

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8481 OF 2012

Yudhvir Singh S/o. Diwan Singh,
Age: 32 years, Occ: Service,
Working with: CISF Unit, BARC,
Anushaktinagar, North Gate,
Trombay, Mumbai, Maharashtra.

... Petitioner.

V/s.

1. Union of India, Represented by
its Secretary to the Government,
Dept. of Home Affairs, New Delhi.
2. The Director General,
CISF Head Quarters, No.13,
C.G.O. Complex, Lodhi Road,
New Delhi- 110 003.
3. The Inspector General,
CISF DAE Head Quarters, Western
Sector, CISF Complex, Taloja,
Kharghar, Navi Mumbai- 410 210.
4. The Deputy Inspector General,
CISF DAE Head Quarters,
Post: ECIL Hyderabad- 62.
State: Andhra Pradesh- 500 062.
5. The Commandant,
CISF Unit BARC-TAPS Tarapur,
District: Thane,
State: Maharashtra- 401 502.

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6. The Dy. Commandant,
CISF Unit, KAPS, Kakrapar,
Post: Anumala- 394 651,
District: Tappi, State: Gujrat. ... Respondents.

**WITH
WRIT PETITION NO. 1059 OF 2013**

Yudhvir Singh S/o. Diwan Singh,
Age: 32 years, Occ: Service,
Working with: CISF Unit, BARC,
Anushaktinagar, North Gate,
Trombay, Mumbai, Maharashtra. ... Petitioner.

V/s.

1. Union of India, Represented by
its Secretary to the Government,
Dept. of Home Affairs, New Delhi.
2. The Director General,
CISF Head Quarters, No.13,
C.G.O. Complex, Lodhi Road,
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Kharghar, Navi Mumbai- 410 210.
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CISF DAE Head Quarters,
Post: ECIL Hyderabad- 62.
State: Andhra Pradesh- 500 062.
5. The Commandant,
CISF Unit BARC-TAPS Tarapur,
District: Thane,
State: Maharashtra- 401 502.

6. The Dy. Commandant,
CISF Unit, KAPS, Kakrapar,
Post: Anumala- 394 651,
District: Tappi, State: Gujrat.
7. The Assistant Commandant,
CISF Unit, KAPS, Kakrapar,
Post: Anumala- 394 651,
District: Tappi, State: Gujrat. ... Respondents.

Mr.R.V.Bansode for the Petitioner.
Mr.Parag Vyas for the Respondents (UOI).

**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE : 4 March 2024.

JUDGMENT: (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. Respondents waive service.

2. The Petitioner and Respondents in these petitions are the same. The issues involved are also overlapping, and therefore, the petitions are disposed of by this common order.

3. The Petitioner is working with the Respondent- Central Industrial Security Force. In Writ Petition No.8481/2012, the

Petitioner has challenged the order dated 28 August 2009 passed by Respondent No.5- withholding increment with certain directions confirmed by the order dated 31 December 2009 by Respondent No.4. In Writ Petition No.1059/2013, the Petitioner has challenged the assessment by the reporting officer for the period from 25 August 2009 to 31 December 2009 as "Below Average Grade".

4. The Petitioner joined the Central Industrial Security Force (CISF) services as Sub-inspector on 14 November 2003. The Petitioner was charged under Rule 36 of the Central Industrial Security Force Rules, 2001 (CISF Rules) by the Disciplinary Authority, CISF Unit, Tarapur. The charge memorandum dated 3 January 2009 is for his overstay from casual leave with effect from 1 October 2008 without prior permission from the competent authority and for having suppressed the fact that he was taken in judicial custody. The articles of charges were thus:

“ARTICLE OF CHARGE NO.-1

"An act of gross misconduct, disobedience and violation of lawful orders of superiors in that CISF No.033480277 SI/Exe Yudhvir Singh (U/S) of CISF Unit KAPS Kakrapar was granted 15 days CL wef 11.09.08 to 30.09.08. He was supposed to join duty on 01.10.08 (FN), but he failed to do so and is overstaying from leave till date without the prior permission of the competent authority".

ARTICLE OF CHARGE NO.-II

"An act of gross misconduct, and suppression of facts in that CISF NO.033480277 SI/Exe Yudhvir Singh (U/S) of CISF Unit KAPS Kakrapar had failed to inform the competent authority about his arrest by Urban Estate Police, Rohtak

(Haryana) in Criminal case No.1518 of 2008 U/S 498 A, 307, 406, 34 & 324 of IPC on 20.09.08 and remand in judicial custody till date by the Addl.Chief Judicial Magistrate, Rohatak. Being a member of the discipline armed force, SI/Exe. Yudhvir Singh (U/S) is duty bound to disclose the fact about the police case against him and judicial custody. This act on the part of No.033480277 SI/Exe Yudhvir Singh (U/S) amounts to gross misconduct and suppression of facts from competent authority".

ARTICLE OF CHARGE NO.-III

"Gross indiscipline and dereliction of duty on the part of No.033480277 SI/Exe Yudhvir Singh (U/S) of CISF Unit KAPS Kakrapar in that he is in the habit of indulging in various indisciplined acts and misconducts and has earned 02 Minor and 01 Major statutory penalties under CISF Rules-2001 during his short service tenure of five years and has not improved upon his conduct and rendered himself incorrigible".

The Petitioner submitted his reply to the charge memorandum on 21 January 2009 and pleaded not guilty. The Disciplinary Authority appointed Enquiry and Presenting Officers on 2 February 2009. The Enquiry Officer completed the departmental enquiry and submitted the enquiry report on 4 August 2009. Copy of the enquiry report was served on the Petitioner by the Disciplinary Authority on 4 August 2009 with a direction to submit a final representation. The Petitioner submitted final representation to the Disciplinary Authority on 11 August 2009. Upon considering the enquiry report and the representation, the Disciplinary Authority by order dated 28 August 2009 found that the charges leveled against the Petitioner were proved and awarded the charged official with the

penalty of reduction of pay by two stages from Rs.11820/- + Rs.4200/- Grade Pay to Rs.10890/- + Rs.4200/- Grade Pay in the Pay Scale of Rs. 9300 - 34800 for three years with further direction that he will not earn increments of pay during the period of reduction, and on expiry of the said period the reduction will have the effect of postponing his future increments of pay.

5. The Petitioner filed an appeal to the Appellate Authority- the Divisional Deputy Inspector General. The Appellate Authority, on 5 September 2009, found that the Petitioner has suppressed the fact that the Petitioner remained in judicial custody for 252 days and informed about the arrest only after he was chargesheeted. Thereupon, the Appellate Authority proposed to enhance the punishment to removal from service and issued show cause notice to the Petitioner. The Petitioner submitted his written statement to the show cause notice. After considering the written statement, the Appellate Authority disposed of the appeal confirming the penalty of reduction of increment and did not enhance the punishment. The findings of the Enquiry Officer were confirmed in the appeal regarding the misconduct of the Petitioner. The Petitioner after that filed Writ Petition No.8481/2012 challenging the impugned orders passed by both, the Disciplinary Authority and the Appellate Authority.

6. In the meanwhile, the assessing/ reporting officer placed remark regarding the Petitioner on 26 December 2009 giving him the grading "Below Average". The reporting officer reported in the column of the confidential report of the Petitioner that the local police arrested the Petitioner and he failed to inform the department. The reviewing authority accepted the grading given to the Petitioner. The Petitioner received a communication dated 28 September 2010 regarding his below-average grade. The Petitioner has challenged this grading by filing Writ Petition No.1059/2013.

7. We have heard Mr. Bansode, learned counsel for the Petitioner and Mr. Vyas, learned counsel for the Respondents.

8. The Petitioner was permitted to take fifteen days casual leave from 11 September 2008 to 30 September 2008 with a direction to report back to duty on 1 October 2008. The Petitioner overstayed from leave with effect from 1 October 2008. Four notices were issued on the address of the Petitioner but they were returned by the postal authority saying that the Petitioner was away at his native place and his family members did not give any response. It so transpired that the Petitioner was arrested by the Urban Estate Police, Rohatak, Haryana in Criminal Case No.1518/2008 under sections 498A, 307, 406, 324 read with section 34 of Indian Penal Code was registered on 20 September 2008. Being a member of discipline armed force, the Petitioner was duty bound to disclose the

fact of his arrest and that he was taken in custody to the department. The learned counsel for the Petitioner contended that the Petitioner was granted casual leave and therefore the Petitioner cannot be considered to have committed any misconduct. Charge against the Petitioner is primarily of suppression of his arrest and taken in judicial custody. The learned counsel for the Petitioner has sought to rely on the communication issued by the Petitioner on 8 October 2008. The learned counsel for the Petitioner contended that in this connection the Petitioner had disclosed about the pendency of the case and reason for not reporting on time.

9. We have perused this communication. It only states that during his leave period, his wife and her family had registered a false case against him; therefore, he could not report the unit on time. This is clear suppression of the fact that the Petitioner was arrested and was taken in judicial custody where he continued for 252 days. It is only on 21 January 2009 after the Petitioner was about to be released on bail that the Petitioner informed about the police case. Regarding this charge against the Petitioner, that the Petitioner being a member of disciplined armed force failed to inform that he was arrested and taken in judicial, the same was proved against the Petitioner. The Petitioner took this ground in appeal as well. The Appellate Authority considered this fact in detail. The contention of the Petitioner that the Petitioner was not in fixed date of mind was rightly negated by the Appellate Authority holding that the

Petitioner had informed about the case but suppressed the factum of he being taken in custody. That being the position, we find that there was no perversity in the findings of the Enquiry Officer and the Appellate Authority that the charge against the Petitioner was proved. Principles of natural justice were followed throughout the enquiry proceedings and the Petitioner was given adequate opportunity. In these circumstances, we find no warrant to interfere with the conclusion reached by the Respondent- Authorities as regards the misconduct of the Petitioner.

10. The learned counsel for the Petitioner sought to contend that the penalty imposed on the Petitioner of postponing future increments of pay for entire service career is harsh. We have considered this submission. The Appellate Authority has noted the Petitioner's contention that he lost his savings due to the court case instituted against him. The Appellate Authority also considered his young age and gave chance to mend himself. Though it is correct that the misconduct of the Petitioner of not informing the factum of his arrest and having taken in judicial custody is proved, the totality of the circumstances including nature of the prosecution in the context of quantum of punishment need to be re-looked by the Appellate Authority. Therefore, we are of the opinion that as far as the quantum of punishment is concerned, confirming the finding of misconduct being proved, the matter needs to be remanded to the Appellate Authority.

11. Now, we turn to Writ Petition No.1059/2013 which is filed, as stated earlier, against the assessment by the reporting authority and grading given as “Below Average” which are confirmed by the reviewing authority. In the assessment, there is a remark that the Petitioner was arrested, but he failed to inform the department. The Petitioner was communicated this adverse remark to which the Petitioner made a representation and thereupon the order is passed by the reviewing authority that there is credible material available on record that grading endorsed by the senior officer on the performance of the Petitioner needs to be confirmed. By this petition the Petitioner again tries to address as to how there was no misconduct by the Petitioner in respect of the charge of not informing about his arrest. The other grounds are only that the Respondents wanted to degrade the service record of the Petitioner and therefore out of personal grudge the grading is given as “Below Average”. The personal grudge which the Petitioner has sought to put forward is the charge of misconduct. Once we have confirmed the finding of the Respondents on the misconduct of the Petitioner, we find no reason to interfere with the substantive assessment by the senior officer regarding the Petitioner's grading. No legal ground is pointed out. There is no merit in this petition.

12. Accordingly, Writ Petition No.8481/2012 is disposed of confirming the finding of misconduct against the Petitioner and

restoring the appeal of the Petitioner to the file of the Appellate Authority only on the limited point of quantum of punishment. It will be open to the Petitioner to submit an additional representation restricted to the quantum of punishment. Thereafter, the Appellate Authority will consider the overall aspects and decide whether the imposed punishment needs to be modified or retained. Subject to other urgent public duties, the Appellate Authority will take a decision within twelve weeks from the date the order is placed before the Appellate Authority. Rule made absolute in the above terms.

13. Writ petition No.1059/2013 is dismissed. Rule stand discharged.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)