

**(2008) 04 CAL CK 0033**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 7531 (W) of 2003**

Inderpal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 18-04-2008

**Acts Referred:**

Central Civil Services (Leave) Rules, 1972 — Rule 7  
Central Industrial Security Force Act, 1968 — Section 18  
Central Industrial Security Force Rules, 1969 — Rule 34

**Citation :** (2008) 04 CAL CK 0033

**Hon'ble Judges :** Aniruddha Bose, J

**Bench :** Single Bench

**Advocate :** B.R. Ghosal, N.C. Mondol and Ujjwal Kr. Dutta, for the Appellant; Anwara Quraishi, for the Respondent

**Final Decision :** Dismissed

## Judgement

Aniruddha Bose, J.—The petitioner herein challenges an order of dismissal of his service from the post of constable in the Central Industrial Security Force (CISF) after conclusion of disciplinary proceeding. The charge against the petitioner, as reflected in the final order of dismissal (Annexure P2 to the writ petition) is reproduced below:

That, the said No. 874140031 Constable Inderpal Singh of CISF Unit, Durgapur is hereby charged with gross indiscipline and dereliction in that he deserted the Unit Lines from 1315 hrs. on 20-3-92 without leave or prior permission from the competent authority which amounts to neglect of duty on the part of the said member and is violation to the provision of CISF Act 18 of 1968....

The final order was passed by the disciplinary authority on 29th September 1992 awarding the punishment of dismissal, which was appealed against by the petitioner. On 18th March 1993 the appellate authority rejected the appeal against the order of the disciplinary authority. A revision petition was filed by the petitioner but the revisional authority, being the Inspector General (ES) found no

reason to interfere with the orders passed by the Disciplinary authority and the appellate authority. Accordingly, the revision petition was rejected.

2. The petitioner was employed with the Central Industrial Security Forces and at the material point of time he was working as a constable and posted at the CISF unit, MAMC, Durgapur. He claims to have had applied for leave for forty days on 16th March 1992 on the ground of his wife's deteriorating health condition when she was in an advanced stage of pregnancy. At that point of time, leave was not granted. The petitioner, however, went to his native village on 20th March 1992 without obtaining sanction for leave.

3. As it has been pleaded in the affidavit-in-opposition, prior to the passing of the order for dismissal, a notice, described as "Call Up" notice was sent to the home address of the petitioner, but the same was returned with the postal endorsement, "Refused." Thereafter, he was charge sheeted under Rule 34 of the CISF Rules, 1969 (this being the operative rule at that point of time). The charge sheet was sent to him at his home address, but this communication was also returned undelivered with similar endorsement. An enquiry officer was subsequently appointed and a notice for enquiry was sent fixing 13th May 1992 as the date of enquiry. This notice again remained undelivered, sent back with the endorsement "refused". Another notice of enquiry was sent to him, and it was then he made communication with the CISF authorities requesting for the notice in his mother language, Hindi. The authorities then accepted such request and sent the notice to him in Hindi. The writ petitioner, however, did not appear in the proceeding before the enquiry officer. The enquiry was conducted ex-parte and the enquiry officer found the charges proved against him. The enquiry report was sent to him eliciting his response, but he did not respond to the report. It is the case of the respondents that after completion of this process, the disciplinary authority found him guilty of the charges and he was awarded the punishment of dismissal from service.

4. The petitioner had challenged the order of dismissal before the Hon'ble Allahabad High Court, by way of filing a writ petition but this writ petition was dismissed on the ground that the Allahabad High Court did not have territorial jurisdiction to entertain the writ petition.

5. The petitioner had preferred appeal before the appellate authority prescribed by the statute against the order of dismissal, but his appeal was rejected by the appellate authority by an order passed on 18th March 1993. Against this order a revisional application was filed by the petitioner on 27th April 1993. As it has been indicated above, the revisional application was also rejected.

6. The main ground on which the petitioner has challenged the impugned order is that though the petitioner was charged with having committed the act of desertion, he could not be held guilty of that charge. Mr. Biswaranjan Ghosal, learned Senior Advocate appearing for the petitioner submitted that the act on the part of the petitioner may constitute indiscipline but the same would not

amount to desertion. He has questioned the manner in which the enquiry was conducted against him, and the action of the disciplinary authority. His case is that it was a one-sided enquiry in which neither the disciplinary authority nor the appellate authority had properly examined the petitioner's case. On the aspect of desertion, Mr. Ghosal has submitted that the petitioner could not be said to have deserted the unit line, as he had left the unit only for the purpose of attending a crisis situation in his family, and it was never his intention to leave the force permanently. Two authorities have been relied upon by Mr. Ghosal in support of his submission that the expression "desertion" implies leaving one's post with no intention to return. These authorities are a decision of the Hon'ble Supreme Court in the case of Ibrahim and Others Vs. State of West Bengal and Another, and a judgment of the Hon'ble High Court of Rajasthan in the case of State Vs. Rawatsingh, .

7. In the Concise Oxford English dictionary (eleventh edition), the expression "desert" has been explained to be:

1. Callously or treacherously abandon
2. Illegally leave the armed forces. There are other meanings attributed to this expression also in that dictionary, but for the purpose of adjudication of the present writ petition, I find these two meanings relevant.

In the case of Ibrahim (supra), the expression desertion was construed by the Hon'ble Supreme Court in relation to the provisions of the Merchant Shipping Act, 1958. It was held by the Hon'ble Supreme Court in that case:

The gist of desertion therefore is the existence of an animus not to return to the ship or, in other words to go against to agreement under which the employment of seamen for sea voyages generally takes place....

In the case of State v. Rawatsingh (supra), it has been held:

There can be no doubt that the word "desertion" does not simply mean leaving the post or mere departure from the post without permission. It means something more, and that something more is the intention never to return to the post, or to go away with the idea of avoiding hazardous duty, or shirking any important service.

8. Mr. Ghosal submitted that the authority concerned failed to consider that the petitioner was seeking leave only for the purpose of being with his wife at the time of a delivery of child and moreover he had returned to the force and joined duty on 12th June 1992. He was shown to be present from 18th June 1992, and it was only on 9th July 1992 he was served with a copy of the order of dismissal. Submission of Mr. Ghosal is that since the petitioner had joined his duties after his absence, he could not be held to have been guilty of desertion.

9. Ms. Quraishi, learned Advocate appearing for the respondents argued that the impugned order of dismissal was passed against the petitioner upon affording

him full opportunity of hearing, and in the proceeding all the requirements of the principles of natural justice were complied with. Her case is that since all the authorities within the hierarchy of the CISF had examined the petitioner's case and the punishment was confirmed, there was no scope for further interference by this Court in exercise of its Constitutional Writ Jurisdiction. She relied on the decisions of the Hon'ble Supreme Court in the case of Gouranga Chakraborty Vs. State of Tripura and Another, and in the case of Government of India and Anr Vs. George Philip, . Her case is that so far as the question of granting of leave is concerned, in the case of the petitioner, he was guided by the Central Civil Services Leave Rules, 1972, and Rule 7 of the said Rules stipulates that leave cannot be claimed as matter of right. 10. On the question of right to obtain leave, learned Counsel for the petitioner had submitted that his client was entitled to paternity leave. My attention has also been drawn to the decision of the Hon'ble Supreme Court in the case of Union of India (UOI) and Others Vs. Dwarka Prasad Tiwari, . In this case, it has been held:

To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, imposed appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment impose is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.

10. Having considered the rival submissions, I am of the opinion that there is no scope for any interference with the order of dismissal in the present case. I agree with the submission of Ms. Quraishi that leave cannot be claimed as a matter of right. In my opinion, the conditions under which leave shall be granted or refused is primarily the decision of the authorities, and there is limited scope of examining as to whether such leave shall be granted or not by the authorities. Moreover, in this writ petition, what is under consideration is not the question as to whether leave should have been granted or not, but whether the punishment of dismissal imposed upon the petitioner for being absent without leave is legally valid. In the absence of any material establishing an outstanding case of arbitrariness, I am not inclined to bring such decision of the CISF authorities under a detailed scrutiny. As regards Mr. Ghosal's submission that the petitioner could not be said to have had committed the offence of "desertion", I do not think there is any scope of threadbare analysis of the meaning of this expression in the factual context of the present case. 11. The main charge against the petitioner, which has been reproduced in the Final Order of the disciplinary authority is gross indiscipline and dereliction of duty. Such acts of "gross indiscipline" and "dereliction of duty" has subsequently been explained in the order in following manner:

in that he deserted the unit lines from 13.15 hrs. on 20-3-92 without leave or prior permission from the competent authority which amounts to neglect of duty

on the part of the said member and is violation to the provision of CISF Act, 1968....

11. Thus the offence alleged is not really "desertion", but unauthorised leave. The expression "deserted" has been used to imply illegally leaving the force without leave. Thus, the ratio of the decision of the Hon"ble Supreme Court in the case of Ibrahim v. State of West Bengal and the Hon"ble High Court of Rajasthan in the case of State v. Rawatsingh does not apply in the facts of the present case. I also do not find the punishment to be shockingly disproportionate.

12. Under these circumstances, this writ petition stands dismissed.

13. There shall, however, be no order as to costs.

Later:

Urgent photostat certified copy of this judgment, if applied for, be handed over to the parties on compliance of necessary formalities.