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**(2025) 03 GAU CK 0455**  
**In the Gauhati High Court**  
**Case No : WP(C) Of 4446 Of 2019**

Ratul Borah

APPELLANT

Vs

The Union Of India And 4 Ors.

RESPONDENT

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**Date of Decision :** 12-03-2025

**Acts Referred:**

Constitution Of India, 1950 — Article 226

Central Industrial Security Force Rules, 2001 — Rule 34, 36, 37, 37(2)

**Citation :** (2025) 03 GAU CK 0455

**Hon'ble Judges :** Sanjay Kumar Medhi, J

**Bench :** Single Bench

**Advocate :** A. Chakraborty, H. Gupta

**Final Decision :** Dismissed

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## Judgement

Sanjay Kumar Medhi, J

1. The instant petition under Article 226 of the Constitution of India has been filed challenging, inter alia a disciplinary proceeding which had culminated in an order dated 01.11.2018 whereby the petitioner was imposed the penalty of stoppage of one increment without cumulative effect. The petitioner is also aggrieved by the order dated 02.08.2018 passed by the Appellate Authority whereby his departmental appeal has been rejected.

2. The projected case of the petitioner, in a nutshell is that he was working as a Constable in the Central Industrial Security Force (CISF) and at the relevant time, was posted at the Numaligarh Refinery Limited (NRL). Vide a memo of charge dated 02.05.2018, a disciplinary proceeding was initiated against him on two charges which related to indecent behavior with certain female nursing staff of the VK-NRL Hospital with the further allegation of locking 4 female medical staff inside the vaccination room. It is the case of the petitioner that he had submitted an application to provide him additional documents and to conduct a regular enquiry and the said request was rejected vide communication dated

09.05.2018 by citing that since the proceeding was a minor disciplinary proceeding wherein the Disciplinary Authority does not desire to conduct detail enquiry, there was no requirement to give the delinquent access to official documents. Nonetheless, the petitioner had submitted his reply on 12.05.2018 and after consideration of the same, final order has been passed on 02.06.2018 whereby a penalty of reduction of pay by one stage for a period of three years was imposed which would not have any effect of postponing his future increments of pay. The petitioner had accordingly submitted an appeal before the Appellate Authority which was disposed of vide order dated 02.08.2018 whereby the appeal was rejected. Against the same, the petitioner has submitted a revision petition. The Revisional Authority, however vide an order dated 01.11.2018 had interfered with the penalty to the extent of reducing the period from three years to one year.

3. It is the validity and legality of the aforesaid action, which has been questioned in the present writ petition.

4. I have heard Shri A. Chakraborty, learned counsel for the petitioner. I have also heard Shri H. Gupta, learned CGC.

5. Shri Chakraborty, learned counsel for the petitioner has submitted that the rejection of his request for furnishing additional documents vide the order dated 09.05.2018 is not sustainable in law as by the said action, the right of the petitioner to defend himself has been adversely affected. It is submitted that unless the documents upon which the allegations were based were furnished to him, no effective reply could be given. He has submitted that the foundation in the disciplinary proceeding being vitiated, the outcome of the same in the form of the impugned penalty is not sustainable in law.

6. The learned counsel for the petitioner has also drawn the attention of this Court to the Office Memorandum dated 28.10.1985 issued by the Ministry of Personnel and Training etc., Government of India on the issue of the dealing with a request of a delinquent for inspection of documents even in cases where enquiry is not mandatory. He has also submitted because of the impugned penalty, his future prospects in service are being adversely affected.

7. Per contra, Shri Gupta, learned CGC has submitted that the writ petition is structured on a fallacious foundation and therefore, is liable to be rejected. It is submitted that the entire action starting from the issue of memorandum of charges dated 02.05.2018 till the modification of the penalty done by the Revisional Authority vide the communication dated 01.11.2018 has been done by following the Rules and there is no illegality or irregularity at all. He has drawn the attention of this Court to the CISF Rules of 2001 and has submitted that under Rule 37 which falls under Chapter IX (Penalties and Procedure), the procedure for imposing minor penalty has been laid down. It is submitted as per the said Rule 37 holding an enquiry for imposing minor penalty is a discretion vested with the Disciplinary Authority and the only requirement is to inform the

enrolled member in writing of the imputations of misconduct on which a minor penalty is proposed to be taken. The further requirement is to give a reasonable opportunity of making a representation. Under Rule 37(2), it is however provided that if the penalty of withholding increments is likely to adversely affect the amount of pension or the same would be for a period exceeding three years or with cumulative effect for any period, an enquiry would be required. It is submitted that the case of the petitioner does not fall under Rule 37(2) and therefore, the contention of the petitioner is unsustainable in law.

8. With regard to the aspect of the Office Memorandum of the Government of India dated 28.10.1985 which the petitioner is trying to rely, Shri Gupta, the learned CGC has submitted that the said Office Memorandum is not applicable to the case in hand as the same pertains to the CCS(CCA) Rules, 1965 whereas in the instant case, a separate set of Rules are applicable, namely, the CISF Rules of 2001. It is submitted that the CISF Rules are special Rules which would prevail over the general Rules.

9. As regards the allegation / apprehension that the said penalty is having adverse affect on the service career of the petitioner, the learned CGC has submitted that in the year 2018, the petitioner has been given MACP benefits in accordance with law. Further, in the year 2023, the petitioner who was earmarked for promotion cum posting to the rank of Head Constable (GD), however he has submitted his unwillingness. The aforesaid facts have been placed before this Court by way of written instructions received vide forwarding letter dated 08.03.2025. He has also relied upon a judgment of Hon'ble Chhatishgarh High Court dated

27. 02.2013 passed in WP(C)/1588/2004 [Vipat Singh Vs. Union of India] in which, in a similar situation involving the CISF Rules it has been laid down that withholding of increments comes under Rule 34 and the procedure is laid down in Rule 37.

10. The learned CGC also submits that the powers of judicial review should be sparingly exercised in cases involving disciplinary action and only in extraordinary circumstances, such powers are required to be exercised. He accordingly submits that the writ petition is liable to be dismissed.

11. The rival contentions of the learned counsel for the parties have been duly considered.

12. The challenge is with regard to the order of imposition of penalty by the disciplinary authority which has been slightly modified by the Revisional Authority. As indicated above, the principal fulcrum on which the writ petition is based is the Office Memorandum dated 28.10.1985 of the Government of India.

13. As regards the nature of the allegations against the petitioner, the same, ex facie would constitute a definite charge. The petitioner was accordingly issued a memorandum of charges dated 02.05.2018 in respect of which, a request was

made by the petitioner to provide additional documents and to conduct a regular enquiry.

14. To examine the aforesaid aspect, it would be necessary to scrutinize the Rules holding the field. It is not in dispute that the CISF Rules, 2001 govern the services of the petitioner and under Rule 37 the procedure for imposing minor penalty has been laid down. Penalties have been defined in Rule 34 which constitute of Major Penalties and Minor Penalties. Withholding of increment of pay is a minor penalty. For ready reference, the relevant portion of Rule 37 is extracted hereinbelow –

“37. Procedure for imposing minor penalties. –

(1) No order imposing any of minor penalties specified in rule 34 shall be made except after--

(a)informing the enrolled member in writing of the imputations of misconduct or misbehaviour on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he wishes to make against the proposal;

(b)holding an inquiry, if the disciplinary authority so desires, in the manner laid down in sub-rules (3) to (22) of rule 36;

(c)taking the representation, if any, submitted by the enrolled member under clause (a) and the record of inquiry, if any, held under clause (b) into consideration; and

(d)recording the findings on each imputation of misconduct or misbehaviour.

(2)Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding 3 years or to withhold increments of pay with cumulative effect for any period an inquiry shall be held in the manner laid down in sub--rules (3) to

(22) of rule 36 before making any order imposing on the enrolled member of the Force any such penalty.

...”

15. As per Rule 37(1) (b), holding of an enquiry for withholding minor penalty is not a mandatory requirement and the discretion is vested on the disciplinary authority. Though under Rule 34 in the definition of minor penalty, the aspect of giving cumulative effect to a penalty of reduction of pay has not been specifically mentioned, Rule 37(2) however requires that for certain minor penalty which is likely to adversely affect the pension or where the period of withholding exceeds

three years or such withholding is with cumulative effect, an enquiry would be necessary as per Rule 36. In the instant case, the penalty imposed would neither adversely affect the pensionary aspect of the petitioner nor exceeds three years or has cumulative effect. Therefore, there was no requirement mandated by law upon the respondents to hold an enquiry.

16. This Court has also noticed that the original order of penalty which was for a period of three years, was modified by the Revisional Authority by reducing the period for one year. It has also been clarified in the order dated 01.11.2018 that the said reduction will have no affect on postponing future increment of pay.

17. As regards the apprehension of the petitioner of denial of the benefits connected to his service, the learned CGC has already placed on record that the petitioner has given the benefit of MACP in the year 2018 and further, that the petitioner was earmarked for promotion cum posting to the rank of Head Constable (GD) to which he has submitted unwillingness on 30.07.2023. Further, even in the years 2024 and 2025 and the DPC had considered the case of the petitioner.

18. As regards the aspect of interference with an order of penalty passed in a disciplinary proceeding by this Court in exercise of powers vested under Article 226 of the Constitution of India, it is trite law that such powers of judicial review are to be exercised in a sparing manner and only when a case of gross illegality in the form of complete departure from the Rules holding the field or blatant violation of the principles of natural justice is made out, such interference is not called for. In the instant case, no such extra-ordinary circumstances have been able to be made out.

19. Accordingly, the writ petition stands dismissed. It is however made clear that the penalty order should not come into the way at the time of consideration for conferring any service benefits to the petitioner.