

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 23044 of 2013

**Manoj Kumar Mandal @ M.K. Mandal
-Vs-
Union of India & Ors.**

For the Petitioner	: Mr. K.B.S. Mahapatra
For the Respondents/UOI	: Mr. Pralay Bhattacharya Mr. Koushik Roy
Heard on	: 21.03.2025, 05.08.2025
Judgment on	: 28.08.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner has sought issuance of a writ in the nature of mandamus commanding the respondent authorities to forthwith quash and set aside the disciplinary proceedings initiated against him, the final order bearing No. V-15014/Anu./Min-08/RTPP(P)/MKM/2013/961 dated 09.05.2013, and the appellate order bearing No. V-15014/DSP/Anu./Appeal/2013/4297 dated 05.07.2013.
2. The petitioner was serving as a Sub-Inspector (Executive) in the CISF. A charge-sheet under Rule 37 of the CISF Rules, 2001 was issued against him alleging gross negligence, indiscipline, and inefficiency in connection with an incident dated 16/17.03.2013 at Ghutitora Gate, RTPP, Purulia,

where despite being the Shift In-Charge, he allegedly failed to take appropriate action against one Satya Prakash Mishra, a local shopkeeper, who created a disturbance under intoxication and threatened CISF personnel, leading to a blockade of the gate on the following day.

3. The petitioner received the charge-sheet on 26.04.2013 and submitted his written reply on 04.05.2013 denying the allegations and contending that the charges were baseless. However, his explanation was considered unsatisfactory, and the disciplinary authority imposed the penalty by order dated 09.05.2013.
4. Aggrieved by the disciplinary proceedings, the penalty order, and the appellate order enhancing the penalty, the petitioner has invoked the writ jurisdiction of this Hon'ble Court.
5. The Learned Advocate representing the petitioner submitted as follows:-
 - (i) It was contended that the penalty of *Censure* was imposed without cogent reasons and in contravention of law.
 - (ii) The memorandum of charge was vague, inasmuch as the allegation of "failure to take appropriate action" did not specify what precise action was expected of the petitioner in the facts and circumstances of the case.
 - (iii) Under Section 11(2) of the CISF Act, 1968, any person found trespassing on the premises could be removed by a member of the Force, and in the instant case the petitioner had duly removed the intruder. Hence, no further action was warranted.

- (iv) The incident in question pertained merely to one individual attempting to enter the plant premises to fetch water, which was prevented by the petitioner. Such minor incidents occur frequently in industrial establishments, and there existed no requirement to report the same to higher authorities. Accordingly, the allegation of “concealment” from senior officers was wholly unwarranted.
- (v) Neither in the memorandum of charges, nor in the final or appellate orders, was it indicated as to what constituted the “appropriate action” allegedly not taken by the petitioner.
- (vi) The intoxicated individual was not allowed entry inside the plant premises, and within the scope of the CISF Act and Rules, the petitioner had discharged his duty appropriately; no further action was mandated.
- (vii) The impugned penalty was founded upon a purported preliminary enquiry report, which was neither supplied to the petitioner nor disclosed as a material to be relied upon, thereby causing grave prejudice.
- (viii) The proceedings were based on surmises and conjectures, in breach of the principles of natural justice, and without affording the petitioner a reasonable opportunity of defence.
- (ix) Despite the petitioner’s categorical denial of the charges, no regular enquiry was conducted; nor was any evidence

adduced by the respondents. Instead, the authorities proceeded in an arbitrary and whimsical manner.

- (x) The allegations contained in the memorandum of charge, even if accepted at face value, did not constitute misconduct, negligence, or indiscipline within the meaning of the CISF Act and Rules.
- (xi) The petitioner's action was in faithful compliance with Section 11(2) of the CISF Act, 1968, which empowers members of the Force to remove trespassers. Hence, the imposition of punishment for performing statutory duties was wholly unjustified.
- (xii) As regards the alleged blockade at Ghutitora Gate, it was submitted that the persons concerned were removed in accordance with law, and any subsequent law-and-order situation was within the domain of the local police, not the petitioner.
- (xiii) Rule 37 of the CISF Rules, 2001 empowers the authorities to impose punishment only for good and sufficient reasons. In the present case, punishment was inflicted despite lawful performance of duty, rendering the impugned orders unsustainable.
- (xiv) Accordingly, it was prayed that the penalty imposed upon the petitioner be quashed and set aside as being arbitrary,

unreasonable, mala fide, and in violation of Articles 14 and 16 of the Constitution of India.

6. The Learned Advocate representing the respondent submitted as follows:-

- (i) The deponent, Bidhan Bhandary, Respondent No. 5, is competent and authorised to affirm this affidavit on behalf of the answering respondents.
- (ii) The writ petition is premature and not maintainable as the petitioner has not exhausted the departmental remedy of revision before the Deputy Inspector General, CISF, under Section 9(2A) of the CISF Act, 1968.
- (iii) The petition is barred by the doctrine of alternative statutory remedy, in terms of the Calcutta High Court judgment in *CR/CO No. 9933(W) of 1992, Sahadev Bag vs. UOI & Ors.*
- (iv) The petitioner failed to serve a valid notice under Section 80 CPC, rendering the writ application defective, as laid down by the Hon'ble Supreme Court in *Salem Advocate Bar Association vs. UOI* (AIR 2005 SC 3353).
- (v) The petitioner, while on duty as QRT-cum-Shift In-Charge on the night of 16/17.03.2013, failed to report or record in the GD the nuisance created by one Shri Satya Prakash Mishra, a local shop owner under intoxication, who had threatened CISF personnel.
- (vi) On 17.03.2013, Shri Mishra, along with 50-60 persons, blocked Ghutitora Gate alleging assault by CISF staff. The

gate blockage disrupted official functioning and tarnished the image of CISF.

- (vii) A preliminary enquiry was conducted wherein the petitioner admitted his failure to report the incident or make GD entries.
- (viii) A charge memorandum dated 25.04.2013 was issued under Rule 37 of CISF Rules, 2001.
- (ix) The petitioner replied on 04.05.2013, which was found unsatisfactory. After due consideration, the disciplinary authority imposed the penalty of "Censure" by order dated 09.05.2013.
- (x) The petitioner's appeal dated 29.05.2013 was duly considered and rejected by the appellate authority on 05.07.2013.
- (xi) The petitioner has also previously suffered three statutory punishments for misconduct/indiscipline.
- (xii) Allegations of bias and mala fides against the Assistant Commandant (Respondent No. 4) are categorically denied. The disciplinary action was taken for good and sufficient reasons.
- (xiii) The plea that no regular departmental enquiry was conducted is untenable since Rule 37 proceedings are minor penalty proceedings where holding a full-fledged enquiry is discretionary.
- (xiv) The petitioner, being Shift In-Charge, had a higher duty to foresee the gravity of the incident and report the same, which

he failed to do. His negligence directly led to the gate blockade.

(xv) The punishment of “Censure” is lawful, proportionate, and based on a reasoned order.

(xvi) The petitioner has deliberately bypassed the statutory remedy of revision before the DIG, making the writ petition liable to be dismissed.

7. Rule 37 of the Central Industrial Security Force Rules, 2001 stated as follows:-

“37. Procedure for imposing minor penalties - (1) No order imposing any of minor penalties specified in rule 34 shall be made except after –

(a) informing the enrolled member in writing of the imputations of misconduct or misbehaviour on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he wishes to make against the proposal;

(b) holding an inquiry, if the disciplinary authority so desires, in the manner laid down in sub-rules (3) to (22) of rule 36;

(c) taking the representation, if any submitted by the enrolled member under clause (a) and the record of inquiry, if any, held under clause (b) into consideration; and (d) recording the findings on each imputation of misconduct or misbehaviour;

(2) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government Servant or to withhold increments of pay for a period exceeding 3 years or to withhold increments of pay with cumulative effect for any period an inquiry shall be held in the manner laid down in sub-rule (3) to (22) of

Rule 36 before making any order imposing on the enrolled member of the Force any such penalty.

(3) The records of the proceedings in such cases shall include –

(i) a copy of the intimation to the enrolled member so charged of the proposal to take action against him;

ii) a copy of the statement of imputation of misconduct or misbehaviour delivered to him;

(iii) his representation, if any; (iv) the evidence produced during the enquiry, if any; (v) the findings on each imputation of misconduct or misbehaviour; and (vi) the orders on the case together with the reasons therefor.”

8. Contextually holding an enquiry by the Disciplinary Authority is optional on its desire. The minor penalty of Censure was imposed on considering the representation of the petitioner.

9. Section 11 (2) of the Central Industrial Security Force Act, 1968 stated as follows:-

*“11. Power to arrest without warrant.— (2) If any person is found trespassing on the premises of any industrial undertaking referred to in clauses (b) and (c) of section 10, he may, without prejudice to any other proceedings which may be taken against him, be removed from such premises by any 2 *** member of the Force.”*

10. In *Rakesh Kumar v. Union of India & Ors.* reported in 2016 LAB. I.C. 198, the Hon’ble Supreme Court held as follows:-

“.....

*8. Learned counsel for the writ petitioner controverted the same by placing paragraph 2 of the judgment rendered by Hon’ble Apex Court in *Hukum Chandra v. Vivek Singh and another*, 2004 (1) UD 477. It will be useful to look into paragraph 2 of said judgment. The same reads as under:*

“A petition filed in the High Court seeking relief under Article 226 or 227 of the Constitution of India was entertained in the year 1993 by the then High Court of Allahabad. Consequent upon re-organisation of the State of Uttar Pradesh, the matter came to be transferred to the High Court of Uttaranchal at Nainital. On 24.11.2003, when the matter came up for hearing, the High Court formed an opinion that an alternate efficacious remedy of filing a revision as provided by Section 18 of Uttar Pradesh Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972 was available to the appellant, the petition did not lie. The petitioner in the High Court had explained in his petition the circumstances in which it was impracticable then to file the revision and therefore the writ jurisdiction of the High Court was being invoked. That explanation had found favour with the High Court while admitting the petition and issuing rule. After the matter had remained pending for little over 10 years, the High Court was not justified in dismissing the writ petition solely on the ground of availability of an alternative remedy. Availability of an alternate efficacious remedy does not implicitly and necessarily take away the jurisdiction of the High Court to hear a writ petition and exclusion of exercise of writ jurisdiction on account of availability of alternate remedy is a rule of discretion.”

9. *A similar view had been taken by the Hon’ble Supreme Court in Dr. Bal Krishna Agarwal v. State of U.P. and others (1995) 1 SCC 614 : (1995 AIR SCW 800), wherein it was held as under:*

“Having regard to the aforesaid facts and circumstances, we are of the view that the High Court was not right in dismissing the writ petition of the appellant on the ground of availability of an alternative remedy under Section 68 of the Act especially when the writ petition that was filed in 1988 had already been admitted and was pending in the High Court for the past more than five years. Since the question that is raised involves a pure

question of law and even if the matter is referred to the Chancellor under Section 68 of the Act it is bound to be agitated in the Court by the party aggrieved by the order of the Chancellor, we are of the view that this was not a case where the High Court should have non-suited the appeal on the ground of availability of an alternative remedy. We, therefore, propose to go into the merits of the question regarding inter se seniority of the appellant and Respondent 4 and 5. We may, in this context, mention that Respondent 4 has already retired in January 1994.”

10. *This Court is, therefore, of the opinion that availability of an alternate efficacious remedy does not implicitly and necessarily take away the jurisdiction of the High Court to hear a writ petition and exclusion of exercise of writ jurisdiction on account of availability of alternate remedy is a rule of discretion. Looking in to the facts of the case, this Court is inclined to exercise that discretion in favour of the petitioner.”*

11. The respondent/CISF apart from stating the lapse on the part of the petitioner to inform of the gate blockade to the Superior Authority did not refer to the specific violation of a statutory provision mandating the petitioner to report the incident to his immediate senior. The removal of the intruders did not occasion any untoward incident to have adversely affected the functioning of the respondent/CISF or to have harmed or bothered any individual attached or connected thereto.
12. After a lapse of thirteen years, the petitioner need not approach for alternative efficacious remedy through the process of accounting to review.
13. The penalty of Censure imposed upon the petitioner be considered leniently without affecting the future financial prospect in as much the

petitioner had earlier been subjected to imposition of penalties to his peril.

14. In view of the above discussions, the instant writ petition being WPA 23044 of 2013 is disposed of.

15. There is no order as to costs.

16. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)