

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

% **Reserved on: January 31, 2023**

Pronounced on: March 20, 2023

+ **W.P.(C) 11688/2016**

PHOOL SINGH

..... Petitioner

Through: **Mr. Udhav Pratap, Advocate**

Versus

DY. INSPECTOR GENERAL/NE, CISF & ORS. Respondents

Through: **Ms. Bharathi Raju, Senior Panel
Counsel for UOI with SI Prahlad D
& SI Amit Kumar, CISF**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition has been preferred seeking setting aside of the order dated 12.05.2016 passed by the Disciplinary Authority whereby under the provisions of sub section (1) of Rule 32 of CISF Rules, 2001, the petitioner has been punished with compulsory retirement with all pensionary benefits. In addition, setting aside of order dated 24.06.2016 passed by the Appellate Authority is also sought whereby petitioner's appeal against the aforesaid order dated 12.05.2016 has been dismissed being devoid of merit.

2. The facts giving rise to the present petition are that the petitioner, Ex.

Head Constable/ GD, had joined the services of CISF in the year 1990 and on 30.05.2014 he was directed to be posted out from CISF 8th RB Jaipur w.e.f. 14.07.2015/AN to CISF Unit HEP Uri-1 on regular posting. Against the aforesaid posting order, petitioner preferred a writ petition before the Rajasthan High Court at Jaipur Bench, which was disposed of vide order dated 24.07.2014 with liberty to the petitioner to make a representation to the Director General, CISF, who was further directed to consider the same keeping a sympathetic view. On his representation, considering education of petitioner's son, his posting was deferred up to 30.04.2015. Petitioner was relieved to his new place of posting vide Commandant CISF 8th RB Jaipur Movement Order No. (5851) dated 14.07.2015 with direction to join his new Unit i.e. CISF Unit HEP Uri-I after availing the applicable joining period. In the meanwhile, the petitioner again preferred a writ petition being W.P.(C) No. 7504/2015 before the High Court of Rajasthan at Jaipur, which was dismissed vide order dated 12.08.2015 with costs.

3. Since the petitioner failed to join his new place of posting, accordingly, a Charge Memo No. V-15014/CISF/HEP/ PS/Disc-36/2015-2346 dated 07.12.2015 under Rule-36 of CISF Rules 2001 was issued by the Commandant against the petitioner for overstaying his joining time without any authority from 31.07.2015 to 20.11.2015. The allegations are that pursuant to Movement Order dated 14.07.2015, petitioner had overstayed for 113 days while proceeding on regular transfer to CISF Unit HEP Uri-1.

4. For the charge of remaining unauthorizedly absent from duty from 31.07.2015 till 20.11.2015 i.e. total 113 days; without prior information to the competent authority, a departmental enquiry was initiated against the

petitioner, wherein he refuted the allegations levelled against him and pleaded not guilty. The Enquiry Officer after conducting the enquiry submitted his report to the Disciplinary Authority on 09.03.2016, who passed the final order on 12.05.2016 and awarded the punishment of “compulsory retirement with all pensionary benefits”.

5. Against the aforesaid order of 12.05.2016, the petitioner claims to have filed an appeal, which was considered and rejected by the Appellate Authority vide order dated 24.06.2016. Even the Revision Petition preferred by the petitioner against the order of the Appellate Authority was rejected vide order dated 17.02.2017 being devoid of merits. It is against the aforesaid orders dated 12.05.2016 passed by the Disciplinary Authority and 24.06.2016 passed by the Appellate Authority that the present petition has been filed seeking setting aside thereof.

6. During the course of hearing, learned counsel appearing on behalf of petitioner submitted that the while passing the impugned orders, the Disciplinary Authority as well as Appellate Authority has not appropriately considered the definition of word “misconduct” and under relevant provisions of Central Industrial Security Act or Central Industrial Force Rules and thereby, no major penalties can be imposed upon the petitioner. In support of this submission, reliance is placed upon decision of Hon’ble Supreme Court in *A.L. Kalara Vs. Project and Equipment Corporation Of India Ltd.* 1984 (3) SCC 316.

7. Learned counsel empathically submitted that the CISF Act and CISF Rules do not provide the definition of the word “misconduct” and so, the punishment orders passed by -the respondents deserve to be set aside.

8. To refute the submissions advanced by learned petitioner's counsel, learned Senior Panel Counsel appearing on behalf of respondents submitted that overstaying the joining time from 31.07.2015 to 20.11.2015 i.e. 113 days without any authority, was gross indiscipline and dereliction of duty. Further submitted that while passing he impugned order dated 12.05.2016, the Disciplinary Authority not only considered that in the departmental enquiry, the charge framed against the petitioner stood proved but also considered that the petitioner had one major and nine minor punishments to his credit and therefore, awarded him the penalty of compulsory retirement with all pensionary benefits. It was submitted that during pendency of the present petition challenging the orders dated 12.05.2016 and 24.06.2016, the revision petition preferred by the petitioner against the order dated 24.06.2016 was also dismissed and there been no interim protection to the petitioner by this Court, the orders dated 12.05.2016 and 24.06.2016 have attained finality.

9. Learned Senior Panel Counsel drew attention of this Court to a decision dated 12.08.2004 rendered by the Supreme Court in Appeal (civil) 9500 of 2003, titled as ***Delhi Transport Corporation Vs. Sardar Singh*** to submit that when an employee absents himself from duty without sanctioned leave for a very long period, it *prima facie* shows lack of interest in work. The Supreme Court also observed that "*conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly when same is unauthorized.*"

10. Attention of this Court was drawn to Rule 36(3) of CISF Rules, 2001 to submit that in cases where an inquiry against an enrolled member of the

Force has to be drawn up by the Disciplinary Authority, the substance of imputation of misconduct or misbehavior in respect of Article of Charge has to be drawn on the basis of any admission or confession made by the member of the Force, documents and witnesses on the basis of charge has been framed.

11. Further submitted that where on the aspect of conditions of service the provisions are insufficient, Rule 77 of the CISF Rules provides that the rules and orders for the time being applicable to officers holding corresponding posts in the Central Government, shall govern such matters.

12. Learned Senior Panel Counsel next submitted that respondents have maintained a lenient approach towards petitioner in respect of Government accommodation retained by him and petitioner has raised false and frivolous allegations of sexual harassment against the Officers to satisfy his grudges which is against the honour of the Force. Lastly, it was submitted that the conduct of petitioner does not call for any interference by this Court and the present petition deserves to be dismissed.

13. Upon hearing learned counsel for the parties and on perusal of material placed before this Court we find that while being posted at CISF 8th RB Jaipur, the petitioner was directed to join CISF Unit HEP Uri-1 w.e.f. 14.07.2015/AN. However, in a writ petition preferred by the petitioner against his aforesaid transfer order, the High Court at Jaipur Bench vide order dated 24.07.2014 deferred his posting up to 30.04.2015. Since the petitioner did not join his new place of posting even after availing the applicable joining time period, he was served with the Charge Memorandum dated 07.12.2015 for unauthorizedly remaining absent from duty from

31.07.2015 till 20.11.2015 i.e. total 113 days, which reads as under:-

“CHARGE

Force serial no. 903190024 Pr.Aa./ G.D. Phool Singh, CISF, Unit - HEP, Udi-1 was relieved from 15.07.2015 (PM) his previous unit CISF Unit - 8, Reserve Force, Jaipur and vide movement order no. 5851 dated 14.07.2015 according to which he was sent for permanent transfer in CISF Unit HEP, Udi and he was directed that he will report at CISF Unit HEP, Udi for duty after consuming the joining time as per the rules. But, the Force member, as per the directions given in the movement order did not reported at CISF, Unit - HEP, Udi on 31.07.2015 after consuming the joining time and as per his will without any permission from higher officers and without any prior information from 31.07.2015 to 20.11.2015 total 113 days of unauthorized stay from the joining time reported for duty at GISF Unit HEP, Udi on 21.11.2015 at 09.10 AM. This was entered in the control room of the Headquarters company, Mohra, CISF unit HEP UDI-1 on 21.11.2015 at 09.10 AM in GD no. 1149. The above act of the Force member shows gross negligence of the duty, disobey of order and great indiscipline. Hence charged.”

14. Pursuant to the aforesaid Charge, the enquiry proceedings were initiated against the petitioner, wherein he did not accept the charge framed against him, and contested the enquiry proceedings. The Disciplinary Officer vide order dated 12.05.2016 held petitioner guilty of the charge framed. The findings returned by the Disciplinary Officer, as spelt out from the order dated 12.05.2016 , are as under:-

(i) *The petitioner pursuant to the directions of the*

High Court of Rajasthan at Jaipur had made a representation to the competent authority on the ground that his children were studying in Class 12 in the year 2014-15 and his parents are old aged and under treatment, therefore, vide order dated 04.09.2014 his transfer was deferred for one year i.e. till 30.04.2015. However, even after exhausting the deferment period, the petitioner did not join the new place of posting.

(ii) *Even though petitioner was relieved from his place of posting on 14.07.2015, however, again petitioner approached the Head Office at Saket seeking stoppage of his transfer and did not report for his duty despite directions of his Officers.*

(iii) *During the pendency of the deferment period from 04.09.2014 till 28/04.2015 i.e. two days prior to completion of the deferment period, the petitioner was not under any treatment nor he was ever hospitalized. However, just a day prior to completion of the deferment period i.e. on 29.04.2015 petitioner got himself admitted in a Government Hospital on the pretext of treatment, as he was already informed on 22.04.2015 by the Officer of the CISF Unit – 8 that he would be relieved on 30.04.2015 to join on his place posting and he deliberately pretended sick a day prior thereto.*

(iv) *On the basis of documentary produced by the petitioner, it transpired that since the year 2012 till 29.04.2015 i.e. for a period of 22 months, petitioner was not under treatment nor did he intimated of undergoing any treatment to his office, which shows that petitioner was not sick.*

(v) *Even though in the prescription dated*

31.10.2014 petitioner has been shown suffering from (01) hypertension (02) Refractive error however from 01.11.2014 till 28.04.2015 petitioner was not under treatment for these two diseases which shows he has not seriously paid attention to it.

(vi) The petitioner on 29.04.2015 got himself admitted to a Government hospital in Aamer, even though he could have taken treatment in the hospital of CISF Unit – 8, Jaipur without any expense with the intention so that the doctors and Officers of the CISF Unit – 8 do not get to know about his illness or correct state of health.

(vii) During the enquiry proceedings it transpired from 29.04.2015 till 09.11.2015 petitioner had undergone treatment only once for hypertension, elave fever, URTI fever, Backache, vomiting, typhoid, masurika etc. from different doctors, however, did not continue his treatment for any of these diseases and was never admitted to hospital and often he would seek rest from different doctors, which shows that he was not actually sick but was misusing his prescription of rest.

(viii) The petitioner has also undergone treatment from National Aurvedic Sansthan, Jaipur and Rajkiya Chikitsalaya Bhanpur Kala, Jaipur which shows he was not suffering from any serious disease and it was only with the intention to procure various prescriptions to get the rest prescribed and despite not being suffering from any serious ailment, petitioner visited various doctors.

(ix) The petitioner was never hospitalized for the period 29.04.2015 till 20.11.2015 and he has been visiting different doctors and hospitals to steer clear of any doubt about his prescribed rest.

(x) Even though petitioner was declared medically fit by the doctor 03.09.2015 but still he did not join his duties and again went on medical rest from 12.09.2015.

(xi) Even after completion of the deferment period, petitioner again approached the High Court of Rajasthan at Jaipur, which was dismissed vide order dated 12.08.2015 and upheld by the Division Bench on 02.11.2015.

(xii) the petitioner has also taken the plea that he was aware of his transfer order but not 'out order', whereas the competent authority had affixed the said order at his official accommodation in the presence of his family members and still he did not report to his duty on the new place of posting.

(xiii) During the 25 years of tenure of his service, petitioner was punished with 09 minor and 01 major penalties.

15. On the basis of aforesaid findings, the Disciplinary Authority held as under:-

"12. From the aforesaid comments it is clear that the charged force member was relieved from the CISF Unit -8, Reserve Force, Jain from 15.07.2015 (PM) vide movement order no. 5851 dated 14.07.2015 and according to which he was sent for permanent transfer in CISF Unit HEP, Udi and he was directed that he will report at CISF Unit HEP, Udi for duty after consuming the joining time as per the rules. But, the Force member, as per the directions given in the movement order did not reported at CISF, Unit - HEP, Udi on 31.07.2015

after consuming the joining time and as per his will without any permission from higher officers and without any prior information from 31.07.2015 to 20.11.2015 total 113 days of unauthorized stay from the joining time reported for duty at Unit and to save himself from the unauthorized stay of the said period he got prepared medical documents from different doctors of different hospitals for different diseases without admitting himself in any hospital. Hence during the departmental enquiry, it is clear that the charge made on the charged force member that the act of the Force member shows gross negligence of the duty, disobey of order and great indiscipline is fully proved.

13. Hence, I, under signatory, utilizing the powers conferred upon under subsection 01 of Rule 32 of CISF Rules 2001, giving punishment for compulsory retirement with all pensionary benefits to the Force no. 903190024 Pr.Aa./ G.D. Phool Singh, CISF, Unit - HEP, Udi-1, under Rule 34(iii) of the CISF Rules 2001, considering the long service period and applying humble attitude.”

16. In the appeal preferred by the petitioner against the aforesaid order dated 12.05.2016, the Appellate Authority vide order dated 24.06.2016 dismissed the same holding as under:-

“Hence, utilizing the powers conferred upon under Rule 52 of CISF Rules 2001, I am dismissing the appeal case dated 30.05.2016 filed by Force no. 903190024 Pr.Aa./ G.D. Phool Singh, CISF, Unit - HEP, Udi-1, being devoid of merit.”

17. The primary ground on which the aforesaid findings returned by the Disciplinary Authority and order of the Appellate Authority has been challenged before us is that there is no mention of word 'misconduct' under the provisions of Central Industrial Force Rules, 2001. The petitioner has relied upon decision in *A.L. Kalara (Supra)*, wherein the appellant was working under the State Trading Corporation and he was charged with the offence of (a) obtaining loan as an advance in the amount of Rs. 16,050 for purchasing a plot of land, for which he executed the requisite agreement as required by 'the Project & Equipment Corporation of India Ltd., House Building Advance (Grant and Recovery) Rules, and (b) an advance in the amount of Rs. 11,000 for purchase of a new motor cycle on July 7, 1979 as permissible under the aforesaid Rules and the allegations against him was that he failed to utilise the amounts and also to refund the same. The Supreme Court observed that there has been lapse in totally complying with these regulations by the appellant though it neither constitutes misconduct to attract a penalty nor substantially good enough for initiation of disciplinary inquiry and held that the appellant should be paid 50% of the back wages for the period since his removal from service upto his reinstatement, excluding the period for which he had procured an alternative employment.

18. Pertinently, in *A.L. Kalara (Supra)* the Supreme Court had observed that what is alleged as misconduct does not constitute misconduct not by analysis or appraisal of evidence, but *per se* under Project and Equipment Corporation of India Ltd. Employees' (Conduct, Discipline and Appeal) Rules, 1975, the respondent had neither the authority nor the jurisdiction nor the power to impose any penalty for the alleged misconduct. An

administrative authority who purports to act by its regulation must be held bound by the regulation. ‘Even if these regulations have no force of law the employment under these corporations is public employment, and therefore, an employee would get a status which would enable him to obtain a declaration for continuance in service, if he was dismissed or discharged contrary to the regulations.’

19. To find out as to whether the punishment inflicted upon the petitioner on the charge of ‘misconduct’ was well within the applicable Rules, our attention was drawn to various provisions of *The CISF Rules, 2001*, Rule 36 whereof reads as under:-

“36. Procedure for imposing major penalties - (1) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850 (37 of 1850), no order imposing on an enrolled member of the Force any of the penalties as specified in clauses (i) to (v) of rule 34 shall be made except after inquiries held, as far as may be, in the manner hereinafter provided.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an enrolled member of the Force, it may itself inquire into, or appoint an authority to inquire into the truth thereof.”

20. The manner in which inquiry has to be conducted has been provided under Rule 36(3) of *The CISF Rules, 2001*, which reads as under:-

“(3) Where is proposed to hold an inquiry against an enrolled member of the Force under this rule the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputation of misconduct or misbehaviour into definite and distinct articles of charge;

- (ii) *a statement of the imputation of misconduct of misbehaviour in support of each article of charge, which shall contain-*
 - (a) *a statement of all relevant facts including any admission or confession made by the enrolled member of the Force,*
 - (b) *a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained."*

21. Further, Rule 36(19) (i) of *The CISF Rules, 2001* provides as under:-

- "(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain –*
- (a) the article of charge and the statement of the imputations of misconduct or misbehaviour;*
 - (b) the defence of the enrolled member in respect of each article of charge;*
 - (c) an assessment of the evidence in respect of each article of charge;*
 - (d) the findings on each article of charge and reasons thereof"*

22. Rule 36 (22) (ii) of *The CISF Rules, 2001* provides that:-

- "36 (22) (ii) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of evidence adduced during the course of inquiry, is of the opinion that any of the major penalties specified in rule 34 should be imposed on the enrolled member, it shall make an order imposing such penalties and it shall not be necessary to give the enrolled member any opportunity of making representation on the penalty proposed to be imposed."*

23. Applying the afore-noted Rules to the facts of the present case, we do not find any procedural lapse in the manner inquiry has been conducted. The impugned order dated 12.05.2016 clearly spells out the findings of the

Disciplinary Officer, which is based upon documentary evidence and based thereupon, penalty of compulsory retirement has been imposed upon the petitioner.

24. During the course of hearing, learned Senior Panel Counsel for respondents had furthermore drawn attention of this Court to Rule 77 of the CISF Rules, which reads as under:-

“77. Other conditions of service - The members of the Force shall, in respect of all matters regarding conditions of service for which no provision or insufficient provisions have been made in these rules be governed by the rules and orders for the time being applicable to officers holding corresponding posts in the Central Government in respect of such matters.”

25. Upon going through the afore-noted provisions of the CISF Rules and applying it to the facts of the present case, we find that by overstaying his joining time without any authority from 31.07.2015 to 20.11.2015 and by not joining CISF Unit HEP Uri-1 even after availing the applicable joining time period, the petitioner has not only disobeyed the orders of the competent authority but has neglected his work and duty. Hence, petitioner's aforesaid act and conduct amounts to “misconduct”. So, reliance placed upon decision in **A.L. Kalara (Supra)** is of no help to the case of petitioner.

26. The Supreme Court in **Central Industrial Security Force Vs. HC (GD) Om Prakash** (2022) 5 SCC 100, in an appeal preferred against a decision of this Court, wherein petitioner working as Head Constable (GD) in CISF was prematurely retired under the provisions of CCS (Pension)

Rules, 1972, on the ground he had two minor penalties to his credit, one, sleeping on duty and second, overstaying leave, which was challenged on the ground that his previous ACRs be considered, the Supreme Court held as under:-

“5. We find that the High Court has completely misdirected itself while setting aside the order of premature retirement of the writ petitioner. The writ petitioner has been awarded number of punishments prior to his promotion including receiving illegal gratification from a transporter while on duty in the year 1993. There are also allegations of absence from duty and overstaying of leave. After promotion, a punishment of four days fine was imposed on the charge of sleeping on duty and two days' fine was imposed for overstayed from joining time. Apart from the said punishments, the writ petitioner has a mixed bag of ACRs such as average, below average, satisfactory good and very good. In the last 5 years, he has been graded average for the period 1-1-2010 to 31-12-2010.

6. After the judgment in Baikuntha Nath Das [Baikuntha Nath Das v. District Medical Officer, (1992) 2 SCC 299] , a three-Judge Bench in a judgment reported as Posts and Telegraphs Board v. C.S.N. Murthy [Posts and Telegraphs Board v. C.S.N. Murthy, (1992) 2 SCC 317] held that the courts would not interfere with the exercise of the power of compulsory retirement if arrived at bona fide and on the basis of material available on record. The Court held as under:

“5. ... Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether

it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record. No mala fides have been urged in the present case. The only suggestion of the High Court is that the record discloses no material which would justify the action taken against the respondent. We are unable to agree. In our opinion, there was material which showed that the efficiency of the petitioner was slackening in the last two years of the period under review and it is, therefore, not possible for us to fault the conclusion of the department as being mala fide, perverse, arbitrary or unreasonable.”

7. A three-Judge Bench of this Court reported as *Union of India v. Dulal Dutt* [*Union of India v. Dulal Dutt*, (1993) 2 SCC 179] examined the order of compulsory retirement of a Controller of Stores in Indian Railways. It was held that an order of compulsory retirement is not an order of punishment. It is a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government and that it is not required to be a speaking order. This Court held as under:

“18. It will be noticed that the Tribunal completely erred in assuming, in the circumstances of the case, that there ought to have been a speaking order for compulsory retirement. This Court, has

been repeatedly emphasising right from R.L. Butail v. Union of India [R.L. Butail v. Union of India, (1970) 2 SCC 876] and Union of India v. J.N. Sinha [Union of India v. J.N. Sinha, (1970) 2 SCC 458] that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order. From the very order of the Tribunal it is clear that the Government had, before it, the report of the Review Committee yet it thought it fit of compulsorily retiring the respondent. The order cannot be called either mala fide or arbitrary in law.”

XXXXXX

XXXXXX

13. There are numerous other judgments upholding the orders of premature retirement of judicial officers inter alia on the ground that the judicial service is not akin to other services. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as discharge of a pious duty, therefore, it is a very serious matter. This Court in Ram Murti Yadav v. State of U.P. [Ram

Murti Yadav v. State of U.P., (2020) 1 SCC] held as under :

“6. ... The scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted. Only if it is found to be based on arbitrary or capricious grounds, vitiated by mala fides, overlooks relevant materials, could there be limited scope for interference. The court, in judicial review, cannot sit in judgment over the same as an appellate authority. Principles of natural justice have no application in a case of compulsory retirement.”

14. Thus, we find that the High Court has not only misread the judgment of this Court in Baikuntha Nath Das [Baikuntha Nath Das v. District Medical Officer, (1992) 2 SCC 299] but wrongly applied the principles laid down therein. The adverse remarks can be taken into consideration as mentioned in the number of judgments mentioned above. There is also a factual error in the order [Om Prakash v. Central Industrial Security Force, 2011 SCC OnLine Del 4388] of the High Court that there are no adverse remarks and that the ACRs for the year 1990 till the year 2009 were either good or very good. In fact, the summary of ACRs as reproduced by the High Court itself shows average, satisfactory and in fact below average reports as well.”

27. In *Union of India and Others Vs. Managobinda Samantaray* 2022 SCC OnLine SC 284, wherein the petitioner working as a Constable in CISF, was found sleeping while on duty and had abused, misbehaved and

assaulted the Officer who found him sleeping, was suspended from service by the Disciplinary Authority and the Appellate Authority dismissed him from service but the High Court of Orissa directed his reinstatement in service with other benefits, the Supreme Court in the appeal preferred by the Government reversed the order of the High Court and observed as under:-

“9. Impugned judgment by the Division Bench is difficult to sustain as it equates appellate power under Rule 52 of the CISF Rules, with power of judicial review exercised by constitutional courts. Rule 52 of the CISF Rules, 2001 empowers the appellate authority to examine whether the penalty imposed is excessive, adequate or inadequate and pass consequential order confirming, enhancing, reducing or setting aside the penalty. In the present case, the procedure requiring issue of show-cause notice and compliance with the principles of natural justice is made. Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved. Such discretionary power is exposed to judicial interference if exercised in a manner which is grossly disproportionate to the fault, as the constitutional courts while exercising the power of judicial review do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice. The decisions are also disturbed when it is found to be ailing with perversity. On the question of quantum of punishment, the court exercising the power of judicial review can examine whether the authority has been a reasonable employer and has taken into consideration measure, magnitude and

degree of misconduct and all other relevant circumstances and excluded irrelevant matters. In the context of punishment these aspects are examined to consider whether there is any error in decision making process. On merits of the quantum of punishment imposed, the courts would not interfere unless the exercise of discretion in awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate.”

28. In the present case, on perusal of petitioner's past service record we find it astonishing that he has been awarded with one major and nine minor penalties such like, over stay on leave, sleeping on duty, assault on subordinates, making false allegations against subordinates and families, refusing to accept official and assault on subordinates & creating tension and public nuisance at CISF family quarters. Also, before the Enquiry Officer the petitioner has not been able to establish his medical condition despite presentation of various prescriptions that he was suffering from such an ailment which precluded him to join his duty within the time granted. The conduct of petitioner speaks a volume of his unwillingness to perform his duty in the Force. Even otherwise, this Court finds that an employee working under the Government/State is expected to perform duties with sincerity, however, a member of the Force has much higher obligations towards duty and any dereliction in duty has to be adjudged with more circumspection. This Court is of the considered opinion that the competent authorities granted fair opportunity to the petitioner to defend himself against the charge framed and recorded all the reasons while passing the impugned orders and has already taken a lenient view by granting petitioner

‘pensionary benefits’ while awarding the punishment of ‘compulsory retirement’ for his misconduct.

29. Finding order dated 12.05.2016 passed by the Disciplinary Authority and order dated 24.06.2016 passed by the Appellate Authority well merited, the present petition is dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 20, 2023

r

