

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/03/2003

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.18789 of 1996 and W.P.No. 18675 of 1997

P.Swaminathan .. Petitioner

in both W.Ps.

-Vs-

1. Officer Commanding

D/2 Signal, CROPF

Avadi, Madras-65.

2. The Commandant

2, Signal Battalion

CRPF, Hyderabad. .. Respondents

1 & 2 in both

Writ petitions

3. The Deputy Director (Communication)

CRPF, C.G.O. Complex

Lodhi Road, New Delhi. .. Respondents No.3 in W.P.No.

18675/1997

PRAYER in W.P.No.18789/1996 : Petition under Article 226 of the Constitution of India for issue of writ of Mandamus as stated therein.

PRAYER in W.P.No.18675/1997 : Petition under Article 226 of the Constitution of India for issue of writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents: Mr.S.M.Deenadayalan,
A.C.G.S.C.

:ORDER

The second respondent by an order of removal dated 11.12.1997, removed the petitioner from service as Head Constable of Radio Operator, alleging that he had committed an act of misconduct punishable under Section 11(1) of the Central Reserve Police Force Act, 1949 for having removed two official radio communications bearing registration Nos.3 697, dated 23.10.1996 and No.1841, dated 12.12.1996 from the Signal Centre records of the Government without prior permission from the competent authority, which was later recovered from the possession of the petitioner on 23.12.1996.

2. Concededly, both the said official radio communications are relating to the case of the petitioner. The first radio communication dated 23.10.1996 is related to his medical leave and the second radio communication dated 12.12.1996 is related to his transfer from Avadi to Assam. Even in his earliest representation dated 1.7.1997, submitted pursuant to the memorandum of charges dated 5.5.1997 framing charges against the petitioner, the petitioner fairly admitted that he took the copies of the said communication for the purpose of challenging the transfer order dated 12.12.1996 before this Court in W.P.No.18789 of 1996. The said W.P.No.18789 of 1996 was admitted by this Court on 13.12.1996 and interim injunction was also granted in W.M.P.No.2634 3 of 1996 restraining the respondents from transferring the petitioner from Avadi to Assam. It was only thereafter the respondents had initiated action against the petitioner by memorandum dated 5.5.1997, referred to above, which ultimately culminated into the order of removal from service dated 11.12.1997 impugned in W.P.No.18675 of 1997.

3.1. Mr.M.Md.Ibrahim Ali, learned counsel appearing for the petitioner submits that in spite of the order of interim injunction dated 13.12.1996 granted in W.M.P.No.26343 of 1996 in W.P.No.18789 of 1996, the petitioner could not continue in service in view of the order of removal dated 11.12.1997, which was made mala fide for having filed the above W.P.No.18789 of 1996.

3.2. Mr.M.Md.Ibrahim Ali, contends that even though both the radio communications dated 23.10.1996 and 12.12.1996 are official communications, the same were not removed from the official records as charged in the memorandum dated 5.5.1997.

3.3. Mr.M.Md.Ibrahim Ali, learned counsel for the petitioner further contends that the petitioner was not permitted to produce his defence witnesses in spite of his specific written request dated 9/13.10.19 97 and the entire enquiry was conducted in Hindi, in which the petitioner was not well versed.

3.4. The learned counsel for the petitioner, in any event, contends that the punishment of removal from service imposed on the petitioner is shockingly disproportionate.

4.1. Per contra, Mr.Deenadayalan, learned Additional Central Government Standing Counsel appearing for the respondents contends that witnesses 1 and 2 sought to be examined on behalf of the petitioner have retired under voluntary retirement scheme and the other witnesses 3 to 11 were considered as not relevant as they were proposed to be examined by the petitioner to show that the copy of the radio communications dated 23.10.1996 and 12.12.1996 taken by the petitioner were only surplus copies but were not removed from the official records.

4.2. Mr.Deenadayalan, further contends that in view of the admission of the petitioner that he had taken the radio communications dated 23.10.1996 and 12.12.1996 for filing W.P.No.18789 of 1996, no further evidence is required to substantiate the charges framed against the petitioner.

5. I have given careful consideration to the submissions of both sides.

6. The contention of the petitioner that the impugned radio communications dated 23.10.1996 and 12.12.1996 were not removed from the official records and hence, the petitioner cannot be charged for the same, in my considered opinion is too technical. Once the petitioner concedes that it is an official memorandum, the petitioner who was working as Head Constable of Radio Operator in the C.R.P.F., is expected to maintain high standard of confidence relating to any official communication, even though the same is related to his own service, unless and until it is served on him officially. The fact that the petitioner was working as Head Constable of Radio Operator in a disciplined force, viz., Central Reserve Police Force, requires him to be not only more confidential but also to maintain secrecy of the official communications, whether it relates to his own service or otherwise. There cannot be any compromise on this issue, which touches the very integrity of the petitioner in the service of the respondent.

7. Two of the witnesses who were sought to be examined by the petitioner have retired under Voluntary Retirement Scheme and with regard to the others, it appears that the petitioner had not taken any steps, even though the Mr.M.Md.Ibrahim Ali, learned counsel for the petitioner would contend that it is for the Enquiry Officer to summon those witnesses. However, it is not in dispute that the petitioner proposed to examine those witnesses only for a specific and limited purpose that the radio communications dated 23.10.1996 and 12.12.1996 were not removed from official records but were only spare copies. But, I had already held that the explanation offered by the petitioner in this regard is too technical, as the

duties and responsibilities expected from the petitioner are very serious. Therefore, the petitioner was not prejudiced by the non-examination of those witnesses in view of his own admission.

8.1. The only other contention to be answered is that the impugned order of removal dated 11.12.1997 of the petitioner from service is shockingly disproportionate.

8.2. In this regard, it would be more appropriate to refer the decision of the Apex Court in REGIONAL MANAGER, U.P.S.R.T.C., ETAWAH & ORS. Vs. HOTI LAL & ANR. reported in JT 2003 (2) SC 27, wherein it has been held that:

" It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment does not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances."

8.3. In CHAIRMAN AND MANAGING DIRECTOR, U.C.BANK & ORS. Vs. P.C. KAKKAR reported in JT 2003 (2) SC 78, the Apex Court held that:
"The court should not interfere with the administrator's decision unless it

was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in WEDNESBURY's case (1948 (1) KB 223) the court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

Unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope of interference. Further to certain litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed."

8.4. It is, therefore, neither permissible nor proper for this Court to go into the proportionality of the punishment of removal imposed on the petitioner. But, at the same time, the facts that the petitioner approached this Court in W.P.No.18789 of 1996 challenging the order of transfer from Avadi to Assam and the said W.P.No.18789 of 1996 was admitted on 13.12.1996 and interim injunction was granted on the same date in W.M.P.No.26343 of 1996, for which purpose the petitioner required the copy of order of transfer dated 12.12.1996, and that only thereafter, the respondents had initiated the impugned disciplinary action against the petitioner by official memorandum dated 5.5.1997, could not be lightly disregarded.

9. The backdrop of the above facts and the totality of the circumstances leads this Court to weigh the contention of the petitioner that the impugned disciplinary action is attracted by mala fide. The Constitutional right of the petitioner to challenge the order of transfer invoking Article 226 of the Constitution of India could not, by itself, be a basic reason to pass the order of removal pursuant to a disciplinary action initiated against the petitioner in that regard, even though the said act of the petitioner amounts to a misconduct warranting disciplinary action against him. To that extent, I am of the considered opinion that the punishment imposed on the petitioner in this regard is shockingly disproportionate, inasmuch as the copies of the proceedings were required to be filed before this Court in W.P.No.18 789 of 1996, as otherwise the petitioner would not have got an order of interim injunction against the order of transfer.

10. However, as this Court does not propose to quantify the punishment to be imposed on the petitioner for the misconduct proved to be committed by him, it is a fit case to set aside the order of removal dated 11.12.1997, remit the matter to the employer with a direction to take appropriate decision with respect to the punishment to be imposed within thirty days from the date of receipt of copy of this order.

11. In the result, both the writ petitions are disposed of with the directions indicated above. No costs. Consequently, W.M.P.No.26343 of 1996 is closed.

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