

GAHC010107162021



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3747/2021

KUMAR CHETRI
S/O SRI JOGANATH CHETRI, R/O VILL. AND P.O. GARUDHARIA, DIST.
DIBRUGARH, ASSAM, PIN 786007

VERSUS

THE UNION OF INDIA AND 4 ORS.
REPRESENTED BY THE SECY., GOVT. OF INDIA, HOME DEPTT., NEW
DELHI 110001

2:THE DIRECTOR GENERAL

CENTRAL INDUSTRIAL SECURITY FORCE
NEW DELHI 110003

3:THE INSPECTOR GENERAL

CISF
NZ
HQRS. MAHIPALPUR
NEW DELHI
PIN 110037

4:THE DY. INSPECTOR GENERAL

CISF
NZ HQRS. MAHIPALPUR
NEW DELHI
PIN 110037

5:THE SR. COMMANDANT

CISF UNIT
BHEL HARIDWAR
UTTARAKHAN
PIN 24940

Advocate for the Petitioner : MR. B CHETRI, MR P BHATTACHARJYA

Advocate for the Respondent : ASSTT.S.G.I., MR. U K GOSWAMI

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 21.11.2024.

Date of judgment : 21.11.2024.

JUDGMENT & ORDER (Oral)

Heard Mr. B. Chetri, learned counsel appearing for the writ petitioner. Also heard Mr. U. K. Goswami, learned Central Government Counsel appearing for the respondents.

2. By filing this writ petition, the petitioner has assailed the order dated 31.07.2017, by means of which, he was removed from service as well as the subsequent order dated 25.03.2019 rejecting the appeal preferred by the petitioner, primarily on the ground that the impugned orders have been passed without following the due procedure laid down by law. The facts and circumstances of the case, briefly stated, are as follows.

3. The writ petitioner herein was recruited as a Constable in the Central Industrial Security Force (CISF) in the year 2009. While serving in the CISF Unit, BHEL, Haridwar at

Barrier No.7 the writ petitioner remained unauthorisedly absent from duty during the period from 05.07.2016 to 23.11.2016 i.e. for a period of 4 months 19 days. As many as three call letters sent to his permanent address instructing the petitioner to report back to duty went unanswered. As such, a departmental proceeding was initiated against the petitioner under Rule 36 of the CISF Rules, 2001 by serving a charge sheet dated 01.11.2016 containing the following charges :-

“Article of Charge – 01

On 05/07/2016 Force No.097353522 Ct/GD Kumar Chetri, CISF Unit BHEL Haridwar was deputed at Barrier No.7 for discharging service in 2nd Shift from 1300 hrs to 2100 hrs. That day the official remained absent from 2nd Shift without any information to or permission from competent officer and the matter of his absence was entered in the Daily Register. Search for the official was made in Unit Line Campus, Shivalik Nagar Market, Bus and Auto Stand and BHEL Hospital but he could not be traced out. The official was also absent from the counting parade. Thereafter five call- letters directing the official to immediately appear in the Unit to discharge his duties were sent to the permanent address of the official by registered post with A/D but the official has neither replied to the call letters nor has appeared in the Unit. The official has been a deserter since 05/07/2016 till date without any leave being granted to him. This act on the part of the official in the capacity of a member of a disciplined Force shows his negligence towards duties, gross indiscipline and defiance to orders duly passed by competent officer.

“Article of Charge – 02

In his short duration of service till date, Force No.097353522 Ct/GD Kumar Chetri, CISF Unit BHEL Haridwar, has already been awarded 06 minor punishments under Rule 37 of CISF Rules and 02 major punishments under Rule 36 of CISF Rules, for his various negligence, indiscipline and misconducts.

Despite that he has not brought any reformation to his negligence in discharging duties and misconduct. This kind of act on the part of a member of a disciplined Force shows his negligence towards duties and indiscipline."

4. The petitioner was granted opportunity to submit his written statement and accordingly, he had also submitted his written statement on 03.12.2016. In his reply, the petitioner has stated that due to some family problem he had to remain absent from duty during the period from 05.07.2016 to 23.11.2016. Although the petitioner had admitted that he was unauthorisedly absent from duty, yet, the authorities had decided to conduct an enquiry into the charges brought against him. Accordingly, Enquiry Officer and a Presenting Officer were appointed for the purpose of the enquiry. It appears that during the preliminary hearing, the charged official i.e. the writ petitioner had admitted that he had received the memorandum of charge and had understood the same but he denied the charges brought against him.

5. During the enquiry proceeding the department had examined a number of witnesses so as to prove the charges brought against the petitioner. However, the writ petitioner did not adduce any evidence in his defence. After conclusion of the enquiry proceeding the Enquiry Officer had submitted his report by holding that both the charges brought against the petitioner were proved. By letter dated 03.01.2017, the Senior Commandant, CISF Unit, BHEL, Haridwar i.e. the Disciplinary Authority had forwarded a copy of the enquiry report to the petitioner giving him 15 days time to submit his reply in respect thereof.

6. It appears that on 21.01.2017 the petitioner had submitted his reply reiterating his stand that due to some family problem he was on Absence Without Leave (AWL)

from 05.07.2016 to 23.11.2016. Upon receipt of such reply the Disciplinary Authority had passed the final order of penalty dated 31.01.2017 imposing the penalty of removal from service upon the petitioner. The operative part of the order dated 31.01.2017 is reproduced herein below for ready reference :-

“7. I, the undersigned, have found the charges framed against the charged official proved on the basis of the available documents, statement of the prosecution witnesses and the documents exhibited by them. The charged official was given ample opportunities to defend himself keeping the principles of natural justice in view. But the charges official has failed to adduce any evidence or document in his defence. The conduct of the charges official shows his gross negligence towards his duties, indiscipline, defiance to the orders given by higher officers and his whimsical attitude besides showing his irresponsibility towards his service and tarnishing the image of the Force. The charged official was given opportunities to reform his conduct and was reinstated in service twice but he has failed to bring any reformation to his conduct. Hence, the charged official is not fit to be kept in service in Armed Force. The offence of the charged official is grave in nature which deserves stricter punishment. Hence, in exercise of the powers conferred by Rule 32(1) and Rule 34(ii) of the CISF Rules, 2001, I award the punishment of ‘Removal from Service’ to Force No.097353522 Ct/GD Kumar Chetri, CISF Unit BHEL Haridwar, which is proportionate to his offence.”

7. Aggrieved by the order dated 31.01.2017 the petitioner had preferred an appeal before the Appellate Authority. However, the appeal preferred by the petitioner was held to be time barred since the same was not preferred within the period of 30 days from the date of the order of penalty, as per prescription of Rule 47 of the CISF Rules, 2001. The decision of the Appellate Authority was also communicated to the petitioner by letter dated 27.05.2019. Thereafter, the petitioner

had preferred a revision before the Inspector General of North Sector, CISF, who is the Revisional Authority. After considering the plea taken by the writ petitioner and upon going through the materials available on record, by the order dated 14.01.2020 the Revisional Authority had rejected the revision preferred by the petitioner. Thereafter, the instant writ petition has been filed before this Court praying for setting aside the order of penalty dated 31.01.2017 as well as the order dated 25.03.2019 passed by the Appellate Authority. However, the order dated 14.01.2020 passed by the Revisional Authority has not been assailed in this writ petition.

8. By referring to the materials available on record Mr. Chetri, learned counsel for the petitioner submits that the petitioner has produced documentary evidence to show that he was suffering from mental illness during the relevant period of time. However, the authorities had failed to consider such medical evidence. It is also the submission of Mr. Chetri that proper opportunity of being heard was not given to the petitioner before removing him from service. As such, according to Mr. Chetri, the impugned orders are vitiated due to violation of procedural norms as well as the principles of natural justice. In support of his above arguments, Mr. Chetri has placed reliance on the following decisions :-

- 1) **(1986) 3 SCC 229 [Kashinath Dikshita Vs. Union of India and others]**
- 2) **(2009) 15 SCC 620 [Chairman cum Managing Director, Coal India Limited & another Vs. Mukul Kumar Choudhuri & others]**
- 3) **(2010) 11 SCC 278 [Indu Bhushan Dwivedi Vs. State of Jharkhand and another]**
- 4) **(2012) 3 SCC 178 [Krushnakant B Parmar Vs. Union of India and another]**
- 5) **2016 (3) GLT 351 [Mridul Kumar Singh Vs. State of Assam and others]**

- 6) **(2016) 4 GLR 336 [Constable No.994750037 Sri Dhanjit Kalita Vs. Union of India and others]**
- 7) **2018 (10 GLT 837 [Union of India and others Vs. Lala Prasad Singh]**

9. Responding to the above arguments, Mr. Goswami, learned Central Government Counsel appearing for the respondents has submitted that the petitioner is a habitual offender inasmuch within the short span of his service career as many as 6 minor penalties and 2 major penalties including the penalty of dismissal/removal from service had already been imposed upon the petitioner on earlier occasions. Such orders of dismissal/removal from service were, however, interfered with by the Appellate/Revisional Authority so as to give an opportunity to the petitioner to rectify himself. However, despite such rare opportunity given to him by the authorities, the petitioner had failed to mend himself. Contending that after the admission of misconduct by the petitioner, there was no requirement for the authorities to hold an enquiry, Mr. Goswami submits that in order to comply with the requirement of the principles of natural justice and the Rules of 2001, a departmental enquiry was conducted into the charges brought against the petitioner by giving him sufficient opportunity to prove his innocence. However, during the enquiry proceeding the petitioner had failed to produce any evidence in his defence. Under the circumstances, submits Mr. Goswami, there is no illegality or infirmity in the impugned order of penalty removing the petitioner from service. Mr. Goswami has also produced the departmental records in support of his above arguments.

10. I have considered the arguments made at the Bar and have also gone

through the materials available on record.

11. Upon a careful scrutiny of the documents brought on record, I find that prior to initiation of the departmental proceeding/enquiry against the petitioner due to his unauthorized absence from duty during the period from 05.07.2016 to 23.11.2016 the petitioner was subjected to departmental proceedings on as many as 8 previous occasions leading to imposition of two major penalties and six minor penalties for remaining absent from duties without permission of the competent authority or for over-stay on leave. The relevant statements, narrating the details of such proceeding made in the counter-affidavit filed by the respondents, are reproduced herein below for ready reference :-

“As averred by the petitioner that the petitioner was under treatment of a medical officer who was holding a MBBS degree whereas the mental imbalance for which the petitioner was taking treatment required consultation with a specialized doctor. Moreover, during the course of enquiry, individual never produced any such medical documents which itself reveals the lie being averred by the petitioner before this Hon'ble Court that he was suffering from mental imbalance. The petitioner in his short service of 07 years in CISF has been awarded with 02 Major penalties and 06 Minor penalties for remaining absent from duties without permission of the competent authority and for overstaying of leave. He was a habitual offender of consuming liquor and not reporting on duty on his own, which are not acceptable in a disciplined Force. He has been awarded penalty of 'Dismissal' from service in the year 2014 vide Final order No.V-15014/01/SSTPS/K/Chetri/Disc.-36/2014- 1002 dated 03.04.2014 for overstaying leave (OSL) for 41 days from 05.12.2013 to 14.01.2014. But he was reinstated by the Appellate Authority i.e., DIG, CISF NZ-II HQrs Allahabad (Now Prayagraj) vide Appellate Order No.V-1101/Disc/NZ-2/Appeal/K. Chetri-

2014-5204 dated 27.06.2014 by giving him an opportunity to mend his indisciplined ways. But he did not appreciate the opportunity and again indulged in various acts of indiscipline, misconduct and dereliction of duties. Due to his act of indiscipline being absent from duty on 01.11.2014; 02.11.2014 and 01.12.2014, he was awarded penalty of 'Removal from service' vide Final Order No.V-15014/FGUTPP/Disc-336/01/K.C./ 2015- 1794 dated 12.05.2015 by the disciplinary authority but, this time again reinstated by the Reviewing Authority vide Review Order No.V-11014/Revision-42/Disc/NS/15/5195 dated 28.04.2016 by giving the petitioner another opportunity to value the importance of the Government job and discipline in Force, but the petitioner again made mockery of the discipline of the uniformed Force by remaining absent without leave (AWL) for 142 days without permission of the competent authority and after his Appeal and Revision petitioner have been rejected by the Appellate and Revisional Authority, the petitioner has approached this Hon'ble High Court with bundle of lies for making mockery of a disciplined Force again, which gave the petitioner more than ample opportunities to mend his indisciplined ways but failed to exaggeratedly which certify his indisciplined acts and misconduct. Thus, the Writ Petition filed by the petitioner being devoid of merit is liable to reject."

12. The above statements of the respondents made in the counter-affidavit have not been denied by the writ petitioner. If that be so, this Court finds substance in the plea taken by the respondents that the petitioner is a habitual offender, who had remained absent from duty unauthorisedly and overstayed his leave on a number of occasions in the past.

13. In so far as the allegation of violation of procedural safeguard while conducting the departmental proceeding is concerned, it is to be noted herein that

Rule 36 of the CISF Rules, 2001 lays down the procedure to be followed for imposing major penalty. On a careful reading of the Rules, in the light of the materials available on record, I find that the departmental authorities have scrupulously followed the rules before issuing the order of penalty dated 31.01.2017 removing the petitioner from service. It is to be noted herein that this is not a case where the petitioner had denied the allegations brought against him. Therefore, ordinarily there would be no necessity for the authorities to hold an enquiry in the matter. Notwithstanding the same, a proper enquiry was held in this case whereby, the charges brought against the petitioner, wherein the petitioner was given ample opportunity to present his case, were held to have been proved based on the evidence brought on record. The petitioner has failed to show any perversity in the enquiry report. Even after the enquiry report was submitted, the disciplinary authority had forwarded a copy of the same to the petitioner, in respect of which, he had also made his reply. Therefore, I do not find violation of any procedural norms in this case prejudicing the rights and interest of the petitioner in any manner.

14. Coming to the plea of the petitioner of having suffered from mental imbalance during the relevant period, it deserves to be mentioned herein that no such plea was taken by the petitioner during the enquiry proceeding. The petitioner has also failed to submit any authentic medical document from any specialist doctor indicating the nature and extent of his mental imbalance, if any, nor is there any explanation as to why, instead of deserting the Unit, the petitioner could not have sought medical treatment at Haridwar itself which had the facilities of treating patients with mental problem. If he was really suffering from any such ailment, the

petitioner ought to have sought medical help at Haridwar itself. In such view of the matter, the above plea of the petitioner, in the opinion of this Court, is not believable and hence, does not deserve consideration by this Court.

15. Rule 47 of the Rules of 2001 prescribes that an appeal against an order of penalty under Rule 46(3) can be entertained only if it is submitted within a period of 30 days from the date on which the appellant had receive a copy of the order appealed against. In the present case, the appeal was admittedly and evidently preferred beyond the period of 30 days and therefore, the same was rightly declined by the Appellate Authority by its order dated 25.03.2019. Having gone through the orer, I do not find any infirmity in the order passed by the Appellate Authority.

16. Coming to the order dated 14.01.2020 passed by the Revisional Authority rejecting the revision filed by the petitioner, here also, it must be noted that the petitioner has not challenged the order dated 14.01.2020 in this writ petition although a copy of the order dated 14.01.2020 had been brought on record by the respondents through their counter-affidavit. Be that as it may, after going through the order dated 14.01.2020, I am of the view that the Revisional Authority has rightly exercised his discretionary power and rejected the revision preferred by the petitioner. Therefore, the order dated 14.01.2020 also does not call for any interference from this Court.

17. Coming to the decisions relied upon by Mr. Chetri in support of his case, as has been observed herein above, this Court does not find any procedural violation or violation of the principles of natural justice in conducting the enquiry proceeding

against the petitioner. Consequently, the impugned order dated 31.01.2017 is also found to be in consonance with the mandate of Rule 36 of the CISF Rules, 2001.

Since there is no element of doubt in the present case that the petitioner is, in fact, guilty of misconduct of AWL hence, the question of perversity of the enquiry report also does not arise in the facts of the present case. Notwithstanding the same, it is seen from the records that the charges brought against the petitioner have been proved by sufficient and cogent evidence brought on record. Under the circumstances, I am of the opinion that the decisions relied upon by Mr. Chetri, would be of no assistance to him in the facts and circumstances of the present case.

18. For the reasons stated herein above, the writ petition is found to be devoid of any merit. The same is accordingly dismissed.

There would be no order as to cost.

The records be returned back to the learned Central Govt. Counsel.

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant