

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1090 of 2023
In
Civil Writ Jurisdiction Case No.18926 of 2010

=====

Dharmendra Gupta S/o Sri Nanhak Gupta R/o-Village-Kodiyar, P.O.-
Purahara, P.S.-Chouri, Distt.-Bhojpur

... .. Appellant/s

Versus

1. The Union of India through its Ministry of Home Affairs, New Delhi.
2. The Inspector General Central Industrial Security Force, C.I.S.F. Office
Complex , Boring Road, Patna - 13 Bihar
3. The Deputy Inspector General C.I.S.F., C.I.S.F. Unit B.C.C.L. Dhanbad,
Jharkhand.
4. The Senior Commandant C.I.S.F. Unit, Dhanbad, Jharkhand.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Om Prakash Kumar, Advocate
For the UOI	:	Mr. Bindhyachal Rai, Sr. Panel Counsel

=====

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA)

Date : 09-10-2025

Heard Mr. Om Prakash Kumar, learned counsel for the
appellant and Mr. Bindhyachal Rai, learned Senior Panel Counsel
for the Union of India.

2. The present appeal is directed against the order dated
26.06.2023 passed in C.W.J.C. No. 18926 of 2010 whereby and
whereunder the writ Court has been pleased to dismiss the writ



petition on the ground that the appellant has not produced any material as to why the appellant remained unauthorized absent from 10.11.2008 to 17.05.2009.

3. The brief facts of the case is that the appellant was appointed as a Constable in the Central Industrial Security Force (hereinafter referred to as 'CISF') on 04.07.1994. When the appellant was posted in CISF Unit, NALCO at Damanjodi, a complaint case bearing Complaint Case No. 516 of 2003 under Sections 494 and 498(A) of the Indian Penal Code was lodged against the appellant. When the appellant came to know about the aforesaid case lodged against him, the appellant immediately on 18.06.2004 filed a representation through the Commandant, CISF. It appears from the letter dated 24.06.2004 of the Commandant, CISF which reflects that the CISF has taken into consideration the aforesaid case as a family dispute. The appellant had been granted provisional bail. Unfortunately in the meantime, wife of the appellant died at her parental house and he was unauthorized absent for 189 days. The appellant was subjected to disciplinary proceedings after framing charges on 10.02.2009. Charges are that the appellant had suppressed pendency of criminal case lodged against him under Section 498A of the Cr. P.C. Another allegation was that the appellant had overstayed for 189 days during the



intervening period from 10.11.2008 to 17.05.2009. The appellant had submitted his explanation on 05.03.2009. The Inquiry Officer was not satisfied with the appellant's explanation and proceeded accordingly. The Inquiry Officer had submitted his report on 21.05.2009 and the same was *ex parte* inquiry, since the appellant had failed to co-operate in the inquiry. Based on the Inquiry Officer's report on 21.05.2009, the disciplinary authority proceeded to issue a show cause notice along with the Inquiry Officer's report seeking appellant's explanation. Thereafter, penalty of removal of service was ordered on 22.06.2009. Thereafter, the appellant had preferred an appeal and revision in both the proceedings the appellant had not succeeded. Thereafter, he has filed the writ petition and the same is impugned in the present LPA.

4. Learned counsel for the appellant fairly submits that the appellant could not attend the duties in the light of criminal proceedings lodged against him. Apart from that the appellant was admitted to the Hospital during the intervening period from 06.04.2009 to 11.05.2009. During this period, the *ex parte* inquiry was concluded. In view of the aforesaid, the present case may be remanded to the disciplinary authority to proceed with the inquiry afresh. Learned counsel for the appellant has relied upon a



judgment in the case of Amarendra Kumar Pandey Vs. Union of India & Ors., reported in 2022 LiveLaw (SC) 600, referring paragraph nos. 22 and 23 which is quoted hereinbelow:

*“22. We must first look into the decision of this Court rendered in the case of **Virendra Kumar Dubey** (supra). In the said case, the appellant Virendra Kumar Dubey was enrolled as an operator in the corps of Artillery of Indian Army on 27.09.1980. Having served in that capacity for nearly twelve years, he received a show cause notice pointing out that he had been awarded four Red Ink entries for various offences set out in the notice and that Virendra Kumar Dubey had become a habitual offender, thereby setting a bad example of indiscipline in the army. Virendra Kumar Dubey ultimately came to be discharged from service by an order dated 14.12.1992. He preferred a departmental appeal, which failed. He, thereafter, went to the High Court of Madhya Pradesh at Jabalpur, however, the High Court declined to entertain the petition on the ground of lack of territorial jurisdiction. He, thereafter, preferred an appeal before the Appeal Court and the writ appeal was ultimately ordered to be transferred to the Armed Forces Tribunal Regional Bench, Lucknow. The Tribunal ultimately dismissed the transferred petition which gave rise to the appeal before this Court.*

*23. This Court in **Virendra Kumar Dubey** (supra) held as under:*



“19. It is common ground that a red ink entry may be earned by an individual for overstaying leave for one week or for six months. In either case the entry is a red ink entry and would qualify for consideration in the matter of discharge. If two persons who suffer such entries are treated similarly notwithstanding the gravity of the offence being different, it would be unfair and unjust for unequals cannot be treated as equals. More importantly, a person who has suffered four such entries on a graver misconduct may escape discharge which another individual who has earned such entries for relatively lesser offences may be asked to go home prematurely. The unfairness in any such situation makes it necessary to bring in safeguards to prevent miscarriage of justice. That is precisely what the procedural safeguards purport to do in the present case.”

Taking the aforesaid view, this Court ultimately passed the following order:

“21. In the result this appeal succeeds and is hereby allowed. The order of discharge passed against the appellant is hereby set aside. Since the appellant has already crossed the age of superannuation, interest of justice will be sufficiently served if we direct that the appellant shall be treated to have been in service till the time he would have completed the qualifying service for grant of pension. No back wages shall, however, be admissible. Benefit of continuity of service for all other purpose shall be granted to the appellant including pension. Monetary benefits payable to the



appellant shall be released expeditiously but not later than four months from the date of this order. No Costs.”

5. Learned counsel for the appellant has relied upon paragraph nos. 22 and 23 of the aforesaid judgment and submits that in light of the aforesaid judgement, the case of the appellant may be remanded to the disciplinary authority to proceed with the inquiry afresh.

6. Mr. Bindhyachal Rai, learned Senior Panel Counsel for the Union of India submits that it appears from the record of the case that despite providing number of opportunities, the appellant has failed to appear before the inquiry authority and even not a single communication has been made by the appellant to the inquiring authority to consider the case of the appellant and the appellant had overstayed for 189 days during the intervening period from 10.11.2008 to 17.05.2009. Although, the appellant had produced medical certificate for the intervening period from 06.04.2009 to 11.05.2009 but for remaining period the appellant has not produced any material which suggests that the appellant remained unauthorized absent during the aforesaid period. Apart from the aforesaid, the appellant has failed to give his response to the inquiring authority and he has been submitting letters to the



Disciplinary Authority/Appointing Authority for grant of leave for various periods. Learned Senior Panel Counsel for the respondent-Union of India has relied upon a judgment dated 08.08.2024 of this Court passed in **LPA No. 1614 of 2019** in the case of **Khurshid Alam Vs. The Union of India and Ors.** In view of the aforesaid case, the appellant was unauthorized absent for about 572 days and the learned Senior Panel Counsel for the Union of India has referred paragraph no. 2 of the aforesaid judgment of the learned Division Bench of this Court which is quoted hereinbelow:

*“2. In view of the aforementioned facts and circumstances, Respondent authority proceeded to pass order of removal and it has been affirmed by the learned single Judge. That apart, scope of judicial review under Article 226 of the Constitution is limited, in this regard Hon’ble Supreme Court in the case of **Union of India vs. P. Gunasekaran reported in 2015 (2) SCC 610**, in para nos. 12 and 13, it is held as under.*

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the



disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappraisal of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*



- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based;*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.*

7. We have heard counsel for the parties and perused the material available on record, it appears that the appellant was unauthorized absent of 189 days which is serious misconduct in a discipline force like Central Industrial Security Force and the appellant has failed to give his response to the inquiring authority. Apart from that the appellant has suppressed about pendency of a criminal case. Despite providing number of opportunities, the



appellant has failed to appear before the inquiring authority and unauthorized absence of 189 days is serious misconduct in a discipline force. The appellant has not made out a case so as to interference with the removal order and consequential order of the writ Court dated 26.06.2023 passed in CWJC No. 18926 of 2010.

8. There is no merit in the present appeal and accordingly, LPA stands dismissed.

9. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

Ibrar//-

(Rajesh Kumar Verma, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	14.11.2025
Transmission Date	N.A.

