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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 11665/2018**

UDAYAN. S

..... Petitioner

Through Ms. Anushree Menon, Advocate

versus

UNION OF INDIA AND ORS.

..... Respondents

Through Dr. Ashwani Bhardwaj, Advocate

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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29.10.2018

CM Appl.No. 45043/2018 (Exemption)

1. Exemption allowed subject to all just exceptions.

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2. The challenge in this writ petition is to the orders passed by the Inspector General, North Sector, CISF dated 30th March 2016 and 5th August 2016. The brief background to the present case, as spelt out in the first impugned order dated 30th March 2016, is that the Petitioner is a Constable of the CISF. He was issued a memorandum of charges dated 19th June 2014 (amended by a subsequent letter dated 14th August 2014) for *inter alia* overstaying on leave without permission from 23rd March 2014 onwards. Despite letters from the Respondents asking him to report for duty, he had

failed to do so and his total unauthorised absence amounted to 347 days.

3. The impugned order also notes that six inquiry notices were sent to him between 13th September 2014 and 25th November 2014 at his declared home address.

4. The inquiry ended and the Petitioner had been found guilty of the charges and the disciplinary authority concurred with those findings.

5. The Petitioner was initially awarded the penalty of 'Removal From Service' by an order dated 5th March 2015.

6. The Petitioner then preferred an appeal against that order. The appeal petition was in fact rejected by an order dated 20th May 2015. The Petitioner then filed a revision petition and the first order impugned herein dated 30th March 2016 has been passed by the Revisional Authority. In exercise of powers under Rule 34 of the CISF Rules 2001, the Revisional Authority modified the punishment of removal from service to that of 'Reduction Of Pay' by three stages for a period of two years. It was further directed that the Petitioner would not earn increments in pay during the period for the reduction and that on expiry of said period, the reduction would have the effect of postponing his future increments in pay.

7. It was further directed that the intervening period, i.e. out of employment period, would be regularised from the date of removal of service to the date of rejoining duty as '*dies non*' on the principle of 'no work, no pay'.

8. Aggrieved by the above order, the Petitioner again went before the same Revisional Authority seeking lenient treatment of his misconduct. In sum, he sought to persuade the Respondent not to treat the intervening period as '*dies non*'. By the second order impugned herein dated 5th August 2016, this prayer was rejected. It was further clarified that "this will not entail break in service in terms of Rule 25 of CCS (Pension) Rules 1972".

9. This Court has heard learned counsel for the Petitioner as well as learned counsel for the Respondents.

10. Having carefully perused the impugned orders, the Court is unable to be persuaded to interfere with the quantum of punishment awarded. The Court in particular notes that the CISF is a security force where the maintenance of discipline has to be of the highest standard. A period of 347 days of absence without justification despite being asked to report for duty does not appeal to the Court as conduct which can be excused. The second article of charge for which again the Petitioner was found guilty pertained to his deliberate overstay on leave for 39 days from 29th October 2010 to 6th December 2010. On that occasion, he was awarded a lesser punishment of three days' pay as fine. However, this did not appear to have any deterrent effect.

11. Counsel for the Petitioner pointed out that the Petitioner's overstay on leave was on account of the illness of his wife and himself. The impugned order specifically notes that, with the availability of family accommodation, the Petitioner was asked to report for duty by reminding him that a family accommodation is available and that he should bring his wife with him. Even this did not appear to have any effect on the Petitioner.

12. The Court is unable to find any legal infirmity in either of the impugned orders.

13. The writ petition is dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

OCTOBER 29, 2018

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