

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

% **Reserved on: April 12, 2023**

Pronounced on: May 01, 2023

+ **W.P.(C) 3713/2022 & CM APPL. 11029/2022**

RAJU JAT

..... Petitioner

Through: Ms. Eshna Kumar, Mr. Udit Gupta,
Mr. Anup Jain & Mr. Aditya
Maheshwari, Advocates

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Vikrant N. Goyal, Ms. Ayushi
Garg & Ms. Tesu Gupta, Advocates
Inspector Sanjay Kumar & Sub
Inspector Prahlad Devenda for CISF

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The petitioner, who is working as ASI/Exe in Central Industrial Security Force ('CISF') and posted at Mumbai Airport, has filed the present petition seeking setting aside of order dated 17.07.2018 passed by respondent No.4- Senior Commandant, CISF; order dated 24.10.2018 passed by respondent No.3-Deputy Inspector General (DIG), CISF and order dated 22.03.2019 passed by respondents No. 2-Inspector General (IG), CISF.

2. The rationale behind the aforesaid orders is that on 08.02.2018 petitioner had applied for earned leave w.e.f. 20.02.2018 till 06.03.2018 on the ground of his engagement. The competent authority vide communication dated 09.02.2018 asked the petitioner to apply for leave under casual leave category instead of earned leaves. The petitioner claims to have accordingly modified his leave application on 10.02.2018 and applied for casual leave for the aforesaid period. The petitioner claims to have booked flight ticket in advance on the said day i.e. 10.02.2018 from Chennai to Jaipur for 19.02.2018 with return flight 06.03.2018.

3. The petitioner is aggrieved that the competent authority instead of any assurance to grant leave, issued an unusual direction to the petitioner on 17.02.2018 to first attend the parade and then apply for the leave. The petitioner has averred that the competent authority did not reject his application but directed him to apply for leave after 23.02.2018 with joining before 08.03.2018 and there was no confirmation of grant of leave even after 23rd onward.

4. The petitioner thereafter once again applied for leave on 19.02.2018 but having no response, petitioner made a request to the Sr. Commandant of Chennai Division for personal hearing, as he had booked his flight for 19.02.2018 ten days ago, on oral assurance of leave. On 19.02.2018, the said authority granted permission to the petitioner for personal hearing.

5. On the same day i.e. 19.02.2018, petitioner personally met the Deputy Commandant (Admn) with request to sanction leave, however, he was asked to apply for leave from 23rd onwards, without giving any assurance for sanction of the same. On the persistence of petitioner, petitioner's request

letter was sent to the superior authority, who also recommended for sanction of leave from 23rd onwards. Since tickets were already booked for 19.02.2018 , the petitioner after orally informing all his senior officers as well as in writing to the concerned jurisdictional police station about his travel, left for his native village at Rajasthan. The petitioner also claims to have requested the concerned authority vide e-mail dated 20.02.2018 for sanction of his leave, but the appropriate authority directed the petitioner to join duty with immediate effect by treating the absence from 20.02.2018 as absconding.

6. According to petitioner, he got engaged on 28.02.2018 at his native village in Rajasthan. The competent authority vide communication dated 02.03.2018 again directed the petitioner to join the duty, threatening disciplinary action against him. The petitioner reported back to duty on 7.03.2018 at the place of his posting i.e. Chennai Airport in accordance with his planned and applied leave till 06.03.2018.

7. The petitioner was issued a Charge Memorandum dated 14.03.2018, under Rule-36 of CISF Rules, 2011 by the Disciplinary Authority i.e. Senior Commandant, proposing to hold an enquiry on the charge of remaining absent from duty from 20.02.2018 till 06.03.2018, which amounted to gross indiscipline, misconduct and dereliction of duty. The petitioner acknowledged the Charge Memorandum and submitted a reply dated 22.03.2018 denying the charge against him. A departmental enquiry was initiated against the petitioner. The Enquiry Officer after conducting the enquiry proceedings submitted the Enquiry Report dated 11.06.2018 to the Senior Commandant of Chennai Division holding the article of charge

proved.

8. The Disciplinary Authority agreeing with the findings of the Enquiry Officer, furnished copy of the same to the petitioner, giving him opportunity to represent against the same. The petitioner preferred a representation dated 10.07.2018 against the Enquiry Report, which was considered by the Disciplinary Authority, who found no ground to disagree with the findings returned by the Enquiry Officer and held petitioner guilty of charge. The Senior Commandant, CISF vide order dated 17.07.2018, awarded penalty of *“reduction of pay by one stage from Rs.34,900 to Rs.33,900 in the pay lev-5 for a period of one year with immediate effect. It is further directed that during the period of reduction, he will not earn increment of pay and on expiry of this period, the reduction will have the effect of postponing his future increment of pay”* to the petitioner.

9. Against the aforesaid order dated 17.07.2018, petitioner preferred an appeal before the DIG, CISF, which was considered and rejected by the Appellate Authority vide order dated 24.10.2018. A revision petition against the order of the Appellate Authority was preferred by the petitioner which also stood considered and rejected vide order dated 22.03.2019. The petitioner thereafter preferred a mercy petition before the Director General seeking removal of the awarded penalty, however, the same was returned by the Deputy Inspector General vide letter dated 23.10.2019 quoting guidelines regarding mercy petition vide letter dated 11.10.2019. The petitioner thereafter preferred a writ petition before the High Court of Rajasthan at Jaipur, which was disposed of vide order dated 18.03.2021 giving liberty to the petitioner to approach the appropriate court having

jurisdiction. Hence, the petitioner is before this Court.

10. In support of the case of petitioner, learned counsel appearing on his behalf argued before the Court that the competent authority as well as the superior authority without appreciating the fact that petitioner had applied for leave from 20.02.2018, ten days prior and had booked the tickets in advance for 19.02.2018, recommended the leave from 23.02.2018 in an arbitrary manner. It was submitted that firstly, petitioner was asked to convert his application seeking earned leave to casual leave and thereafter, he was asked to apply for leave from 23.02.2018 and that too, without any assurance that the leave would be sanctioned.

11. Learned counsel for petitioner submitted that the charge of absent from duty from 20.02.2018 till 06.03.2018 is false, as the petitioner had very timely applied for leave for the said period and had also informed the senior officers in writing before leaving the place of posting. Next submitted that the period from 20.02.2018 till 06.03.2018 was treated as "Absent without Leave" and also "No leave salary" on account of Rule 25 of CCS Leave Rules, 1972; as this provision will be applicable only if the leave duly granted has been utilized for period more than the period approved.

12. It was also brought to the notice of this Court that the Company Commander had verbally asked the petitioner to return before 10.03.2018, as ICAO inspection was to be conducted and the petitioner had returned on 06.03.2018 and so, charge of dereliction of duty and misconduct is not tenable at all. Learned counsel submitted that respondents did not reject the leave application of the petitioner so to put a charge that petitioner had proceeded on leave despite having refused the leaves, is not made out.

13. Lastly, it was submitted that petitioner had applied for leave through proper channel and as per prescribed procedure but the respondents kept on dragging to sanction the leaves and so, the charge levelled against the petitioner is not made out and the Enquiry Report as well as impugned penalty deserves to be set aside.

14. Per contra, learned counsel appearing on behalf of respondents submitted that on 08.02.2018 petitioner had applied for 13 days earned leave w.e.f. 20.02.2018, however, due to exigency of service, petitioner was advised to apply for casual leave, but the petitioner applied for the same leave plan on 10.02.2018 without any modification, on which he was against asked on 17.02.2018 to modify. On 18.02.2018 petitioner applied for the same leave plan, which was returned with the remarks to modify and avail leaves after 23.02.2018 and return before 08.03.2018. On 19.02.2018, the petitioner again applied for leave under the same leave plan, which was returned by the Coy Commander with the remarks "meet me". The petitioner made another application on 19.02.2018 seeking personal hearing by Senior Commandant. However, petitioner met with the Assistant commandant and Deputy Commandant, CISF on 19.02.2018, who while taking into consideration the security function, advised the petitioner to proceed on 05 days casual leave w.e.f. 23.02.2018. But petitioner was not willing to abide by the advice of his superior officers and went to the police station to give written intimation regarding his leave on 19.02.2018 and proceeded to his home at his own will, without any permission.

15. Learned counsel for respondents pointed out that first call up notice dated 22.02.2018 was sent to the petitioner but petitioner did not report back

to the Unit. Since the petitioner failed to report back, the second call up notice dated 02.03.2018 was sent directing him to report back. But the petitioner neither reported nor gave any response to the aforesaid Notices. The petitioner reported back to the Unit on 07.03.2018 after 15 days of willful availing leave. Learned counsel submitted that by availing unsanctioned leaves, petitioner has committed a serious misconduct and disobeyed the orders of the superiors. Hence, the petitioner was issued a Charge Memorandum dated 14.03.2018, pursuant to which a departmental enquiry was proceeded against him. Learned counsel for respondents submitted that during the course of enquiry, reasonable and ample opportunities were extended to the petitioner to defend his case. There was neither procedural impropriety nor denial of natural justice to the petitioner at any stage of the enquiry proceedings. The Disciplinary Authority, the Appellate Authority as well as the Reviewing Authority did not find any fault with the findings returned by the Enquiry Officer in the Inquiry Report holding that the article of charge stood proved against the petitioner and awarded the penalty in question upon the petitioner.

16. In rebuttal, learned counsel for petitioner submitted that it was due to own engagement of the petitioner on 28.02.2018 he had again and again prayed for the leave and also petitioner had modified his leave from earned leave to casual leave and since petitioner had already booked his flight tickets and had paid a heavy price and had not received any written sanction of leave despite repeated written and verbal communication with his superiors, he had left on 19.02.2018. Finding himself not guilty of charges levelled against him, petitioner had represented before the Enquiry Officer

and also challenged the Enquiry Report before the Appellate and Revisional Authority, however, with the *mala fide* intention to harass the petitioner, he has been awarded with the penalty in question, which deserves to be set aside. In support of petitioner's case, reliance was placed upon decision of Hon'ble Supreme Court in ***Krushnakant B Parmar Vs. Union of India & Anr.*** (2012) 3 SCC 178 and ***Union of India and Ors. Vs. Giriraj Sharma*** 1994 Supp (3) SCC 755. Reliance was also placed upon decisions of this Court in ***Pratap Singh & Ors. Vs. Food Corporation of India*** 2011 SCC OnLine Del 1718 and decision dated 13.10.2015 in W.P.(C) No. 7845/2020 titled as ***Havildar AM Khan Vs. Union of India & Ors.***

17. The submissions advanced by learned counsel representing both the sides were heard at length and the material placed on record has been carefully perused by this Court.

18. Apparently, on 08.02.2018, petitioner had applied for earned leave from 20.02.2018 till 06.03.2018, which was returned by the competent authority with the remarks "*APPLY CL Modify Your Leave and Apply Again*". On 10.02.2018, the petitioner again applied for earned leave for the same period, which was returned with the remarks "*attend parade then apply leave Modify Your Leave and Apply Again*". Yet again on 18.02.2018, petitioner applied for earned leave for the same period, which was returned with the remarks "*apply leave after 23 feb and before joining 08 mar 2018 plan your leave Modify Your Leave and Apply Again*". On 19.02.2018, petitioner once again applied for earned leave for the said period, which was returned with the remarks "Meet me".

19. The aforesaid chain of applications clearly shows that on the first

application dated 08.02.2018, the competent authority had asked the petitioner to apply for Casual Leave but instead thereof, petitioner persistently vide different applications chose to apply only for earned leave. On 18.02.2018 specific direction was issued to the petitioner to apply for leave after 23.02.2018, however, again on 19.02.2018 the petitioner made an application seeking similar kind of leave i.e. earned leave and that too for the similar period i.e. 20.02.2018 till 06.03.2018. Petitioner's application dated 19.02.2018 was returned by the competent authority with the remarks "meet me", however, on the same day, petitioner made an application to the Senior Commandant, CISF, Chennai, requesting for personal hearing. On the said application dated 19.02.2018, the Assistant Command put a noting, which is as under:-

"Sir, he has his engagement on 25th as he mentioned so he is advised to apply 5 days CL w.e.f. 23.02.2018 but he is adamant to go on 19.02.18 itself. So request of individual is forwarded for your kind consideration pls"

20. The aforesaid application of petitioner dated 19.02.2018 was considered and he was granted 05 days' casual leave w.e.f 23.02.2018, noting as under:-

*"He may be given leave
05 Days CL wef 23/02"*

21. The reason for leave mentioned in all the applications made by the petitioner is 'SELF ENGAGEMENT', however, no date for engagement has been mentioned. The petitioner in his application written to the Inspector of Police on 19.02.2018 intimated that he was leaving his duties and going home and mentioned the date of his engagement as 28.02.2018; whereas the

Assistant Commandant in his noting on the request letter dated 19.02.2018 written by petitioner to the Senior Commandant, CISF, seeking personal hearing, has mentioned the date of his engagement as 25.02.2023. The petitioner has averred that despite making several applications, his leave was not sanctioned. However, the aforesaid order dated 19.02.2018 makes it clear that the competent authority had sanctioned 05 days casual leave w.e.f 23.02.2018 to the petitioner.

22. In fact, the petitioner without waiting for sanction of his leave and without obtaining proper permission from the competent authority proceeded on leave on the very same day i.e. 19.02.2018 itself. The reason put forth by the petitioner is that his tickets were booked in advance. In support of this submission, petitioner has placed on record copy of e-mail from the concerned traveller to show that his departure air-flight ticket from Chennai to Hyderabad and Hyderabad to Jaipur was booked for 19.02.2018. Also, his return ticket from Jaipur to Chennai was booked for 06.03.2018. This shows that petitioner without bothering about sanction of leave, booked his air tickets much in advance in his own capacity. This shows his wilful disobedience of instructions issued by the competent authority. To further add up to his misconduct, petitioner did not report back to the Unit even after issuance of first call up notice dated 22.02.2018 and second call up notice dated 02.03.2018 nor replied to the notices. Instead, as per his pre-booked tickets, petitioner reported back to the Unit on 07.03.2018. Even if date of engagement being 25th or 28th was not explicit, still petitioner being a member of the Force is expected to maintain demeanor and he could have joined his duties earlier than 07.03.2018 but he willfully availed complete 15

days of earned leave, which was not sanctioned by the competent authority.

23. In such facts of the case, the respondents issued the Memorandum of Charge dated 14.03.2018 under Rule-36 of CISF Rules, 2011 to the petitioner. The aforesaid Memorandum of Charge dated 14.03.2018 reads as under:-

“ **MEMORANDUM**

The undersigned proposes to hold an enquiry against No.130406305 ASI(Exe) Raju Jat of CISF Unit ASG Chennai under Rule-36 of CISF Rules, 2001. The substance of the imputation of misconduct or misbehavior in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of imputation of misconduct or misbehavior in support of each article of charge is enclosed (Annexure-II). A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III and IV) respectively.

xxxxxxxx

STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOR IN SUPPORT OF THE ARTICLES OF CHARGE FRAMED AGAINST No.130406305 ASI(EXE) RAJU JAT OF CISF UNIT ASG CHENNAI.

ARTICLE OF CHARGE-I

CISF No.130406305 ASI (Exe) Raju Jat of 'B' Coy of CISF Unit ASG Chennai applied for 13 days EL w.e.f. 20.02.2018 alongwith admissible permission on the grounds of self engagement.

He was asked to modify his leave by Coy Commander. On 19.02.2018, he appeared before Deputy Commandant (Adm) for leave. Since the above Sub-officer had applied for leave on the grounds of his sister and Self-marriage settlement, Deputy Commandant (Adm) asked him to reduce the number of days and report back to the Unit before 1st March, 2018 in view of ICAO Audit scheduled in the month of March 2018. The concerned GO I/C was also asked to grant him leave accordingly. But ASI(Exe) Raju Jat had not submitted any leave application and left the duty station on 19.02.2018 on his own and remained absent from A Shift duty on 20.02.2018 and thereafter upto 06.03.2018. In response to the e-mail received by the Unit administration from him on 21.2.2018 to sanction leave, he was intimated vide Lr. No.(1732) dated 22.02.2018 that absence from duty without valid permission amounts to a serious offence and entails stern action under relevant rules of CISF. He was therefore directed to report back to the Unit immediately. Since he did not report back to the Unit, a 2nd Call up letter was also sent vide letter No.E-42099/CISF/ASG(Ch)/Doc/AWL/2018/2006 dated 02.03.2018 with directions to report back to the Unit immediately. However, he neither reported back to the Unit immediately nor responded to the Call-up letters issued by the Unit administration. After unauthorisedly absenting from Unit line/duty from 20.02.2018 (AN) to 06.03.2018 for 15 days, he reported back to the Unit on 07.03.2018 at about 1130 hrs. The above said act on the part of No.130406305 ASI(Exe) Raju Jat of CISF unit ASG Chennai tantamounts to gross

indiscipline, misconduct and dereliction of duty. Hence the charge.”

24. On the aforesaid Memorandum of Charge, inquiry proceedings were conducted and the Inquiry Officer returned the following findings in the Enquiry Report dated 11.06.2018 :-

“ **ENQUIRY REPORT**

ANALYSIS

CISF No.130406305, ASI/Exe Raju Jat left unit line at 1500 hrs. on 19.02.2018 without any valid authority as per PW-1, Exhibit-I. He also did not attend Roll Call at around 1747 hrs. on 19/02/18 as per C.W.-I, Exhibit-II. ASI/Exe Raju Jat was deployed for 'A' shift duty on 20/02/2018 at XBIS-02 for bag checking at Domestic Terminal as per P.W.-I, Exhibit-II. ASI/Exe Raju Jat didn't report for duty as per P.W.-I, Exhibit-III. ASI/Exe Raju Jat A.W.L. report was sent to the CASO/Sr. Commandant, CISF Unit, ASG Chennai as per PW-I, Exhibit-IV. ASI/Exe Raju Jat had applied for 13 days E.L. w.e.f. 20/02/18 but it was not sanctioned by the competent authority as per DW, Exhibit-I, II, III & IV. The competent authority remarked for giving ASI/Exe Raju Jat 05 days C.L. w.e.f. 23/02/18 as per DW, Exhibit-VII. ASI/Exe Raju Jat was also counseled to apply five days C.L. first and join before 1st March due to ICAO audit schedule from 7th March as per PW-I, Exhibit-VIII. ASI/Exe Raju Jat engagement was scheduled on 28/02/18 as per DW, Exhibit-IX. His sister marriage settlement commitment was scheduled on 25/02/18 as per statement of C.O. So the leave being proposed to be given to ASI/Exe Raju Jat encompassed both his

commitment, yet ASI/Exe Raju Jat did not apply leave accordingly and left unit line on 19/02/18 and abstained from duty on 20/02/18 without any authority. Though he informed to the local police about his leaving the duty place on 19/02/18 but local police is not the authority for leave. Moreover, he was not denied leave. Leaving duty place without any authority by ASI/Exe Raju Jat is a serious case of gross indiscipline, misconduct and dereliction of duty.

CISF No.130406305, ASI/Exe Raju Jat told that he had left duty station after permission from the Deputy Commandant but could not adduce his claim by any evidence or witness during final hearing. He left duty station without applying any leave and after one day of being A.W.L. he sent one undated mail to the Senior Commandant for leave which was received by ASG Chennai unit on 21/02/18 as per PW-II, Exhibit-I. ASI/Exe Raju Jat was served two call up notices respectively on 22/02/18 & 02/03/18 at his home address and on his mail i.d. as per PW-II, Exhibit-II & IV. ASI/Exe Raju Jat or his family received both call up notices is adduced by PW-II Exhibit-III, V, VI & VII. ASI/Exe Raju Jat had booked air ticket on 10/02/18 for Chennai to Jaipur on 19/02/18 and Jaipur to Chennai on 06/03/18 as per DW, Exhibit-V & VI. ASI/Exe Raju Jat did not heed to any advice of senior officer nor caed for exigencies of services regarding ICAO audit and deserted duty as per his pre-decided plan. He also reported back to the unit as per pre-booked return ticket on PW-I, Exhibit-V, VI & VII. It is very unbecoming of a disciplined member of the force and proves beyond doubt the charge labeled against him of gross indiscipline, misconduct and dereliction of duty.

No.130406305, ASI/Exe Raju Jat engagement was scheduled on 28/02/18 is proved by DW, Exhibit-IX & X. But it is also proved that competent authority had permitted him leave for 05 days C.L w.e.f. 23/02/18 and had asked him to join before 01/03/18 as ICAO audit was scheduled from 07/03/18 is adduced by PW-I, Exhibit-VIII & DW, Exhibit-VII. But ASI/Exe Raju Jat left duty place without applying leave, which is a serious offence for a disciplined member of the force and can't be justified in any circumstances.

CONCLUSION

E.O. took statement of all concerned and examined all exhibits. Thereupon E.O. has come to the conclusion that the Article of Charge-I labeled against CISF No.130406305, ASI/Exe Raju Jat vide memorandum no.15014/ASG(Ch)/Disc/Maj-3/RJ/2018/2396 dated 14/03/2018 is proved. “

25. The aforesaid findings returned in the Enquiry Report dated 11.06.2018 were affirmed by the Disciplinary Authority vide order dated 17.07.2018 holding as under:-

“

FINAL ORDER

CISF No.130406305 ASI/Exe. Raju Jat (hereinafter referred as Charged Official) of CISF Unit, ASG Chennai was proceeded against under Rule-36 of CISF Rules, 2001 vide this office charge memorandum No.V-15014/CISF/ASG(Ch)/Maj-3/RJ/2018/2396 dated 14.03.18 on the following charge:

XXXXX

7. I have carefully gone through the article of charge framed against the Charged Official, and other documents available in this case viz. statement of PWs, defence version of the charged official, exhibits produced by prosecution, brief of Presenting officer, Enquiry Report, reply of the Charged Official against the enquiry report and other related documents available in the case file. It is found that the Charged Official absented himself from attending 'A' shift duty on 20.02.18 for baggage checking at XBIS No.2 at NDT at CISF ASG Chennai. Moreover, he failed to report for duty from 20.02.18 to 06.03.18 for 15 days and did not give any intimation about his absence and continued to remain absent unauthorizedly for duty as well as from Unit Lines without obtaining proper permission or giving any intimation to the Competent Authority. The Enquiry Officer has rightly concluded his findings and has proved the charges beyond any doubt. The Charged Official in his representation dated 10.07.18 to the Enquiry Report has not brought out any new points/plea for consideration but has reiterated the same stand deposed by him during the DE. I fully agree with the Enquiry Officer in holding the charge as proved against the charged official. It is apparent that the Charged Official was not refused leave as pleaded by him but was asked to modify/limit his leave in view of exigencies of service. He was briefed of the situation but he did not pay any heed to the same and left the unit unauthorizedly and remained AWL. He stuck to his pre-planned programme of proceedings and returning from his place. To cover up his misdeeds he gave a complaint to the local police for remaining absent unauthorizedly, which is a very serious nature of misconduct

*being a member of disciplined force. Absenting from duty and Unit Lines without proper permission from the competent authority tantamounts to gross indiscipline, misconduct and dereliction of duty which deserves stringent punishment to curb such tendency amongst other Force personnel. However, considering his future career in the Force and his record so far, I intend to take a lenient view in the instant case. Therefore, the undersigned in exercise of powers conferred upon me under Rule 32 read with Schedule-I of the said rules and rule 34(v) of CISF Rules, 2001, award the penalty of **“REDUCTION OF PAY BY ONE STAGE FROM Rs.34,900/- TO RS.33,900/- IN THE PAY LEVEL-5 FOR A PERIOD OF ONE YEAR WITH IMMEDIATE EFFECT. IT IS FURTHER DIRECTED THAT DURING THE PERIOD OF REDUCTION, HE WILL NOT EARN INCREMENT OF PAY AND ON EXPIRY OF THIS PERIOD, THE REDUCTION WILL HAVE THE EFFECT IF POSTPONING HIS FUTURE INCREMENT OF PAY”** upon No. 130406305 ASI/Exe. Raju Jat of CISF Unit ASG Chennai. The period of AWL from 20.02.18 to 06.03.18 will be regularized separately.”*

26. The penalty awarded by Disciplinary Authority vide order dated 17.07.2018 was challenged by the petitioner before the Appellate Authority, who vide order dated 24.10.2018 held as under:-

“APPELLATE ORDER

This disposes of an Appeal Petition dated 15.09.2018 preferred by CISF No.130406305 ASI/Exe. Raju Jat of ASG Chennai (hereinafter

called as Appellant) against the punishment of “Reduction of pay by one stage from Rs.34,900/- to Rs.33,900/- in the pay level-5 for a period of one year with immediate effect with further direction that during the period of reduction, he will not earn increment of pay and on expiry of this period, the reduction will have the effect of postponing his future increment of pay” vide Sr. Commandant CISF Unit ASG, Chennai Final Order No.V-15014/CISF/ASG (Ch.)/Disc/Maj-3/2018/8082 dated 17.07.2018.

XXXX

05. *I have carefully gone through the Appeal preferred by the Appellant and the connected case files, evidences on record and found that the Appellant has not put forth any convincing pleas in his Appeal Petition. The DE has been conducted as per laid down his case. The Appellant has also availed of all such opportunities. On my dispassionate consideration of the entire case and the material held on record, I find that there is no procedural lacuna/impropriety either in conducting of enquiry or awarding of impugned penalty. The Appellant has failed to report for duty from 20.02.18 to 06.03.18 and remained absent without leave of the Competent Authority. To cover up his misdeeds he gave a complaint to the local police for remaining absent unauthorizedly, which cannot be condoned as he is a member of a disciplined Force. He should have proceeded on leave only after sanction of leave. Absenting from duty and Unit Lines without proper permission/sanction from the competent authority tantamounts to gross indiscipline, misconduct and dereliction of duty which deserves stringent*

punishment. It appears that he had made up his mind to go on leave on a particular date and was not ready to budge from that position. His way of approaching the local police relating to sanction of leave cannot be condoned. I feel that the Disciplinary authority has dispassionately considered all evidences on record while coming to the conclusion on this case. It is my considered view that the Appellant has been awarded a penalty which is commensurate with the gravity of the charge and hence, I find no merit in his pleas which warrants any modification in the penalty awarded to the appellant No.130406305 ASI/Exe. Raju Jat by the Disciplinary Authority vide Final Order No.V-15014/CISF/ASG(Ch)/Disc/Maj-3/RJ/2018/8082 dated 17.07.2018. Hence, in exercise of the powers conferred upon me U/R 52(2)(c)(i) of CISF Rules-2001, I hereby confirm the penalty of "Reduction of pay by one stage from Rs.34,900/- to Rs.33,900/- in the pay level-5 for a period of one year with immediate effect with further direction that during the period of reduction, he will not earn increment of pay and on expiry of this period, the reduction will have the effect of postponing his future increment of pay" awarded by the Disciplinary Authority and reject the appeal petition being devoid of any merit.

27. It is not the case of petitioner that the departmental enquiry was not conducted as per provisions of Rule 36 of CISF Rules, 2001 or that he was not provided with ample and reasonable opportunity to defend his case. The finding returned in the Enquiry Report dated 11.06.2018, the decision of the Disciplinary Authority dated 17.07.2018 and order of the Appellate Authority dated 24.10.2018 record the reasons for imposing the penalty in

question upon the petitioner.

28. This Court has also gone through the decisions relied upon by the petitioner in support of his pleadings. In ***Krushnakant B Parmar (Supra)***, the petitioner was charged for unauthorized absence from duty during three consecutive periods. However, the Supreme Court noted that the appellant therein had sought transfer from Palanpur to any place near Ahmedabad or Nadiad and he was transferred to Nadiad. Subsequent upon his relieving from Palanpur, the appellant had joined in Nadiad but his transfer order was cancelled and he was posted at a distant place. The appellant challenged his transfer order before the Central Administrative Tribunal and the same was set aside. The appellant joined his duty but had to proceed on leave due to illness of his father, which the authority considered as unauthorized absence from duty. The Supreme Court held that the Disciplinary Authority was required to ascertain that the absence was wilful. The Inquiry Officer in the said case, had failed to prove that the appellant therein was wilfully absent from duty. Therefore, the Supreme Court had set aside the orders passed by the Disciplinary Authority. In the present case, in the inquiry proceedings, the Enquiry Officer based upon the documentary evidence and testimony of the witnesses, has proved the case against the petitioner. Even otherwise, in the said case the appellant has alleged that he was not permitted to join his duty and not that he had remained unauthorized absent from duty, unlike the present case.

29. In ***Union of India and Ors. Vs. Giriraj Sharma (Supra)***, the appellant while being on leave had sought extension of leave by sending telegram, which was rejected. The appellant therein joined overstaying leave

for 12 days and so, for his misdemeanor his services were terminated. Even the appeal and revision preferred by the said appellant against termination of his service, was also dismissed. However, the High Court reversed the order of his termination and in the appeal preferred by the Union of India, the Supreme Court though affirmed the order of the High Court but also left it open for the Union of India to revisit the punishment with minor punishment. The facts of the said case are distinguishable from the one in hand, as the appellant therein was already on leave and had sought extension. In the present case, the leave itself was not sanctioned and rather, on repeated applications by the petitioner herein, he was sanctioned leave for five days, but the petitioner intentionally left the place of posting prior to sanction of leave and proceeded on leave other than the period permitted for. Hence, the decisions in ***Krushnakant B Parmar (Supra)*** and ***Union of India and Ors. Vs. Giriraj Sharma (Supra)*** are of no support to the case of petitioner.

30. An employee of any organisation is expected to follow the dignity and protocol and especially a member of the Force, is expected to be disciplined and acquiescent to the orders of the authority. However, by not abiding the orders of the competent authority, the petitioner remained absent from duty from 20.02.2018 till 06.03.2018, which amounted to gross indiscipline, misconduct and dereliction of duty on his part. The impropriety on the part of petitioner speaks a volume about his disrespect to the orders of the authority and he cannot be permitted to act as per his will and pleasure. In the considered opinion of this Court, the penalty awarded to the petitioner is just and proper in the facts of the present case.

31. Finding no reason to interfere with the order dated 17.07.2018 passed by respondent No.4- Senior Commandant, CISF; order dated 24.10.2018 passed by respondent No.3-Deputy Inspector General (DIG), CISF and order dated 22.03.2019 passed by respondents No. 2-Inspector General (IG), CISF, the present petition is accordingly dismissed. Pending application accordingly stands disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MAY 01, 2023

r

