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**(2002) 08 JH CK 0087**  
**In the Jharkhand High Court**  
**Case No : CWJC No. 11947 of 1997**

Hirdeo Prasad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 21-08-2002

**Acts Referred:**

Central Industrial Security Force Act, 1968 — Section 18

**Citation :** (2002) 08 JH CK 0087

**Hon'ble Judges :** Tapen Sen, J

**Bench :** Single Bench

**Advocate :** M.K. Laik and J.P. Pandey, for the Appellant; M.M. Prasad, for the Respondent

**Final Decision :** Allowed

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## Judgement

Tapen Sen, J.—Heard Mr. M.K. Laik, learned counsel for the petitioner assisted by Mr. Jai Prakash Pandey and Mr. M.M. Prasad learned counsel for the respondents.

2. The petitioner, in the instant case, has prayed for quashing the order dated 29.3.1993 passed by the Deputy Inspector General, Central Industrial Security Force, Eastern Zone, by reason whereof the appeal filed by the petitioner against his order of dismissal from service has been rejected. Mr. M.K. Laik, learned counsel for the petitioner, during the course of arguments has submitted that consequently the dismissal of the petitioner be also set aside and the petitioner be reinstated in service with all consequential benefits.

3. On 6.4.1992, the petitioner was served with a memorandum of charges informing him that the Commandant/CISF Group Headquarters-cum-Disciplinary Authority, proposed to hold an enquiry against the petitioner under Rule 34 of the CISF Rules, 1969. The imputation of misconduct/misbehaviour in respect of which the enquiry was proposed to be held, was enclosed in the articles of charges appended to the aforementioned memorandum. According to the statement of articles of charges, it is apparent that the petitioner was sought to

be proceeded against the following charges :--

(A) On 11/12.2.1992, the petitioner had been assigned "C" shift duty from 9.00 p.m. to 5.00 a.m. (2100 Hrs. to 500 Hrs.) at Watch Tower No. III of "B" Plant. He was found sitting and dozing in front of a small fire which amounted to neglect of duty within the meaning of Section 18 of the C.I.S.F. Act, 1968.

(B) At about 12.20 a.m. (00.20 hours) the petitioner assaulted Inspector/Exe. T. Chakraborty who had found him sitting and dozing while on duty which amounted to misconduct within the meaning of Section 18 of the C.I.S.F. Act, 1968.

4. In the statements of imputation of misconduct/misbehaviour, in support of the aforementioned articles of charges, it was further mentioned and it was stated that the petitioner was sitting and dozing in the manner stated above keeping a tin sheet (1" x 4") on the left side (Western Side) which obstructed the vision of on-duty, constable who found the perimeter wall/ fencing towards the Western Side checked by Inspector/Exe. T. Chakraborty. When questioned by the said Inspector T. Chakraborty, the petitioner became angry and took out his short "lathi" and assaulted him, as a result whereof, the latter sustained injury, which was again, said to be misconduct within the meaning of Section 18 of the C.I.S.F. Act, 1968.

5. The aforementioned memorandum and the imputation of charges/articles of charges has been marked Annexure 1 to the writ application.

6. The petitioner was thereafter put on suspension vide letter dated 12.2.1992 and was also given the punishment of P.T. Parade, Roll Call, Sainik Sammelan etc. However, the suspension was revoked subsequently by an order dated 6.4.1992 and it was ordered that the manner in which the period of suspension would be treated would be issued after the departmental enquiry was concluded.

7. After conclusion of the enquiry, the report was duly served upon the petitioner by letter dated 24.7.1992 as contained at Annexure 6 by reason whereof the petitioner was found guilty of the charges levelled against him. Thereafter, on 12.10.1992 the punishment of dismissal from service was inflicted upon the petitioner. Being aggrieved, the petitioner filed an appeal which was also rejected by order as contained at Annexure 8 being order dated 29.3.1993.

8. Mr. M.K. Laik, learned counsel for the petitioner during the course of his arguments, pointed out some very pertinent flaws in the proceeding and one such flaw which he attempted to highlight and rightly so, was the matter pertaining to the Beat Book. According to him, the person who was entrusted with the Beat Book was supposed to record every event that took place. The defence was that in fact, the allegations levelled against the petitioner were concocted and had been cooked up only as a mode of defence for the assault that he himself had suffered. A direct question was asked as to what was recorded in the Beat Book, his question is to be found at running page 46 of the

writ application. This question was asked to Inspector T. Chakraborty himself. In answer, T. Chakraborty refused to give any reply saying that this was not related to this issue and, therefore, he refused to reply, Mr. M.K. Laik, learned counsel for the petitioner then drew the attention of this Court to the observations made by the Commandant, C.I.S.F. who punished the petitioner vide order dated 12.10.1992. At internal page 3 of the said order, the Commandant says "I also find that the Inspector/Exe. T. Chakraborty has not made any entry in the Beat Book (photo copy of Beat Book) is held in file, which he was supposed to make entry in the Beat Book as and when he visit any post, which he might have forgot due to unexpected incident of assault by Const. Hirdeo Prasad."

(quoted verbatim)

9. Thus, from the manner in which the proceeding has been held, it appears that the defence taken by the petitioner to the effect that he was himself assaulted has not been dealt with. On the contrary, it has been discarded without any reasons.

10. In any event, for an offence of dozing/sleeping on duty, this Court is definitely and positively of the opinion that the punishment of dismissal from service is extremely harsh. In fact, the punishment is not at all commensurate with the nature of the allegations levelled against the petitioner. The first part of the allegation pertains to dozing/sleeping on duty for which a person certainly does not deserve to be dismissed from service. The second part is the assault on T. Chakraborty, but on account of the fact that the beat book was not even entered upon, this part of the allegation becomes very, very doubtful.

11. However, what cannot be lost sight of is that the petitioner is a member of a Disciplined Armed Force and he was expected to be vigilant and on his toes while on duty. Dozing off amounts to switching off on duty and therefore, the petitioner being a member of such a disciplined armed force, cannot be let off without any punishment at all. However, punishment of dismissal being extremely harsh, a lesser punishment should have been taken into consideration for being inflicted upon the petitioner. This Court does not wish to advise the respondents in the matter relating to lesser punishment and leaves the same entirely to them.

12. In the result and in view of the reasonings given above, this writ application is allowed and the impugned order of dismissal as also the order of the appellate authority are both set aside and the petitioner stands reinstated. However, it will be open to the disciplinary authority to inflict a lesser punishment upon the petitioner in accordance with law.

13. With the aforementioned observations this writ application is allowed. However, there shall be no order as to costs.