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**(1995) 03 KL CK 0020**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 3144 of 1992-Y**

Joseph, C.J.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision :** 08-03-1995

**Acts Referred:**

Central Industrial Security Force Act, 1968 — Section 4, 4(2), 4(3), 5, 8  
Central Industrial Security Force Rules, 1969 — Rule 29A, 47, 47(2)

**Citation :** (1995) 03 KL CK 0020

**Hon'ble Judges :** D.J. Jagannadha Raju, J

**Bench :** Single Bench

**Advocate :** E. Subramani, for the Appellant; M.A. Fayaz, C.G.S. Counsel, for the Respondent

**Final Decision :** Allowed

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## Judgement

Jagannadha Raju, J.—This O.P. is filed by a dismissed constable of the Central Industrial Security Force. He seeks the relief of a writ of certiorari to quash Exts. P-2 order passed by the Respondent. He also seeks the relief of a writ of mandamus to direct the Respondent to consider afresh Ext. P-1 appeal in the light of the provisions contained in Rule 47(2) of the Central Industrial Security Force Rules, 1969 and pass orders afresh.

2. The facts leading to the filing of this Writ Petition are a little peculiar. The Petitioner claims that he is enrolled as a constable in the Central Industrial Security Force on 9th February 1983. The Central industrial Security Force Act, 1968 only talks of enrolled member of the Force. While he was working in the A.S.P. Unit, Durgapur, he left the unit and was unauthorisedly absent from 16th September 1988 to 18th November 1988. Subsequently disciplinary proceedings were initiated against him and the Director General, Central Industrial Security Force, by order dated 24th September 1990 imposed the punishment of dismissal from service with immediate effect. Against that he filed an appeal to the Union of India, represented by the Secretary of Home Affairs. That appeal

was dismissed and then he has come forward with the present O.P.

3. A perusal of the record clearly indicates that the entire thing was conducted in a most improper manner and without bearing in mind the provisions of the Central Industrial Security Force Act, 1968 and the Central Industrial Security Force Rules, 1969. Both the Officers as well as the Petitioner who described himself as a constable, though he is an enrolled member of the Force as per the terms of the Act, seem to have acted in total ignorance of the Act and Rules. It would be unnecessary for me to point out the numerous irregularities and illegalities that took place, but suffice it to say that Ext. P-2 is neither a speaking order, nor is it an order in conformity with Rule 47. One fails to understand why the Petitioner filed an appeal to the Union Government. A cursory perusal of the provisions of the Act clearly indicates that there are various types of Officers, as contemplated by the provisions of the Act, and as per Section 5, the Director General is the authority for making appointments of the enrolled members of the Force. The proviso to Section 5 provides that the power of appointment under this section may also be exercised by such other supervisory officer as the Central Government may by order specify in this behalf. Section 4 deals with appointment and powers of supervisory officers. That category includes Inspectors General, Dy. I.G., Commandants, Deputy Commandants or Assistant Commandants of the Force. Sub-section (2) of Section 4 stipulates that every other supervisory officers so appointed shall have, and may exercise, such powers and authority as is provided by or under this Act. Section 8 deals with dismissal, removal, etc. of enrolled members of the Force. Section 9 deals with appeal and revision. Section 9 specifically provides that any enrolled member of the Force, aggrieved by an order made u/s 8, may within 30 days from the date on which the order is communicated to him, prefer an appeal against the order to such authority as may be prescribed, and subject to the provisions of Sub-section (3), the decision of the said authority thereon shall be final. Rule 29A of the Rules clearly lays down that the disciplinary authority in respect of a member of the Force for the purpose of imposing any particular penalties or the passing of any disciplinary order shall be the authority specified in this behalf in Schedule II under whose administrative control the member is serving and shall include any authority mentioned in the said Schedule superior to such authority. Schedule II clearly indicates that the disciplinary authority who is entitled to impose the punishment of dismissal on the Petitioner is the Commandant. The Commandant has the power to impose the punishment of dismissal for all members of the force upto the level of Sub Inspectors. Inspector onwards are excluded from his purview. When such is the case, one fails to understand how in this case the Petitioner had to appeal to the Government of India, Home Department.

4. The counter affidavit filed in this case by a Commandant of the C.I.S.F. makes things much worse. Paragraph 5 of the counter affidavit clearly shows that the Commandant C.I.S.F. Unit A.S.P., Durgapur had appointed an Enquiry Officer to enquire into the charge. The Enquiry Officer submitted his findings holding the

charge as proved. The disciplinary authority forwarded all the relevant facts, documents to the Director General, C.I.S.F., New Delhi, for passing the final order in the instant case. One fails to understand why such a thing was done by the disciplinary authority, when he had the power to impose the punishment, including dismissal. Any sensible Director General would have returned the papers to the disciplinary authority directing him to exercise the powers vested in him. Such a thing does not appear to have been done. The fact remains that the punishment of dismissal was awarded to him by order dated 24th September 1990 and then Ext. P-1 appeal was filed by the Petitioner.

5. Chapter 10 of the Rules deals with appeals, revision and petitions. No second appeal is provided but there is provision under the Act for the Central Government to call for and examine the proceedings of any case. Sub-rule (2) of Rule 47 contemplates that the appellate authority should consider (a) whether the procedure prescribed in these rules has been complied with, and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (b) whether the findings are justified and (c) whether the penalty imposed is excessive, adequate or inadequate and pass orders. None of these has been done by the appellate authority, namely, the Respondent in this case. With a cryptic order of one line the appeal has been disposed of. The operative portion of Ext. P-2 reads as follows:

You are hereby informed that your appeal has been considered and rejected by M.H.A.

The order Ext. P-2 does not even refer to any other detailed order passed in the appeal by the appellate authority. One fails to understand why Ext. P-2 order was passed in gross violation of Rule 47(2). Ext. P-2 is not a speaking order. It does not consider the various grounds urged by the Petitioner. No judicial body can uphold an order like Ext. P-2. Ext. P-2 order has necessarily to be set aside.

6. The next question that will have to be considered is what is the further action that should be taken. Considering the way in which the matter has been dealt with by the department, and considering the manner in which the disciplinary authority, namely the Commandant has bundled up all the papers and forwarded them to the Director General, I feel that the action of the Commandant is most improper. By virtue of that action, and by making the Director General to pass the original order of punishment, the Petitioner was forced to appeal to the Respondent, namely, the Ministry of Home Affairs. The right of revision available to him u/s 9 was deprived of. In this background it would be just and proper to set aside Ext. P-2 order and direct the authorities to proceed afresh from the stage of submission of the Enquiry Officer's report. The disciplinary authority, namely, the Commandant shall deal with the matter and pass a reasoned fresh order on the basis of the material available in the record of the Enquiry Officer. If the Petitioner is aggrieved by the same, he should file appeal to the next superior authority, namely, the Deputy Inspector General in accordance with Section 9.

In the result, the O.P. is allowed, and Ext. P-2 is quashed. There shall be a direction to the Commandant C.I.S.F. Unit, A.S.P., Durgapur, to go into the Enquiry Officer's report and findings and then take action in strict accordance with the Act and Rules and pass a speaking order. If the Petitioner is aggrieved by the orders passed afresh by the disciplinary authority, namely, the Commandant, he is entitled to file an appeal to the Deputy Inspector General, the authority superior to the Commandant. Each party to bear its own costs.