IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY SEVENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION NO: 12748 OF 2022

Between:

Shailesh Kumar Mandal, S/o. Uday Mandal, Aged about 32 years, Occ. Ex-Constable, R/o. Bishal Village, Ishipur, Barahat, Bhagalpur District, Bihar State.

...PETITIONER

AND

1. The Union of India, Rep by Secretary Department of Home Affairs, New Delhi.
2. The Director General Central Industrial Security Force, Ministry of Home Affairs, New Delhi.
3. The Inspector General CISF SZ Head Quarters, Chennai.
4. The Senior Commandant CISF Unit, BDL, Kanchanbag, Hyderabad.
5. The Deputy Commandant CISF Unit BDL, Bhanur, Medak District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or directions more particularly writ of mandamus to declare the orders of the 3rd respondent dated 29/10/2019 in proceeding No.11014 (1)/Appeal/SKM-BDL(B)/ SZ/L&R/2019 in conforming orders of the 4th respondent dated 16/06/2015 in ProceedingNo.V-15014/CISF/BDL(KB/B)/DISC/ MAJ-01/ SKM/2015/3145 in removing the petitioner from service is illegal and against to the principles of law, consequentially to set aside the orders of the 3rd respondent in conforming the orders of 4th respondent and to reinstate the petitioner in service with all other service benefits.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to

direct the 4th and 5th Respondent to reinstate the petitioner in service pending disposal of main writ petition.

Counsel for the Petitioner: SRI MOHD MUMTAZ PASHA
Counsel for the Respondents: SRI M.PRUDHVI RAJ FOR SRI R.MANGULAL, SC FOR CENTRAL GOVERNMENT COUNSEL

The Court made the following: ORDER

HON'BLE MRS. JUSTICE SUREPALLI NANDA

WRIT PETITION No.12748 OF 2022

ORDER:

Heard Sri Mohd. Mumtaz Pasha, learned counsel appearing on behalf of the petitioner, and Sri M. Prudhvi Raj, learned counsel representing Sri R. Mangulal, learned Standing Counsel for Central Government, appearing on behalf of the respondents.

2. The petitioner filed the writ petition seeking the following relief:

> "...to issue a writ, order or directions more particularly writ of mandamus to declare the orders of the 3rd respondent dated 29.10.2019 in proceeding No.11014 (1)/Appeal/SKM-BDL(B)/SZ/L&R/2019 in conforming orders of the 4th respondent dated 16.06.2015 in Proceeding No.V-15014/ CISF/BDL(KB/B)/DISC/ MAJ-01/ SKM/2015/3145 in removing the petitioner from service, is illegal and against to the principles of law, consequentially to set aside the orders of the 3rd respondent in conforming the orders of 4th respondent and to reinstate the petitioner in service with all other service benefits and pass...".

3. The case of the petitioner in brief as per the averments made in the affidavit filed by the petitioner in support of the present Writ Petition is as under:-

The petitioner was appointed as Constable in CISF in the year 2009. The petitioner was transferred from CISF unit NLC

Neyveli to CISF unit BDL, Bhanur, Medak and movement order was issued on 30.06.2014, the petitioner was granted ten days leave for joining at new place of posting. The petitioner was hospitalized on 10.07.2014 due to malaria and jaundice. Thereafter the petitioner again seriously fell sick at his native place i.e. Bishal Village, Bihar District as the petitioner was suffering from depression and psychic ailments. The petitioner's wife had informed to the respondent No.4 about the ill-health of the petitioner. On 04.07.2017 the petitioner requested the respondent Nos.4 and 5 to join duty but the respondent Nos.4 and 5 informed the petitioner that *ex-parte* enquiry has been conducted against the petitioner and order, dated 16.06.2015 was passed removing the petitioner from service. The petitioner preferred appeal before the respondent No.3, who rejected the appeal *vide* order dated 29.08.2017 stating that the petitioner overstayed for a period of 137 days without any leave or permission from respondent No.4, which amounts to misconduct and dereliction of duty. Aggrieved by the same, the petitioner approached the Court by filing the present writ petition.

4. <u>PERUSED THE RECORD</u>

(A) The Article of Charge issued to the petitioner dated 30.09.2014 by the respondent No.3 is extracted hereunder:

> "CISF No.091560102 EX-CONST/GD/Shailesh Kumar Mandal of CISF Unit BDL Bhanur while posted at CISF Unit NLC Neyveli was relieved on regular posting from CISF Unit Neyveli to CISF Unit Bhanur on 30.06.2014 (AN) vide CISF Unit NLC Neyveli Movement Order bearing No.E-38014/ movement order/Adm-I/14/4996 dated 30.06.2014 As per directions contained in the said movement order, he was entitled to avail 10 days joining time from 01.07.2014 to 10.07.2014 and supposed to report at CISF Unit BDL Bhanur on 11-07-2014 (FN) but he did not report at CISF unit BDL Bhanur on 11-07-2014 and overstayed from joining time w.e.f. 11.07.2014 to24.11.2014 for a period of 137 days on his own without any leave or permission from the competent authority and reported at CISF Unit BDL Bhanur on 25.11.2014. **His act of non-reporting in time to the new place of posting i.e., at CISF Unit BDL Bhanur and overstaying from joining time w.e.f. 11.07.2014 to 24.11.2014 tantamount to serious misconduct gross indiscipline, dereliction of duty and disobedience of lawful orders considering that he is a member of disciplined central Armed Police force of the Union".**

(B) The relevant portion of the order impugned *vide* No.V-15014/CISF/BDL(KB/B)Disc/Maj-01/SKM/ 2015/3145 dated 16.06.2015 issued to the petitioner by

the respondent No.4 in particular para No.4 to 9 is extracted hereunder:

> **"4. In the Departmental Enquiry, the Charged Official was offered all reasonable opportunities to defend his case, but the Charged Official neither defended his case by attending the enquiry nor submitted his reply against the findings of Enquiry Officer even after receipt of enquiry report. Hence, it is presumed that the charged Official has nothing to represent or submit against the article of charge framed against him.**
>
> **5.** In the light of above facts and after consideration of all the relevant aspects of the case, I full agreed with the findings of the Enquiry Officer and the charge leveled against the Charged Official clearly and unambiguously stands proved. His misconduct is grave in breach of discipline and amounts to gross misconduct. The individual overstayed on leave for a long period. Moreover, he did not report back despite all possible opportunities being offered to him. The misconduct committed by charged official in remaining absent from bona fide duties without any leave or permission from the competent authority does not speak well of the Charged Official and shows that he is not interested in performing his bonafide duties nor continuing in service. Hence, to curb the tendency of the charged official for unauthorized overstayal from joining time for such a long period needs to be dealt firmly and deserves an exemplary punishment with strict proof.

6. I therefore hold the charged official guilty of the article of charge framed against him. In exercise of powers conferred upon me under Rule-32 read in conjunction with Schedule-I with Rule-34 (ii) of CISF Rules, 2001 and award him the penalty of "REMOVAL FROM SERVICE" with immediate effect upon No.091560102 Constable/GD Shailesh Kumar Mandal of CISF Unit BDL Bhanur.

7. The period of unauthorized absence in respect of No.091560102 Constable/GD Shailesh Kumar Mandal of CISF Unit BDL Bhanur w.e.f. 11.07.2014 to 24.11.2014 for a period of 137 days will be regularized through a separate order after following the prescribed procedure.

8. No.091560102 Constable/GD Shailesh Kumar Mandal of CISF Unit BDL Bhanur is also informed that he may prefer an appeal petition against the above cited order if he desires so. The same should be addressed to the deputy Inspector General, CISF SZ HQrs., D-Block, Rajaji Bhawan, Besant Nagar, Chennai - 90 (Tamil Nadu) within 30 (thirty) days from the date of receipt of this order.

9. A copy of this order be supplied to No.091560102 Constable/GD Shailesh Kumar Mandal of CISf Unit BDL Bhanur receipt of which be acknowledged".

(C) <u>The order, dated 29.08.2017 passed by the Deputy Inspector General, SZ Head Quarters, Chennai and in particular para Nos.4 to 7 are extracted hereunder</u>:-

4. In the instant Appeal Petition the Appellant did not put forth any cogent reasons for preferring the instant Appeal Petition at such belated stage. He has only stated that while on leave, he suddenly suffered severe illness, as a result, he could not intimate his health condition to the Authority and during his treatment at his native place, he was Removed from the Service. Finally, he pleaded that due to various difficulties, his mental condition was not so good and he requested to excuse him this time and take him on duty.

5. I have meticulously examined the case. As per CISF Rules, the aggrieved person should prefer his Appeal Petition within a period of 30 days from the date on which the Final Order was communicated to him. In this instant case, the Final Order was issued by the Disciplinary Authority on dated 16.06.2015, which has been acknowledged by him on 05.07.2015 at his native place through special messenger. The Appellant should have preferred Appeal Petition within 30 days, but he has preferred the Appeal Petition dated 04.07.2017 after lapse of more than two years. In the Appeal Petition, the Appellant has not stated anything which prevented him from filing the Appeal Petition within the stipulated time. Hence, am unable to condone the inordinate delay of more than 02 years in filing the Appeal Petition and therefore, without going into the merit of the case, I hereby REJECT the Appeal Petition as TIME BARRED

6. This disposes of the Appeal Petition dated 04.07.2017 submitted by No. 091560102 Ex-Const/GD Shailesh Kumar Mandal of CISF Unit, BDL Bhanur.

7. No. 091560102 Ex-Const/GD Shailesh Kumar Mandal of CISF Unit, BOL Bhanur is hereby informed that if aggrieved, he may prefer a Revision Petition against this order as per Section-9 of CISF Act, 1968.

(D) <u>The relevant portion of the impugned order</u>

<u>vide Proc.No.11014(1)/Appeal/SKM-BDL(B)/ SZ/ L&R/</u>

2019-8922, dated 29.10.2019 issued by the respondent No.3 to the petitioner herein in particular para Nos.11 and 12 are extracted hereunder:

"**11.** CISF being an Central Armed Police Force of the Union, where discipline is of paramount importance, cannot afford to retain such in disciplined elements especially the one like the Appellant who had been overstaying on joining time for a prolonged period without any valid ground and later again overstayed on sanctioned leave. Hence, it was a fit case for REMOVAL FROM SERVICE Under the given circumstances, the Disciplinary Authority is found to have fully justified in deciding not to retain such a bad element in the Force as it would be cancerous to the very discipline and morale of the entire Force. I am, therefore, of the view that there is no ground to interfere with the orders passed by the Disciplinary authority at any stage. The penalty awarded by the Disciplinary Authority is found justified. There was no procedural lacuna either in the proceedings or in passing the impugned order.

12. As narrated above, in complained to the Judgment Order dated 25.07.2019 of the Hon'ble High Court of Judicature at Patna. The Appeal Petition dated 04.7.2017 of the Appellant has been taken into consideration afresh on merit and I do not find any congent reasons as discussed above, to interfere with the orders passed by the Disciplinary Authority, As such, I considered the Appeal petition dated 04.07.2017 and REJECT the same being devoid of merit".

5. The learned counsel appearing on behalf of the petitioner mainly puts forth the following submissions:

(i) The order impugned No.V-15014/CISF/BDL(KB/B)/ DISC/ MAJ-01/SKM/2015/3145 dated 16.06.2015 passed by the respondent No.4 is in clear violation of principles of natural justice.

(ii) The petitioner explained the reasons for petitioner's absence for the period from 01.07.2014 to 10.07.2014 i.e. a period of 137 days to the respondents. But however the detailed explanation furnished by the petitioner had not been considered and the order impugned had been passed. The order impugned does not indicate that the absence of the petitioner was willful and deliberate and therefore, the impugned order is vitiated.

(iii) The order impugned is disproportionate to the alleged misconduct. The penalty of removal of service is unwarranted and vindictive.

Based on the aforesaid submissions, the learned counsel appearing on behalf of the petitioner contends that the writ petition needs to be allowed as prayed for.

6. On the other hand, the learned standing counsel appearing on behalf of the respondents mainly puts forth the following submissions:

(i) CISF being Central Armed Police Force of the Union, where discipline is of paramount importance, the petitioner's indiscipline cannot be tolerated since the petitioner overstayed for prolonged period without any valid grounds.

(ii) The continuation of the petitioner would be cancerous to the very discipline of the entire force and there was no procedural lacuna either in the proceedings or in passing of the impugned order.

(iii) The penalty awarded by the disciplinary authority is justified.

Based on the aforesaid submissions, the learned standing counsel appearing on behalf of respondents submits that the writ petition needs to be dismissed.

DISCUSSION AND CONCLUSION

7. A bare perusal of the order impugned dated 16.06.2015 issued by the respondent No.4 admittedly as borne on record indicates that the enquiry against the

petitioner had been concluded *ex parte* on the ground that the petitioner failed to attend the enquiry even after offering reasonable opportunities to the petitioner by the respondents. The same however had been disputed by the petitioner herein on the ground that the petitioner did not receive the notices pertaining to the conduct of enquiry. The charge framed against the petitioner also indicates that the petitioner overstayed joining time with effect from 01.07.2014 to 10.07.2014 and the same tantamounts to serious misconduct, gross indiscipline, dereliction of duty. This Court opines that the order of removal from service had been imposed against the petitioner without there being a clear finding that the said unauthorized absence of the petitioner was willful or deliberate.

8. A bare perusal of the order impugned passed by the Appellate Authority i.e. respondent No.3 dated 29.10.2019 also clearly indicates that the reasons furnished by the petitioner for unauthorized absence had not been considered on the ground that if petitioner is retained in Armed Police Force, it would be cancerous to the very discipline and morale of the entire force.

The Appellate Authority upheld the order of removal, dated 16.06.2015 passed by the respondent No.4 against the petitioner herein vide order dated 29.10.2019 without applying its mind independently to examine the reasons furnished by the petitioner for his unauthorized absence ignoring totally the fact as borne on record that the disciplinary Authority did not arrive at a clear finding that the absence of the petitioner for the period 11.07.2014 to 24.11.2014 i.e., for a period of 137 days had been deliberate or willful.

9. <u>In the Judgment of the Apex Court of India, in Civil Appeal No. 4531 of 2007, dated 13.08.2008 between State of Uttaranchal and Others Vs. Kharak Singh, it is observed as under:-</u>

"11) From the above decisions, the following principles would emerge:

(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer, If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should

be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

In the present case, it is specifically pleaded by the petitioner at para No.4 of the affidavit filed by the petitioner in support of the present writ petition that petitioner did not receive any notice or letters issued by the 4th respondent and the petitioner had no knowledge of conduct of enquiry proceedings by the 4th respondent. This however had been disputed in the counter affidavit filed by the respondents, but fact remains as borne on record the procedure above admittedly had not been

followed in the present case petitioner had been *"Ex-parte"*

10. The Apex Court in its judgment reported in Olga Tellis & Others v. Bombay Municipal Corporation at para 32 observed as under:

> "**32**.....The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life. **Deprive a person of his right to livelihood and you shall have deprived him of his life....."**

This Court applying the principles of natural justice opines that the *Ex-parte* enquiry conducted cannot be the basis for imposing the impugned punishment of removal of service against the petitioner and petitioner's right to be continued as Constable is petitioner's right to life and the petitioner cannot be deprived of the same in violation of the procedure established by law.

11. The Apex Court in the Judgment reported in (2012) 3 Supreme Court Cases 178 in Krushnakant B. Parmar Vs. Union of India and Another very clearly observed that when there is no willful absence on the part of the employee in attending to his or her duties, the punishment of removal from service is highly excessive and the same should not be imposed, relevant para Nos.16 to 19.

"16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including 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 behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct.

19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was willful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.

In the present case, admittedly as borne on record, there is no clear finding arrived at by the disciplinary Authority holding that the absence of the petitioner was willful for the period 11.07.2014 to 24.11.2014.

12. The Division Bench of High Court of Andhra Pradesh at Amaravathi in Judgment reported in 2023 (6) ALD 585 (AP) (DB) passed in W.P. No.40940 of 2015, dated 27.07.2023 in D. Dundi Babu (Died) and others V.

Registrar, Central Administrative Tribunal and others at particular para Nos.21 and 22 observed as under:

21. The Hon'ble Apex Court further held that, if the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond circumstances beyond its 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 servant.

22. In Krushnakant's case (supra), the Hon'ble Apex Court further held that in a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct. In the said case, the disciplinary authority though recorded that the appellant was un-authorizedly absent from duty but failed to hold that the absence is willful, it was held that the disciplinary authority as also the Appellate Authority wrongly held the Government servant guilty. The order of dismissal in that case and all the subsequent orders of affirmation were set aside by the Hon'ble Apex Court".

In the present case admittedly as borne on record there is no clear positive finding that absence of the petitioner during the said period with effect from 11.07.2014 to 24.11.2014 i.e. for a period of 137 days had been willful and deliberate.

13. The Apex Court in a Judgment reported in the case

of Managing Director, ECIL, Hyderabad v B. Karunakar reported in 1993(4) SCC page 727 at page 28, 29 observed as follows:

"**28.** The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is

dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural

justice".

This Court applying the principles of Doctrine of Proportionality opines that the alleged unauthorized absence of the petitioner w.e.f.11.07.2014 to 24.11.2014 for a period of 137 days cannot deprive the petitioner, petitioner's right to life and occupation when petitioner admittedly had been working as a Constable in CISF since the year 2009.

14. This Court in a judgment reported in Raghubir Singh V. General Manager, Harayana Roadways, Hissar at paras 30 in Civil Appeal No.8434/2014, observed as follows :

> "**35.** Having regard to the facts and circumstances of this case, we are of the view that it is important to discuss the Rule of the 'Doctrine of Proportionality' in ensuring preservation of the rights of the workman. The principle of 'Doctrine of Proportionality' is a well recognized one to ensure that the action of the employer against employees/workmen does not impinge their fundamental and statutory rights. The above said important doctrine has to be followed by the employer/employers at the time of taking disciplinary action against their employees/ workmen to satisfy the principles of natural justice and safeguard the rights of employees/ workmen".

.....The appellant workman is a conductor in the respondent-statutory body which is an undertaking under the State Government of Haryana thus it is a potential employment. **Therefore, his services could not have been dispensed with by passing an order of termination on the alleged ground of unauthorised absence without considering the leave at his credit and further examining whether he is entitled for either leave without wages or extraordinary leave.** Therefore, the order of termination passed is against the fundamental rights guaranteed to the workman under Articles 14, 16, 19 and 21 of the Constitution of India and against the statutory rights conferred upon him under the Act as well as against the law laid down by this Court in the cases referred to supra. This important aspect of the case has not been considered by the courts below. Therefore, the impugned award of the Labour Court and the judgment & order of the High Court are liable to be set aside".

15. The erstwhile High Court in the Judgment dated 27.09.2010 in Prameela and others v APSRTC, Hyderabad and others reported in 2011(3) ALD 641 at para 13 observed as under: "..

"...Hence, it is expected of every disciplinary authority to carefully assess the quantum of guilt held established against the delinquent employee and then consider the

appropriate punishment that is to be imposed. The choice of punishment, hence, has to meet the standards of fairness. It shall not be too harsh or excessive or too lenient. It should be fair, adequate and proportionate. This exercise, apparently was not carried out by either the disciplinary or the Appellate Authority. However, in my opinion, for that part of the misconduct held established against Sri Pandu, perhaps, imposition of a minor punishment of reduction of pay by two stages would have met the ends of justice".

16. The learned standing counsel appearing on behalf of the respondents-Central Government placed reliance on the Judgment reported in **(2023) 9 SCC 100 in Ex Sepoy Madan Prasad Vs. Union of India and Others and also the Judgment of Division Bench of Apex Court in Civil Appeal No.246 of 2017, dated 28.07.2023** and contends that the petitioner is entitled for punishment of removal from service and hence, the same had been imposed against the petitioner and further the unauthorized absence of petitioner for 137 days amounts to gross indiscipline from a member of Armed Force and the same cannot be tolerated.

17. This Court opines that the Judgments relied upon by the learned counsel appearing on behalf of the respondents/Central Government do not apply to the facts

of the present case and the submissions made in reliance of the same are held as untenable and hence, rejected in view of the fact as borne on record that the order impugned passed by the 3rd respondent, dated 29.10.2019 rejecting the Appeal Petition of the petitioner, dated 04.07.2017 holding the same as devoid of merit upholding the orders of the Disciplinary Authority i.e., 4th respondent, dated 16.06.2015 issued to the petitioner imposing the penalty of "Removal from Service" against petitioner without arriving at a clear finding that the absence of the petitioner w.e.f.11.07.2014 to 24.11.2014 for a period of 137 days had been deliberate or willful and further applying the principle of doctrine of proportionality to the facts of the present case, this Court opines that the penalty of removal of service imposed upon the petitioner is harsh, since the petitioner admittedly had been working as a Constable since 2009. Hence, this Court opines that petitioner is entitled for grant of appropriate relief in the present case.

18. Taking into consideration:

(a) The aforesaid facts and circumstances of the case,

(b) The submissions made by the learned counsel appearing on behalf of the petitioner and the learned Assistant Government Pleader and the learned Standing Counsel, appearing on behalf of respondents,

(c) The order impugned vide Proceeding No.V-15014/CISF/BDL/(KB/B)DISC/MAJ-01/SKM/ 2015/3145 passed by the respondent No.4 and the order of the respondent No.3 *vide* Proceedings No.11014 (1)/ Appeal/ SKM-BDL(B)/SZ/L&R/2019, dated 29.10.2019 confirming the order of the 4th respondent, dated 16.06.2015.

(d) The observations of the Apex Court and High Courts in various Judgments (referred to and extracted above),

The writ petition is allowed as prayed for. The order impugned vide Proceeding No.V-15014/ CISF/ BDL/ (KB/B)DISC/MAJ-01/SKM/ 2015/3145, dated 16.06.2015 passed by the respondent No.4 and the order of the respondent No.3 *vide* Proceedings No.11014 (1)/ Appeal/

SKM-BDL(B)/ SZ/L&R/2019-8922, dated 29.10.2019 confirming the order of the 4th respondent are set aside. The matter is remitted to the 4th respondent for reconsideration of the subject issue afresh in accordance to law, in conformity with principles of natural justice by providing an opportunity of personal hearing to the petitioner and further, the 4th respondent is directed to pass appropriate reasoned orders, within a period of six (06) weeks from the date of receipt of a copy of the order and duly communicate the decision to the petitioner,. However, there shall be no order as to costs.

The miscellaneous applications, pending if any, shall stand closed.

SD/- S.MALLIKARJUNA RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

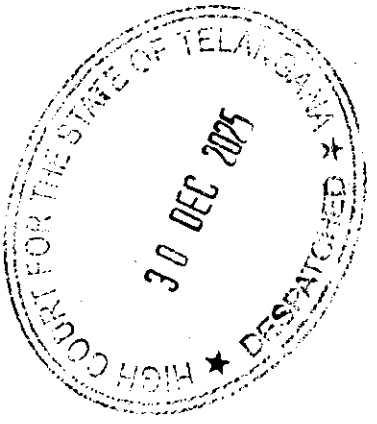
1. The Secretary, Union of India, Department of Home Affairs, New Delhi.
2. The Director General Central Industrial Security Force, Ministry of Home Affairs, New Delhi.
3. The Inspector General CISF SZ Head Quarters, Chennai.
4. The Senior Commandant CISF Unit, BDL, Kanchanbag, Hyderabad.
5. The Deputy Commandant CISF Unit BDL, Bhanur, Medak District.
6. One CC to SRI MOHD MUMTAZ PASHA, Advocate [OPUC]
7. One CC to SRI R.MANGULAL, SC FOR CENTRAL GOVERNMENT COUNSEL [OPUC]
8. Two CD Copies

PSK.

CC TODAY

HIGH COURT

DATED:27/11/2025



ORDER

WP.No.12748 of 2022

ALLOWING THE WRIT PETITION
WITHOUT COSTS

10
Asv
30/12/25