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W.P. No.29664 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No. 29664 of 2019

Khushhal Ahamed

... Petitioner

Vs.

- 1.The Union of India,
Rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi – 110 001.
- 2.The Additional Director General,
Central Industrial Security Force,
Airport Sector, CISF Campus,
Mahipalpur,
New Delhi – 110 037.
- 3.The Inspector General, APS-II,
South West Head Quarters,
Central Industrial Security Force,
Airport Security Group,
Kempegowda International Airport,
Bengaluru – 560 300.
- 4.The Deputy Inspector General/AP-SZ,
Central Industrial Security Force,
South Zone, Head Quarters,
2nd Floor D Block,
Rajaji Bhavan, Besant Nagar,



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Chennai – 600 090.

5. The Senior Commandant,
Central Industrial Security Force Union,
10th Reserve Battalion,
Arakkonam – 631 152,
Vellore District.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent in his order No. V-15019/L&R/AP-SZ/Review-01/2019/4919 dated 23.09.2019 enhancing the order passed by the 5th respondent in his final order No.V-15014/10th RB(A)/Maj-03/KA/2019/2675 dated 18.06.2019 and quash the same and to direct the respondents to take the petitioner into the strength of the CISF as Head Constable/Clerk with all monetary benefits.

For Petitioner : Mr.R.Thiyagarajan

For Respondents : Mr.S.Muthusamy
ACGSC

ORDER

Against the Petitioner, a charge Memorandum has been issued by the 5th Respondent on 19.03.2019. The Article of Charge reads thus:-

“An act prejudicial to the good orders and discipline of the Force in that No. 120401602 Head Constable/Clerk Khushhal Ahmed of CISF 10th Reserve Battalion, Arakkonam while serving as CISF Unit ASG Guwahati on 16.2.2019 at about 09.25 p.m. circulated an



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objectionable “anti-national” message i.e., (“PAKISTAN ZINDABAD”) in the WhatsApp group named “CISF 1969” from the mobile phone No.7982985516, which is identified in the Truecaller as in the objectionable name of “Isi Agent (India)”. The act on the part of No. 120401602 Hc/CLK Khushhal Ahmed of CISF 10th Reserve Battalion Arakkonam reflect his anti-national, anti-social attitude which tantamount to grave misconduct, indiscipline and highly prejudice to his allegiance to Sovereignty on Constitution of India and unbecoming of a member of a Central Armed Police Force of the Union of India.”

2. The Petitioner was working as a Head Constable / Clerk at CISF 10th Reserve Battalion, Arakkonam. At that time, the said charge memo was issued for the Article of Charge under which it was alleged that while the petitioner was working at CISF Unit ASG Guwahati, on 16.2.2019 at about 09.25 p.m., circulated an objectionable “anti-national” message i.e., “PAKISTAN ZINDABAD” in the WhatsApp group named “CISF 1969” from his mobile phone No.7982985516.

3. The said charge memorandum has been served on the petitioner on 19.03.2019 and on receipt of the same, the petitioner on 20.03.2019 had requested



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for additional documents, further request also has been made by the petitioner on 21.03.2019. Those additional documents sought for by the petitioner has been supplied. Thereafter, the petitioner has given his statement of defence in writing vide his reply on 28.03.2019, which was received by the 5th respondent on 29.03.2019, where the petitioner had denied the charge levelled against him.

4. However, departmental enquiry was proceeded as per the provision under Rule 36 of the Central Industrial Security Force Rules, 2001 (in short the CISF Rule, 2001). Accordingly, Enquiry Officer has been appointed and the Presenting Officer was also appointed and the enquiry went on for few days, where the petitioner has appeared before the enquiry officer.

5. On behalf of the department, 6 documents had been marked and 6 witnesses were examined. However, though the petitioner had requested for examining three defence witnesses from CISF Unit, ASG Guwahati, when they were summoned, they expressed their unwillingness to appear as defence witnesses, therefore, the enquiry was concluded by examining only the petitioner. After completing the enquiry, the enquiry officer had submitted the enquiry report on 10.05.2019, a copy of which has also been served on the petitioner seeking a



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reply to the enquiry report, which had also been given by the petitioner on

24.05.2019.

6. However, according to the petitioner, without considering the defence evidence given by the petitioner and without considering the defence, including the reply given to the Enquiry Officer's report in proper perspective, the 5th respondent, who is the disciplinary authority, had issued an order dated 18.06.2019, under which the 5th respondent had imposed a penalty on the petitioner to the extent of reduction of pay by two stages from Rs.31400/- to Rs.29600/- with cumulative effect for a period of three years. It was further directed that he will not earn increment of pay during the period of reduction and that on expiry of the period, this reduction will have the effect of postponing his future increment of pay.

7. Though the punishment / penalty has been imposed against the petitioner by the 5th respondent disciplinary authority, the petitioner had not preferred appeal against the penalty.

8. However, on 09.08.2019, the 4th respondent had issued a show cause notice by invoking Rule 54 of the CISF Rules, 2001 for revising the case by way of *suo motu* revision under Rule 54 of the CISF Rules, 2001. In the said show cause



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notice, the 4th respondent had stated that by imposing a lesser punishment, the 5th respondent disciplinary authority has undermined the gravity of delinquency on the part of the petitioner and therefore, the 4th respondent had stated that he was of the opinion that the punishment awarded to the individual i.e., the petitioner did not commensurate with the gravity of the delinquency committed by the petitioner and therefore, he provisionally decided to enhance the penalty to that of dismissal from service.

9. On receipt of the said show cause notice issued by the 4th respondent, the petitioner had given a very detailed reply on 09.09.2019 to the said show cause notice.

10. However, according to the petitioner, without considering these defences or reply given by the petitioner to the said show cause notice, the 4th respondent proceeded to pass order of punishment dated 23.09.2019, under which, the penalty / punishment imposed by the disciplinary authority has been enhanced into a dismissal from service. Therefore, challenging the said orders i.e., both the order imposing penalty passed by the disciplinary authority / 5th respondent dated 18.06.2019 and the order of the appellate / revisional authority enhancing the



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punishment against the petitioner by order dated 23.09.2019 passed by the 4th respondent, the petitioner has filed the present writ petition with the aforesaid prayer.

11. Heard the arguments of Mr.R.Thiyagarajan, the learned counsel for the petitioner, who would submit that, the petitioner had been working in the force i.e., CISF for several years and had earned several medals also and he had no intention to insult the nation and he had faith in the Constitution of India as well as the unity and integrity and sovereignty of India and therefore, he had no occasion whatsoever to think of making any move, the least like sending the message in the WhatsApp group against the interest of India by praising the neighbouring country and therefore, the very message sent by the petitioner is not actually the message, he intended because the words “Pakistan Zindabad” is an incomplete text, but actually what was intended to send by the petitioner was “Pakistan Zindabad jo bolely vo b murdabad”.

12. Learned counsel would further submits that, when the petitioner typed the first two words “Pakistan Zindabad”, due to technical snag as he was using the android phone the two words message has been slipped and the petitioner was not able to retrieve the message sent or disappear it and thereafter,



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the petitioner could not work in his phone due to technical snag.

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13. Learned Counsel further submits that when that being so, the message sent through WhatsApp group by the petitioner had been immediately requested to be deleted as the petitioner could not delete the same and even if he had deleted it he could have deleted it only for himself and not in the group and therefore, he requested the group admin to delete the said message, which was subsequently deleted and he had put an apology message also after some time and on the next day he informed the superior officer about this incident and under whose advise the petitioner sent the apology message also and therefore, these sequence of events would clearly establish that the petitioner had no idea or intention of whatsoever to defame India or its sovereignty and he has no intention to act against the integrity and sovereignty of the country and the Indian society and therefore, the said unfortunate incident had taken place beyond the control of the petitioner. Because of the technical snag, which has been blown up disproportionately, such a punishment of dismissal from service had been slapped against the petitioner, due to which his livelihood is at stake, learned counsel contended. He has raised a point that, assuming that the message sent by the petitioner deserves to be taken up as a violation, for which the petitioner has to be imposed penalty that having been considered, the 5th respondent disciplinary



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authority by order dated 18.06.2019 had imposed the punishment of reduction of pay by two stages under which already the petitioner was put to suffer financially because of the reduction of pay at two stages and when that being so, the fourth respondent by invoking its revisional power under Rule 54 of the CISF Rules, 2001 had suo motu initiated the proceedings by giving a show cause notice dated 09.08.2019, where he had already predetermined what would be the punishment or penalty going to be imposed against the petitioner i.e., dismissal from service. Though the said show cause notice had been properly responded with an exhaustive reply by the petitioner on 09.09.2019, the contention made in the said detailed reply given by the petitioner has not been considered in proper perspective. Therefore, the impugned order dated 23.09.2019, passed by the 4th respondent appellate authority / revisional authority, who exercised the *suo motu* power under rule 54 of the CISF Rules, 2001 is totally untenable and unsustainable and hence, the learned counsel appearing for the petitioner seeks indulgence of this Court against the impugned order.

14. Per contra, Mr.S.Muthusamy, learned Additional Central Government Standing Counsel appearing for the respondents by making reliance on the counter / reply affidavit filed by the 4th respondent would submit that,

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insofar as the petitioner is concerned, he is a member of a disciplined force and comparing with the ordinary citizen of the country a member of the force like the CISF must have utmost integrity and devotion to duty and he must have faith in the constitution, the country and its sovereignty.

15. When that being so, absolutely the message sent by the petitioner as “Pakistan Zindabad” was totally uncalled for and the time when that message was sent by the petitioner through the WhatsApp group where several CISF personels are members was vulnerable because immediately after the Pulwama incident that shocked the nation, since this message has been sent by the petitioner and the fact that the petitioner alone has sent the message has been proved beyond doubt during the departmental enquiry, where six witnesses were examined and equal number of documents have been filed on behalf of the prosecution, the proven charge certainly makes the disciplinary authority entitle to slap the maximum penalty.

16. However, since the disciplinary authority had taken it lightly and had imposed only a lighter punishment and that action on the part of the 5th respondent had undermined the gravity of the delinquency of the petitioner, the 4th respondent



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on going through the same had to necessarily invoke the *suo motu* power under Rule 54 of the CISF Rules, 2001, where proper show cause notice had been given to the petitioner and the reply given by the petitioner had been considered in detail and this could be evident on a reading of the order dated 23.09.2019, which is impugned herein passed by the 4th respondent, where each and every defence or reply taken or given by the petitioner has been met with proper reasons and ultimately the 4th respondent has concluded that the petitioner was deserved to be imposed with the maximum penalty of dismissal from service and hence, such a penalty / punishment has been imposed on the petitioner hence the orders impugned are to be sustained and the writ petition deserves to be dismissed, he contended.

17. I have considered the said rival submissions of the learned counsel appearing for both sides and have perused the materials placed before this Court.

18. Insofar as the charge made against the petitioner is, that on 16.02.2019 at about 09.25 p.m., when the petitioner was serving as Head Constable / Clerk at CISF Unit, ASG Guwahati, he has sent a message called “Pakistan Zindabad” in a WhatsApp group viz., “CISF 1969 from the mobile

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phone No. 798298556.

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19. Insofar as this charge is concerned, it is admitted by the petitioner that the words “Pakistan Zindabad” was sent by the petitioner, but, according to him, it is not a full text and it is only an incomplete text. Therefore, insofar as the sending of the said message is concerned no further evidence is required, as the petitioner has admitted the same.

20. Then the issue to be decided is whether the petitioner was in the intention of sending a sentence “Pakistan Zindabad jo bolely vo b murdabad” and when that was typed for sending it due to technical snag the first two words “Pakistan Zindabad” alone has been slipped into the WhatsApp group and it has been sent and thereafter, the petitioner could not retrieve it or delete it and by thus the reply stated by the petitioner that he has no intention to send such a word or message called “Pakistan Zindabad”, whether is correct or not has to be ascertained.

21. In this context, if we look at the disciplinary proceedings initiated and the enquiry conducted against the petitioner, that absolutely there has been no violation of principles of natural justice as proper charge had been framed which



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had been served on the petitioner, time was given to give reply after going through the reply the disciplinary authority not being satisfied with the said reply decided to proceed against the petitioner. Therefore, Enquiry Officer was appointed, Presenting Officer was also appointed and before the Enquiry Officer enquiry was conducted, where full opportunity was given and 6 witnesses were examined and 6 documents were also filed and marked on behalf of the department and chance for cross examination was also given to the petitioner.

22. Though certain defence witnesses were sought to be examined by the petition from the CSIF Unit, ASG Guwahati, even that intention of the petitioner had been sent to the witnesses, however, those people were not interested in being examined themselves as defence witnesses on behalf of the petitioner. Thereafter, the petitioner has examined himself as witness and his evidence was taken into account and thereafter, the enquiry officer has given a detailed report on 10.05.2019, where he had come to a conclusion that the charge against the petitioner has been proved.

23. After the enquiry officer's report was received by the disciplinary authority, a copy of it was forwarded to the petitioner by giving the second opportunity to give reply and that was also exhausted by the petitioner by sending



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his reply to the enquiry officer's report on 24.05.2019.

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24. Considering the enquiry report as well as the reply given by the petitioner, the disciplinary authority has ultimately concluded that the charge against the petitioner has been proved. However, he had chosen to impose a punishment / penalty of reduction of pay by two stages from Rs.31400/- to Rs.29600/- with cumulative effect for a period of three years and the reduction will have the effect of postponing the petitioner's future increment of pay also.

25. In this context, if we look at the relevant rule of the CISF Rule, 2001 the reduction of time scale of pay is one of the major penalty, however, apart from the said penalty other major penalties are also available under Rule 34, which includes dismissal from service. In this context, if we look at Rule 54, it reads thus:-

“54. Revision.— (1) Any authority superior to the authority making the order may either on his own motion or otherwise call for the records of any inquiry and revise any order made under these rules, and may—

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has



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been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such order as it may deem fit, within six months of the date of communication of the order proposed to be revised:

Provided that no order imposing or enhancing any penalty shall be made by any revisioning authority unless the enrolled member of the Force concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (i) to (v) of rule 34 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if any, inquiry under rule 36 of Central Industrial Security Force Rules, 2001 has not already been held in the case no such penalty shall be imposed except after an enquiry in the manner laid down in the aforesaid rules.”

Under Rule 54(1) any authority superior to the authority making the order i.e., any order of punishment like the present one may either on his own motion or otherwise of the superior authority can be revised by calling for the records of any inquiry and may confirm, modify or set aside the order under sub-clause (a) and can confirm, reduce, **enhance** or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed under sub-clause (b).

(Emphasis supplied)



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26. Therefore, as per sub-clause (b) of sub-rule (1) of Rule 54, it is possible for any superior officer by his own motion to revise the order passed by the original authority, where if any penalty has been imposed, the same can be confirmed or reduced or even enhanced. Therefore, the power of enhancing the penalty already imposed is also vested with such revisional authority or superior authority. When that being so, the 4th respondent, being the superior authority than the 5th respondent has invoked the power under Rule 54.

27. In the said *suo motu* proceedings under Rule 54 as per the proviso to Rule 54(1), the 4th respondent was required to give the petitioner reasonable opportunity of making representations against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (1) to (5) of Rule 34 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses such opportunity of being heard must be given. Therefore, in order comply with the said proviso to 54(1), the 4th respondent had issued the show cause notice dated 09.08.2019, where he has proposed to state that provisionally he has decided to enhance the penalty to that of dismissal from



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service. Therefore, upto this level, there has been no violation of the relevant Rule of the CISF Rules, 2001. Therefore, in this context, the arguments advanced by Mr.R.Thiyagarajan, the learned counsel for the petitioner and the stand taken by the petitioner cannot be countenanced.

28. Insofar as the further complaint made on behalf of the petitioner by his counsel that the detailed reply given to the show cause notice by the petitioner to the 4th respondent either not at all was considered or not being considered in proper perspective by the 4th respondent is concerned, in the order dated 23.09.2019, if we look at the same, the 4th respondent has met each and every such reply and the defences taken by the petitioner. Insofar as the defence taken by the petitioner regarding “Pakistan Zindabad jo bolely vo b murdabad” is concerned, it is a clear afterthought on the part of the petitioner and that has been concluded by the 4th respondent. Insofar as the defence taken that the Head Constable Deshraj, who had found through the True Caller of the number of the petitioner shows that he is an ISI agent is a fabricated document is concerned, that has also been considered by the 4th respondent and stated that the said Thiru. Deshraj was examined as P.W.3 and he has not been cross-examined to unearth the truth, which the petitioner has not chosen to do.



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29. The very seriousness of the message that has been posted by the petitioner was noticed by the respondents, according to them, because that message was posted by the petitioner in the WhatsApp group after the Pulwama incident as a terrorist organisation in Pakistan took responsibility of killing CRPF Jawans.

30. The relevant portion of the consideration of the same by the 4th respondent in the impugned order reads thus:-

“The charged official has stated that during the DE proceedings EO & PO tried to link the incident occurred on 14.02.2019 with his message circulated a half/partial part of message on 16.02.2019.

-) A message i.e., “PAKISTAN MURDABAD” was posted by one of the WhatsApp group member after Pulwama incident as a terrorist organisation in Pakistan took responsibility for killing of CRPF Jawans (PW-II/Exhibits-I). On seeking the message, the charged official posted an anti-national message i.e., “PAKISTAN ZINDABAD” below the message. Hence, the argument of the charged official that the Enquiry Officer & the Presenting Officer tried to link



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Pulwama incident with his message circulated a half/partial part of message on 16.02.2019 is not tenable.”

Like that every such defence taken by the petitioner had been considered only thereafter ultimately the order of dismissal from service was passed by the 4th respondent.

31. Therefore, on seeing all these aspects by examining the content of the message and the manner in which it has been sent, that too by a member of a disciplined force, it would certainly make ground to come to a irresistible conclusion that the petitioner has sent this message in a vulnerable circumstances.

32. In this context, it is to be noted that every citizen of this country is having a set of fundamental duties as provided under Article 51-A of the Constitution of India. The relevant duty corresponding to the present incident is duty under Article 51-A(c). It has to be noted that it shall be the duty of the citizens of India to uphold and protect the sovereignty, unity and integrity of India.

33. This is one among the several duties that has been provided as fundamental duty under Article 51-A of the Constitution. Though it is meant for all



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its citizens of this country, insofar as the member of a disciplinary force is concerned, he must have been doubly responsible to strictly follow the path of strict adherence to the fundamental duties.

34. When that being the legal position, this Court feels that, the view taken by the 4th respondent, being the superior authority that, for the proven charge against the petitioner, the imposition of penalty of reduction of pay at two stages is not commensurate to the gravity of the delinquency is correct.

35. In this context, even though innocence was claimed by the petitioner as his counsel vehemently contended before this Court by stating that his intention was to type a long sentence and only first two words has slipped into due to technical snag, it cannot be easily accepted, the reason being that, the true caller identification as shown in the screenshot which has been marked as a document through the prosecution witness, was not questioned by making any cross-examination by the petitioner. Moreover, the objectionable message was sent by the petitioner on 16.02.2019 at 09.25 p.m., after few minutes, i.e., even before 10.00 p.m., the petitioner left from the WhatsApp group. For sending the message and for leaving from the WhatsApp group, eventhough the petitioner has tried to give some defence, it is not acceptable one, as, if at all the petitioner had wrongly



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sent any message the same could have been very well been deleted as that kind of facility is available in the WhatsApp, however, the petitioner instead of deleting it by himself had left the group within few minutes. Therefore, these circumstances, definitely create a high doubt in the minds of any normal person who considered these episodes. Moreover, the respondent department had followed the rules i.e., CISF Rules, 2001 strictly by conducting enquiry, after giving opportunity of being heard to the petitioner and there was no violation of principles of natural justice. Two times opportunity was given to the petitioner to give his reply and every time reply given by the petitioner was considered point to point and after following all these formalities, which ought to have been followed under the Rules, then only the orders have been passed.

36. Therefore, looking from any angle, the defence now taken by the petitioner before this Court, assailing the order impugned, would not be sustained.

37. It is also to be noted that, as against the order passed by the original authority, the petitioner has not chosen to prefer any appeal. That itself shows that the petitioner was accepting the fact that the charge against the petitioner has been proved and also has accepted the penalty of reduction of pay for two stages.



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38. Only when it was enhanced to the punishment of dismissal from service, now the petitioner has taken all these defences. Hence, these defences assuming for argument sake is to be taken into account, because of his own action on the part of the petitioner in not choosing to prefer appeal against the order passed by the original authority makes all these defences redundant and hence, for that aspect also one can easily conclude that the petitioner is guilty of the aforesaid violation of sending offensive message touching the sovereignty of the nation and the petitioner being the member of the disciplined force was expected to maintain the high degree of devotion and integrity towards service and the nation. If that being so, this kind of action of the petitioner certainly would tend to come to a irresistible conclusion that there is a violation made by the petitioner by sending such highly objectionable message to a group of people, who are none other than the members of disciplined force i.e., CISF and therefore, that kind of action of the petitioner certainly deserved to be dealt with by iron hand and therefore, absolutely there has been no infirmity in invoking the suo motu power vest with the superior authority i.e., the 4th respondent under Rule 54 of the CISF Rules, 2001. Hence, the impugned order is to be sustained as it does not require any interference from this Court.

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02.09.2022

Index : Yes

Internet : Yes

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To

- 1.The Secretary to Government,
Ministry of Home Affairs,
Union of India,
New Delhi – 110 001.
- 2.The Additional Director General,
Central Industrial Security Force,
Airport Sector, CISF Campus,
Mahipalpur,
New Delhi – 110 037.
- 3.The Inspector General, APS-II,
South West Head Quarters,
Central Industrial Security Force,
Airport Security Group,
Kempegowda International Airport,
Bengaluru – 560 300.
- 4.The Deputy Inspector General/AP-SZ,
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23/25



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R.SURESH KUMAR, J.

sj

5.The Senior Commandant,
Central Industrial Security Force Union,
10th Reserve Battalion,
Arakkonam – 631 152,
Vellore District.

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