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**(2015) 10 JH CK 0052**  
**In the Jharkhand High Court**  
**Case No : WP(S) No. 5423 of 2004**

Ravi Kumar Sharma

APPELLANT

Vs

The Union of India and Others

RESPONDENT

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**Date of Decision :** 08-10-2015

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

**Citation :** (2015) 4 JLJR 396

**Hon'ble Judges :** Pramath Patnaik, J.

**Bench :** Single Bench

**Advocate :** A.K. Das, for the Appellant; Nitu Sinha, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pramath Patnaik, J.—In the instant writ application, the petitioner has inter alia prayed for issuance of a writ of certiorari for quashing the order dated 24.2.2004 passed by the Inspector General Central Industrial Security Force vide Annexure-8 and for issuance of a writ in the nature of certiorari for quashing the order dated 9.2.2002 issued under the signature of DIG, CISF vide Annexures-5 & 5/1 rejecting the appeal of the petitioner and for issuance of a writ in the nature of certiorari for quashing the order of removal from service passed on 30.6.2000 by the Commandant, CISF vide Annexure-2 communicated by the Deputy Commandant (Administration) vide letter dated 4.1.2001 and for issuance of a writ in the nature of mandamus commanding and directing the respondents to reinstate the petitioner in the services with all consequential benefits. The factual matrix, as delineated in the writ application, in a nutshell is that the petitioner while continuing services in the CISF was charge-sheeted for his absence without any information or permission from his superior authorities and subsequently departmental inquiry was initiated. Since the petitioner was mentally ill and was under treatment, he could not participate in the said inquiry and the inquiry officer held ex-parte enquiry and removed the petitioner from services vide order dated 30.6.2000, which was communicated to the petitioner

by order dated 4.1.2001 vide Annexures-2 & 2/1 to the writ application. Since the period of appeal had already expired, the petitioner was left with no alternative but to approach this Court in W.P. (S) No. 5406 of 2001 and vide order dated 20.11.2001, the Hon"ble Court was pleased to direct the petitioner to file appeal within 4 weeks along with petition for condonation of delay and the same was directed to be decided by the Appellate Authority on merit vide Annexure-3 to the writ application. Pursuant to the direction of this Hon"ble Court, the petitioner submitted all relevant papers before the D.I.G., C.I.S.F., B.S.L. Unit, Bokaro on 19.12.2001 enumerating therein all the facts and circumstances causing his unauthorized absence and all material facts which could facilitate the proper hearing of his appeal as per the Annexure-4 to the writ application and Appellate Authority vide order dated 9.2.2002 rejected the appeal Of the petitioner being devoid of any merit and upheld the order passed by Commandant, CISF, on 30.6.2000 as per Annexure-5 to the writ application. Again, the petitioner filed a writ application before this Hon"ble Court in W.P.(S) No. 5846 of 2002 and the respondents took the plea of alternative remedy of filing revision and the petitioner was constrained to withdraw the writ application so as to enable him to file a revision before the Revisional Authority against the order passed in appeal as per Annexure-6 to the writ application and pursuant to the said direction, the petitioner filed a Revision under Rule 54 of CISF Rules, 2001 before the Inspector General, CISF vide Annexure-7 to the writ application and the Revisional Authority rejected the Revision Petition and upheld the order of Appellate Authority vide Annexure-8 to the writ application. Left with no other alternative, efficacious and speedy remedy, the petitioner approached this Court invoking extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

2. Heard Mr. A.K. Das, learned counsel appearing for the petitioner and Mrs. Nitu Sinha, learned counsel appearing for the respondents. Perused the records.

3. Learned counsel for the petitioner during course of argument has strenuously urged that the respondents have committed error in fact by not taking notice of the fact that the petitioner was prevented from appearing before the Inquiry Officer due to reasons beyond his control, which fact was placed before the Appellate Authority and Revisional Authority. Learned counsel further submits that the petitioner has been inflicted with major punishment based on ex-parte enquiry which is violative of principle of natural justice and also provisions of Articles 14 and 16 of the Constitution of India. Learned counsel for the petitioner further submits that the punishment imposed is harsh and disproportionate to the charges proved against the petitioner.

4. Learned counsel for the respondents, on the other hand, has assiduously countered the submissions of the learned counsel for the petitioner. During course of argument, learned counsel for the respondents has referred to the counter-affidavit filed on behalf of the respondents wherein it has been stated that the petitioner was charge-sheeted under Rule 34 of CISF Rules, 1969

(amended as Rule 36 of CISF Rules, 2001) vide charge memorandum dated 5.11.1999 and additional charge memorandum dated 3.12.1999 and for absenting without leave for a period of 40 days from 25.8.1999 to 3.10.1999 and thereafter remained absent from duty on 6.11.1999 without any information/permission till issuance of final order. It is further submitted that the petitioner is habitual in absenting without leave and overstaying from leave during his short span of service for which he has been punished four times by various disciplinary authorities, which is incorrigible. On duly conducted departmental enquiry, various alleged misconducts were categorically proved basing on documentary and oral evidences. The disciplinary authority on agreeing with the findings of the enquiry officer awarded the punishment of Removal from service upon the petitioner. The action of the disciplinary authority, appellate and revisioning authorities are entirely within the purview of rules and sustainable in the eyes of law. Learned counsel for the respondents has further submitted that absenting from duty and subsequently deserting from unit line on the part of petitioner being a member of Armed Force amounts to gross misconduct, indiscipline and highly prejudicial to good order and discipline of the Force. If petitioner had some urgent domestic work, he could have applied for leave and after due sanction of leave/permission of competent authority, he should have left unit line, which he failed to do and deserted from unit line to his detriment. Regarding his mental treatment at Health Center, Ranchi, it has been submitted that during the period of treatment from 10.11.1999 to 18.12.2000, petitioner was an outdoor patient and said to have been visited to the doctor/clinic seven times. Even if petitioner's plea is accepted, it clearly shows that the petitioner visited the Doctors at an interval of 2/3 months as an outdoor patient and he was not advised rest anywhere as per prescription. The petitioner did not get treatment in his own Unit BSL Bokaro, where medical facilities are available at free of cost. Moreover, he was under treatment of one Dr. Ashok Kumar Prasad in a private capacity. Learned counsel for the respondent has further submitted that so far as ex-parte enquiry is concerned, as per the laid down procedure the enquiry officer sent notices at the home address of the petitioner through registered post fixing different dates of enquiry directing the petitioner to appear before the enquiry officer vide letter dated 5.3.2000, 5.1.2000, 16.1.2000 and 26.1.2000 but the said notices were returned undelivered by postal authority with the remarks that the person on whom the registered letters were to be served was staying away without giving intimation about his location. Finding no other alternative, the enquiry officer was compelled to conduct the enquiry ex-parte, after observing the formalities religiously at all stages of the enquiry. On the other hand, petitioner was aware about disciplinary proceeding initiated against him since he had acknowledged the charge memorandum at his home address. Therefore, it is quite clear that the petitioner intentionally and deliberately was not present at his home town and his whereabouts were also not told by his family members to postal authority for the period from 6.11.1999 to 30.6.2000, as is evident from the remark of postal authority. Therefore, action of enquiry officer as well as disciplinary authority are entirely within the purview of rules.

5. Learned counsel for the petitioner, while buttressing his submission, has referred to the decision rendered by the Hon"ble Apex Court in the case of Geetaben Ratilal Patel Vs. District Primary Education Officer, wherein at paragraph 21, the Hon"ble Apex Court has held as under:--

"21. The appellant was appointed as Primary Teacher on 30.7.1990 and continued for nine years without any complaint till she proceeded on medical leave on 21.6.1999. She thereafter, remained absent from time to time for about 1360 days from June 1999 till the date of dismissal. The appellant has taken a specific plea that she was divorced by her husband in the year 1998 and since then she suffered mental depression. The Government Medical Board also held the appellant mentally disabled as she was suffering from 40% to 70% mental disability. The order of dismissal was passed during her mental disability in violation of Section 47(1) of the Act. In this background, the Commissioner having declared the order of dismissal as void, it was not open to the High Court to interfere with such order and to restore the illegal order of dismissal."

6. Having heard learned counsel for the respective parties and on perusal of the documents on records it appears that the impugned order of punishment dated 24.2.2004 (Annexure-8) and subsequently orders dated 9.2.2002 (Annexures-5 & 5/1), 30.6.2000 (Annexure-2) are not legally sustainable due to the following facts, reasons and judicial pronouncement:--

"(i) Admittedly, the petitioner belongs to disciplined force i.e. C.I.S.F. and due to unauthorized absence from duty, the departmental proceeding was initiated. Despite issuance of notice, the petitioner did not participate in the inquiry and the inquiry proceeding was conducted ex-parte. Basing on the inquiry report, the services of the petitioner has been dispensed with and the order of disciplinary authority has been upheld by the Appellate as well as Revisional Authority. Since, there is no procedural irregularities in conduct of the disciplinary proceeding, impugned order of Disciplinary Authority, Appellate Authority and Revisional Authority do not call for any interference.

(ii) On perusal of the impugned order, it appears that prior initiation of proceeding as disclosed in the counter-affidavit, the petitioner was habit (sic--habituated?) of absenting without leave and overstaying on leave during his short span of service for which he has been punished four times by various disciplinary authorities that the conduct of the petitioner appears to be incorrigible. Therefore, impugned order of punishment (sic--of?) removal from service being confirmed by the Appellate as well as Revisional Authority do not appear to be harsh and disproportionate to the alleged charges so as to prick the conscience of Court."

7. On the cumulative effect of the facts and reasons as stated in the foregoing paragraphs the impugned order of punishment dated 24.2.2004 (Annexure-8) and subsequently orders dated 9.2.2002 (Annexures-5 & 5/1), 30.6.2000 (Annexure-2) do not warrant for any interference by this Court. Accordingly, the

writ petition is dismissed being devoid of any merit.