

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.12034 of 2000**

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Narayan Singh, Son of Harnam Singh, resident of village-Deothi, PO & PS-Bahadpur, District-Kangrah ( H P.)

.... .... Petitioner/s

Versus

1. The Union of India through, Director General, Central Industrial Security Force (Ministry of Home Affairs)
2. The Inspector General, Central Industrial Security Force (Ministry of Home Affairs, Patna
3. Sri R.A. Kinvi, the Deputy Inspector General ( Eastern Range) Central Industrial Security Force, Main Office, Eastern Range, Patliputra Colony, Patna-13
4. The Commandant, Disciplinary Authority, Central Industrial Security Force, Head Quarter, Patna-14.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Abhay Kumar Singh, Advocate 1

For the Respondent/s : Mr.Kumar Priya Ranjan, CGC

With Miss Gunja

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**ORAL JUDGMENT**

**Date: 07-07-2015**

1. The petitioner was at the relevant point of time posted as Constable, Central Industrial Security Force (CISF), Unit, FCI, Mokamah. In the present writ application he is aggrieved by the order dated 30.04.1996 passed by Group Commandant, Central Industrial Security Force, Group Headquarters, Patna, whereby, punishment of removal from service has been imposed upon him, on the ground of proved misconduct, on the basis of findings in a departmental enquiry



held against him. The petitioner's absence from service for a period of 221 days has been treated to be extraordinary leave without medical certificate. The petitioner had remained under suspension from 14.12.1995 to 30.04.1996. The disciplinary authority has held that the petitioner would be entitled for nothing more than the subsistence allowance for the period of suspension. The petitioner had preferred appeal before the Deputy Inspector General, CISF, East Zone, Patna which came to be dismissed by an order dated 10.03.1997. For the same occurrence which had led to initiation of departmental proceeding, a criminal case was instituted against him. In the said criminal case, the petitioner came to be finally acquitted by this Court by an order dated 18.02.2000, whereafter, he again approached the DIG, CISF, Patna for passing necessary orders in the light of his acquittal in the criminal case. The Deputy Inspector General, CISF, Patna passed an order afresh on 14.11.2000, wherein he came to the conclusion that the punishment of dismissal imposed upon the petitioner was proper as out of three charges, findings as regards third charge levelled against him for his unauthorized absence, remained unaltered. The order of the Deputy Inspector General, CISF, Patna dated 14.11.2000 is thus under challenge in the present

writ application.

2. In order to appreciate the controversy, it would be apt to take note of certain facts which are not in dispute.

3. When the petitioner was posted as Constable, CISF, Unit, FCI, Mokamah, the Inspector, CISF of the said Unit received a telephonic message from an unknown persons that two CISF Personnel were carrying four bags of sugar weighing 50 Kg. each on a Rickshaw from FCI godown. One of them (the petitioner) was caught by the villagers whereas another managed to escape. The said Inspector of Central Industrial Security Force is said to have rushed to the spot, with the police party where he found the petitioner in custody of the villagers and four bags of sugar loaded on a Rickshaw. Allegedly, his associate, constable Ashok Kumar Yadav is said to have confessed his guilt stating that they had taken four bags of sugar from the godown. On the basis of a written report of the Inspector, CISF, Mokamah P.S. Case No. 69 of 1995 was instituted on 07.05.1995. The petitioner thereafter, is said to have left the place of his posting without obtaining necessary orders from his superior.

4. For the said occurrence a departmental proceeding was also initiated against the petitioner with the

issuance of charge-sheet dated 19.5.1995, containing following three charges:-

#### ARTICLE-I

*“An Act of gross Indiscipline and misconduct in that CISF No. 924521733 CONST. Narayan Singh along with Constable Ashok Kumar Yadav of CISF Unit FCI (FSD) Mokama on 06.05.1995 at about 2200 HRS near Chatarpur Bypass was found steal THILY and unauthorized taking away four bags sugar each containing 50 kg belonging to FCI ( FSD) Mokama.*

#### ARTICE-II

*An act of gross indiscipline and misconduct in that CISF No. 92422733 Constable Narayan Singh along with constable Ashok Kumar Yadav of CISF UNIT FCI ( FSD) Mokma, on 6.5.95 just after 2200 HRS quarreled with the FCT L:abourers and manhandled them when they questioned him about his act of taking away the undertaking's property unauthorized endly.*

#### ARTICLE-III

*An act of gross indiscipline and negligence of duty in that CISF No. 924521733 Constable Narayan Singh of CISF UNIT, FCI (FSD) Mokama when detailed for quarter guard duty on 7.5.95 from 0600 HRS to 0900 HRS failed to report for duty and is absent from duty since 07.5.95 ( FN).”*



5. The petitioner had not turned up for discharging his duties after institution of First Information Report on 07.05.1995. He turned up on 14.12.1995 and reported for duty after having been released on bail by the criminal Court in connection with Mokamah P.S. Case No. 69 of 1995. The petitioner thereafter, participated in the departmental enquiry. The Inquiry Officer submitted his report holding that the charge Nos. I and III levelled against the petitioner stood proved. As regards charge No.II, the Inquiry Officer came to a finding that the said charge could not be proved. The disciplinary authority, i.e. Group Commandant, CISF, Patna agreeing with the report of the Inquiry Officer imposed upon the petitioner the punishment of dismissal from service, vide his order dated 30.04.1996.

6. For the reasons, which will be clear from the succeeding discussion in the present judgment, I am not addressing the findings of the disciplinary authority as regards charge no. I for the present which relates to theft of sugar bags from godown. As has been noted above, charge No.2 levelled against the petitioner could not be proved. So far as charge No.3 is concerned, it was alleged against the petitioner that he failed to report for duty since 07.05.1995, which was the date

for institution of the First Information Report of Mokamah P.S. Case No. 69 of 1995. The disciplinary authority dealing with charge No.3 has mentioned in his order that he left the place of his posting and on 07.05.1995 on 01.07.1995 he informed his superiors that he would be joining duty after his release on bail in connection with the said Mokamah P.S. Case No. 69 of 1995. He, however, did not disclose his place of location in the said letter dated 01.07.1995. He again wrote a letter informing his superiors that he surrendered in the Court on 13.09.1995 in connection with the said case and since then he was in Barh Jail. The disciplinary authority has recorded in his order, the fact that from 13.9.1995 to 13.12.1995, the petitioner remained in Barh Jail and after having been released on bail, he reported for joining in the said CISF Unit on 14.12.1995. On the basis of such discussion, the disciplinary authority has recorded the following findings in the order dated 30.04.1996:-

“ इस तथ्यों के आधार पर यह सावित होता है कि आरोपी दिनांक 13.09.95 से 13.12.95 तक वगैरह किसी छुट्टी अथवा उच्च अधिकारी के आदेश से अपनी इकाई से अनुपस्थित रहा। आरोपी अपने ब्यान में इसे स्वीकार किया है। अतः आरोपी पर लगाया गया तीसरा आरोप पूर्णतः सिद्ध होता है।”

7. As has been noted above, the petitioner preferred appeal and the Deputy inspector General, CISF, East

Zone, Patna, the appellate authority refused to interfere with the order passed by the disciplinary authority and rejected his appeal by an order dated 10.3.1997.

8. In the meanwhile, the criminal trial against the petitioner proceeded. The petitioner was convicted and sentenced to rigorous imprisonment for a period of two years. The petitioner preferred appeal upon which the petitioner was held guilty of charge under Section 411 of the Indian Penal Code but was acquitted of the charge framed against him for offences under other Sections of the Indian Penal Code. His sentence was reduced to R.I. for one year. The petitioner, thereafter, preferred Criminal Revision No. 428 of 1996 before this Court. This Court by an order dated 18.02.2000, allowed the said criminal revision application and acquitted the petitioner of the criminal charge levelled against him. Relevant portion of the order of this Court dated 18.02.2000 passed in Cr. Revision No. 428 of 1998 is being extracted hereinbelow, which according to me is germane for the purpose of present judgment:-

*“Heard learned APP. I have carefully scrutinized the evidence of the P.Ws. including that of P.Ws.5 and 8, the informant and the Investigating Officer, respectively. The I.O has not investigated on the point whether there was any theft of sugar bags from the godown of FCI nor he had examined*

the Incharge of the godown. No one has reported that there was shortage of four bags of sugar in the godown of FCI. He has further stated that he did not find any footprint at the place of occurrence. The other witnesses examined on behalf of the prosecution have not uttered a word that the recovered sugar bags belonged to FCI and it was the stolen property. In absence of such evidence, the conviction of the petitioner under Section 411 of the Indian Penal Code is not maintainable.” (Emphasis mine)

9. This is to be noted that charge no.1 framed against the petitioner in the departmental proceeding and the offence for which the petitioner was being tried in the criminal case were based on identical facts. The petitioner thereafter, approached this Court by filing a writ application being CWJC No. 8933 of 2000 for quashing the order passed by the disciplinary authority dated 30.04.1996, in view of the fact that he got acquitted in the criminal case by the order dated 18.2.2000, passed by this Court in Criminal Revision No. 428 of 1998. This Court vide order dated 11.09.2000, asked the Deputy Inspector General, CISF, Patna to dispose of petitioner's representation filed in this regard within a period of four weeks from the date of receipt/production of a copy of the said order. In the light of the order of this Court, the Deputy Inspector General, CISF, East Zone, Patna has passed the order dated 14.11.2000. The appellate authority, this time



agreed with the fact that in view of the petitioner's acquittal in criminal case in terms of the order of this court as noted above, charge No.I cannot be said to be proved for the purpose of taking disciplinary action against him. He, however, was of the view that charge No.III still held good and the petitioner could not put forth any fresh evidence or documents to disapprove the article of third charge, which related to his failure on his part to report for guard duty at 6 hours to 9 hours on 07.05.1995 and his unauthorized absence since 07.05.1995. The DIG, CISF, East Zone, Patna referred to the earlier appellate order passed by him rejecting the petitioner's appeal in which the petitioner's plea of treatment in a private Clinic during the said period of his absence was doubted and held that the fact remained that the petitioner absented himself from duty unauthorizedly for a period of 221 days, and he failed to intimate his whereabouts, the DIG, CISF, Patna. He held that award of punishment of removal from service did not require any change. Paragraph 7 of the order passed by the DIG, CISF, Patna dated 11.11.2000 is relevant and is being quoted hereinbelow:-

*"In spite of the fact that Articles of Charge No.1 and II have not been proved, I am of the view that Articles of Charge III has been proved beyond doubt. The enquiry has been conducted as per laid down procedure and there is no denial of natural justice. The punishment*

*awarded by the Disciplinary Authority still holds good relates to Article of Charge III which has also been proved.”*

10. There is no dispute between the parties over the facts as noted above. It is evident thus, that punishment of removal from service of CISF has been imposed upon the petitioner on the basis of proved charge No.III only of the charge-sheet. There is no dispute about the fact that the petitioner absented himself from the very date of the institution of the First Information Report, from duty, in order to avoid his arrest in the criminal case. It has been stated in the writ application that the petitioner was taking legal steps for grant of anticipatory bail and when he did not succeed, he surrendered before the Magistrate on 13.09.1995 whereafter, he was taken into custody on 13.9.1995 and he remained in custody from 13.9.1995 to 13.12.1995. It is not in dispute that the petitioner had informed his superiors that he had surrendered before the Magistrate and was in custody in Barh Jail. In such circumstance, in my opinion, on the ground that petitioner remained absent from service for the period 13.9.1995 to 13.12.1995, without any permission of the authority, when he was in jail, cannot be said to be constituting an act of



misconduct. The disciplinary authority has recorded in his order that on 01.07.1995, the petitioner had informed his superior that he would be reporting to duty once he was released on bail. Evidently, he was trying to convey his superior that he was taking all legal steps for his release on bail in connection with the said criminal case. In my opinion, in such circumstance, the petitioner was confronted with a situation where if he joined the duty he would be taken into custody in connection with the said criminal case and if he did not, it might incur disciplinary action. From the facts of the case, it appears that it was never the intention of the petitioner to unauthorizedly remain absent from duty without any reason. The petitioner's absence for the said period when the First Information Report was instituted on 07.05.1995 till he was released on bail on 13.12.1995 cannot be treated to be such misconduct, warranting imposition of punishment of removal from service. In any event, absence of an employee from duty during which he was in judicial custody cannot itself constitute misconduct.

11. In my opinion, these aspects ought to have been considered by the Deputy Inspector General, CISF, East Zone, Patna while passing the order dated 14.11.2000 and he



ought to have been sensitive about the situation which the petitioner was facing, which had compelled him to remain absent from duty. The petitioner's absence from duty for the period during which he remained in jail, in my opinion, cannot constitute a misconduct for the purpose of imposing any punishment unless it was alleged that he did not inform his employer about the fact that he was in judicial custody.

12. The order dated 11.11.2000 passed by the Deputy Inspector General, Central Industrial Security Force, East Zone, Patna, therefore, deserves to be quashed and is accordingly quashed. He is directed to pass an order afresh on the petitioner's representation. It is directed that in no circumstance, the DIG, CISF, East Zone, Patna will consider petitioner's absence from duty during which he was in judicial custody to be an act of misconduct.

11. Though this Court while exercising power of judicial review under Article 226 of the Constitution of India, normally does not substitute its views in place of one taken by the disciplinary authorities, in the matter of quantum of punishment, still in peculiar facts and circumstances of the case as discussed above, I direct that the Deputy Inspector General, CISF, Patna shall not impose any punishment having effect of



petitioner’s termination from service as I am of the opinion that such punishment would shockingly disproportionate, in the background of facts nsoted above. I further direct that final decision in this regard must be taken within a period of three months from the date of receipt /production of a copy of this order.

12. This application is accordingly, allowed.

13. There shall, however, be no order as to costs.

**(Chakradhari Sharan Singh, J)**

ArunKumar/-

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