

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE PULLA KARTHIK

WRIT PETITION NO: 30376 OF 2013

Between:

G.Sankara Rao, S/o. G.Bhaskara Rao, Aged about 33 years, Occ Constable, CISF No.021170067, Presently working at CISF Unit, SSCL,OCP-II, RG area.

...PETITIONER

AND

1. The Central Industrial Security Force, Represented by its Director General, Ministry of Home Affairs, Government of India, New Delhi.
2. The Inspector General, The Central Industrial Security Force, Ministry of Home Affairs, Government of India, South Zone, Chennai.
3. Deputy Inspector General, Central Industrial Security Force, South Zone, Besant Road, Chennai
4. The Group Commandant, Central Industrial Security Force, CISF Unit Gp.Hqrs, Hyderabad
5. The Commandant, Central Industrial Security Force, CISF Unit SCCL, CC Naspur, Srirampur (SRP), Adilabad District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to Issue a Writ or order or direction more particularly one in the nature of Writ of Mandamus or any other appropriate order declaring the impugned final order issued vide Final Order No. V-15014/GHH/MAJ(14/11)-GSR_HPCL(V)/AdiV/11/854, 21.02.2012 by the 4th respondent, which was confirmed by the 3rd and 2nd respondents vide their proceedings dt.04.01.2013 and 22.04.2013 respectively as illegal, arbitrary, violative of principles of natural justice, violation of Art. 21 of the Constitution of India and consequently set-aside the same.

I.A. NO: 1 OF 2013(WPMP. NO: 37698 OF 2013)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the Final Order No. V-15014/GHH/MAJ(14/11)-GSR_HPCL(V)/Ad.IV/11/854, 21.02.2012 issued by the 4th respondent, pending disposal of the above Writ Petition.

Counsel for the Petitioner : SRI B.SHIVA KUMAR

**Counsel for the Respondents: SRI K.ARVIND KUMAR,
CENTRAL GOVERNMENT COUNSEL**

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE PULLA KARTHIK

WRIT PETITION No.30376 of 2013

ORDER:

This Writ Petition has been filed challenging the Order No.V-15014/GHH/MAJ(14/11)-GSR_HPCL(V)/Ad.IV/11/854, dated 21-02-2012 passed by respondent No.4 imposing the punishment of reduction of pay by two increments in pay band-I for a period of two years, which will have the effect of postponing future increments of pay of the petitioner, and the orders dated 04.01.2013 and 22.04.2013 passed in appeal and review respectively, as illegal, arbitrary and violative of principles of natural justice.

2) The case of the petitioner, in brief, is that he was appointed as a Constable in Central Industrial Security Force (CISF) on 09.02.2002 and was initially posted at RTC, Arakkonam of Tamil Nadu State. Thereafter, he was posted at 5th Reserve Battalion, Gaziabad, Uttar Pradesh, Punjab Haryana Civil Secretariat, Chandigarh, 6th Reserve Battalion, Davili, Rajasthan, HPCL-BP, Vizag (A.P.) and thereafter to the Unit of 5th respondent i.e. CISF Unit SCCL, CC Naspur, Srirampur (SRP), Adilabad District. It is further averred that in the year 2010, he received United Nations Medal from the United Nations Police Commissioner, Minustah (UN), and a letter of Commendation and a Prasamsapatrah were received from the Contingent Commander, FPU, India. It is further averred that while he was working at CISF Unit HPCL-BP, Visakhapatnam, a Charge Memorandum dated 21.10.2011

was issued to the petitioner, based on the complaint lodged by the wife of the petitioner at Mandapeta Rural Police Station, East Godavari District. To the said Charge Memorandum, the petitioner has submitted his explanation on 01.11.2011 denying the charge. Being dissatisfied with the said explanation, a regular enquiry was ordered appointing an Enquiry Officer, who conducted the enquiry without providing adequate opportunity to the petitioner and in a biased and prejudicial manner. Thereafter, the Enquiry Officer has submitted an Enquiry Report, to which the petitioner raised objections by way of representation dated 29.01.2012. Without considering the said representation, the Disciplinary Authority, based on assumptions and presumptions, has imposed the penalty *vide* impugned proceedings dated 21.02.2012. The statutory Appeal and revision filed by the petitioner were also dismissed by the appellate and revisional authorities. Hence, the petitioner is before this Court.

- 3) Heard Sri B. Shiva Kumar, learned counsel for the petitioner, and Sri K. Aravind Kumar, learned Standing Counsel for Central Government, appearing for the respondents.
- 4) Learned counsel for the petitioner has contended that the appellate authority has not properly dealt with the contention of the petitioner that the Deputy Commandant of CISF Unit, HPCL-BP, Visakhapatnam, issued the charge Memorandum under Rule 36 and appointed the Enquiry Officer, Presenting Officer, in exercise of power

conferred under sub-rule (5)(a)(2) and sub-rule (5)(c) of Rule 36 of CISF Rules, 2001, and contends that the Deputy Commandant was neither an appointing authority nor the disciplinary authority under Rule 36 of the CISF Rules, 2001, in the case of the petitioner. Hence, on this ground alone, the entire proceedings are liable to be set aside. It is further contended that before the competent Criminal Court the wife of the petitioner, in her cross examination, has admitted that she filed the criminal case against the petitioner as a counter blast to the divorce petition filed by A.1 i.e. the petitioner herein. Learned counsel has further contended that the petitioner was acquitted in criminal case vide Judgement dated 01.02.2016 passed in C.C. No.146 of 2011 on the file of the Special Magistrate, Alamuru, and the same was confirmed in Crl.A.No.110/2016 dated 10.01.2018 by the Principal Sessions Judge, East Godavari at Rajamahendra-varam. Hence, the punishment imposed on the petitioner is liable to be set aside on the ground that the charge memo was issued on the basis of registration of the criminal case, which was ended in acquittal. It is further contended that the competent Civil Court also granted a decree of divorce by dissolving the marriage between the petitioner and his wife holding that the conduct of the wife caused mental agony to the petitioner and the petitioner proved his case for grant of divorce on the ground of desertion and cruelty. Hence, the charge levelled against the petitioner cannot be sustained as it was on the basis of the criminal case where the petitioner got clean acquittal by the competent Court.

Learned counsel has further contended that the petitioner is a disciplined employee of the respondent and the matrimonial disputes, which are purely personal in nature, are nothing to do with the official duties. Moreover, none of the accusations/allegations were proved in the Criminal Court of law and the charge sheet dated 21.10.2011 and corrigendum charge sheet dated 26.10.2011 are issued on same set of facts. Hence, as per the decision of the Apex Court in **G.M. Tank v. State of Gujarat**¹, the punishment is not sustainable under the law. Hence, it is prayed to allow the Writ Petition.

5) Per contra, the learned Standing Counsel has contended that as the respondents are not convinced with the explanation submitted by the petitioner to the charge memo, an enquiry was ordered and the Enquiry was conducted in accordance with the Rules by giving ample opportunity to the petitioner at every stage of the enquiry. It is further contended that in the enquiry, the charge levelled against the petitioner was proved and after supplying the copy of the enquiry report for submission of his reply, he was imposed with the punishment of reduction of pay by two increments in pay band-I for a period of two years, which shall have the effect of postponing his future increments of pay, for his failure to maintain a decent standard of conduct in his family life. The said punishment was also confirmed by respondents 3 and 2 in appeal and revision, vide proceedings dated

¹ (2006) 5 SCC 446

04.01.2013 and 22.04.2013 respectively. It is further contended that there is no procedural infirmity in the entire proceedings to be interfered with by this Court. The Enquiry Officer has conducted the departmental enquiry as per the procedure laid down under the Rules and giving all reasonable opportunity to the petitioner to defend his case and after taking into consideration the prosecution evidence and defence version of the petitioner and as the charge held proved in the enquiry, the respondents are justified in passing the impugned punishment order. Hence, it is prayed to dismiss the writ petition.

6) This Court has taken note of the submissions made by the respective parties.

7) A perusal of the charge memo dated 21.10.2011 and the amendment thereto vide memo dated 26.10.2011 wherein one charge was framed against the petitioner reveals that the basis for the issuance of the charge memo to the petitioner was registration of a criminal case in FIR No.15 of 2011 on the file of Mandapeta Rural Police Station, East Godavari District, for the offence punishable under Section 498-A of Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act, pursuant to the complaint lodged by the wife of the petitioner. After filing of the charge sheet, the same was numbered as C.C. No.146 of 2011 on the file of the Special Magistrate, Alamuru. After conducting a full-fledged trial, learned Magistrate has acquitted the petitioner on the ground that the Prosecution failed to prove the

case against the petitioner and the said acquittal was also confirmed in appeal preferred by the wife of the petitioner.

8) That apart, the competent Civil Court also granted a decree of divorce in favour of the petitioner against his wife on the ground of desertion and cruelty *vide* order and decree dated 30.06.2022 passed by the Senior Civil Judge, Ramachandrapuram, in H.M.O.P. No.146 of 2018. The record further discloses that the primary witness in criminal case and charge memo is one and the same *viz.*, Madhulatha, who is none other than the wife of the petitioner. Further, as seen from the judgment, dated 01.02.2016, in C.C. No.146/2011, the said witness in her cross-examination has admitted that "*It is true that A1 filed divorce O.P. against her, after that I filed this case as counter blast.*" The said admission of the witness makes it crystal clear that there is no iota of truth in the allegations levelled against the petitioner and admittedly, the charge memo was issued on the same set of facts.

9) In this context, it is pertinent to note that the Hon'ble Supreme Court in **G.M. Tank (referred supra)**, at paras 30 and 31, has held as under:

"30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant

on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

10) In the present case, admittedly, the charge memo was issued on the basis of registration of FIR against the petitioner and admittedly the primary witness is one and the same in criminal case and departmental proceedings. Basing on the same charge, the petitioner was imposed with the punishment in the departmental proceedings

vide impugned proceedings dated 21-02-2012 while he was acquitted in the criminal case and the same was also confirmed by the appellate court. Therefore, the punishment imposed upon the petitioner cannot be sustained in view of the above referred proposition of law. Hence, I deem it appropriate to set aside punishment order dated 21-02-2012 passed by respondent No.4.

11) Accordingly, the Writ Petition is allowed and the order dated 21.02.2012 passed by respondent No.4, the order dated 04.01.2013 passed by the appellate authority-respondent No.3, and the order dated 22.04.2013 passed by the revisional authority-respondent No.2 are hereby set aside.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

That Rule Nisi has been made absolute as above.
Witness THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE, on this Friday,
The Twenty Ninth Day Of September, Two Thousand And Twenty Three

SD/- MOHD. SANAULLAH ANSARI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Director General, Central Industrial Security Force, Ministry of Home Affairs, Government of India, New Delhi.
2. The Inspector General, The Central Industrial Security Force, Ministry of Home Affairs, Government of India, South Zone, Chennai.
3. The Deputy Inspector General, Central Industrial Security Force, South Zone, Besant Road, Chennai
4. The Group Commandant, Central Industrial Security Force, CISF Unit Gp.Hqrs, Hyderabad
5. The Commandant, Central Industrial Security Force, CISF Unit SCCL, CC Naspur, Srirampur (SRP), Adilabad District
6. One CC to SRI E.SHIVA KUMAR, Advocate. [OPUC]
7. One CC to SRI K.ARVIND KUMAR, CENTRAL GOVERNMENT COUNSEL. [OPUC]
8. Two CD Copies.

BSK

GJP

CHF

HIGH COURT

DATED:29/09/2023



ORDER

WP.No.30376 of 2013

**ALLOWING THE WRIT PETITION
WITHOUT COSTS**

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16/10/23