



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 30.09.2024

Pronounced on: 05.12.2024

+ W.P. (C) 7350/2016

SUBHASH CHAND

..... Petitioner

Through: Mr. Raj Singh Phogat & Mr. Amit
Raj, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Nirvikar Verma, SPC for UOI
with SI Prahlad, CISF.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

1. The petitioner, who joined the Central Industrial Security Force (CISF) in 2002 and was removed from service on 15.02.2014, has approached this Court under Article 226 of the Constitution of India assailing the Order dated 20.01.2016 passed by the respondent no.3 rejecting his revision petition filed against the Order dated 22.04.2014 *vide* which his appeal was dismissed wherein he had challenged the Order dated 15.02.2014 passed by the Disciplinary Authority, the Senior Commandant, whereby he, upon being found guilty of all the charges levelled against him, was removed from service. The petitioner has prayed for an order of reinstatement in the service along with the financial benefits of back wages and for an order of cost of litigation in his favour.

2. It is the case of the petitioner that he was initially posted at the NTPC, Unchahar, Raebareli and thereon he satisfactorily performed his duties. In



the year 2008, he was transferred and posted to the Unit SSG Battalion, Greater Noida.

3. In April 2013, the petitioner, *vide* the Movement Order dated 15.04.2013, was transferred to the CISF Unit, Chhatrapati Shivaji Maharaj International (CSI) Airport, Mumbai. The Competent Authority had granted the petitioner 12 days of joining time from 16.04.2013 to 27.04.2013. In addition to this, he was also granted 27 days of Earned Leave, from 28.04.2013 to 24.05.2013, on expiry of which, he was to join his duty at the CSI Airport, Mumbai.

4. The petitioner claimed that on account of death of his brother-in-law, the petitioner, on 25.05.2013, *vide* an application sent through Fax to the respondents, sought for an extension of leave for 14 days to join the duty at the CSI, Airport. Thereafter, he reported for his duty on 10.06.2013, after availing the presumed extended Earned Leave of 14 days, as he was never intimated by the respondents about the rejection of the said application seeking extension of leave.

5. The petitioner has further claimed that as part of his duties at the CSI, Airport, on 28/29.06.2013 from 2000 hrs. to 0800 hrs., he was assigned patrolling duty between Departure Gates 'C' and 'D' of the CSI Airport, and after 10 hours of continuous patrolling, he briefly stopped at Gate 'D' to drink water where, while he was talking to the Constable Devender Kumar Sharma, he was asked by the Sub-Inspector (SI) /Executive J. P. Yadav, the Gate D In-Charge, to go back to his duty post and was publicly reprimanded in front of civilians thereby causing humiliation to the petitioner. The said incident was also reported by the SI/Executive J. P. Yadav to the Company



Commander, who also reprimanded the petitioner. Aggrieved by the said humiliation, the petitioner submitted his conditional resignation on 30.06.2013.

6. The petitioner has claimed that on 30.06.2013, he had also applied for 38 days of Earned Leave and 7 days of half-pay leave w.e.f. 11.07.2013 with the prefix of 9/10.07.2013 as he was required to travel on 08.07.2013. The said leave was requested in order to carry out the repair and reconstruction of his house which was in a dilapidated condition. The petitioner claimed that he was promised that the leave requested for will be sanctioned, however, the same was later refused due to reasons unbeknownst to him, even though the leave asked for was within the permissible limit under Rule 32(2)(a) of the Central Civil Services (in short 'CCS') (Leave) Rules, 1972 and was not a long leave as per the said Rules.

7. Subsequently, on 07.07.2013, the petitioner submitted an application stating that his mental condition was not well. Thereupon, the petitioner was also counselled by the Officers. However, on 08.07.2013, the petitioner was found absent from the Unit line without any information or permission from the Competent Authority, and he being Absent Without Leave (AWL), a General Diary (GD) entry was made against him.

8. In view of the abovesaid and previous instances of misconduct, the Disciplinary Authority proposed to take disciplinary action against the petitioner, which he claimed was in violation of Clause 3 of the Department of Personnel and Training's (DoPT), Office Memorandum (OM) No.13026/3/2010 -Estt. (Leave) dated 22.06.2010, issued by the Ministry of Personnel, P.G. and Pensions (DoPT), Government of India, which reiterates



and places emphasis on Rule 25 of the CCS (Leave) Rules, 1972, therefore, the proposed disciplinary action taken against the petitioner by the respondents without any intimation of non-sanction of leave and without a direction to report for duty to the petitioner was violative of instructions contained in the aforesaid DoPT's OM.

9. The petitioner was issued a Charge Memorandum No. V-15014/CISF/CSIA(M)/DISC/SC/2013-8673 dated 21.08.2013, whereby four charges were levelled against him under Rule 36 of the CISF Rules, 2001, which are as follows:

“CHARGE-1

FORCE NO 024350381 Constable Subhash Chand of 'D' Company of CISF UNIT CSI Airport Mumbai International sector while on being regular transfer posting to this unit was sanctioned to avail 27 days earned leave along with the joining time from dated 28-04-2013 to 24-05-2013 by the competent authority. He should have reported for duty in the Unit on dated 25-05-2013 (FN) after the completion of duty. But the aforesaid member of the force did not report for duty in time and joined voluntarily for duty in the Unit by over staying 16 days on dated 10-06-2013 (FN). In this way Constable Subhash Chand without any prior information and permission from the competent authority remained over staying of leave, which shows his act of dereliction of his duty, misconduct and indiscipline.

CHARGE-2

FORCE NO 024350381 Constable Subhash Chand of 'D' Company of CISF UNIT CSI Airport Mumbai international sector was deployed for patrolling from 2000 hrs to 0800 hrs on dated 28/29-06-2013 at the departure gate 'C' to 'D' of the international terminal. At about 0600 hrs on dated 29-06-2013 Constable Subhash Chand was found talking with Constable Devender Kumar who was deployed in the 'D' gate Morcha after deserting his duty post. Departure gate in charge Sub Inps/Exe J P Yadav



directed him to go to his duty post. But the member of the force disobeyed him and misbehaved with him. In this way being the disciplined member of armed force, the act shows grave indiscipline, grave misconduct and unbecoming of member of the force like CISF.

CHARGE- 3

FORCE NO 024350381 Constable Subhash Chand of 'D' Company of CISF UNIT CSI Airport Mumbai international sector was found absent from the evening roll call parade of the AAI barrack at 1730 hrs on dated 08-07-2013 and did not present for the day duty from 0800 hrs to 2000 hrs on dated 09-07-2013. He is absent from the Unit. Line from 08-07-2013. In this way without prior information and permission from the competent authority, the Constable Subhash Chand remained absent from the Unit Line, shows the act of grave dereliction of duty, misconduct and indiscipline.

CHARGE- 4

FORCE NO 024350381 Constable Subhash Chand of 'D' Company of CISF UNIT CSI Airport Mumbai international sector had been in the habit of habitual deserter and overstaying of leave. He has been punished for the same with two minor penalties but he did not mend his ways. The above act of the member of the force shows indiscipline and unbecoming of the member of the force like CISF."

10. After issuance of the Charge Memorandum, the petitioner rejoined his duty on 07.10.2013 on his own volition after being absent for 91 days.
11. Subsequent thereto, the preliminary hearing was conducted on 28.11.2013. Thereafter, the departmental inquiry commenced and during which, the petitioner made an application dated 05.12.2013 and a review application dated 16.12.2013 to the Deputy Commandant of CISF Unit, CSI Airport, Mumbai, requesting for change of the Inquiry Officer on account of alleged bias. Both of these applications were rejected *vide* Orders dated 09.12.2013 and 18.12.2013, respectively. The petitioner claimed that these



orders are illegal as they were not passed by the Competent Authority, that is, the Commandant.

12. Whereafter, the departmental inquiry was proceeded *ex-parte* against the petitioner as he stopped participating in the inquiry, and upon conclusion thereof, the petitioner was awarded the sentence of removal from service, *vide* Order dated 15.02.2014 of the Disciplinary Authority, which he claimed was passed without considering the gravity of the charges, the reply to the written brief submitted by him on 26.12.2013, and other extenuating grounds of exoneration including the procedural irregularity in the said proceedings.

13. Being aggrieved by his removal from service, the petitioner preferred an appeal to the Deputy Inspector General (Appellate Authority) of CISF Unit, CSI Airport, Mumbai, which was rejected *vide* Order dated 22.04.2014.

14. The petitioner then filed a Writ Petition bearing no. 44954/2015 before the High Court of Judicature at Allahabad, which was, *vide* Order dated 14.08.2015, dismissed as withdrawn with the liberty to the petitioner to file a revision petition and the same to be entertained by the concerned authority of the respondents on merits without being rejected on the ground of limitation.

15. Pursuant to the liberty so granted, the petitioner preferred a revision petition to the respondent no. 3, Inspector General (Revisional Authority), CISF, Airport Sector, Frontier Headquarters, CGO Complex, New Delhi. The same was rejected *vide* the Impugned Order dated 20.01.2016.



16. Aggrieved by this predicament, the petitioner approached this Court invoking the writ jurisdiction.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

17. Mr. Raj Singh Phogat, the learned counsel for the petitioner, submitted that apart from the merits of the case, there are numerous procedural irregularities in the manner the departmental inquiry was conducted, starting with the Inquiry Officer/Disciplinary Authority, who never provided the petitioner with the copy of statement of witnesses recorded in the preliminary inquiry in order for him to prepare sufficient defence in the said departmental inquiry proceedings, thereby causing grave prejudice to the petitioner in his defence also being in violation of the principles of natural justice and the DoPT's OM dated 25.08.1961. Further, the petitioner's application dated 01.12.2013 seeking copies of the documents in this regard was rejected *vide* Order dated 02.12.2013, and only some of the documents were provided to the petitioner on the second application of the petitioner dated 03.12.2013. To strengthen his plea, the learned counsel placed reliance on the judgment of *State of Punjab vs. Bhagat Ram*, (1975) 1 SCC 155 and *Kashinath Dikshita vs. Union of India & Ors.* (1986) 3 SCC 229.

18. To impress upon the necessity to have an impartial inquiry, the learned counsel contended that the Inquiry Officer did not even stay the departmental inquiry proceedings on account of the pendency of review application dated 16.12.2013 seeking change of the Inquiry Officer, and instead proceeded to conduct the same on 17.12.2013 by recording the statements of the prosecution witnesses without awaiting the outcome of the



said review application, which was rejected only on 18.12.2013. He submitted that this in itself is sufficient to show *malafide* and bias on behalf of the Inquiry Officer, which is also in contravention of the DoPT's OM dated 09.11.1972.

19. Learned counsel further submitted that the Inquiry Officer had not taken into account the reply of the petitioner to the written brief of the Presenting Officer submitted on 26.12.2013. Rather, the Inquiry Officer, contrary to the record, noted that no reply to the said written brief was filed by the petitioner, and gave its findings while conducting an *ex-parte* departmental inquiry against him, thereby resulting in sheer violation of Rule 36 of the CISF Rules, 2001, Rule 14(19) of the CCS (Classification, Control and Appeal) (in short 'CCA') Rules, 1965, and also of the DoPT's Guidelines in OM No. 11012/18/77-Estt (A.) dated 02.09.1978.

20. He further urged that the Inquiry Officer incorporated additional evidence by issuing notice to the witness SI/Executive N.D. Sunderam, In-Charge of AAI Colony Barrack, who is not listed as a witness in the Annexure III of the Charge Memorandum, in violation of the Rule 36(16) of the CISF Rules as a fresh notice was mandated to be given regarding the new evidence sought to be taken on record. Furthermore, the said Court witness was required to be cross-examined for authenticating the veracity of facts deposed by him in the departmental inquiry against the petitioner, which has caused gross injustice to him. Learned counsel placed reliance on the decision of the High Court of Himachal Pradesh in *H.L. Sethi vs Municipal Corporation, Simla*, 1983 Lab. JC 73.



21. The learned counsel for the petitioner, while placing reliance on the decision of this Court in *Shri H.L. Sonar vs. Kendriya Vidyalaya Sangathan & Ors.* MANU/DE/0592/1987, submitted that the Inquiry Officer also failed to comply with the Rule 14(11) of the CCS (CCA) Rules thereby vitiating the entire inquiry which is, thus, liable to be set aside.

22. Mr. Raj Singh Phogat strenuously urged that the petitioner was not even provided with a Defence Assistant, thus breaching the principles of natural justice even further, as enunciated by the Supreme Court in *Bhagat Ram vs. State of Himachal Pradesh & Ors.* (1983) 2 SCC 442.

23. The learned counsel submitted that the appeal as well as the revision petition filed by the petitioner to the Deputy Inspector General and Inspector General respectively, were dismissed by non-speaking and cryptic orders, without considering the grounds raised by the petitioner therein with respect to the procedural irregularity and the extenuating grounds for the vindication of the petitioner from the charges levelled against him.

24. On merits, the learned counsel submitted that arbitrary charges were framed against the petitioner, which were not proved. The petitioner was granted authorised Earned Leave with effect from 28.04.2013 to 24.05.2013, suffixing a Sunday falling on 26.05.2013 and a gazetted holiday on 27.05.2013. However, due to the sudden death of the petitioner's brother-in-law on the night of 24.05.2013, the petitioner was unable to join his duty and accordingly, sent a Fax message to the respondents on 25.05.2013 seeking extension of leave for 14 days. He submitted that as the petitioner was never intimated about rejection of the said extension of leave, thus, he presumed that his leave has been extended. The respondents arbitrarily treated the



period of 14 days as being AWL, even though they had received the communication from the petitioner seeking extension of his leave on account of unfortunate demise of his brother-in-law. He submitted that even otherwise, the respondents themselves decided to regularise this period of 16 days of leave, as is evident from the Show Cause Notice dated 21.02.2014. Therefore, no disciplinary action can be taken against the petitioner for his absence from service during the aforementioned period.

25. As far as Charge No. 2 is concerned, the learned counsel pointed out that on 28/29.06.2013, while petitioner was detailed for patrolling duty from Departure Gate 'C' to 'D' of International Sector at CSI Airport, Mumbai, he had gone to Gate 'D' for only two minutes to quench his thirst, and while he was talking to Constable Devender Kumar Sharma, who was posted at Gate 'D', the SI/Executive J. P. Yadav, the Gate 'D' In-charge, asked him to return to his Gate Duty and he immediately returned on his asking.

26. The learned counsel with respect to Charge No. 3 submitted, that though the respondents have alleged that the petitioner was AWL for 91 days, however, he has not been charged for the said period of absence. Moreover, the said leave of 91 days was also regularised by the respondents subsequently *vide* Show Cause Notice dated 21.02.2014. The learned counsel contended that, therefore, the petitioner has been illegally charged for being AWL for 91 days. He placed reliance on the decision in *State of Punjab & Ors. vs. Bakshish Singh* (1998) 8 SCC 222.

27. He further submitted that the respondents have transgressed his fundamental right under Article 20(2) of the Constitution of India by framing Charge No. 4 against the petitioner, which relates to his past



conduct for which minor punishments have already been awarded to the petitioner. Therefore, he could not have been punished for the same charges twice.

28. Concluding his arguments, the learned counsel submitted that the departmental inquiry conducted against him has led to gross injustice. Shockingly, the punishment of removal from service awarded to him is highly disproportionate to the gravity of charges framed against him. The petitioner was performing his duty diligently and with utmost sincerity, however, the Competent Authority, by following illegal procedure, has caused miscarriage of justice thereby victimising the petitioner and constraining him to have approached this Court by way of the present petition. In support of his submissions that the punishment imposed on the petitioner is disproportionate and is liable to be set aside, the learned counsel relied upon the decisions in *Union of India vs. J. Ahmed* (1979) 2 SCC 286; *Union of India vs. R.K. Sharma* (2022) SCC Online SC 2010, *Laxman Singh vs Union of India & Others*, (2015) SCC OnLine Del 8245; and *Kulrawat Singh vs. Union of India* (2015) SCC OnLine Del 6047.

29. In these circumstances, he submitted, the petitioner be reinstated with back wages after setting aside the Impugned Order, for which he placed reliance on the decision in *Union of India vs. Madhusudan Prasad* (2004) 1 SCC 43.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS

30. *Per contra*, Mr. Nirvikar Verma, learned counsel for the respondents contended that the principles of natural justice were duly followed by the respondents as is apparent from the record of the departmental proceedings.



Pertinently, the petitioner had cross-examined as many as six prosecution witnesses and whereafter he had voluntarily avoided to participate in the departmental proceedings, therefore, his challenge with respect to procedural irregularity is meritless.

31. Learned counsel submitted that as far as the petitioner's application seeking change of Inquiry Officer is concerned, the Competent Authority had taken a decision on his application and the Deputy Commandant had merely communicated the decision of the Competent Authority. Therefore, the plea of the petitioner in this regard holds no water. Moreover, his requests for change of Inquiry Officer were found to be on flimsy grounds and, therefore, the said requests were rightly rejected. Nonetheless, ample opportunities were granted to the petitioner during the departmental inquiry which he failed to avail. Thus, the plea of petitioner in this regard is also untenable.

32. Learned counsel, while placing reliance on the decision in ***Maharashtra State Board of Secondary and Higher Education vs K.S. Gandhi and Ors*** (1991) 2 SCC 716, contended that the strict rules of Evidence Act and the standard of proof envisaged therein do not apply to departmental proceedings in a domestic tribunal and it is open to the authorities to receive and place on record documents and acceptable materials which are strictly not in conformity with the Evidence Act.

33. He submitted that the correctness of Charges levelled against the petitioner qua his unauthorized absence and over stay of leave are squarely covered *inter alia* by Rule 25 of the CCS (Leave) Rules, 1972, thereby making the present case being one of wilful absence from duty. He laid



emphasis on the fact that the petitioner had been a habitual absentee without leave as per his service record and has been awarded as many as 2 minor punishments during his service period; one of stoppage of increment for a period of two years for late reporting for WT instructor course; and the second being, withholding of the next increment for a period of 2 years for 77 days of overstaying from leave, which clearly substantiates his habitual absenteeism.

34. He submitted that the reliance placed by the petitioner on the DoPT's OM dated 22.06.2010 is misplaced inasmuch as, it is trite in law that the person claiming prejudice being caused to him has to show the occurrence of real prejudice by non-compliance of the Rules as against the mere claim thereof. He contended that by moving an application via Fax to seek extension of leave is an evidence of the fact that the petitioner had a clear understanding in his mind of the requirement that the overstaying on leave is not permissible to him, being a government employee. However, he still chose to remain on unauthorized leave without any confirmation of the same by the Competent Authority. Thus, the petitioner cannot claim that the department ought to have informed him about the consequences of overstay of leave, rather it was for him to have proper sanction of leaves before availing them and it was thus, incumbent upon the petitioner to immediately join his duty as the respondents had not extended the period of leave.

35. Learned counsel submitted that on the concerned night of duty when the petitioner was on patrolling duty between Gate C and D, he was found gossiping with on-duty Constable Devender Kumar Sharma near Gate D leaving his place of responsibility, thus, he was directed by Mr. J. P. Yadav,



being his senior, to go back to his gate duty, however, the petitioner misbehaved with him and denied to do as instructed. The said fact is also duly corroborated by the Prosecution Witness (PW) no. 4, 5 and 6.

36. He submitted that the SI/Executive Mr. J.P. Yadav made a complaint against the misconduct of the petitioner to the concerned authority but no such complaint/intimation ever came on record to support the plea of the petitioner that Mr. J. P. Yadav had unduly scolded the petitioner in front of the Civilians causing him humiliation, thus, this plea of the petitioner is unsubstantiated and is merely an afterthought.

37. It was next urged by the learned counsel that the GD entry, the special report relied upon in the inquiry, and also the statement of witnesses are sacrosanct in nature and the correctness of the same is not being impugned 'on merits' by the petitioner. He submitted that the unauthorized absence of a Force member is serious in nature and if any leniency is shown, it will adversely affect the discipline of the Force. Moreover, the petitioner's resignation, he submitted, also showcases his casual attitude towards the duty. Thus, the petitioner had been given appropriate punishment which commensurate with the Charges framed against him. In support, he placed reliance on *Union of India vs. Bishanker Deo Dogra*: (2009) 13 SCC 102.

38. The Appellate as well as Revisional authority, he submitted, passed orders which were self-contained, reasoned and speaking. Therefore, the appeal and the revision petition filed by the petitioner were devoid of any merit and resultantly were rightly rejected by the concerned authorities. Thus, there is no infirmity with any of the orders challenged by the petitioner and the principles of natural justice having been duly complied



with by all the authorities in the respective stages qua all the charges, as apparent from the material on record.

39. Lastly, the learned counsel submitted that the discipline is of paramount significance in the Armed Force like CISF, therefore, considering the gravity of charges proved against the petitioner which amount to serious misconduct in relation to the responsibilities attached to the duties of a Force member, the present petition is liable to be dismissed.

ANALYSIS AND CONCLUSION

40. We have considered the submissions of the learned counsel for the parties and perused the record. At the outset, it would be apposite to note the scope of interference in exercise of powers vested in the High Court under Article 226 of the Constitution of India which is limited inasmuch as that the Court does not function as an Appellate Court to re-evaluate the evidence recorded in the departmental inquiry. However, the Court may only review the decision making process to determine any infirmity with respect to error of jurisdiction or if there is violation of principles of natural justice as well as any manifest error of law apparent on the face of record. Furthermore, in case the finding in the order impugned is utterly perverse, the Court can always interfere with the same.

41. Applying the aforesaid test, we proceed to first deal with the procedural defects as alleged on behalf of the petitioner.

42. Learned counsel for the petitioner contended that the petitioner submitted an application dated 05.12.2013 to the Deputy Commandant requesting for change of the Inquiry Officer on the ground of him being biased against the petitioner. Subsequently, the petitioner made a review



application on 16.12.2013, however, both of these applications were rejected summarily without assigning any reasons whatsoever thus, indicating that fair inquiry was not conducted by the respondents. *Per contra*, the learned counsel for the respondents submitted that the petitioner's contention is baseless and this plea has been appropriately dealt with by the Disciplinary Authority and the Appellate Authority in their Orders dated 15.02.2014 and 22.04.2014 respectively.

43. We find that in both the orders, the authorities have observed that in the preliminary hearing, the petitioner himself had admitted / accepted the Assistant Commandant, Sh. R. K. Churia, as the Inquiry Officer therefore, this request was merely to delay the inquiry proceedings. Moreover, the petitioner was also informed about his request for change of the Inquiry Officer being turned down and he was advised to co-operate in the inquiry, otherwise he will be proceeded *ex-parte*.

44. Needless to say, the petitioner has only made a vague assertion attributing bias on the part of the Inquiry Officer without specifying the kind of bias perceived by him. In view of the fact that the petitioner had initially accepted Sh. R.K. Churia as the Inquiry Officer and without stating about the manner, in which the bias was exercised, his submission in this regard cannot be accepted.

45. The next grievance of the petitioner is that he was not provided with the statement of witnesses recorded by the Inquiry Officer in the preliminary inquiry, which could have facilitated him to prepare his defence while appearing before the Disciplinary Authority. He submitted that the petitioner was provided copies of only three documents i.e. his leave application, the



conditional resignation application and the copy of the applications alleging bias exercised by the department towards him. To the contrary, the respondents claimed that the petitioner was supplied the copies of the documents, as mentioned in the Annexure-III of the Charge Memorandum apart from the three documents requested by him.

46. To appreciate the aforesaid plea of the petitioner, it would be apposite to refer to the decision of the Supreme Court in *State of Punjab vs. Bhagat Ram (supra)* wherein it has been observed as under:-

“7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.”

47. From the aforesaid decision, it is manifest that it is incumbent upon the Disciplinary Authority to ensure that the Charged officer/ official has



been furnished with the complete copies of previous statement of witnesses proposed to be examined by the department against him.

48. In the present case, the record reveals that the petitioner had made three representations dated 25.10.2013, 10.12.2013, 17.12.2013 and a reminder dated 17.12.2013 requesting for copies of the documents required for his defence. It is evident from the report of the Inquiry Officer that the petitioner had on 03.12.2013 demanded the copies of only the above mentioned three documents, which were duly furnished to him by the Inquiry Officer on 05.12.2013 after seeking approval of the Competent Authority. It further emerges from the Counter-Affidavit filed by the respondents as well as from the Revisional Authority's Order dated 20.01.2016 that the respondents had furnished the copies of the documents as listed in Annexure-III of the Charge Memorandum dated 21.08.2013, which are as follows:-

1. *The movement order No. E-38014/CISF/SSG/POSTING/ADM-II/2013-2169, dated 15-04-2013 of CISF UNIT SSG Battalion, Greater Noida.*
2. *The application for extension of leave sent by the Constable Subhas Chand on dated 25-05-2013.*
3. *The forwarding letter of the application of the extension of leave by the office of the Deputy Inspector General vide letter No. 5344 dated 29-05-2013.*
4. *The letter No. 5824 dated 10-06-2013 of the office of the Deputy Inspector General.*
5. *The special report about the absenteeism on dated 09-07-2013.*
6. *The duplicate copy of the absent report recorded in the Rojnamcha at Serial No. 35 of dated 08-07-13 at 1730 hours, of No 35A of dated 08-07-13 at 1745 hours, of No 36 of dated 08-07-13 at 1845 hours and of No. 445 dated 09-07-13 at 0750 hours.*



7. *The call up notice sent vide international sector office letter No. 1398 dated 12-07-2013.*
8. *The complaint presented by the SI/Exe J P Yadav.*
9. *The photocopy of the final order No 1055 of dated 29/30-07-2004 and final order No 3504/A of dated 23-06-2011.*

49. It is relevant to note that in the appeal filed by the petitioner, he has not mentioned about not having received the copies of the documents / statements of witnesses. Similarly, even in the review petition, the petitioner has not stated that the copies of the statements of witnesses were not provided to him. Though, he raised an objection that copies of the documents were not furnished to him.

50. Apparently, the petitioner has raised the plea for not having received the copies of statements of witnesses for the first time in the present petition. Thus, the said claim of the petitioner is merely an afterthought, which has not been agitated before any of the authorities. However, petitioner's request for furnishing the copies of the documents as demanded by him was duly fulfilled by the respondents during the departmental proceedings. Hence, we find no merit in the submission of the petitioner that due to non-supply of the copies of documents/statements of witnesses, his defence has been prejudiced in any manner.

51. Moreover, the reliance placed by the petitioner on the decision of ***Kashinath Dikshita*** (supra) is misconceived, as the Court in the said decision has also opined that whether non-supply of the copies of documents or statements has resulted in a prejudice to the employee facing departmental inquiry will depend on facts of each case.



52. The next argument raised on behalf of the petitioner is that though he had furnished a reply dated 26.12.2013 to the Presenting Officer's written brief dated 24.12.2013, however, the same was not even considered by the Disciplinary Authority and he erroneously observed that the petitioner did not file any reply to the brief that was given to him. He submitted that the Appellate and Revisional Authorities, shockingly have observed in their respective orders that the written brief filed by the petitioner was considered by the Disciplinary Authority. He submitted that this reflects the casual approach of the senior officers while dealing with his representations ultimately affecting his job and career.

53. It emerges from the departmental proceedings that the preliminary hearing of the departmental inquiry was conducted on 28.11.2013 and the statement of the prosecution witnesses were recorded with effect from 28.11.2013 to 19.12.2013. Thereafter, the Inquiry Officer handed over the copy of the brief note received from the Presenting Officer to the petitioner on 24.12.2013 granting him an opportunity to submit any exhibit/evidence in his defence in reply to the brief note within five days.

54. The Inquiry Officer has observed in his report that the petitioner after the recording of prosecution witnesses and cross-examination thereto adopted delay tactics by not co-operating in the departmental inquiry. At that stage, first he raised a demand for copies of three documents, which were furnished to him on 05.12.2013. The departmental inquiry, which was being conducted on a day to day basis, was scheduled to resume on 07.12.2013, however, the petitioner denied to participate in the inquiry proceedings citing one reason or the other such as his mental imbalance or



that he has to proceed on leave. Notably, all his applications in this regard were forwarded by the Inquiry Officer to the Competent Authority, who rejected his applications.

55. Subsequent thereto, the departmental inquiry resumed on 16.12.2013, when the petitioner again submitted another application seeking change of the Inquiry Officer, which was also rejected by the Competent Authority and the petitioner was duly informed about it. The inquiry report also mentions that though the petitioner appeared on 16.12.2013 but refused to participate in the inquiry proceedings, thus, due to non-participation of the petitioner, though sufficient opportunities were granted to him, the departmental inquiry was conducted *ex-parte* and the remaining prosecution witnesses were recorded on 17.12.2013.

56. Evidently, the petitioner on 19.12.2013 was again called to submit his defence version. Though he appeared but denied to give his defence version either in writing or oral. Thereafter, the brief note prepared by the Presenting Officer was handed over to the petitioner, so that he could furnish his defence to which the petitioner failed to provide an exhibit / evidence in reply to the said written brief, therefore, the Inquiry Officer proceeded to conclude the inquiry.

57. In view of the above, we do not find any substance in the argument raised on behalf of the petitioner that as the reply furnished by him to the brief note of the Presenting Officer was not considered by the Inquiry Officer or submissions relevant to his defence was not considered by Inquiry Officer. The petitioner was granted sufficient opportunities by the Inquiry Officer to cross-examine all the witnesses of the department, however, the



petitioner cross-examined only PWs-1, 2, 3, 4, 7 and 8. It is not disputed that the petitioner has neither furnished statement in defence nor he got his evidence in defence recorded in the departmental proceedings.

58. Suffice to say, merely by claiming that some reply to the written brief of the Presenting Officer was furnished would not be sufficient in itself to say that the petitioner's defence was not adequately considered as the petitioner himself failed to actively participate in the inquiry as per the procedure required and failed to put forth his defence under the CISF Rules, 2001. The petitioner had consciously abandoned participation midway of the departmental inquiry. Thus, we find no merit in the said submission raised on behalf of the petitioner that his defence was not adequately considered in the departmental inquiry.

59. With respect to the plea of the petitioner that the Inquiry Officer did not issue notice to the petitioner for incorporating additional evidence led by the Court Witness SI/Executive N.D. Sundaram, In-Charge of AAI Colony Barrack, we find that the petitioner failed to participate in the inquiry proceedings from 17.12.2013 onwards, therefore, the Inquiry Officer was compelled to conclude the proceedings in absence of the petitioner. The Inquiry Officer had examined the SI/Executive N.D. Sundaram, as a Court Witness, who had, along with other Force personnel gone in search of the petitioner and found him missing at the time of evening roll call on 08.07.2013. It is not disputed that the petitioner had left his Unit without informing his Commandant or anyone in the Unit. Therefore, the Inquiry Officer has rightly exercised his power as per the rules to summon a witness for recording additional evidence to ascertain true facts. Even otherwise, no



prejudice would have been caused to the petitioner by respondents examining the said witness as a 'new witness' as the evidence of the said witness could only corroborate the fact that on search, the petitioner could not be found available at his room, which has not even been disputed by the petitioner.

60. The decision of the High Court of Himachal Pradesh in the case of ***H.L. Sethi vs Municipal Corporation and Ors.*** (supra) as relied upon by the learned counsel for the petitioner, is distinguishable on facts inasmuch as the said case dealt with the situation where the petitioner therein was charged *inter alia* with embezzlement and the respondents examined an expert for ascertaining whether the signatures of the petitioner in various invoices/documents were made by the same person or not i.e. the petitioner. The expert report had concluded that the signatures in the questioned documents matched with that of the petitioner's admitted signature, though, the said expert report was a non-reasoned one, the petitioner was not afforded an opportunity to rebut the report, only a copy of this report was supplied to him. However, in the said case, the respondents had substantially relied upon the expert's report to hold the petitioner guilty.

61. In the present case, the Inquiry Officer had called upon the SI/Executive N.D. Sundaram to depose regarding the petitioner's missing from the Unit on the dates in question, however, no prejudice was caused to the petitioner by his testimony as the petitioner had himself not rebutted his absence from the roll call on the relevant dates. Therefore, there is no merit in this plea of the petitioner and the reliance placed by him on the said decision is misplaced being distinguishable on facts.



62. The next challenge has been made on the report of the Inquiry Officer by the learned counsel for the petitioner who strenuously submitted that during the inquiry proceedings, the petitioner was not provided with any Defence Assistant. Therefore, in view of the decision of the Supreme Court in ***Bhagat Ram vs State of Himachal Pradesh & Ors.*** (supra), the inquiry is vitiated.

63. To deal with the aforesaid submission, it would be relevant to reproduce the relevant extracts from the decision of the Supreme Court in ***Bhagat Ram vs State of Himachal Pradesh & Ors.*** (supra):

“This is the minimum principle of natural justice which must inform a disciplinary proceeding. To be precise, the provisions contained in 1965 Rules do make adequate provisions for the same. The question is whether it has been substantially complied with, and when we say substantial compliance, we mean that it is too much to presume that a government servant of the level of a Forest Guard would be fully aware of all the intricate rules governing a disciplinary proceeding contained in 1965 Rules that he must seek permission for proper assistance at a proper stage as contemplated by the Rules. In fact, justice and fair play demand that where in a disciplinary proceeding the department is represented by a Presenting Officer, it would be incumbent upon the Disciplinary Authority while making appointment of a Presenting Officer to appear on his behalf simultaneously to inform the delinquent of the fact of appointment and the right of the delinquent to take help of another government servant before the commencement of enquiry. At any rate the Enquiry Officer at least must enquire from the delinquent officer whether he would like to engage anyone from the Department to defend him and when the delinquent is a government servant belonging to the lower echelons of service, he would further be informed that he is entitled under the relevant Rules to seek assistance of another



government servant belonging to Department to represent him. If after this information is conveyed to the delinquent government servant, he still chooses to proceed with the enquiry without obtaining assistance one can say there is substantial compliance with the Rules. But in the absence of such information being conveyed, if the enquiry proceeds, as it has happened in this case, certainly a very vital question would arise whether the appellat delinquent government servant was afforded a reasonable opportunity to defend himself and if the answer is in the negative.”

64. It emerges from the aforesaid extracts that it is the duty of the Inquiry Officer to make the Charged Officer / Official aware of his right to avail assistance of a Defence Assistant to defend himself in the departmental inquiry specifically when the department is represented by a Presenting Officer. In case, the Charged Officer / official chooses to proceed with the inquiry without obtaining the help of a Defence Assistant, the same amounts to adequate compliance with the rules.

65. In the present case, during the course of arguments, the said issue was raised by the petitioner which has not been taken as a ground in the writ petition. The petitioner has also not raised this plea before any of the authorities. Nonetheless, from the order of the Revisional Authority, it emerges that the petitioner had himself denied to take any member of the Force as his Defence Assistant, thus, no procedural lapse in this regard could be pointed out by the petitioner.

66. From the submissions made at the bar as also the detailed written submissions filed on behalf of the parties, we are unable to find any procedural defects in holding of inquiry proceeding which would vitiate the inquiry.



67. We may now proceed to deal with the pleas of the learned counsel for the petitioner *vis-a-vis* the merits of the inquiry proceedings. We may note that apart from highlighting the above-mentioned procedural defects which have been duly considered by us above, the entire premise of the petitioner approaching this Court is based on the fact that the Charges have been framed irrationally thereby vitiating the entire disciplinary proceedings.

68. The respondents, on the other hand, contended that the Memorandum of Charge was prepared on the basis of the preliminary inquiry held against the petitioner, therefore, the disciplinary inquiry has been conducted as per rules, thus, no interference in the Impugned Order is warranted from this Court.

69. From a perusal of the record, we find that the disciplinary action was initiated against the petitioner under Rule 36 of the CISF Rules, 2001 on the allegations of misconduct, misbehaviour, dereliction of duty and indiscipline. The petitioner was served with the Memorandum of Charge containing four Charges followed by the disciplinary proceedings into those Charges. The Inquiry Officer submitted its report holding the petitioner guilty on all the four charges and the Disciplinary Authority imposed a major penalty of removal from service. The Deputy Inspector General (Appellate Authority) as well as Inspector General (Revisional Authority) concurred with the findings of the Inquiry Officer.

CHARGE-1

70. Upon perusal of the Memorandum of Charges, the same would indicate that the Charge-1 is with respect to the petitioner overstaying the period of his Earned Leave and accordingly, in view of Rule 25 of the CCS



(Leave) Rules, the wilful absence from duty after expiry of the period of Earned Leave availed by the petitioner, rendered him liable to a disciplinary action.

71. There is no doubt that the petitioner belongs to a Force of which discipline is of paramount significance. When a member of a Force is unauthorisedly absent and does not report back to duty, he/she is liable to face a departmental inquiry, specifically when the explanation offered by such personnel is not satisfactory. Such disciplinary proceedings may lead to an imposition of punishment ranging from a minor to a major penalty, depending upon the nature of service, position held by the personnel, the period of absence, and the cause/explanation provided for the absence.

72. In the present case, it is an admitted position that while being on regular transfer posting at CSI Airport, Mumbai, International Sector, the petitioner was sanctioned 27 days of Earned Leave along with joining time from 28.04.2013 to 24.05.2013 by the Competent Authority. He was required to report for duty in the Unit on 25.05.2013 (forenoon). The report of the Inquiry Officer reveals that the application for extension of the aforementioned leave was forwarded to the previous Unit of the petitioner for consideration, whereby a preliminary inquiry was conducted against him and he was found guilty of overstaying of leave.

73. It is not disputed that the petitioner overstayed his leave by a period of 16 days in joining his duty on 10.06.2013. What is also not disputed is that the petitioner had sent an application through Fax seeking extension of leave by 14 days on account of the death of his brother-in-law. The preliminary inquiry was conducted into the incident and the petitioner was found guilty



of overstaying the period of leave without taking prior permission of the Competent Authority. Undoubtedly, the petitioner did not participate in the departmental inquiry to prove his defence. Normally, it would not be sufficient to merely move an application seeking extension of leave as it is expected of a personnel to also follow up to inquire from the concerned authority whether his leave has been sanctioned or not. The grant of leave, in our view, is not something which can be inferred or presumed by an officer especially of a security Force.

74. Evidently, as the petitioner failed to put forth any defence, the Inquiry Officer on the basis of evidence available before it, found the petitioner guilty of overstaying of leave without any prior permission of the Competent Authority, thus, holding that such conduct of petitioner was an act of dereliction of duty, misbehaviour and indiscipline towards his duty, which finding has been endorsed by the Appellate Authority *vide* Order dated 22.04.2014 as well as Revisional Authority *vide* Impugned Order dated 20.01.2016. No doubt, the petitioner had presumed that his leave would be extended in view of the special circumstances.

75. However, the symbiotic appreciation of the facts that the petitioner had applied for extension of leave well within time and for a valid and sufficient cause that is the death of his brother-in-law, would in our view is relevant to wipe out the misconduct in the peculiar circumstances of the present case. In any case, the respondents seem to have taken a decision to regularise this period of absence of the petitioner.

CHARGE-2

76. The petitioner has also been charged for being away from his duty



post at 'C' Gate and after being scolded by his immediate superior, he refused to return to his duty gate and misbehaved with him. The petitioner has explained the incident by stating that he was away from his duty post to drink water and immediately returned to his post when told by his superior.

77. From the inquiry report, we find that the SI/Executive J.P. Yadav had informed to the Company Commandant about this incident. Even though, the petitioner was counselled thereon and sent back to his duty post by the Company Commandant, the petitioner subsequently confronted SI/Executive J.P. Yadav regarding the incident in an inordinate manner, thus, he made a written complaint against the petitioner on 29.06.2013 for misbehaviour, on which a preliminary inquiry was conducted and the petitioner was found guilty, however, the said complaint has been denied by the petitioner.

78. The learned counsel for the respondents drew our attention to the evidence of PW 4, 5 & 6 and contended that these witnesses, have reiterated the said incident coupled with the fact that the PW 5 & 6 have not been cross examined by the petitioner. The petitioner has not led any evidence in defence to prove that he had gone to Gate D to drink water and immediately returned to his post when he was asked to do so. PW 6 / Constable (General Duty) Devender Kumar Sharma, with whom the petitioner was noticed to be talking at Gate No. D, had during the said departmental inquiry admitted that the petitioner was having a conversation with him and did not immediately go back to his duty post on asking of the SI/Executive J.P. Yadav.

79. Importantly, CISF is entrusted with duty and responsibility to safeguard various important venues. The petitioner, being a member of the Force



was on guard duty at Gate No. D at CSI Airport, Mumbai, therefore, mandatorily the petitioner could not have left the said Gate unattended even for a short while and in case of any emergency, it was imperative upon him to arrange some reliever in his place while being away from his duty Gate. Therefore, to say that the said incident could not have amounted to misconduct or dereliction in duty would be incorrect.

CHARGE-3

80. The next grievance of the petitioner is that the report of the Inquiry Officer is liable to be quashed solely on the ground that he has given his findings holding that the petitioner remained absent (AWL) from 08.07.2013 to 06.10.2013 for 91 days from the Unit, although the Charge No. 3 in the Memorandum of Charge does not refer to the absence of the petitioner for 91 days of AWL. He submitted that without framing charge against the petitioner of such period of absence, he could not have been held guilty for the same, let alone being awarded major penalty.

81. The position of law is well settled that the Inquiry Officer is not permitted to travel beyond the Charge and any punishment imposed on the basis of finding which was not the subject matter of Charge, is wholly illegal.

82. Given this position, upon perusal of Charge-3, we find that the petitioner has been charged for having been absent from the evening roll call parade of the AAI barrack at 1730 hours on 08.07.2013 and he was not present for the day duty from 0800 hours to 0200 hours on 09.07.2013. Thereafter, he remained absent from the Unit line from 08.07.2013. In Charge 3, the said facts have been clearly noted and it is further noted that



the petitioner without prior information and permission from the Competent Authority remained absent from the Unit line. Moreso, the Charge Memorandum was prepared before the petitioner re-joined his duty after remaining absent for 91 days from 08.01.2013.

83. We, thus, find no force in the submission on behalf of the petitioner that the factum of being absent was not mentioned in the Charge. No doubt, in the said Charge, the period of 91 days is not stated but it is specifically mentioned that the petitioner remained absent from his Unit with effect from 08.07.2013 and therefore, the petitioner has been put to sufficient notice to defend himself on the allegation that he remained absent without information from 08.07.2013 till he reported back to his duty.

84. It is the claim of the respondents that on 30.06.2013, the petitioner had applied for 45 days of leave commencing from 11.07.2013 and he was advised to curtail the number of days of leave as it was a high alert period due to the forthcoming Independence Day celebration and there was scarcity of manpower. But the petitioner refused to cut down the number of leaves that he had applied for. Thereupon, he was advised to avail the said leaves after said Independence Day celebration. However, to the dismay of the Commandant, the petitioner submitted his conditional resignation alleging harassment and his mental condition not being stable. On 07.07.2013, he submitted another application stating his poor mental condition, even though he was counselled by the officers, he was found to be missing from his unit line on 08.07.2013. When contacted over the phone in order to know of his whereabouts, he informed that he was on way to his native place by train.



Accordingly an AWL report/GD entry was recorded against the petitioner in this regard.

85. From the statement of witnesses and the Inquiry Report, we find that the petitioner did not attend the evening roll call on 08.07.2013, and he was not found available at his barrack residence and his room was found locked. The information regarding his absence was recorded as GD entry at S. No. 35A on 08.07.2013 at 1745 hours. Company Commandant / Inspector A.K. Singh, then himself checked the room of the petitioner which was found locked, thereupon, he spoke to the petitioner on his mobile phone, who informed him that he was going to his home and declined the advice of the Company Commandant to proceed towards his home after taking permission of leave. The said information was recorded *vide* GD entry at S. No 36 on 08.07.2013 at 1845 hours.

86. Furthermore, the petitioner was detailed for day shift duty on 09.07.2013, however, due to his non-presence, his absent report was recorded as GD at S. No. 445 dated 09.07.2013 at 0745 hours. In this way, relying upon the witnesses, the Disciplinary Authority found that the petitioner was absent from his duty without any prior information and permission from the Competent Authority and held him guilty for an act of grave dereliction of duty, misconduct and indiscipline towards his duty. These findings of the Disciplinary Authority were upheld by the Appellate as well as Revisional Authorities *vide* their respective orders. It is worthwhile to note that subsequently, *vide* the Show Cause Notice dated 21.02.2014, the leave of 91 days was regularised by the respondents.



87. The learned counsel for the petitioner, while referring to the decision of the Supreme Court in the judgment of *State of Punjab and Ors. vs. Bakshish Singh* (supra), vehemently submitted that once the department had regularised the leave of 16 days as mentioned in Charge No. 1 and AWL of 91 days in Charge No. 3 of misconduct *vide* these Charges did not survive. We may, thus, advert to the aforesaid decision, the relevant extract of the decision is as under:-

“11. Applying the above principles to the instant case, it will be noticed that the trial court recorded a categorical finding of fact that a proper opportunity of hearing was not afforded to the respondent in the departmental proceedings and that his allegation that his signatures on certain papers during those proceedings were obtained under duress, was not controverted as the State of Punjab had led no evidence in defence. The trial court also recorded a finding that unauthorised absence from duty having been regularised by treating the period of absence as leave without pay, the charge of misconduct did not survive. It was with this finding that the suit was decreed. The lower appellate court confirmed the finding that since the period of unauthorised absence from duty was regularised, the charge did not survive but it did not say a word about the finding relating to the opportunity of hearing in the departmental proceedings. Since those findings were not specifically set aside and the lower appellate court was silent about them, the same shall be treated to have been affirmed. In the face of these findings, it was not open to the lower appellate court to remand the case to the punishing authority for passing a fresh order of punishment. The High Court before which the second appeal was filed by the State of Punjab, did not advert itself to this inconsistency as it dismissed the appeal summarily, which indirectly reflects that it allowed an inconsistent judgment to pass through its scrutiny.”



88. From the above decision, it emerges that the Supreme Court mainly considered the validity of remanding the matter by the District Judge back to the Disciplinary Authority for a fresh order of punishment and found it to be improper, without it setting aside the findings of the Trial Court relating to opportunity of hearing not provided to the petitioner in the departmental proceedings not being set aside. A second appeal was made by the State before the High Court of Punjab and Haryana, which was summarily dismissed. Thus, the said case, dealing with premise different than the one in the present, does not come to the aid of the petitioner.

89. In this regard, it is also worthy to note the decision of the Supreme Court in *State of Punjab vs. Dr. P. L. Singla*, (2008) 8 SCC 469 wherein it held as under:-

“14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorised absence (unless the rules require otherwise). Where the punishment awarded for the unauthorised absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service



record. If the unauthorised absence remains unaccounted it will result in break in service, thereby affecting the seniority, pension, pay, etc. of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or supersede the order imposing punishment.

15. In this case, the punishment was imposed by order dated 16-9-1999/11-10-1999. That order was not cancelled, revoked or withdrawn. The subsequent order dated 25-1-2001 merely accorded extraordinary leave in regard to the period of absence, but did not condone the unauthorised absence nor wipe out the punishment already imposed. The said order was only consequential to the imposition of punishment. Its effect was to maintain continuity of service of the respondent, but deny salary for the period of absence and not to count the period of absence as qualifying service for the purposes of pension. Its effect is certainly not to exonerate the respondent from the charge of unauthorised absence nor to wipe out the punishment. If the intention was to revoke the punishment, the order dated 25-1-2001 would have clearly stated so. But it did not.

16. The assumption by the courts below that when an order is passed according extraordinary leave for the period of absence, it will have the effect of effacing or erasing the punishment already imposed, is therefore incorrect and is a serious error of law. When the trial court and the appellate court had committed this serious error, the High Court ought to have formulated an appropriate question of law and allowed the second appeal. Instead, it chose to dismiss the second appeal putting its seal of approval on a wrong interpretation of law leading to serious repercussions in regard to discipline and administration. The judgment of the High Court confirming the orders of the courts below, therefore calls for interference.

17. We accordingly allow this appeal, set aside the judgments and decrees of the courts below and



dismiss the suit of the respondent. Parties to bear their respective costs.”

90. From the above, what emerges is that the Apex Court in the aforesaid case was dealing with a situation where the employee was punished for overstaying his period of leave by withholding increments. However, the subsequent order by the Governor of Punjab regularized the said period of absence as Extra-ordinary leave which the Courts below construed to be wiping out the misconduct of the petitioner therein. The Supreme Court held that the subsequent order of regularizing leave was only an administrative order to deal with the service period of the Charged Official otherwise there would be a break in service period, the employer had to account for the said period as the petitioner therein was not severed from the service and rather the action of the respondents was to maintain the petitioner's continuity in the service. The Apex Court also held that passing of such administrative order, regularising the leave, will have no effect on effacing the punishment already imposed on the Charged Employee.

91. Similarly, in the present case, the regularisation of leave was granted to the petitioner after the departmental inquiry was concluded and petitioner was held guilty of the charge. In such circumstances, the leaves of the petitioner were regularized as certain leaves were in his credit and that he would have received some financial benefit, however, the regularisation of leaves will not in any manner absolve the petitioner of the misconduct, misbehaviour, dereliction of duty in absenting himself from duty without the prior permission of the Competent Authority. Therefore, the plea of the petitioner that once the leaves were regularized, the Charge did not survive has no merit.



CHARGE-4

92. Now reverting to the findings of Charge-4, from a bare perusal of the said Charge, it appears that it records about two earlier minor penalties imposed on the petitioner and that he was a habitual deserter, who also overstayed his period of leave. The learned counsel for the petitioner urged and correctly so, that any previous penalty awarded to the petitioner could not have been made the subject matter of the Charge which was framed in the present disciplinary proceedings.

93. The penalties inflicted on a member of the Force in the past could have been considered at the time of hearing on sentence and the punishment to be awarded to the Force member on conclusion of the disciplinary proceedings, however, framing of a separate Charge relating to the previous punishments in the subsequent departmental inquiry is not maintainable and is against the principle enshrined under Article 20 (2) of the Constitution of India. Therefore, the Charge No. 4 does not survive. However, the same has rightly been considered by the Disciplinary Authority while considering the punishment with which the petitioner is to be visited with.

94. Having considered the above, we find no infirmity with respect to findings of Charge No. 2 and 3 in the Impugned Order dated 20.01.2016 passed by Revisional Authority upholding the decisions of the Appellate and Disciplinary Authorities holding the petitioner guilty of indiscipline, misconduct and dereliction of duty.

95. That being said, the question that still survives for our consideration is regarding the quantum of punishment to be afforded to the petitioner in the above circumstances with respect to Charge No. 2 and 3. The learned



counsel for the petitioner submitted that the department has awarded major punishment in violation of petitioner's fundamental rights which is totally disproportionate to the Charges levelled against him and the Inquiry Officer has erroneously concluded that the petitioner is habitual in overstaying of his sanctioned leaves. In support of his plea, the learned counsel had relied on the judgments of *Union of India vs. R.K. Sharma* (supra) and *Laxman Singh vs Union of India & Ors.* (supra).

96. To refute the said submission, the learned counsel for the respondents submitted that the misconduct of the petitioner in respect to the Charge No. 2 and 3 is serious in nature and the punishment of removal from service awarded to him is appropriate while holding him guilty.

97. We find that the Inquiry Officer has held against the petitioner that he is a habitual absentee for which he was punished with two minor penalties but he did not mend his conduct. In the previous inquiry conducted against the petitioner, when he was issued a Movement Order for sending him to RTC, Barwaha and in disobedience to the said Movement Order, he went to his home. After holding inquiry against the petitioner and finding him guilty of the charge, the then Disciplinary Authority awarded him punishment of withholding of one increment for two years without cumulative effect. Additionally, he was found guilty of overstaying of leave of 77 days and was awarded punishment of withholding of next increment for a period of two years without cumulative effect.

98. If the Charge 1 and 4 were alone required to be proved against the petitioner, we may have taken a different view regarding the punishment of removal from service awarded to the petitioner. However, in totality of facts



and circumstances surrounding the indiscipline and misconduct of the petitioner, specially bearing in mind that for similar misconduct of overstay of leave and indiscipline, the petitioner had been punished twice, though with minor punishments of withholding of increments, still, subsequent to said punishment being imposed on the petitioner, he continued to disregard the established procedure and the rules of CISF, by again overstaying the period of leave without prior permission or sanction and by being absent from duty without leave. His failure to correct his behaviour after facing the consequences for his similar actions in the past, goes to show his blatant disregard for authority and a lack of accountability. Instead of learning from his past misconduct, he seems to have become even more indifferent thereby demonstrating his unwillingness to comply with the protocols expected from an officer of CISF to follow. Suffice to say, the overall misconduct, past and present, indicates that his misbehaviour only escalated in the subsequent events for which he stood departmental proceedings in the present case.

99. We would also note here that the CISF being an Armed Police Force of the Union of India. The members of the Force are obligated to maintain the highest standards of discipline at all times in order to effectively meet day-to-day operational requirements of the organization where they are posted. Therefore, the petitioner has presented himself with a consistent pattern of remaining absent and being indisciplined coupled with the findings with respect to Charge No. 2 and 3, the misconduct is, thus, grave in nature and the petitioner has been adequately punished with removal from service.



100. The aforesaid decisions relied upon by the petitioner are not applicable to the facts of the present case, being on distinct factual footing.

101. In view of the foregoing analysis, the writ petition is dismissed along with pending application, if any.

(SHALINDER KAUR)
JUDGE

(NAVIN CHAWLA)
JUDGE

DECEMBER 05, 2024
KM/ss