing a detailed counter affidavit, submitted that the petitioner was dealt with under Rule 36 of CISF Rules, 2001, on a definite charge of absenting from service from 11.07.2005 to 02.12.2005, that too without permission or leave from the competent authority. In the departmental enquiry, he was afforded reasonable opportunity to defend his

claim and therefore, as contended by the petitioner, there was no violation of principles of natural justice. Moreover, he was issued with an enquiry notice dated 26.01.2006 fixing the enquiry on 06.02.2006, which was received by the petitioner on 26.01.2006 with proper acknowledgement. However, he absconded from the Unit and never came back to attend the enquiry. Finally, the respondents, on the basis of the evidence, passed the final order removing him from service, on the ground that he was habitual absentee. On that basis, she prayed for dismissal of the writ petition.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. The facts, which have been narrated herein-above are sufficient to depict that the petitioner had absented himself without prior permission or sanction of leave between 11.07.2005 and 02.12.2005. For the said unauthorised leave period, when a charge memo was issued, the petitioner has submitted his explanation stating that he suffered jaundice and also mental depression. But, no medical report in respect of the said explanation was produced by the petitioner. However, a medical certificate issued by the Sanjeevani Hospital Authorities, Mumbai, submitted by the petitioner at the time of rejoining duty, shows that he was diagnosed for viral fever. But, the authenticity of the medical certificate itself is under question, since it bears no signature of a doctor/issuing authority.

6. Further contention of the petitioner that he had been diagnosed for HIV during the year 2007, has no relevance to the charge memo issued by the authority, since he was issued with a charge memo on the ground that he was unauthorisedly absented from duty between 11.07.2005 and 02.12.2005 only, therefore, during the said period, he was in normal state of mind and was not aware of HIV. Further, the petitioner never cared to make any application for sanction of leave for his absence for a long period of five months and he remained out of duty unauthorisedly. He was, therefore, charge sheeted and enquiry was conducted and in the said enquiry process, he did not even appear. Finally, the respondents/competent authority passed the impugned orders removing him service.

7. It is trite law that this Court, while exercising the power of judicial review under Article 226 of the Constitution of India, cannot confer benediction impelled by sympathetic consideration. Therefore, once the impugned proceedings passed by the respondents do not suffer from any procedural infirmities and is in the fullest compliance of the principles of natural justice, and the respondents have imposed the order of dismissal, finding the petitioner guilty of the charges and also taking into consideration his chronic unauthorised absence, as referred to above, I do not find any reason to interfere with the impugned orders passed by the respondents removing the petitioner from service. Consequently, the writ petition, being devoid of merits, is dismissed. No Costs. Index:yes/no 10.12.2013 Internet:yes/no rkm To .The Senior Commandant, Disciplinary Authority, CISF, Unit CISA, Mumbai. 2.The Deputy Inspector General, Central Industrial Security Force, C-301, CBD Belapur, Navi Mumbai 614. 3.The Inspector General, Lodi Road, Block No.:15, New Delhi. 4.The Union of India, Rep. by the Home Secretary, New Delhi. T.RAJA,J.

Rkm W.P.No.26898 of 2010 10.12.2013

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