

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 09.07.2025

DELIVERED ON: 09.07.2025

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

**M.A.T. 2290 of 2024
With
I.A. No. CAN 1 of 2025
+
CAN 2 of 2025**

**Union of India & Ors.
Versus
R. Kasivelu**

Appearance:-

Mr. Indrajeet Dasgupta

Mr. Uttam Basak

.....For the Appellants/Union of India

Mr. Kedareshwar Chakraborty

.....For the Respondent

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

In Re. I.A. No. CAN 1 of 2025

1. This intra-Court appeal has been filed challenging the order dated 26th June, 2024 in W.P.A. 23983 of 2014. The said writ petition was filed by the respondent herein challenging the order of punishment imposed upon him i.e. removal from service as well as the order passed by the appellate authority and the revisional authority confirming such punishment. The appeal filed by the Union of India & Ors. is time-barred and there is a delay of 144 days in filing the appeal. The respondent/writ petitioner has filed his affidavit-in-opposition objecting to the prayer for condonation of delay.

2. We have considered the averments set out in the application and we find sufficient cause has been shown for not preferring the appeal within the period of limitation and as also the delay is not inordinate, therefore, we exercise discretion and condone the delay in filing the appeal.
3. Accordingly, application being, I.A. No. CAN 1 of 2025 stands allowed.

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4. We have carefully perused the order passed by the learned Single Bench and also the annexures, which have been annexed to the stay petition by the appellants.
5. On going through the order impugned, we find up to paragraph 36 of the impugned order, all the findings rendered by the learned Writ Court are against the writ petitioner. In paragraph 37, the learned Writ Court notes the submission made by the learned advocate appearing for the respondent/writ petitioner that the disciplinary authority acted unreasonably as no action was taken against the other employee involved in the scuffle.
6. The next argument was that the punishment is shockingly disproportionate. This argument was accepted by the learned Single Bench and it was held that only one employee has been punished i.e. the writ petitioner for an incident of scuffle while the other person involved in this scuffle was not held accountable. This finding rendered by the learned Single Bench is factually incorrect. This is evident from a bare perusal of the order passed by the appellate authority viz. Deputy Inspector General, Central Industrial Security Force (C.I.S.F.) dated 31st May, 2004. In the said order, internal page 5, the following finding has been recorded by the appellate authority.

“However, PW-3 Constable Jaibir Singh was charged U/R-36 of CISF Rules, 2001 for his indiscipline act and involving himself in a scuffle with his senior i.e. the appellant and on being found guilty of the said departmental proceedings he has been awarded the

penalty of 'Removal from Service' wef 08.1.2004 vide order No.V-15014/ONGC(N)/Disc/Maj-18/2004-182 dated 08.1.2004".

7. The above finding appears to have not been brought to the notice of the learned Single Bench. Therefore, the conclusion arrived at by the learned Single Bench to hold that the writ petitioner alone has been victimized is incorrect. The other person involved in the scuffle viz. Constable Jaibir Singh was also charged under Rule 36 of the CISF Rules, 2001 for his indiscipline and involving himself in a scuffle with his senior, who is the respondent/writ petitioner and on being found guilty in the said departmental proceedings, he was awarded the penalty of removal from service with effect from 8th January, 2004 by order dated 8th January, 2004. If this is the position, then it goes without saying that both the employees i.e. the respondent/writ petitioner and the other individual viz. Constable Jaibir Singh have been dealt with departmentally and similar punishment has been imposed on both of them. Therefore, the finding rendered by the learned Single Bench, which was contrary to the facts is hereby set aside.
8. The next aspect, which weighed in the mind of the learned Single Bench is with regard to proportionality of punishment imposed. According to the learned Single Bench, punishment of dismissal or removal from service is a capital punishment and it is shockingly disproportionate and it defies logic and, therefore, has substituted the punishment to one of reduction to a lower grade. The issue is whether this could be done by a Writ Court or not.
9. Firstly, we need to point out that the level of discipline to be followed by a member of a Para-Military Force is much much higher than that of any other employee, who is employed in any other civil service. Therefore, the question of whether this scuffle occurred or not, how it occurred and what precipitated this scuffle etc. is of no consequence when admittedly there was a scuffle in

which two people were involved i.e. the respondent/writ petitioner and the Constable Jaibir Singh and both have been removed from service.

10. Therefore, the question of interfering with the punishment imposed on a person, who is a member of a disciplined Force (Para-Military Force) is beyond the jurisdiction of the Court exercising power under Article 226 of the Constitution of India.
11. Even assuming the Court exercise of a finding that the punishment imposed is disproportionate, the procedure to be adopted is to send back to the disciplinary authority for consideration of appropriate punishment instead of punishment of removal or dismissal from service.
12. In this regard, we refer to the decision of the Hon'ble Supreme Court in ***Union of India & Ors. v. Constable Sunil Kumar: AIR 2023 SC 554***. In the said case also, the respondents therein was a Constable working in Central Reserve Police Force, who was charged with gross misconduct and disobedience of orders in his capacity as a member of the Force under Section 11(1) of the Central Reserve Police Force Act, 1949 inasmuch as he misbehaved, insubordinated with a Deputy Commandant and Sub-Inspector after consuming country liquor while on Government duty and threatened senior officers with dire consequences. On conclusion of the departmental proceeding, he was dismissed from service. The order of dismissal was affirmed by the appellate Court, which was challenged by filing a writ petition. The writ petition was dismissed against which an intra-Court appeal was filed and the Division Bench set aside the order of penalty on the ground that the misconduct was committed by the Constable when he was not on active duty and therefore, the offences committed by him can be said to be less heinous offence, which does not warrant extreme punishment of dismissal.

13. With this observation, the Division Bench of the said High Court directed reinstatement of the said Constable in service with notional benefits. The said order was challenged before the Hon'ble Supreme Court by the Union of India and the Hon'ble Supreme Court pointed out that the disciplinary authority imposed penalty of dismissal after holding departmental inquiry and after following the due procedure, as required under Rule 55 of the CRPF Rules and after having held charges of misconduct proved, where the charge was that he had committed grave and serious misconduct. The Hon'ble Supreme Court referred to an earlier decision in ***Union of India v. R.K. Sharma : (2001) 9 SCC 592***, wherein it was held that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate and only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Article 226 or 227 or under Article 32 of the Constitution. By applying this decision, the Court held that the Division Bench committed a very serious error in interfering with the penalty of dismissal imposed on the said Constable.
14. The decision in the case of ***Constable Sunil Kumar (supra)*** will apply with full force in the case on hand. In the instant case, all other grounds, which have been raised by the respondent/writ petitioner have been held against the respondent/writ petitioner.
15. As mentioned above, from paragraph 36 in the impugned order, all findings are against the respondent/writ petitioner. Therefore, the charges, which stood proved, based on which punishment was imposed affirmed by the appellate authority and revisional authority was not interfered with by the learned Single Bench. Rather, the learned Single Bench took an extreme view in interfering

with the punishment alone when all other points have been decided against the respondent/writ petitioner.

16. Therefore, we are of the clear view that the order and direction issued by the learned Single Bench was beyond the jurisdiction of this Court and an error of law has occurred while doing so.
17. For the above reasons, the appeal is allowed and the order passed by the learned Single Bench is set aside and the punishment of removal from service imposed on the respondent/writ petitioner stands restored. Consequently, I.A. No. CAN 2 of 2025 is disposed of.
18. No costs.
19. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)