

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8388 of 2018

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Santosh Kumar Rai Son of Sri Shrikant rai, Resident of Village and P.O.-
Diyaman, P.S.-Krishna Brahm, District-Buxar.

... .. Petitioner/s

Versus

1. The Union Of India
2. The Inspector General WS, Central Industrial Security Force Ministry of
home affairs. Keosun Com
3. The Deputy Inspector General, Central Industrial Security Force CISF DAE
Zonal Hors. ECIL Post, Hyd
4. The Commandant, Central Industrial Security Force CISF Unit, DAE
Kalpallam, Kanchaepuram, District

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Nand Gopal Mishra, Advocate

For the Respondent/s : Mr. Mr. Amarrendra Nath Verma, Sr. Panel Counsel
Mr. Mukesh Kumar, CGC

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 01-05-2025

Heard learned counsel for the petitioner and the Union
of India.

2. The present writ petition seeks the following
reliefs:

“i) To quash the removal order dated
11.12.2006 issued by the Commandant, CISF Unit,
DAE Kalpakkam, Tamil Nadu (Order No. 4767)
(Annexure-5);

ii) To quash the appellate order dated
05.05.2008 passed by the Deputy Inspector General,
CISF DAE Zonal Headquarters, Hyderabad (Order
No. 1633) (Annexure-7), and the revisional order
dated 04.01.2016 passed by the Inspector General



(W.S.), CISF, Navi Mumbai (Order No. 00044) (Annexure-11), both upholding the penalty of removal;

iii) To direct the respondents to reinstate the petitioner in service with continuity and all consequential benefits.”

3. Learned counsel for the petitioner submits that the petitioner was appointed as a Constable (No. 014380541) in CISF on 19.05.2001. While posted at DAE Unit, Kalpakkam (Tamil Nadu), the region was struck by a tsunami on 26.12.2005. The petitioner was assigned rescue and recovery duties, including handling dead bodies. After the rescue operation, the petitioner did not feel well and applied for leave, which was granted to him from 01.02.2006 to 15.02.2006, and further granted paternity leave from 16.02.2006 to 02.03.2006. It has been further submitted by learned counsel for the petitioner that the impact of tsunami rescue operation was so deep in the mind of the petitioner that while availing his leave at his native place, his family observed signs of abnormal behavior. He was consulted a doctor who referred him to a psychiatrist at Kanke, Ranchi, vide prescription dated 20.02.2006. Pursuant to medical advice, the petitioner visited to Ranchi on 26.02.2006 and began treatment under a psychiatrist. He was diagnosed with *Schizoaffective Psychosis*, a condition



requiring long-term treatment. The petitioner remained under doctor's care from 26.02.2006 to 08.03.2008 and, during this period, was mentally unfit to make decisions, including those related to his employment. The doctor at Ranchi issued fitness certificate on 08.03.2008. However, he had already reported to his unit in January 2008 intending to resume duty. There, he came to know about of his removal from service. On requesting the removal order, he was told it had already been sent. The petitioner then submitted applications dated 09.01.2008 and 21.01.2008 via speed post to the Commandant requesting a copy of the charge sheet, inquiry report, and removal order for the purpose of filing an appeal. Thereafter, the removal order dated 11.12.2006 was eventually delivered to him by the local police on 29.02.2008, sent under letter No. 384 dated 30.01.2008. Learned counsel further submits that from the removal order it transpires that an *ex parte* departmental proceeding had been conducted against him for overstaying leave and failing to respond to call-up letters.

4. It is further submitted that prior to the passing of the impugned removal order, the petitioner was never served with the charge sheet, show cause notice, inquiry report, witness depositions, or any other relevant documents. At the time of the



inquiry, he was undergoing psychiatric treatment at Kanke. Though the order claims that the charge sheet was served to his mother at his father's residence on 08.08.2006 (as it could not be personally served), the petitioner was not in a mental state to receive or respond to it. Thus, effective service of documents and a meaningful opportunity to defend himself were absent.

5. Learned counsel further submits that upon receiving the fitness certificate on 08.03.2008, the petitioner promptly filed an appeal before the Deputy Inspector General, DAE, Hyderabad on 25.03.2008, explaining that he was mentally unwell and under treatment during the period of inquiry. Hence, he submits that the proceeding was conducted *ex parte* without serving him charges or giving an opportunity to be heard and the same is void and unjust. The appellate authority also, without due consideration of the petitioner's medical condition, dismissed the appeal. Learned counsel further submits that the C.I.S.F. authority erroneously and insensitively doubted the authenticity of his treatment, noting that he was not admitted in a hospital and only visited the doctor on 08.03.2008 to obtain a fitness certificate. The authority of the C.I.S.F. also relied on two resignation applications sent by the petitioner on 05.09.2006 and 05.10.2006, ignoring that these



were made while he was mentally unfit and under psychiatric care.

6. The removal significantly worsened the petitioner's mental health, and he had to undergo further treatment from 04.08.2008 to 05.01.2015. As a result, he could not file a revision against the appellate order within the statutory period. On medical advice, he later submitted a representation to the Hon'ble Home Minister, Government of India, narrating his ordeal. This was treated as a revision petition by the Inspector General, CISF, Navi Mumbai, who also rejected it without adequately addressing the facts.

7. Learned counsel for the petitioner further submits that the entire disciplinary proceeding was fundamentally flawed and not in accordance with established legal principles. There is no evidence that the petitioner was served with critical documents during the inquiry. Despite credible medical evidence showing he was undergoing psychiatric treatment, the authorities wrongly treated his ailment as fabricated.

8. Learned counsel refers to a similar case (*C.W.J.C No. 12635/2002*), where this Hon'ble Court held that removal from service in *ex parte* proceedings without serving charges was illegal and quashed the dismissal order. It is submitted that



this precedent, among other relevant considerations, was completely ignored by the authorities in the petitioner's case.

9. To substantiate his argument, learned counsel for the petitioner relied on a judgement passed by Hon'ble Supreme Court of India in the case of ***Krushnakant B. Parmar V. Union of India and Anr.*** Reported in 2012(3) SCC 178 :: 2012(3) SCR 484 and submits that absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful and in compelling circumstances beyond his control like illness, accident, hospitalization, etc, but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a Government.

10. Learned counsel relied another judgement rendered in the case of ***Sanjay Kumar Vs. the State of Bihar and Ors.*** reported in 2008(1) PLJR 449 :2008(1)BBCJ 504 in which it has been held that a person cannot be punished for the same offence twice.

11. Learned counsel further submits that this Hon'ble Court in case of ***Mohan Pandey Vs. Union of India in CWJC NO. 12635 of 2002*** passed vide in its order dated 31.01.2005 whereby the Hon'ble Court pleased to set aside the punishment order on the ground that when a proceeding is initiated notices



has to be issued and served upon the delinquent and where there is nothing to show that notices were served and charge were furnished to the delinquent then in that case the punishment order shall not survive. In this background, learned counsel for the petitioner submits that the order awarding punishment from removal of service by the Commandant (Annexure-5), order passed by the appellate authority by D.I.G., C.I.S.F. and the revisional order passed by the I.G. (Annexure-11), all be set aside and the petitioner be reinstated in service with all consequential benefits.

12. Learned counsel for the Union of India submits that the present case is fit for dismissal as all the impugned orders, namely, the original order, appellate order, and the revisional order, have been passed strictly in accordance with the provisions of the CISF Rules, 2001. It is further submitted that three charges were levelled against the petitioner: **Charge I:** The petitioner was granted 15 days of Earned Leave from 01.02.2006 to 15.02.2006 and 15 days of Paternity Leave from 16.02.2006 to 02.03.2006, along with two days' permission on 30.01.2006 and 31.01.2006. However, he failed to report for duty on 03.03.2006 upon expiry of his leave and continued to overstay without any intimation or approval, which constituted



gross indiscipline, misconduct, and dereliction of duty as a member of an armed force. **Charge II:** The petitioner failed to respond to a call-up letter dated 10.03.2006 and did not inform the department about the change in his residential address. As a result, official communications sent to his last known address were returned undelivered. **Charge III:** The petitioner neither responded to any official communications nor made any effort to contact the office during his prolonged absence.

13. The CISF authorities decided to deal with the matter under the relevant rules and issued a charge memorandum via letter dated 12.06.2006 through the AC, CISF Unit, FCI Dighaghat. The same was returned with the information that the petitioner was staying with his father at Chittaranjan (West Bengal) in the RPF Department. A CISF official was then dispatched to locate the petitioner's father's residence, where the petitioner's mother was found, and the charge memorandum was served upon her on 08.08.2006 (Annexure-4). Despite service of the charge memo, no reply was received from the petitioner. Consequently, an Enquiry Officer was appointed on 22.08.2006. The Enquiry Officer initiated proceedings in accordance with CISF Rules, 2001, and provided reasonable opportunities to the petitioner to defend himself.



However, the petitioner did not participate in the enquiry, despite receiving enquiry notice No. 492 dated 31.08.2006, as acknowledged in Annexure-5. The enquiry was therefore conducted ex-parte. The Enquiry Officer submitted his report on 16.11.2006 to the Disciplinary Authority, and a copy was served to the petitioner with instructions to submit a representation by 10.12.2006 (Annexure-7). The petitioner failed to respond, and the penalty of **“Removal from Service”** was imposed vide Final Order dated 11.12.2006 (Annexure-8).

14. Learned counsel for the Union of India further submits that while overstaying on leave, the petitioner sent an application dated 05.09.2006 vide fax to CISF Unit DAE Kalpakkam, addressed to the Unit Commander. In the application, he stated that due to division of ancestral property and concerns for its upkeep, he wished to resign from service in the interest of his family's welfare (Annexure-9). In response, the department, through Office Letter No. 3432 dated 07.09.2006, rejected his resignation, instructing him to appear for the departmental enquiry and submit a clearance certificate thereafter (Annexure-10).

15. Subsequently, the petitioner again sent a fax dated 05.10.2006 to the Unit Commander, referring to a recent



communication asking him to report physically to the unit for resignation processing. Instead of reporting, he requested two more months' time citing domestic problems (Annexure-11). This request was also rejected, and the petitioner was again directed to appear for the departmental enquiry and submit a clearance certificate before any resignation request could be processed (Annexure-12).

16. Learned counsel for the Union of India further submits that despite four call-up notices and two messages, the petitioner failed to report for duty. It is emphasized that in none of his applications did the petitioner mention any illness or disclose his whereabouts. Had he genuinely been unwell, the same would have been communicated to the department. His conduct reflects a lack of interest in continuing service.

17. Learned counsel for the Union of India further submits that the final removal order was passed on 11.12.2006. The petitioner filed an appeal only in March 2008, which was rejected by the appellate authority on 05.05.2008. Thereafter, he submitted a representation dated 21.05.2015 addressed to the Home Minister, which was treated as a revision petition. The Reviewing Officer, Inspector General, CISF WS Headquarters, Navi Mumbai, found no new or relevant facts and rejected the



revision on 04.01.2016 (Annexure-14). A legal notice dated 19.09.2017 was also responded to, with the department clarifying that the petitioner had exhausted all remedies available under CISF Rules.

18. It is further submitted that it is incorrect for the petitioner to now claim non-receipt of departmental materials. Letters concerning his resignation were duly served, including one delivered in person to his mother. Four notices were also sent by registered post. No illness due to the tsunami was ever reported during the relevant period; this excuse was raised for the first time in appeal and supported only by a local doctor's note, which was rightly rejected for lack of authentication by a government medical officer.

19. The judgment in *Krushnakant B. Parmar (supra)* is not applicable as the petitioner's case does not involve hospitalization, accident, or any proven medical condition. Similarly, *Sanjay Kumar (supra)* is irrelevant, as the petitioner has not been punished twice for the same offence. Prior conduct was only referenced to show habitual misconduct. The case of *Ex Sepoy Madan Prasad (supra)* is also distinguishable. Unlike that case, here there is clear evidence of service of notices and other communications, including acknowledgment of receipt



and two resignation letters from the petitioner himself.

20. After hearing the parties and perusing the documents on record, it transpires to this Court that both the Appellate Authority and the Revisional Authority have duly considered the case of the petitioner. The records indicate that notice was served upon the petitioner through his mother. Prior to the passing of the final order, the petitioner had also sent two registered letters to the concerned authority. This Court, upon examining the reasoning provided by the Revisional Authority, finds that the petitioner did not raise before the departmental authorities the plea he now seeks to raise before this Court. No documents have been produced to substantiate his claim regarding his son's illness and burn injuries. Further, although the petitioner contends that he was ill due to the tsunami, no medical report from any Government doctor or hospital has been filed to support this claim. This is particularly significant considering that, as a member of the force, he had access to treatment at local government or departmental hospitals. Instead, the petitioner has submitted a report from a private medical practitioner, which the authorities have rightly declined to accept due to lack of corroboration by any government medical institution. Moreover, the judgments relied upon by the



petitioner rendered in the case of *Krushnakant B. Parmar*, *Sanjay Kumar (supra)* and *Ex Sepoy Madan Prasad (supra)* are distinguishable on facts and do not help the petitioner’s case in any manner.

21. In conclusion, order passed by the Commandant, CISF Unit DAE Kalpakkam (Order No. 4767 dated 11.12.2006, Annexure-5), the appellate order passed by the Deputy Inspector General, CISF DAE Zonal Headquarters, Hyderabad (Order No. 1633 dated 05.05.2008, Annexure-7), and the revisional order passed by the Inspector General (W.S.), Navi Mumbai (Order No. 00044 dated 04.01.2016, Annexure-11), are all valid, legal, and sustainable as they were passed in accordance with the CISF Act, 2001 and relevant rules.

22. Hence, this writ petition is hereby dismissed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
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