



WEB COPY



W.P.No.17125 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.17125 of 2017

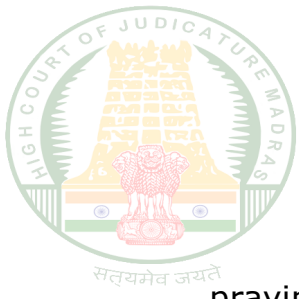
S.Jarin Singh

.. Petitioner

VS

- 1.The Union of India
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, Head Quarters,
Chennai Port Trust Campus,
Chennai - 600 009.
- 4.The Deputy Inspector General,
Central Industrial Security Force,
South Zone, Head Quarters,
Rajaji Bhawan,
Besant nagar, Chennai - 90.
- 5.The Senior Commandant,
Central Industrial Security Force Unit,
Cochin Port Trust,
Cochin, Kerala State.

.. Respondents



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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 2nd respondent dated 25.05.2017 in his order No.V-11014/1(24)L&R/2017/595 confirming the order dated 30.01.2017 passed by the 3rd respondent his order No.V-15014/SS/Rev/L&R/SJS(02)/2017-1101 modifying the order passed by the 4th respondent in his order No.V-11014(1)/38/Appeal-SJS/Disc/SZ/2015-16/1315 dated 03.03.2016 confirming the order of the 5th respondent in his final order No.V-15014/CPT/Disc/Maj-06/SJS/2015/2052 dated 18.08.2015 and quash the same and to direct the respondents to take the petitioner into strength of CISF as a Constable and to pay all Monetary benefits.

For Petitioner : Mr.A.S.Mujibur Rahman
For Respondents : Mr.K.Ramanamoorthy
CGSC, for R1 to R5

ORDER

Writ petition has been filed in the nature of a certiorarified mandamus seeking records of order of the second respondent, Director General, Central Industrial Security Force at New Delhi dated 25.05.2017 in order No.V-11014/1(24)L&R/2017/595 confirming the order dated 30.01.2017 passed by the third respondent, Inspector General, Central Industrial Security Force at Chennai Port Trust, Chennai in order No.V-15014/SS/Rev/L&R/SJS(02)/2017-1101 modifying the order



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passed by the fourth respondent, Deputy Inspector General, Central Industrial Security Force, Chennai No.V-11014(1)/38/Appeal-SJS/Disc/SZ/2015-16/1315 dated 03.03.2016 confirming the order of the fifth respondent in final order No.V-15014/CPT/Disc/Maj-06/SJS/2015 /2052 dated 18.08.2015 and quash all the aforementioned orders. The petitioner seeks that the petitioner should be re-inducted as Constable in the Central Industrial Security Force and also to pay all monetary benefits.

2. Learned counsel for the petitioner stated that the petitioner had been working in Central Industrial Security Force for a period of 18 years without any blemish and had also been awarded about 15 medals for services rendered to the CISF. It is stated that unfortunately owing to an incident which had happened on 17.02.2015, the petitioner had been originally inflicted with a punishment of removal from service which, on appeal, had been modified as compulsory retirement.

3. The punishment of compulsory retirement does not attach any stigma on any delinquent and it is made clear that the order of compulsory retirement should not come in the way of the petitioner applying for any job elsewhere. I am making it clear at



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the very beginning of the order itself. I am also informed that consequent to the order of compulsory retirement, the petitioner had been paid with all monetary and pensionary benefits.

4. The incident occurred on 17.02.2015 when the petitioner was detailed for B shift duty between 1 pm and 9 pm at CISF Unit / CPT Cochin. At that particular point of time, at around 8.21 pm, the CISF Central Vigilance Team headed by an Inspector had conducted an anti corruption checking at K.K.Gate of NMPT, Mangalore along with team members. The petitioner was also standing in front of K.K.Gate (Outpost). He was found to remove certain materials which were rolled, which according to them, were found to be Indian currency notes. This was removed from under his belt and according to them, he swallowed them forcibly. They tried to catch him but he tried to slip away and finally was apprehended.

5. It was stated that they tried to conduct search in his mouth by trying to pluck out whatever he had swallowed but the petitioner resisted. It was stated that this act of the petitioner in resisting search and in obstructing the removal of whatever he had swallowed and in trying to destroy such evidence amounted to



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gross misconduct, indiscipline, disobedience and obstruction of lawful orders which was unbecoming of a member of the armed force of the unit. Holding as above, the petitioner was issued with a charge memo.

6. The proceedings then commenced and inquiry was ordered and the enquiry was conducted. It must also be stated that the petitioner was taken to Mangalore Port Trust Hospital and an endoscopy was done to determine as to what was the object he actually swallowed. No conclusive result came out in the endoscopy. This particular fact is relied on with much vehemence by learned counsel for the petitioner.

7. Be that as it may, during the course of enquiry, the respondents had produced a footage of CCTV, which had ran about four minutes and odd.

8. The petitioner, for good measure, produced as his evidence a footage of the very same CCTV, which ran for about thirty five minutes.

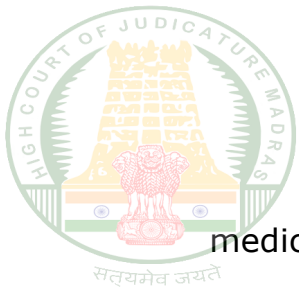
9. It is contended by learned counsel for the petitioner



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that if the entire thirty five minutes is shown and if seen and analysed it would be very evident that the petitioner did not take anything resembling currency notes from under his belt but was only taking medicine for what according to learned counsel, the petitioner was suffering from '*itching in the mouth*'. It is therefore, contended that the petitioner did no wrong. However, the documents relating to the medicines prescribed for such itching and the particular doctor, who so prescribed such medicine or a sample of available remainder of the medicine had not been produced by the petitioner herein to substantiate this particular theory of swallowing medicines and not any currency notes.

10. The two stands which had been taken was, as stated, the footage of about thirty five minutes of CCTV, which was not viewed by the respondents but produced by the petitioner during the enquiry and the report of the endoscopy done on the petitioner by NMPT Hospital. They are both not directly connected with the incident. What is directly connected with the defence put up by the petitioner is production of relevant material for medicines prescribed for itching and even if there is no prescription for the same, the balance medicines already available with him since itching appears to be chronic and for which he had to take



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medicines. None of these have been produced by the petitioner herein and, therefore, that particular defence taken, did not inspire confidence on the respondents.

11. The enquiry officer had held the charges as proved. Thereafter, the punishment of removal from service was imposed on the petitioner herein. As stated, this had been modified in appeal to one of compulsory retirement. The petitioner questions that particular modification. The petitioner should be quite grateful that removal from service had actually been modified to one of compulsory retirement.

12. Any member of armed forces is expected to uphold principles of discipline to the utmost. There can never be any resistance shown to the superior or higher officer. The command is a command and should be followed even at the cause of personal suffering.

13. It is evident from the records that the petitioner had not only resisted being secured, he had also resisted the ejection from the mouth of whatever he had swallowed and he tried to run away from the place. The conduct subsequent to a particular



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allegation is very relevant. The conduct of this particular petition at the time when the vigilance team came is therefore relevant. It is not required that the disciplinary proceedings, the allegations should be proved by the measure of strict proof. There could be preponderance of probabilities but still both strict proof and preponderance of probabilities are based on the same nature of evidence.

14. The analysis of evidence is a little different. While, in a criminal trial, it is examined meticulously to hold that there is chain which links the evidence available to the act alleged, in a departmental proceedings, there could be a presumption drawn between the evidence available and the charge which is inflicted on the delinquent.

15. In the instant case, the charge was that the petitioner had removed certain things under his belt, put them in his mouth and when questioned tried to run away and prevented taking them out from the mouth but rather swallowed them. This conduct becomes relevant, particularly when the respondents raised a strong presumption that what was so swallowed by the petitioner were Indian currency notes. Therefore, there cannot be any

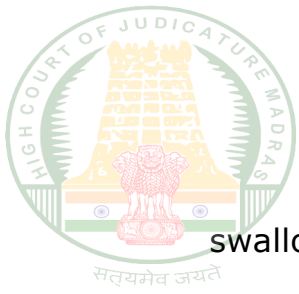


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alternate finding which could be rendered. It is under those circumstances, that punishment of compulsory retirement from the service comes to the advantage of the petitioner herein. It does not attach any stigma. He can always apply for any further job. He can also make use of the medals which had been given to him during the period of service. He can also take advantage of the pensionary benefits which had been given to him.

16. Learned counsel for the petitioner stated that the petitioner had sought for various documents but they were denied during the course of enquiry. Those documents have been listed and it seen that they all relate to the incident itself. The entire records have been produced. One fact which the petitioner could have produced to rebut the presumption, would be either a medical prescription or establishment of the fact that he actually suffered from itching or atleast a sample of the medicine which he put in his mouth and swallowed and thereby trying to establish that as a fact he had itching in his mouth and was taking treatment for it.

17. In the absence of any such material produced by the petitioner herein, the respondents were correct in falling back on the presumption that the resistance to bring out what was



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swallowed would only imply that what was swallowed were Indian currency notes. Thus, judicial review will not lie on facts but to a limited extent on the findings of the punishment imposed. The punishment imposed in this regard has been only of compulsory retirement and as stated, it will not be a stigma for the petitioner herein.

18. Holding as above, writ petition stands dismissed. No costs.

07.08.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

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C.V.KARTHIKEYAN,J.

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