

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.21188 of 2012**

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Deo Narayan Singh S/O Shri Surendra Singh R/O Village- Akbarpur, P.S.-  
Paliganj, District-Patna

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Department Of Homes,  
Government Of India, New Delhi
2. Director General (Central Industrial Security Force) C.G.O. Complex, New  
Delhi
3. Inspector General (C.I.S.F.), Eastern Zone Head Office Boring Road, Patna,  
Bihar
4. Deputy Inspector General (C.I.S.F. Unit), B.C.C.L., Dhanbad, Jharkhand
5. Commandant (C.I.S.F. Unit), B.C.C.L., Dhanbad, Jharkhand

... .. Respondent/s

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**Appearance :**

For the Petitioner/s	:	Mr. Bhairaw Nand Sharma, Advocate Mr. Binod Kumar Jha, Advocate
For the UoI	:	Mr. Radhika Raman, Sr. CGC Mr. Ram Tujabh Singh, CGC

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**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH**

**ORAL JUDGMENT**

**Date : 25-06-2024**

Heard Mr. Bhairaw Nand Sharma along with Mr. Binod Kumar Jha, learned counsels appearing on behalf of the petitioner and Mr. Radhika Raman, Sr. CGC along with Mr. Ram Tujabh Singh, CGC appearing on behalf of the Union of India.

2. The petitioner has, *inter alia*, prayed for



following relief/s in the paragraphs No.1 of the writ petition:-

“That this Writ application is being filed for issuance of a Writ in the nature of Writ of Certiorari, for quashing the Order dated 3.11.2011, passed by the Respondent No.3 along with Appellate Order dated 28.06.2011, passed by the Respondent No.4 and punishment Order dated 5.2.2011, passed by Respondent No.5 as the petitioner has been punished with a punishment of "Compulsory Retirement from service with 100% Pension and Gratuity" and the same punishment Order has been affirmed by the Appellate Authority (Respondent No.4) and further the same was affirmed by the Revisional Authority (Respondent No.3), without applying his Judicial mind and without going through the real facts and circumstances of this case as well as without considering the real and true statements on the part of the petitioner and violating the rules of enquiry and Article 311(2) of the Constitution of India for Natural Justice and further be pleased to issuance of a Writ in the nature of Writ of Mandamus, commanding and directing the concerned respondents, to allow the petitioner to serve to the Department on his required post, giving all consequential benefits accordingly. And/or pass such other Order/Orders, Writ/Writs as your Lordships may think fit and proper.”

### **BRIEF FACTS**

3. The petitioner was posted as Constable at C.I.S.F. Unit, BCCL, Dhanbad. He was issued with charge memorandum under Rule 36 of the C.I.S.F. Rules, 2001 (Amended Rules, 2007), contained in memo no.5423 dated 04.09.2010. The Authority had conducted an enquiry based on the complaint made by one Sahdeo Thakur, who was posted as Loading Clerk, against the petitioner on the allegation of having committed misconduct, misbehaving and scuffled with him during duty hour and was not present at his duty post.



Departmental enquiry was initiated against the petitioner as per the provision of Rule 36 of C.I.S.F. Rules, 2001, as amended up-to-date and an enquiry Officer was appointed. It is the case of petitioner that in course of the Departmental enquiry, the petitioner was not afforded with a reasonable opportunity to cross examine the witnesses and also neither preliminary enquiry was held, nor the preliminary show cause was served to the petitioner. The proceeding was initiated on the basis of allegation made by one Sahdeo Thakur, who was posted at Dahibara Loading Office, with whom the petitioner had scuffled on duty. Aggrieved by the punishment order dated 05.02.2011 and the Appellate order dated 28.06.2011, the petitioner has filed the present writ petition. It is the case of the respondents that prescribed procedures were followed in conduct of Departmental Enquiry. Petitioner was served with all the required documents and there is no violation of principle of natural justice by the Disciplinary Authority.

#### **SUBMISSIONS OF THE PARTIES**

4. Learned counsel for the petitioner submitted that the petitioner is aggrieved by the order dated 10.09.2010, by which the penalty order has been modified. The petitioner has further prayed that the compulsory retirement is too harsh and



severe and seeing the gravity of the charges, the same is required to be interfered by considering the charges, which were not fully proven but unilaterally, the disciplinary proceeding was initiated against the petitioner, without serving the petitioner the preliminary show-cause or holding any preliminary enquiry, in respect of the allegation made by one Sahdeo Thakur, which is against the principle of natural justice. Learned counsel further submitted that denying to hold preliminary enquiry and before charges being *prima facie* established, the entire disciplinary proceeding becomes empty formality itself, as the enquiry report was served to the petitioner in spite of the fact that petitioner had objected to the one sided preliminary enquiry.

5. Learned counsel taking reference of the point raised in his revision petition, has submitted that in spite of his due diligence and having been sincere towards his duty and towards his Superior Authorities, who have never complained of any misconduct or illegal act to have been committed by the petitioner in the past. Even the allegation that the complainant Mr. Avdhesh Sharma had found the petitioner to be present on duty on 29.07.2010 at 1 A.M., the punishment of compulsory retirement can be considered to be too harsh and severe. Learned counsel, in this regard, has relied upon the judgment



passed by a Coordinate Bench of this Court in ***CWJC No.10065 of 2013 (Constable No.911120653 Hawaldar, G.D. Datta Singh Vs. the Union of India & Ors.)*** passed on the basis of law laid down by the Apex Court in case of ***Union of India & Anr. vs. R.K. Sharma (Civil Appeal No. 4059 of 2015)*** in which, penalty order passed by the Disciplinary Authority, which was affirmed by the Appellate Authority and Revisional Authority, was quashed and the matter was remanded to the Disciplinary Authority to impose lesser punishment and extend all monetary and service benefit to the petitioner of the said writ petition.

6. Learned counsel restricts his relief to the extent that the order of penalty being very harsh and the same is required to be modified, following the principle relied, in terms of order dated 31.08.2022 passed in ***CWJC No. 10065 of 2013***.

7. *Per contra*, learned counsel appearing on behalf of the respondents submitted that the petitioner has not been able to make out a case for judicial review against the penalty order, which was affirmed by the Appellate Authority, as well as, the Revisional Authority. Petitioner has also not been able to substantiate his stand that neither the preliminary enquiry report nor any show cause was served upon him at any point of time in



course of Disciplinary Proceeding and he cannot be permitted to take the said plea in the writ petition. Learned counsel further submitted that in reply to the paragraph no. 6 of the writ petition, a specific statement has been made in paragraph no. 21 of the counter affidavit that “The Preliminary Enquiry report was not made a listed document, hence his request to supply preliminary enquiry report was considered not relevant”. Learned counsel further submitted that the penalty order cannot be faulted for and don’t call for any interference by this Court to modify the same in view of the order passed in the case of ***Hawaldar G.D. Datta Singh (Supra)***.

8. Heard the parties.

9. The facts in brief giving rise to the present writ petition are that :

(i). The petitioner was constable in the CISF, which is a Central Armed Police Force. It is an Armed Force of the Union of India. It is deployed in sensitive Sectors such as Airports, Ports, Units of Department of Atomic Energy, Department of Space, Metro, Power and Steel. The Force is also deployed on Internal Security duties and Election Duties. The Force, therefore, requires maintaining discipline of the highest order. The petitioner formerly of CISF Unit, BCCL Dhanbad



was issued with charge memorandum under Rule-36 of CISF Rules, 2001 (amended Rules 2007) vide charge memorandum No. (5423) dated 04.09.2010 (Annexure:1 to the writ petition) for the following Articles of Charges:

**Article of Charge-1**

“बल संख्या 921500021 आरक्षक डी0एन0सिंह, केऔसुब इकाई भाकोकोलि धनबाद क्षेत्र संख्या-07 दिनांक 29.07.2010 को समय 2100 बजे से दिनांक 30.07.2010 समय 0500 बजे तक बल संख्या 943440942 आरक्षक विजय खाल्को के साथ रात्रि पारी ड्यूटी के लिए दहीवाड़ी वर्कशॉप में कर्तव्य हेतु तैनात किया गया था। उक्त तैनाती के दौरान आरक्षक डी0एन0सिंह अपनी मर्जी से अपने ड्यूटी से समय लगभग 2300 बजे तक अनुपस्थित रहा, जोकि उसके कर्तव्य के प्रति घोर लापरवाही, अनुशासनहीनता, एवं वरिष्ठ अधिकारियों द्वारा विधिसम्मत दिये गये आदेशों की अवहेलना के कृत्य को दर्शाता है। अतः आरोप है।”

**Article of Charge-2**

“बल संख्या 921500021 आरक्षक डी0एन0सिंह, केऔसुब इकाई भाकोकोलि धनबाद क्षेत्र संख्या-07 दिनांक 29.07.2010 को समय 2100 बजे से दिनांक 30.07.2010 समय 0500 बजे तक रात्रि पारी ड्यूटी के लिए दहीवाड़ी वर्कशॉप में कर्तव्य हेतु तैनात किया गया। परन्तु उक्त बल सदस्य अपना कर्तव्य पोस्ट छोड़कर, कर्तव्य के दौरान समय लगभग 0100 बजे दहीवाड़ी लोडिंग ऑफिस में जाकर लोडिंग क्लर्क श्री सहदेव ठाकुर के साथ झगड़ा एवं गाली-गलौज किया। बल क्रमांक 921500021 आरक्षक डी0एन0सिंह, द्वारा किया गया उक्त कृत्य उसके कर्तव्य के प्रति घोर कदाचार, अनुशासनहीनता एवं वरिष्ठ अधिकारियों द्वारा विधिसम्मत दिये गये आदेशों की अवहेलना को दर्शाता है। अतः आरोप है।”



**Article of Charge-3**

“बल संख्या 921500021 आरक्षक डी0एन0सिंह, केऔसुब इकाई भाकोकोलि धनबाद क्षेत्र संख्या-07 को उसकी सेवा अवधि के दौरान भिन्न-भिन्न अनुशासनहीन कृत्यों के लिए 11 सजाओं से दण्डित किया गया है। फिर भी वह अपने कार्यकलाप में सुधार लाने में विफल रहा है, जोकि उसके आदतन अपराधी की प्रकृति को दर्शाता है। अतः आरोप है।”

(ii). The petitioner had received the charge memorandum on 08.09.2010 and submitted his written submission against the charge memorandum on 10.09.2010, denying the charges leveled against him. Departmental enquiry was ordered under the provisions of Rule-36 of CISF Rules, 2001 (Now amended Rules 2007) by Appointing Authority R.B. Prasad, Asstt. Commandant of CISF Unit BCCL Dhanbad as Enquiry Officer and Sub-Inspector/Exe C.S. Dani as Presenting Officer vide order No. (5751) and No. (5752) dated 17.09.2010 respectively.

(iii). The Disciplinary Authority, after taking into account all the aspects had found the petitioner guilty of the charges framed against him, which were proved in a duly constituted departmental enquiry on the basis of statements of witnesses and evidences during the course of enquiry. The petitioner having found to have committed gross misconduct,





indisciplined act, dereliction of duty and disobedience of lawful orders by absenting from his duty post, misbehaving with and threatening the Loading Clerk (employee of undertaking) and considering his past service record of the petitioner, he was provided with ample opportunities to mend his conduct, but he did not improve himself and committed misconduct/indiscipline one after another for which he had been imposed with 11 penalties during his service. The Disciplinary Authority had taken a lenient view, though he deserved a stringent penalty, considering his long service and family liability, awarded him penalty of "Compulsory Retirement" with full pension and gratuity benefits vide final order No.(891) dated 05.02.2011 (Annexure: 2 to the writ petition). Being aggrieved with the aforesaid penalty, the petitioner preferred an appeal before the Appellate Authority i.e. Deputy Inspector General, CISF Unit, BCCL, Dhanbad. The Appellate Authority found that the petitioner had committed gross misconduct, indiscipline, dereliction towards duty and disobedience of lawful orders. The Appellate Authority did not find any cogent reason to interfere with the order passed by the Disciplinary Authority, and the appeal of the petitioner was rejected, being devoid of merit, vide order No. (7324) dated 28/30.06.2011. (Annexure: 3 to the writ



petition). Against the said order passed by the Disciplinary Authority and the Appellate Authority, the petitioner had preferred a revision petition before the Revisional Authority i.e. Inspector General, CISF Eastern Sector HQrs., Patna, who also, after examining the case records, submissions made by the petitioner, rejected the revision petition having devoid of merit, vide order No. (11251) dated 03.11.2011 (Annexure: 4 to the writ petition). The petitioner was paid the pensionary benefits in terms of the final Order dated 05.02.2011, under the following heads :-

Sl. No	Particulars of payment	Amount	Date of payment
01	Pension PPO No.237041202 205	Rs. 4800/-pm	with eligible D.A. from time to time
02	Commutation of Pension	Not entitled on Compulsory Retirement	
03	Retirement Gratuity	Rs. 1,29,667/-	10.05.2012
04	GPF	Rs. 1,14,901/-	06.06.2012
05	CGEGIS	Rs. 11,842/-	22.05.2012
06	RMS	Rs. 19,791/-	06.03.2012
07	Encashment of EL/HPL	Rs. 72,480/-	30.04.2012



10. From the perusal of the counter affidavit, nowhere the respondents have given information, as to whether, upon complaint made by one Sahdeo Thakur, the petitioner was inquired about the alleged incidence and was given any opportunity to place his version before the Disciplinary Authority, however, the preliminary enquiry was held, even then no statement has been made in the writ petition that the Disciplinary Authority unilaterally initiated a Departmental Proceeding against the petitioner and the required procedure was followed in conduct of the Disciplinary Proceeding.

11. The charges, framed against the petitioner, were proved and a penalty of 'Compulsory Retirement' was imposed. The petitioner's appeal was dismissed and accordingly the Revision was also rejected. The petitioner has challenged the order on several grounds, however, he has sought interference only to the extent to modify the penalty order to be very harsh and consider his case in light of ratio laid down in CWJC No.10065 of 2013 (supra).

12. The petitioner of ***CWJC No.10065 of 2013 (Supra)*** was charge-sheeted for being absent for 36 days and order of 'Compulsory Retirement' was passed against him, by a Coordinate Bench of this Court. The Coordinate Bench,



considering the facts of the said case, relied upon the judgment of the Hon'ble Apex Court in case of ***Amrender Kumar Pandey Vs. Union of India and Ors.*** reported in ***2022 Live Law (SC 600)***, I find apt to quote paragraph nos. 9 and 10 of the order dated 31.08.2022 passed in CWJC No.10065 of 2013, which is, *inter-alia*, reproduced hereinafter:

*“09. Having regard to the length of service rendered by the petitioner from 08.07.1991 and the fact that he remained unauthorized absent for 13 days and similar unauthorized absent for a period of 36 days in the past and imposition of major penalty of compulsory retirement would be too harsh. In the identical circumstances, Hon'ble Apex Court in the case of **Amrendra Kumar Pandey vs. Union of India & Ors.** reported in **2022 Live Law(SC) 600** held as under:-*

*“27. The reliance placed by the learned Counsel appearing for the respondents of the decision of this Court in the case Satgur Singh (supra) is of no avail. It was a case in which the appellant failed to furnish any explanation of his absence from duty on seven occasions. On facts, this Court took the view that as the absence from duty was on several different occasions for which he was imposed punishment of imprisonment, the order of discharge could not be said to unjustified.*

*40. Having regard to the nature of the misconduct alleged against the appellant we are of the view that the ends of justice would be met if we set aside the order of discharge and treat the appellant herein to have been in service till the time, he could be said to have completed the qualifying service for grant of pension. We are inclined to pass such an order with a view to do substantial justice as there is nothing on record to indicate that the nature of them is conduct leading to the award of four Red Ink entries was so unacceptable that the competent authority had no option but to direct his discharge to prevent*



*indiscipline in the force”*

*10. Also, Hon’ble Apex Court in the case of **Union of India & Anr. vs. R.K. Sharma (Civil Appeal No. 4059 of 2015)** held as under:-*

*“11. As regards to the period for which the respondent was absent from duty, we are satisfied that the punishment of dismissal from service is too harsh, disproportionate and not commensurate with the nature of the charge proved against the respondent. We are, therefore, of the view that the ends of justice would have been adequately met by imposing some lesser but major penalty upon the respondent.*

*12. The misconduct attributed to the respondent is based on the charge-memo dated 04.12.1998 with respect to which he was dismissed from service in the year 2000. We, therefore, do not deem it necessary to remit the case to the disciplinary authority after such a long spell of 22 years. Instead, we are inclined to invoke our power under Article 142 of the Constitution, keeping in mind the doctrine of proportionality and with a view to do complete justice between the parties. This Court has utilized Article 142 on numerous occasions in the past, such as in *Hind Construction & Engineering Vs. Their Workmen* and *Management of the Federation of Indian Chambers of Commerce Vs. Their Workmen* to ensure that the punishment meted out to a public sector employee for a violation of the applicable service laws/rules is not disproportionate to the infraction that he/she has committed. The doctrine of proportionality is employed to examine whether the penalty that is imposed upon is congruent with the charges brought against the delinquent employee.”*

13. From the aforesaid facts and law laid down by the Apex Court, I find that the enquiry was held on the basis of complaint made by one Sahdeo Thakur, who had alleged that the petitioner had misbehaved with him during the duty hour



and he was not present on his duty, on the date of alleged misbehavior. The records reveal that the said complaint was not handed over to the petitioner to defend and no preliminary enquiry was held in this regard.

14. The law in respect of interference by this Court is well settled by the Apex Court that in the case of major penalty, Article 21 of the Constitution of India is attracted and in view of the interdependence of the fundamental right, the punishment/penalty awarded to be reasonable and if it be unreasonable, Article 14 of the Constitution would be violated, however, for the self-imposed limitation while exercising power under Section 226 of the Constitution of India and in light of the law laid down by the Apex Court in the case of ***B.C. Chaturvedi v. Union of India & Ors.*** reported in ***(1995) 6 SCC 749***, I find it proper to direct the Disciplinary Authority/ Appellate Authority to re-consider the penalty imposed and for passing appropriate order, as the punishment of dismissal from service is too harsh, hence, the matter remanded back to the Disciplinary Authority to impose lesser penalty, in the facts and circumstances of the case and to extend monetary and service benefits to the petitioner. The above exercise is directed to be completed within three months, from the date of communication of this order.



15. For the above reasons, the present writ petition  
stands disposed of.

**(Purnendu Singh, J.)**

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2024
Transmission Date	NA

