
(2014) 11 MAD CK 0296
In the Madras High Court
Case No : Writ Appeal No. 2212 of 2011

The Commandant 42 Bn. C.R.P.F.

APPELLANT

Vs

S. Dhanasekaran

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)

Citation : (2014) 11 MAD CK 0296

Hon'ble Judges : M. Jaichandren, J;Aruna Jagadeesan, J

Bench : Division Bench

Judgement

M. Jaichandren, J.

1. This writ appeal has been filed against the order passed by the learned single Judge, dated 4.1.2011, in W.P.No. 11983 of 2003.

2. The respondent in the present writ appeal was the petitioner in the writ petition, in W.P.No. 11983 of 2003. The respondent had filed the writ petition before this Court, praying that this Court may be pleased to issue a writ of Certiorarified Mandamus to call for the records relating to the order passed by the Deputy Inspector General, Central Reserve Police Force, Avadi, Chennai, the second appellant in the present writ appeal, dated 19.3.2003, confirming the order passed by the first appellant, dated 24.9.2002, quash the same, and to direct the appellants, who were the respondents in the said writ petition, to take back the respondent into the service of the Central Reserve Police Force, as a Constable and to grant all the monetary benefits payable to him.

3. The respondent had stated that he had joined the Central Reserve Police Force as a Constable, in the year, 1987, and he was posted in the 42 Battalion, after completion of his training. When the respondent was in service, in Delhi, he had received a telegram, on 6.9.2001, stating that his wife was seriously ill and that she has to undergo a surgery, urgently. Therefore, the respondent had applied to the 42 Battalion Commandant, Delhi, for leave. However, there was no reply

from the officer concerned, till 23.9.2001. When the respondent had approached the CHM for leave, he was informed that the leave prayed for by him had not been sanctioned. Thereafter, he had been sanctioned with Casual Leave, between 24.9.2001 and 14.10.2001.

4. The respondent had further stated that, on the expiry of the leave period, on 14.10.2001, the respondent had sent a telegram for extension of leave, on the ground that he was unwell. Thereafter, on 12.12.2001, he had reported for duty, at Delhi. The absence of the respondent from service, for a period of 58 days, was treated as leave without pay and punishment for 15 days line guard had been awarded to him. The articles of charges had been issued to the respondent, containing two charges, stating that the respondent had committed misconduct, under Section 11(1) of the Central Reserve Police Force Act, 1949, and on 23.9.2001, he had misbehaved and used filthy language against his superior officers and had created nuisance in the campus, during the night hours, and had disobeyed the orders of the superiors, and that on 23.9.2001, while the respondent was functioning as a Constable, he had committed an act of misbehaviour and had consumed liquor, and after having consumed liquor, he had tried to damage the Government property and that he had pulled out the electric wirings, resulting in total darkness in the campus and that he had also assaulted the coy. Dhobi. Thereafter, the respondent had been sent to Tripura, with effect from 31.5.2002. Based on the charges, an enquiry had been conducted, contrary to the principles of natural justice, without giving him an opportunity to defend his case, as the entire enquiry proceedings had been conducted in Hindi language.

5. It had also been stated that all the statements were recorded in Hindi, which he did not understand. The respondent had submitted a representation, dated 20.9.2002, to the Enquiry Officer, with the help of his colleagues. However, without considering the same, the Commandant, 42 Battalion, Agartala, had dismissed him from service, on 24.9.2002. Against the said order of dismissal, the respondent had preferred the appeal before the Deputy Inspector General, Central Reserve Police Force, Avadi, Chennai. The said appeal had been rejected. In such circumstances, the respondent had preferred the writ petition before this Court, in W.P.No. 11983 of 2003, stating that the incident, said to have taken place, on 23.9.2001, is a concocted story and that the charges framed against the respondent were vague in nature.

6. It had also been stated that the Enquiry Officer had recorded the statements of the witnesses, who had deposed in the preliminary enquiry, and had submitted a report against the respondent. There was no evidence recorded during the enquiry proceedings and therefore, the enquiry had not been conducted in a manner known to law.

7. It had also been stated that the statements had been recorded in Hindi and the enquiry had also been conducted in the said language, which the respondent did not understand. Therefore, the entire enquiry proceedings is illegal, void and

non est in the eye of law.

8. The learned single Judge, on considering the facts and circumstances of the case, had accepted the contentions raised on behalf of the respondent and had allowed the writ petition filed by the respondent, setting aside the impugned orders with liberty to the Commandant 42 Battalion, Central Reserve Police Force, Narasinghar, Agartala, the first appellant herein, to conduct a fresh enquiry in conformity with the principles of natural justice, in the language known to the respondent. Against the order passed by the learned single Judge, dated 4.1.2011, made in W.P.No. 11983 of 2003, the appellants had filed the present writ appeal before this Court stating that the learned single Judge had erred in setting aside the impugned orders passed by the appellants.

9. It had also been stated that the respondent had committed serious misconduct, while in service, and therefore, he had been issued with the charge memo containing certain serious charges. Proper enquiry had been conducted with regard to the said charges, after giving an opportunity of hearing to the respondent. The respondent had submitted his explanation in Hindi and he had not raised any objection for conducting the enquiry in Hindi. Therefore, the enquiry had been conducted in Hindi and the respondent had not raised any objection, with regard to the language in which the enquiry had been conducted, at any point of time. Thereafter, only on the passing of the impugned orders, he has taken a new plea that he does not understand Hindi and therefore, the entire enquiry proceedings conducted against him, based on the charges levelled against him, is vitiated. In fact, the charges and the depositions had been read over to the respondent and the contents of the same had been explained to him. The respondent had not raised any issue against the conducting of the enquiry in Hindi and even when the enquiry proceedings had been conducted on a day-to-day basis, nor did he request for the translated version of the enquiry report.

10. It had also been stated that the learned single Judge had not taken into consideration the fact that the respondent had given a written submission stating that he had committed a mistake and that he would not repeat the same, in future. In fact, the disciplinary authority had considered all the relevant facts, in view of the explanation submitted by the respondent, and had arrived at the right conclusion.

11. It had also been submitted that the respondent did not co-operate, when he was taken for medical examination. The disciplinary authority had applied its mind, fully, when considering the facts and circumstances of the case, in view of the explanation submitted by the respondent, while arriving at its conclusion. Therefore, it cannot be said that the order passed by the appellants, imposing the punishment of removal from service on the respondent, is bad in law. Further, the punishment imposed on the respondent cannot be said to be disproportionate in nature, taking into account the fact that the respondent was in service in a disciplined force. Therefore, the order passed by the learned single Judge, setting aside the impugned orders of the appellants and directing the first

appellant to conduct a fresh enquiry into the charges levelled against the respondent, is liable to be set aside.

12. Per contra, the learned counsel appearing for the respondent had submitted that the entire enquiry proceedings had been vitiated by the fact that it had been conducted in Hindi language, which the respondent did not understand.

13. It had also been stated that the impugned order passed by the appellate authority is a non speaking order. The order of the original authority had not been properly analysed by the appellate authority. Even though various grounds had been raised by the respondent, with regard to the order passed against him imposing the punishment of removal from service, they had not been properly considered by the appellants, while passing the impugned orders. The Enquiry Officer had submitted a report relying on the preliminary enquiry report, without proper application of mind.

14. It had also been stated that the respondent had not been sent for medical check up before the impugned orders had been passed. The respondent had been imposed with the punishment of dismissal from service, which is based on a sham enquiry. The punishment imposed on the respondent is disproportionate in nature. In such circumstances, the learned single Judge had set aside the impugned orders passed by the appellants, while allowing the writ petition filed by the respondent.

15. In view of the submissions made by the learned counsels appearing for the appellants, as well as the respondent and on a perusal of the records available, it is noted that certain charges had been framed against the respondent for the alleged misconduct committed by him and an enquiry had been held and an explanation had been called for asking him to show cause as to why he should not be punished for his misconduct. The respondent had submitted his explanation in Hindi. The enquiry proceedings had been conducted in Hindi. However, the respondent had not objected to the conducting of the enquiry in Hindi, even though it has been held on a day-to-day basis.

16. On a perusal of the original records, it is found that the respondent had also affixed his signature on the relevant pages of the enquiry proceedings, which were in Hindi. It is also noted that the contents of the proceedings, which were in writing, had been explained to the respondent and he had understood the contents of the proceedings.

17. It is also noted that the respondent had made written submissions accepting the fact that he had committed a mistake and that he would not repeat the same. It is also noted that the respondent had not raised the said issue at any point of time during the enquiry proceedings. In such circumstances, it would not be open to the respondent to turnaround and to state that he was not aware of the proceedings, that had been held, based on the charges levelled against him, as it had been conducted in Hindi.

18. The claim of the respondent that the punishment imposed on him is disproportionate in nature cannot be accepted, in view of the fact that he had been serving as a member of the Central Reserve Police Force, which is a disciplined force. Further, we do not find any serious flaw in the report of the Enquiry Officer, in respect of his findings. Further, the impugned orders passed by the appellants cannot be said to be non-speaking orders, as sufficient reasons had been shown for arriving at their conclusions. Therefore, the order of the learned single Judge, dated 4.1.2011 made in W.P.No. 11983 of 2003, setting aside the impugned orders and directing the conducting of a fresh enquiry, cannot be sustained in the eye of law. Hence, we are of the view that sufficient cause had been shown by the appellants to set aside the order passed by the learned single Judge, dated 4.1.2011 made in W.P.No. 11983 of 2003. Accordingly, the writ appeal stands allowed. No costs. Connected M.P.No. 1 of 2011 is closed.