

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**W.P.A. 12159 of 2017**

**Binit Kumar Jha**

**-Vs-**

**Union of India & Ors.**

|                            |                                                     |
|----------------------------|-----------------------------------------------------|
| For the Petitioner         | : Ms. Sohini Samanta                                |
| For the Respondents/U.O.I. | : Mr. Swapan Kumar Nandi<br>Ms. Banani Bhattacharya |
| Heard on                   | : 29.01.2025, 18.03.2025, 31.07.2025,<br>27.08.2025 |
| Judgment on                | : 02.02.2026                                        |
| Uploaded on                | : 06.02.2026                                        |

**Ananya Bandyopadhyay, J.:-**

1. The writ petition assailed a chain of departmental actions initiated against Force Member No.073250308, Constable/GD Binit Kumar Jha then posted in 'H' Coy, CISF Unit DSP, Durgapur. The disciplinary proceedings commenced under a charge memorandum dated 22.09.2013 culminating in the final order dated 01.01.2014 upon the petitioner, the extreme penalty of removal from service which was thereafter successively affirmed by the Appellate Authority on 29.05.2014 and the Revisional Authority on 06.03.2015. The petitioner enlisted as a constable on general duty under the Central Industrial Security Force contended the entire disciplinary project was vitiated by procedural, informative, factual, misreading, and constitutional impropriety.

2. The petitioner was visited with the following charges as detailed in the annexed pages summarized below:

- (i) While deployed on night shift duty at the Durgapur House Gate from 21:00 hrs. 30.08.2023 to 05:00 hrs. 31.08.2013, the Shift-in-Charge allegedly found the petitioner speaking on his mobile phone at 20:30 hours. When asked to hand over the phone, the petitioner allegedly replied the Shift-in-Charge should sign the beat book and leave. This conduct was imputed as gross conduct, indiscipline, negligence towards duty and disobedience of orders.
- (ii) During additional duty on 13.09.2013 from 17:00 hrs. to 21:00 hrs., the Shift-in-Charge again allegedly found the petitioner using his mobile phone at 7:40 hours. Upon repeated demands to hand over the mobile, the petitioner allegedly refused. When the Company Commandant reached the spot at 18:50 hours, the petitioner allegedly handed over two mobile phones and three SIM cards. These conducts were alleged to constitute serious indiscipline and defiance.
- (iii) The petitioner was further accused of exhibiting incorrigible behaviour in as much as he had allegedly received five prior minor penalties for varied indiscretion, including absence from duty, carrying mobile phone on duty, leaving the gate without a pass, brawl with a civilian and an episode of theft within his duty area. It was alleged that the petitioner demonstrated persistent disregard for discipline and had rendered himself unfit to serve in a uniformed force.

3. The petitioner submitted his representation dated 05.10.2013 denying all allegations. A regular enquiry was thereafter ordered under Rule 36 of the CISF Rules, 2001. The Enquiry Officer conducted proceedings on multiple dates and submitted the enquiry report dated 28.11.2013 holding all charges proved.
4. Upon issuance of a second show-cause notice, the disciplinary authority after considering the materials, imposed the penalty of removal from service by order dated 01.01.2014
5. The appeal dated 06.01.2014 was rejected by the DIG CISF DSP Unit, Durgapur on 29.05.2014, concurring with the disciplinary findings.
6. The revision petition dated 27.06.2014 was considered and rejected by the IG CISF NES HQrs., Kolkata on 06.03.2015 again affirming the penalty.
7. The Learned Advocate representing the petitioner submitted the impugned proceedings were born not of objective assessment, but of animus, as evident through the prejudged tenor of the enquiry leading to obvious and strenuous conclusions. It was argued the proceedings were arbitrary, capricious and whimsical, inconsistent with principles of service jurisprudence.
8. The Learner Advocate representing the petitioner further submitted violation of natural justice could be assessed as the enquiry was vitiated by procedural irregularity, the findings rested on surmise, conjuncture and pre-judgment rather than evidence. Prior service records were selectively placed to negatively influence the Enquiry Officer. The petitioner was denied effective opportunity to defend himself. It was further submitted the foundational jurisdictional facts justifying issuance of charge memorandum was never established. The Disciplinary Authority

allegedly displayed hostility influencing the trajectory of the proceedings at every stage, thereby vitiating the same. The conclusions reached were asserted to be perversely irrational, unsupported by evidence, contrary to the principles of equity, fairness, and proportionality. It was argued that removal from service; the harsh civil consequences bore no proportional relation to the nature of the alleged misconduct.

9. The Learned Advocate representing the respondent resisted the writ petition, stating the same to be defective for want of statutory notice to Union of India under Section 80 of the Civil Procedure Code. It was urged that there was inordinate delay in approaching the court attracting dismissal on the ground of laches. It was further submitted the charge memorandum was validly issued under Rule 36 as aforesaid and enquiry was conducted strictly in accordance with CISF Rules, 2001. Adequate opportunity was afforded to the petitioner at all stages to defend himself, and all statutory safeguards were observed. It was further asserted the petitioner was twice found speaking on his mobile while on duty. He refused to hand over his mobile phone to his superior. His possession of two phones and three SIM cards reflected misconduct and his prior records revealed consistent indiscipline. The Enquiry Officer's conclusions were termed logical, recent and evidence based. Relying on settled jurisprudence, it was argued the Court could not appreciate evidence or act as an Appellate Authority and might interfere only if natural justice was violated, statutory rules breached, findings were perverse or conclusion was so arbitrary that no reasonable person could reach such result. According to the Learned Advocate representing the respondent, none of these grounds were satisfied. The fact that the two Higher

Authorities independently examined and affirmed the penalty fortified the sustainability of the disciplinary decision.

10. The essence of the petitioner's case had been the enquiry to have been tainted by bias, prejudgment and lack of neutrality. The findings were perverse, resting on conjectures rather than evidence. The punishment of "removal from service", the severe permissible, was shockingly disproportionate. Minor past misconduct dating back years were inappropriately resurrected to colour the current charges and the principles of natural justice were violated, rendering the proceedings unsustainable.

11. The contrary view of the respondents expressed the writ petition to have not been maintainable due to delay and lack of service of Section 80 CPC notice. The evidence was clear, consistent and sufficient to prove all the charges. CISF being armed sensitive security force, required strict discipline. The penalty reflected repeated indiscipline and was justified. Judicial review cannot act as an appellate forum to appreciate evidence.

12. Section 80 of the Code of Criminal Procedure replicated as follows:-

***"Section 80. Notice.***

*[(1)] [Save as otherwise provided in sub-section (2), no suits [shall be instituted] against the Government (including the Government of the State of Jammu and Kashmir)] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been [delivered to, or left at the office of] (a) in the case of a suit against the Central Government, [except where it relates to a railway] a Secretary to that Government; [(b)] in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway; [(bb) in the case of a*

suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorized by that Government in this behalf;] (c) in the case of a suit against 8[any other State Government], a Secretary to that Government or the Collector of the district; and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

[(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice (a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and (b) the cause of action and the relief claimed by the plaintiff had been substantially indicated.]”

13. In filing a writ petition seeking urgent relief, the petitioner could not have served a two month's prior notice, which according to the opinion of this Court had not been mandated by the statute.
14. The Court embarked upon the constitutional doctrine of proportionality, a principle derived from the provisions of Articles, 14 and 21 of the Constitution of India, forming a bed-rock of administrative justice.
15. Indubitably, the petitioner had been indisciplined while discharging his official duties on multiple occasions, disregarding repeated warnings and minor punishments inflicted upon him for such dereliction of duties.
16. To determine whether a punishment is proportionate, the Court must examine the nature of the misconduct, its impact on service discipline, the past record of the employee, the purpose sought to be achieved by the punishment, whether any less penalty could serve the object of deterrence.
17. The Uniform Forces demand heightened discipline, the law does not sanction retributive exercises. Proportionality requires that punishment be commensurate with fault, calibrated by fairness, guided by reason and tempered by humanity. The allegation pertaining to use and non-surrender of a mobile phone while on duty did not explicit the petitioner to have committed any act of corruption, violence, disloyalty, breach of national security or dereliction causing damage to installations. His misconduct, though undesirable can be categorized as indiscipline, not moral turpitude or operational betrayal.
18. The respondent relied heavily on prior minor penalties, but the jurisprudence is clear. Minor penalties cannot exalt accrued weight alone

to justify the ultimate penalty of removal unless the immediate misconduct is of a gravity warranting such extinction of livelihood.

19. CISF requires alertness, but the instant misconduct did not produce any concrete harm, proportionality rejects collective punishment for cumulative annoyance
20. It can be opined that the Constitution insists while discipline is the artery of the security force, fair procedure and measured response are its pulse.
21. A punishment becomes unconstitutional, when the offence is minor, the penalty is maximum and the reasoning is mechanical. This is precisely the landscape revealed here.
22. To obliterate the entire service record of a constable for mobile phone indiscipline constitutes administrative extremism, which the constitutional conscience cannot endorse.
23. After considering the entirety of the record, the court arrives at the following findings, the charges were proved only to the extent of discipline, not of liability or gross misconduct warranting removal.
24. The Disciplinary Authority failed to appreciate proportionality relying considerably on minor past penalties.
25. The Revisional Authorities mechanically affirmed the punishment without independent application of mind.
26. However, the misconduct itself cannot be condoned. It warrants correction but not at the cost of annihilation of career. In the delicate terrain of service discipline, fairness must not be an antagonist, but companion. A punishment to be just must not merely chastise, it must reform balance and resonate with constitutional functionality. The punishment of removal from service is shockingly compelling this Court in

its limited jurisdiction to interfere, which otherwise should not have meddled with the decision of the Disciplinary Authority in terms of imposing punishment.

27. In view of the above discussions, the writ petition is allowed in part. The petitioner shall be reinstated in service. The Disciplinary Authority can impose any other penalty apart from removal from service.

28. Accordingly, the instant writ petition being WPA 12159 of 2017 is disposed of.

29. There is no order as to costs.

30. 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.)**