

GAHC010016042021



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/1052/2021

SAURAV ROY
S/O LATE RAMCHARAM ROY,
RESIDENT OF VILLAGE DOLOIGAON, PO BAMAKHATA, PS
PATARAKUCHI, DIST BARPETA, ASSAM, 781325

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY ITS SECRETARY, HOME DEPARTMENT, NEW DELHI
110001

2:DIRECTOR GENERAL
CENTRAL INDUSTRIAL SECURITY FORCE (CISF) HEADQUARTER
CGO COMPLEX
LODHI ROAD
NEW DELHI 110003

3:INSPECTOR GENERAL

CENTRAL INDUSTRIAL SECURITY FORCE (CISF) HEADQUARTER
BORIG ROAD
PATALIPUTRA
PATNA 13

4:DEPUTY INSPECTOR GENERAL

CENTRAL INDUSTRIAL SECURITY FORCE (CISF) HEADQUARTER
BORIG ROAD
PATALIPUTRA
PATNA 13

5:SENIOR COMMANDANT

CENTRAL INDUSTRIAL SECURITY FORCE (CISF) BHAGALPUR DISTRICT
BIHAR
813214

6:ASSISTANT COMMANDANT
DIPTI NAGAR
KEHELGAON
DIST BHAGALPUR
BIHAR
81321

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. T. Deuri. Advocate.

For the Respondents : Mr. P. S. Lahkar, CGC

Date of Hearing : 15.02.2024

Date of Judgment : 15.02.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. T. Deuri, learned counsel for the petitioner. Also heard Mr. P. S. Lahkar, learned CGC representing the Union of India.

2. The challenge:

The present writ petition is filed assailing the orders which are as indicated below:-

I. The order dated 29.12.2015, whereby the punishment of removal from service was inflicted upon the petitioner.

- II. Enquiry report dated 23.11.2015.
- III. Order dated 05.05.2016 passed by the appellate authority rejecting the claim of the petitioner.
- IV. Order dated 03.08.2016 passed by the Revisional Authority.

3. The facts:-

The brief facts leading to the present case can be summarized as follows:-

- I. While the petitioner was serving as Constable of Central Industrial Security Force (CISF) and was posted at Ekchari Out Post in the district of Bhagalpur, Bihar, respondent authorities brought an allegation that the petitioner has left the duty without any intimation and without any approval from the competent authority.
- II. An enquiry was conducted whereby charge under Rule 36 of the CISF Regulations Act, 2001 was framed by a charge memorandum dated 14.08.2015 by the Senior Commandant/Enquiry Officer, CISF, KHSTPP, Koholgaon Unit. The charge is quoted herein below:-

“CISF No. 071733588CT/GD Sourav Roy was deployed in Ekchari Outpost line of CISF Unit KHSTPP(K) on dated 08.07.2015 in “C” shift duty from 2011 to 0600 but the deserted his duty post and went to his home village: Daligaon, P.O. Bamakhata Police Station, Patacharkuchi, District Barpeta (Assam), Pin Code 781325 without any permission from any competent Authority. As informed by ASI/Ext. S.N. Singh post Commander and Insp/Exe.MD. Irfan Coy Commander “B” Coy’ after contracting him on his mobile as on 07.07.2015 about 18.10 hrs. After that this office had sent four call up letter to CISF No. 071733588CT/GD Sourav Roy on his home address but neither he appeared for duty nor he intimated anything regarding this. Apart from this CISF No. 071733588CT/GD

Sourav Roy was given message through CISF Unit IOCL Bongaigaon by special Messenger for reporting him in the unit but even though he did not report back to the unit for duty.

Being a discipline member of an Armed Force CISF No. 071733588CT/GD Sourav Roy deserted his duty place without any information/permission from the competent Authorities. So, the above act on the part of CISF No. 071733588CT/GD Sourav Roy tantamount to gross indiscipline, misconduct and dereliction of duty and unbecoming member of armed Force. Hence the charge".

- III. It is the allegation of the employer that even after issuance of many communications, the petitioner neither returned and rejoined his duty nor filed any reply to such charge and accordingly, an enquiry was conducted ex-parte.
- IV. As many as four prosecution witnesses and one court witness were examined in proof of charge leveled against the petitioner.
- V. After completion of the departmental proceeding, by an order dated 29.12.2015 (Annexure-7), the punishment of removal from service under Rule 32(1) of CISF Regulation Act, 2001, was inflicted upon the petitioner.
- VI. Being aggrieved, the petitioner preferred an appeal under the CISF Rule and such appeal was dismissed by an order dated 05.05.2016 by the Appellate Authority.
- VII. Thereafter, the petitioner approached the Revisional Authority by preferring a revision and such revision was also dismissed by the competent authority under its order dated 03.08.2016.
- VIII. Being aggrieved, the present writ petition is filed.

4. Argument on behalf of the petitioner:-

Mr. T. Deuri, learned counsel for the petitioner assailing the orders argues the following:-

- I. There is absolute violation of the principles of natural justice inasmuch as the notices were not duly served upon the petitioner and therefore, he could not reply to such charges and therefore, this Court should in exercise of its power of judicial review may set aside the entire disciplinary proceeding and be pleased to ask the employer to initiate a de-novo proceeding in terms of the CISF Rule by giving reasonable opportunity of hearing, to the petitioner.
- II. Though it is an admitted position that the petitioner left for his residence, however, the deposition of the witnesses shall clearly reveal that the petitioner had to leave the station for his hometown in an extraordinary situation when his mother was ill and he had also informed his colleague, though he did not inform his higher authorities. However, in view of such emergent situation, it cannot be said that such unauthorized absence is wilful and therefore, the decision is liable to be interfered with.
- III. In the aforesaid factual backdrop inasmuch as in view of the established position that the petitioner had to leave in an emergent situation, the punishment imposed is disproportionate and a lesser punishment like reduction of rank would have served the purpose of the disciplinary authority.
- IV. Alternatively, Mr. Deuri, learned counsel argues that even if, this Court is not inclined to interfere with the impugned decisions, this Court may direct the authorities to re-consider the quantum of punishment.

5. Argument advanced on behalf of the Employer:-

Per contra, Mr. P. S. Lahkar, learned CGC representing the Union of India and relying on its affidavit argues the following:-

- I. The petitioner is a member of a disciplined force and therefore, the authority cannot take a lenient view inasmuch as it is an admitted position that the petitioner has left his place of posting without intimating his higher authority, which is gross indiscipline.
- II. Even in the case of emergency, the petitioner could have made an application for grant of leave before the higher authority.
- III. Referring to different documents annexed with the affidavit-in-opposition filed by the employer, Mr. Lahkar, learned counsel submits that notices recalling back the petitioner to his Unit were duly served upon the petitioner through the local Police Station, however, inspite of such notices, the petitioner did not rejoin his office.
- IV. The charge memos were also duly served in the residence of the petitioner, which was duly received by the mother of the petitioner and therefore, it cannot be said that the petitioner was not given any opportunity to contest the proceeding. In that view of the matter, there is no violation of principles of natural justice.
- V. Even after non appearance of the petitioner, the authority has proceeded in terms of the Rule and examined witnesses. Accordingly, Mr. Lahkar, learned counsel submits that this is not a fit case to exercise the power of judicial review and interference with the punishment inflicted after adhering due process of law.

6. Decision and determination:-

- I. This Court has given anxious consideration to the arguments advanced

by the learned counsel for the parties. Also perused the materials available on record.

- II. Law is by now well settled that the Constitutional Courts while exercising its power of judicial review under Article 226 of the Constitution of India, dealing with a departmental proceeding, would not generally interfere with findings of fact arrived at in such departmental proceeding except in cases of malafide and perversity. The Constitutional Court can also exercise power of judicial review when there is violation of procedure mandated for conduct of such departmental proceeding resulting in violation of principle of natural justice.
- III. The power of judicial review is meant to ensure that an individual receives fair treatment, however, such power of judicial review is not to judge the conclusion arrived at by the authority and to verify whether same is correct or not. This Court in exercise of such power of judicial review of a disciplinary action does not act as an appellate authority to re-appreciate the evidence or to arrive at its own findings.
- IV. In the backdrop of aforesaid settled propositions of law, let this Court consider the present case. The principal ground for challenging the decision is the violation of the principles of natural justice and non service of notice.
- V. So far relating to non service of notice, from the record, following facts are discernible:
- a. It is seen that on 09.07.2015, a call up notice was issued by the Assistant Commandant, CISF Unit KhSTPP, Kahalgaon, Bihar under whom the petitioner was posted. The aforesaid communication reveals that it was addressed to the petitioner and a copy was marked to the

Officer-In-Charge of the jurisdictional Police Station where the petitioner resides with a request to serve such copies and report thereafter. The record further reveals that such notice was served upon the petitioner by the Officer-in-Charge, and accordingly, a report was also submitted before the CISF by the Officer-in-Charge. Such notice and report were exhibited in the departmental proceeding.

- b. Subsequently, similar notices were issued on 16.07.2015 and report was submitted by the Officer-in-Charge on 29.07.2015 which was also exhibited as Exhibit-2 by the PW-3.
- c. Thereafter, yet another call up notice was issued on 22.07.2015, same was served upon the petitioner on 11.08.2015 and report was submitted to the Commandant of the Unit and the same was also exhibited as Document-4 by the PW-3 in the departmental proceeding.
- d. Another communication dated 30.07.2015 was issued to the Superintendent of Police, District- Barpeta, Assam of which district the petitioner is a resident along with an enquiry notice to the petitioner. Such notice was received by the petitioner on 11.08.2015 and a report was accordingly submitted and such report was also exhibited before the departmental proceeding.
- e. The enquiry notice dated 01.10.2015 was also sent to the petitioner, the same was received by the mother of the petitioner and a thumb impression was put therein.
- f. Thereafter, a preliminary hearing notice dated 08.10.2015 was also served at the residence of the petitioner which was duly received by the mother of the petitioner on 22.10.2015.

g. Similar is the case that enquiry notices dated 28.10.2015 and 04.11.2015. The enquiry report was also served upon the petitioner on 13.12.2015 receipt of which was acknowledged by the petitioner.

VI. Though a reply affidavit has been filed and attempt is made to defend the stand of the petitioner regarding non supply of documents etc., however, no specific denial that the aforesaid notices/charge memo/enquiry report were not served as stated hereinabove. In view of the aforesaid, this Court is of unhesitant view that the petitioner was given reasonable opportunity of hearing, however, the petitioner had opted not to contest the departmental proceeding on its own. Therefore, the primary ground of non adherence of principles of natural justice stands rejected.

VII. The basic allegation of unauthorized absence has not been denied, though it is projected that it was not wilful. However, the petitioner had all opportunities to return back to the Unit or to request in grant of leave even after report of the call notices. He had the option to participate in the Departmental Proceeding and to explain that it was not wilful absence and there were compelling situation. However, even after report of notice, the petitioner opted to keep silent.

VIII. This Court cannot, consider the defence of the petitioner as has been raised in this proceeding and decide correctness of such defence, in a proceeding of judicial review, moreso, when the petitioner had not contested and disputed such allegation in the departmental proceeding and did not raise such objections/defence that unauthorized absence was not willful and deliberate.

IX. Coming to the opportunity of the departmental proceeding, law is well settled that so far relating to the disciplined forces like CISF, Armed forces as to unauthorized absence, there should not be any lenient view. In the case in hand, the petitioner, a member of a disciplined force admittedly even did not bother to

intimate his employer regarding his mother's alleged serious illness, and did not respond to any of the "call up notice", this Court is of the view that the punishment cannot be said to be disproportionate.

X. Accordingly, the present writ petition stands dismissed. Parties to bear their own cost.

JUDGE

Comparing Assistant