

GAHC010056482017



2026:GAU-AS:3016

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7726/2017

BHUPENDRA KUMAR @ BHUPENDER KUMAR
S/O SRI RAJBEER SINGH, R/O VILL- KAZIPURA, PO- DASNA, PS- MASURI,
PIN-201001, DIST. GAZIABAD, UTTAR PRADESH

VERSUS

THE UNION OF INDIA and 6 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NORTH BLOCK,
CABINET SECRETARIAT, RAISINA HILL, NEW DELHI-110001

2:THE DIRECTOR GENERAL
CISF HEADQUARTER
BLOCK NO.13
CGO COMPLEX
LODHI ROAD
NEW DELHI-110003

3:THE INSPECTOR GENERAL
CISF NES HQRS
KOLKATA-700107
WEST BENGAL

4:THE DEPUTY INSPECTOR GENERAL
CISF UNIT
OIL DULIAJAN
DIBRUGARH
ASSAM
PIN-786602

5:THE COMMANDANT DISCIPLINARY OFFICER
CISF UNIT
DSP DURGAPUR

WEST BENGAL
PIN-713203

6:THE COMMANDANT
CISF
UNIT DSP-DURGAPUR
WEST BENGAL
PIN-713203

7:THE ASSISTANT COMMANDANT
ENQUIRY OFFICER
CISF UNIT
DSP
DURGAPUR
WEST BENGAL
PIN-71320

Advocate for the Petitioner : MR.K KALITA, MR.A SARMA,MR.S CHOUDHURY

Advocate for the Respondent : MR.B CHAKRAVARTY, ASSTT.S.G.I.,C.G.C.

BEFORE

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

24/02/2026

Heard Mr. K Kalita, learned counsel for the petitioner and Mr. B Chakravarty, learned CGC, appearing for the respondents.

2. The petitioner in the present writ petition has presented a challenge to an order dated 13.12.2013, issued by the Commandant (Disciplinary Officer), CISF Unit, DSP, Durgapur, imposing upon the petitioner the penalty of "Reduction of Pay by one (01) stage" from Rs.6990 + Rs.2000 (GP) to Rs.6720 + Rs.2000 (GP), in the time scale of pay of Rs. 5200 - Rs.20200/- + Rs.2000 (GP), for a period of 2 (two) years with immediate effect, with further directions that he will not earn increment of pay during the period of reduction and that on expiry of

this period, the reduction will have the effect of postponing his future increments of pay.

3. As projected in the writ petition, the petitioner, while being posted as a Constable (General Duty) in Central Industrial Security Force (CISF) at CISF Unit, DSP, Durgapur, was directed vide a Movement Order dated 27.08.2012 to report before the Senior Commandant, CISF, Ghaziabad on 29.10.2012 to participate in the Republic Day Parade.

It is projected that the petitioner reported in accordance with the Movement Order and participated in the Republic Day Parade. After the completion of the Republic Day Parade, the Director General, CISF granted 12 (twelve) days Special Leave to the participants of the Republic Day Parade and also 10 (ten) days Special Casual Leave to the participants of CDP-2013. The petitioner was also granted 9 (nine) days Earned Leave pursuant to his application to the said effect. Accordingly, the petitioner was granted 31 (Thirty One) days of leave, w.e.f. 13.03.2013 and he was required to rejoin his duties on 13.04.2013.

The petitioner has further projected that while he was at home during the period of leave granted to him, his wife had lodged an FIR with the Massuri Police Station, alleging, that the petitioner along with his parents and other relatives had tried to kill her, as she could not fulfill their demands for dowry. The said FIR was registered as Mahila P.S. Case Crime No. 62/2013 under Sections 498A/307 IPC read with Sections 3 and 4 of the Dowry Prohibition Act.

On registration of the said criminal proceedings against the petitioner, the petitioner was placed under arrest by the police on 16.03.2013 and on

17.03.2013, he being produced before the competent Court, he was sent to judicial custody.

The petitioner was, thereafter, enlarged on bail vide an order dated 30.10.2013 passed by the Allahabad High Court in Criminal Misc. Bail Application No. 32378/2013. The petitioner was actually released from the jail in terms of the bail granted to him by the Hon'ble Court on 16.11.2013. The petitioner projects that after being enlarged on bail, he had reported for his duty on 18.11.2013.

On conclusion of the investigation in the matter, police laid a charge-sheet against the petitioner and other accused persons under Sections 498A/307/323 IPC read with Section 3/4 of the Dowry Prohibition Act.

It is projected by the petitioner that while being under judicial custody, he had on 23.04.2013, received a summon dated 09.04.2013 from the Unit, wherein, the petitioner was directed to be present for temporary duty. The petitioner responded to the said summon on 10.04.2013 through the jail authority.

Poised thus, the petitioner on 28.10.2013, while he was in jail, received a Memorandum of Charge dated 27.08.2013, issued by the Commandant, CISF Unit, DSP, Durgapur, whereby, charge of dire negligence, incompetency and indiscipline towards duties, failure to obey the orders of senior officials and concealment of fact of arrest, came to be leveled against him.

The petitioner submitted his written statement in the matter on 29.10.2013, through the jail authority. The written statement submitted by the petitioner not being found to be satisfactory, an enquiry was directed to be held

in the matter and a Presenting Officer came to be appointed. The Enquiry Officer, on conclusion of the enquiry, submitted his report and therein, held that the Charge No. 1 leveled against the petitioner to be not proved, whereas, the Charge No. 2 was held to be proved. A copy of the said enquiry report, being furnished to him, the petitioner submitted his representation, thereto. The petitioner in his representation submitted that he had neither concealed nor tried to conceal anything, but it was due to mental tension and improper arrangement in the jail that there was some delay in intimating the Unit with regard to his detention in connection with a criminal proceeding.

The Disciplinary Authority of the petitioner not being satisfied with the reply submitted by the petitioner, holding the Charge No. 2 to have been established against the petitioner, proceeded to impose upon him a penalty of Reduction of Pay by 1 (one) stage with further directions that he would not earn increment of pay during the period of reduction and that on expiry of the said period, the reduction will have the effect of postponing his future increments of pay.

The petitioner projects that after imposition of the said penalty, in the criminal proceedings initiated against him, upon conclusion of the trial, the Court of the learned Additional Sessions Judge, Ghaziabad, vide judgment and order dated 07.05.2016, proceeded to acquit the petitioner from the charges framed against him, therein. The petitioner now having been acquitted from the criminal proceedings instituted against him, preferred a Departmental Appeal on 02.06.2016 before the Appellate Authority, however, the said appeal of the petitioner came to be rejected as being time barred. The revision petition preferred by the petitioner in the matter was also rejected as being time barred.

Being aggrieved, the petitioner has instituted the present writ petition.

4. Mr. K Kalita, learned counsel for the petitioner has submitted that vide the Memorandum of Charge dated 27.08.2013, two Articles of Charges were came to be framed against the petitioner. The Article of Charge No. 1 was held to be not proved by the Enquiry Officer and accordingly, further submissions, thereon, was not made by the learned counsel for the petitioner. With regard to the Charge No. 2, the learned counsel for the petitioner submits that the same pertains to non-furnishing of information by the petitioner about his detention in connection with a criminal proceeding instituted against him and accordingly, the petitioner was alleged to have concealed his such arrest.

4.1 Mr. Kalita, learned counsel for the petitioner submits that after his arrest on 16.03.2013, considering the nature of allegations leveled against him, the petitioner was under great mental stress and accordingly, was not in a position to promptly inform the Departmental Authorities. He submits that the petitioner, thereafter, had informed the departmental authorities on 03.04.2013. However, Mr. Kalita, submits that the Enquiry Officer did not find the said projection made by the petitioner to be acceptable and accordingly, proceeded to hold the Charge No. 2 leveled against the petitioner to be established.

4.2 Mr. Kalita, learned counsel for the petitioner has, thereafter, by referring to the order dated 13.12.2013, issued by the Disciplinary Authority, submitted that the Disciplinary Authority had accepted the findings of the Enquiry officer and proceeded to impose the penalty of Reduction of Pay by 1 (one) stage for a period of 2 (two) years with further directions that he would not earn increment of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay.

4.3 Mr. Kalita, learned counsel for the petitioner further submits that the Enquiry Officer, while drawing his conclusions in the matter, with regard to the Article of Charge No. 2 framed against the petitioner, had not taken into consideration the fact that during the period, when the petitioner was alleged to have remained absent without giving any intimation to the respondent authorities, he was in fact under detention in pursuance to his arrest in the criminal proceedings instituted against him.

4.4 Mr. Kalita, learned counsel for the petitioner has further submitted that the petitioner, herein, was placed under arrest during the period when he was on permissible leave, i.e., on 16.03.2013 and the petitioner continued to remain under detention till 16.11.2013. He further submits that immediately on being enlarged on bail, the petitioner had reported for his duties on 18.11.2013. Accordingly, he submits that the Enquiry Officer without appreciating the fact that the petitioner was in fact in jail and was not in a position to act freely, proceeded to draw conclusions that the Article of Charge No. 2 framed against him, was proved, which he submits is clearly perverse.

4.5 Mr. Kalita, learned counsel for the petitioner, by referring to the Article of Charge No. 2, as framed against the petitioner submits that the fact that the petitioner was detained in jail was known to the authorities after 06.04.2013, inasmuch as, the summon No. 1951 dated 06.04.2013, which was sent to him was returned by the postal authorities with the remark "Recipient is in jail, so returned". He submits that the respondent authorities having not denied the return of the summon, with the said endorsement made, therein, by the postal authorities, the fact that the petitioner was under detention in jail, had already come to the knowledge of the respondent authorities and accordingly, there was

no occasion for the respondent authorities to frame Article of Charge No. 2, against the petitioner, herein.

4.6 In the above premises, Mr. Kalita, learned counsel for the petitioner, submits that the penalty, as imposed upon the petitioner would mandate an interference by this Court.

5. Mr. B Chakraborty, learned CGC for the respondents has submitted that the Article of Charge No. 2, as framed against the petitioner pertains to his suppression of the fact that he was placed under arrest in connection with a criminal proceeding instituted against him. He submits that the Enquiry Officer in his enquiry report had also drawn a conclusion to the effect that it was established that the petitioner had not informed the fact that he was in jail since 16.03.2013 and thereby, tried to conceal the fact of his arrest in connection with a criminal proceeding, which is unbecoming of a member of a disciplined Armed Force. Accordingly, Mr. Chakraborty, learned counsel for the respondents submits that the said charge against the petitioner having been established in the enquiry, the Disciplinary Authority by taking a lenient view of the matter had imposed upon him a penalty of Reduction of Pay by one (01) stage for a period of 2 (two) years, with the further direction that he will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction would have the effect of postponing his future increments of pay.

5.1 In the above premises, Mr. Chakraborty, learned CGC, for the respondents submits that the petitioner, being a member of a disciplined force, ought not to have suppressed the fact of his detention and the same having been established, the penalty as imposed upon the petitioner, would not mandate an interference from this Court.

6. I have heard the learned counsels for the parties and also perused the materials available on record.

7. As noticed, hereinabove, vide a Memorandum of Charge dated 27.08.2013, a departmental proceeding came to be instituted against the petitioner basing on two Articles of charges. The Article of Charge No. 1, having held to be not established by the Enquiry Officer, the same would not mandate a further discussion. The Article of Charge No. 2 having been held to be established against the petitioner, the same, being relevant, is extracted hereinbelow:

“Description of charges leveled against Force No. 104386659 CT/GD Bhupendra Kumar (Suspended) CISF UNIT DSP DURGAPUR F Coy under Rule 36 of Rulings 2001 (Amended CISF Ruling 2007)

.....

Article of Charge No. 2

Force No. 104386659 CT/GD Bhupendra Kumar (Suspended) CISF UNIT DSP DURGAPUR F Coy (presently in jail of Distt. Jail Ghaziabad in Prisoner's Cell), was sanctioned 09 days leave (EL) w.e.f. 13.03.2013 to 03.04.2013 and 12 days Special Casual Leave. During the above leaves a Crime No. 62/13 under Section 498-A, 323/307 of IPC and 3/4 Prohibition of Dowry Act P.S. Mahila Thana, Ghaziabad was lodged against the Coy and he was arrested and taken up in custody by police on 17.03.2013. Force member could not inform promptly the above incident held with him to his unit and concealed it. So Force No. 104386659 CT/GD Bhupendra Kumar (Suspended) CISF, being member of disciplined Armed Forces, he has shown dire negligency, incompetency and indiscipline towards his duties and ignored the orders of the senior officials given by them. So the charge is proved.”

8. A perusal of the said charge would reveal that the petitioner, who was

sanctioned 9 days Earned Leave, w.e.f. 13.03.2013 to 03.04.2013 and 12 days Special Leave, was entangled in a criminal proceeding instituted against him and he was arrested and taken into custody by police on 17.03.2013. It was alleged that the petitioner had not promptly informed about his arrest to his Unit and had thereby, concealed the same. Accordingly, the petitioner was charged that he being a member of a disciplined Armed Force, he had shown dire negligence, incompetency and indiscipline towards his duty and ignored the orders of his Senior Officers. The petitioner at the time of receipt of the said Memorandum of Charge was in detention in jail in connection with the said criminal case. The petitioner was released from detention only on 16.11.2013 and he had reported for his duties on 18.11.2013.

9. In the enquiry that was held, the petitioner is found to have participated, therein and his statement was also recorded. The Enquiry Officer, on conclusion of the enquiry, forwarded his enquiry report on 27.11.2013. In the enquiry report, the Enquiry Officer, after noticing the fact of arrest of the petitioner and his release from detention on being enlarged on bail, had also noticed that the petitioner had reported for his duties on 18.11.2013.

10. Basing on the materials coming on record, the Enquiry Officer arrived at a conclusion that the Article of Charge No. 1 leveled against the petitioner was not proved. With regard to the Article of Charge-2, it was held that the petitioner had only informed his Unit for the first time about his arrest through his communication on 03.04.2013. Accordingly, it was concluded that the petitioner, having been placed under detention, w.e.f. 16.03.2013, he had not promptly intimated about the said fact to his Unit, with an intention to conceal his such detention in connection with a criminal case.

11. Accordingly, basing on the said conclusions, the Article of Charge No. 2 was held to be established. The Disciplinary Authority, thereafter, vide order dated 13.12.2013, accepting the conclusions drawn by the Enquiry Officer in his enquiry report dated 27.11.2013, proceeded to impose upon the petitioner the following penalty:

"Reduction of Pay by one (01) stage" from Rs. 6990 + Rs. 2000 (GP) to Rs. 6720 Rs. 2000 (GP) in the time scale of pay of Rs. 5200 = 20200 + Rs. 2000 (GP) for a period of two years with immediate effect with further directions that he will not earn increment of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increments of pay, which is justifiable."

12. It is to be noted at this stage that the criminal case for which the petitioner was placed under detention, after filing of the charge-sheet in the matter by the Investigating Agency, was taken up for trial and on conclusion of the trial, the learned Trial Court, vide judgment dated 07.05.2016, had acquitted the petitioner from the charges framed against him, therein. The petitioner had, thereafter, preferred an appeal in the matter against the order of the disciplinary authority, however, the said appeal was vide order dated 01.09.2016, rejected as being time bared.

13. The petitioner, thereafter, preferred a revision petition on 22.09.2016. The said revision petition was, however, rejected vide order dated 30.01.2017, on the ground of being time bared.

14. The Article of Charge No. 2, as noticed hereinabove, has only leveled an allegation against the petitioner that by not informing his Unit about his detention in connection with a criminal case, which had occasioned on

16.03.2013, he had tried to conceal the said fact from the Unit authorities. Accordingly, it was alleged that he had not acted in the manner as mandated in the matter from a member of a disciplined force.

15. This Court finds that the petitioner, while being placed under detention, by police in connection with a criminal case instituted against him, was on permissible leave. It is an admitted fact that the petitioner had not informed his Unit about his such arrest and the explanation as given by the petitioner for the same was that being in jail, he was in a confused mental condition and accordingly, could not give such information to his Unit. Further, it was projected that the arrangement for the purpose in the jail, was also not proper. However, the petitioner has contended that on accepting the situation he found himself in, he had managed to inform about his arrest to his Unit, vide his communication dated 03.04.2013, which was sent through the jail authorities.

16. This Court finds that the respondent authorities also had knowledge about the petitioner being in jail in connection with a criminal proceeding when the communication dated 06.04.2013 issued to the petitioner at his correspondence address, while on leave, was returned with an endorsement of the postal department to the effect that "Recipient is in jail, so returned". Accordingly, it cannot be said that after the arrest of the petitioner for a long period of time, the respondents were not in the knowhow of the fact that the petitioner was behind the bars. The petitioner, admittedly, being behind the bars in connection with a criminal proceeding and the same also being on account of a marital discord arising between him and his wife, the petitioner naturally would be under mental depression during the said period of time and accordingly, he cannot be held to be guilty for not having immediately informed

his Unit authorities about his such detention in connection with a criminal proceeding.

17. The department in the enquiry had also not adduced evidence to the effect that the family members of the petitioner could have forwarded the said intimation about the arrest of the petitioner to his Unit, proximate to the time of his such arrest.

18. This Court finds that the petitioner on account of his detention in connection with a criminal case in jail was prevented from making further communications in the matter with his Unit and for the same, the petitioner cannot be held to be at fault. The petitioner had duly intimated about his arrest through the Jail authorities vide a communication dated 03.04.2013.

19. In view of the above conclusions reached by this Court, this Court is of the considered view that the conclusions drawn in the matter by the Enquiry Officer in his enquiry report, was so drawn without appreciating the contentions of the petitioner that during the initial days of his detention, he admittedly, was under mental tension and also there was no proper facility in the jail to make such communication. Accordingly, this Court is of the considered view that the conclusions drawn in the matter by the Enquiry Officer stood vitiated and the same would mandate an interference from this Court.

20. The Disciplinary Authority having only proceeded to impose the penalty upon the petitioner by agreeing with the findings recorded by the Enquiry Officer with regard to Article of Charge No. 2, this Court having already concluded that the findings to the Enquiry Officer to be vitiated, is of the considered view that basing on such vitiated enquiry report, it was not

permissible for the Disciplinary Authority to impose any penalty upon the petitioner, herein. Accordingly, the order of the Disciplinary Authority would also mandate an interference.

21. The orders passed by the Appellate Authority and the Revisional Authority, being not so passed basing on the merits of the matter and being so passed by considering that the appeal and the revision as preferred by the petitioner in the matter were time barred, the order of the Disciplinary Authority, having been held to be liable to be interfered with, the further orders passed by the Appellate Authority as well as the Revisional Authority would also mandate an interference.

22. Accordingly, the order dated 13.12.2013 passed by the Disciplinary Authority, imposing the penalty of "Reduction of Pay by one (01) stage" from Rs.6990 + Rs.2000 (GP) to Rs.6720 + Rs.2000 (GP), in the time scale of pay of Rs. 5200 = Rs.20200/- + Rs.2000 (GP) for a period of 2 (two) years with immediate effect with further directions that he will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay, stands set aside along with the order dated 01.09.2016 passed by the Appellate Authority and the order dated 30.01.2017 passed by the Revisional Authority.

23. This Court having interfered with the penalty imposed upon the petitioner, the pay of the petitioner would now be called to be re-fixed by authorizing to him the increments, which he had lost on account of imposition of the said penalty. On the re-fixation of the pay of the petitioner by re-authorizing the annual increments, the petitioner had so lost, the respondent authorities shall release to the petitioner the arrears of pay now working out, within a period of

3 (three) months from the date of receipt of a certified copy of this order.

24. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant