

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 2308 of 2021

Pradeep Kumar Kushwaha, aged about 33 years, son of Lallu Ram Kushwaha, Resident of Village Singhiya, PO-Bharwari, P.S. Kokhraj, District-Kaushambi (U.P.) [Presently posted as Sub Inspector/Executive, at CISF Unit, DMRC, New Delhi, Residing at C/o Bipin Kumar, House No.178, Sector-37, P.O. Amar Nagar, Faridabad, PS-Saraikhawaja, District-Faridabad (Harayana)].

... .. **Petitioner(s)**

Versus

1. Union of India.
2. Inspector General, CISF Unit, Eastern Sector, Head Quarter at Dhurwa, PO & PS-Dhurwa, District-Ranchi (Pin-834001).
3. D.I.G., CISF Unit, CCL Kargali having its Head Quarter at CCL, Darbhanga House, PO, GPO PS-Kotwali, District-Ranchi (Pin-834001).
4. Commandant, CISF Unit, CCL Kargali PO & PS-Kargali, District-Bokaro (Pin-829104).
5. Deputy Commandant, CISF Unit, CCL Kargali PO & PS-Kargali, District-Bokaro (Pin-829104).
6. Assistant Commandant, Administration (Administrative Officer), CISF Unit, CCL Kargali PO & PS-Kargali, District-Bokaro (Pin-829104).
7. Mr. O.P. Gupta, Inspector Enquiry Officer, CISF Unit, CCL Kargali PO & PS-Kargali, District-Bokaro (Pin-829104).

... .. **Respondent(s)**

CORAM : SRI ANANDA SEN, J.

For the Petitioner(s) : Mr. Saurav Arun, Advocate
Mr. Bhanu Kumar No.1, Advocate
Ms. Ayushi, Advocate
For the Respondent(s) : Mr. Radha Krishna Gupta, CGC
Ms. Kiran Shushma Khoya, CGC
Ms. Shalini, Advocate

26/ 21st January, 2026

1. Heard, learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the Union of India.
2. The petitioner has challenged the order of punishment dated 20.04.2018 whereby the salary of the petitioner has been reduced by one time scale for two years without cumulative effect. Further, he has challenged the order dated 12.06.2018 passed by

the Appellate Authority rejecting his appeal and also order dated 06.10.2018 whereby his Revision Petition has been rejected.

3. The learned counsel appearing on behalf of the petitioner submits that solely based on the preliminary enquiry report, the petitioner has been punished. Such action of the respondents is impermissible under the settled principles of law.

The witnesses were examined behind the back of petitioner in the preliminary enquiry, and the petitioner was not allowed to cross-examine them also. He lastly submits that in absence of proper departmental enquiry, the entire proceeding is vitiated, so is the order of punishment.

4. The learned counsel appearing on behalf of the Union of India submits that there are evidence to suggests that the petitioner has over stayed beyond his permissible leave. From the materials available on record and also from the statement of the witnesses, it is clear that the petitioner who is in a disciplined force, remained unauthorizedly absent for more 53 days, thus punishment has been imposed. He submits that the punishment commensurates with the proved misconduct and this Court exercising jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the order of punishment.

5. After hearing the parties, I find that the petitioner was appointed as ASI in Central Industrial Security Force (CISF). While he was posted in an Unit of Central Industrial Security Force (CISF) at Kargali, he prayed for grant of leave. The leave was sanctioned for 04 days i.e., from 22.10.2017 to 27.10.2017. The leave was granted on the ground that his mother-in-law was ill. On 26.10.2017, the petitioner made a request to extend his leave on the ground that he fell ill. The employer did not respond to such request. Again on 11.11.2017, the petitioner intimated that since he has been hospitalized, he is not in a position to join and his leave be extended till he recovers. On 17.11.2017, he also sent an e-mail and thereafter he has forwarded the medical prescriptions and documents. The respondents directed the petitioner to submit a report, which the petitioner submitted on 02.12.2017. As the petitioner did not join within the prescribed period, which he was

supposed to, the respondents conducted a preliminary enquiry. On 08.01.2018, the report was submitted wherein, it was opined that his absence was not willful and was beyond his control, as the petitioner was undergoing treatment. Thereafter, again another preliminary enquiry was conducted and on 21.05.2018, as per the said report, the Preliminary Enquiry Officer found the allegation against the petitioner to be *prima facie* correct. The report concluded that the petitioner remained unauthorizedly absent beyond the prescribed period. On 09.03.2018, i.e., much after the two preliminary reports, the petitioner was charge-sheeted. The petitioner replied to the charge on 18.03.2018. The respondents thereafter, on 20.04.2018, passed the impugned order of punishment whereby the salary of the petitioner has been reduced to one time scale for two years without cumulative effect. The petitioner filed a departmental appeal which was rejected on 12.06.2018. The statutory revision also stood rejected on 06.10.2018 which led to this writ petition.

6. It is an admitted case of the parties that the petitioner was granted leave for four days i.e., from 22.10.2017 to 27.10.2017. It is the allegation of the respondents that the petitioner had over stayed and admittedly the petitioner did not join on 28.10.2017. The petitioner informed his employer that since he has not well and later on hospitalized, his leave needs to be extended. The petitioner also provided the medical prescriptions and other documents, but there was no reply from the side of the respondents.

7. Since according to the respondents, the petitioner was unauthorizedly absent and the same amounts to misconduct under the Rules, thus the respondents wanted to proceed against the petitioner.

8. The fact which emerges from the documents is that before issuing the departmental charge-sheet against the petitioner, the respondents conducted two preliminary enquiries. Report of the first preliminary enquiry is dated 08.01.2018 and thereafter second is dated 25.01.2018. Perusal of both the reports, it is clear that both are preliminary enquiry reports. From the

documents attached, I find that the person who conducted the preliminary enquiry, recorded statement of several persons including that of the petitioner. Some of those statements are also on record. After going through these statements, I find that the statement of each of the persons were recorded in absence of the petitioner. The petitioner was not also given an opportunity to cross-examine them. Further, in the first preliminary enquiry report which is dated 08.01.2018, the Enquiry Officer *prima facie* arrived at a finding that the petitioner is not at fault but the in the second preliminary enquiry report dated 25.01.2018, the other Enquiry Officer *prima facie* arrived at a conclusion that there are materials against the petitioner and that he has remained unauthorizedly absent.

9. From perusal of these two reports, there is no doubt that these are preliminary enquiry reports and not an inquiry report in the disciplinary proceeding. This finding is fortified by the admitted fact that the departmental charge-sheet was issued to the petitioner only on 09.03.2018 i.e., after these two preliminary reports.

10. A departmental proceeding starts with the charge-sheet. Once a charge-sheet is filed with specific allegation, the allegation needs to be proved in the departmental proceeding. A departmental enquiry must be held.

11. In this case, the allegation against the petitioner is that he remained unauthorized absent for 53 days. This allegation was supposed to be proved in the departmental enquiry proceeding. An Enquiry Officer who is appointed to conduct the enquiry proceeding, performs an independent nature of work which is quasi-judicial in nature. He has to independently arrive at a finding as to whether the charge which is being levelled against the delinquent employee stands proved or not. This finding has to be based on evidence either be oral or documentary. This evidence must be recorded during the departmental enquiry. Any evidence or material which is recorded/collected prior to initiation of a departmental proceeding, cannot be considered by the Enquiry Officer unless the charged employee is provided with the same and

he has been given a proper opportunity to rebut and cross-examine those witnesses, whose statements are being relied upon.

12. The purpose of a preliminary enquiry is to arrive at a conclusion as to whether it is necessary to initiate a departmental proceeding or not. Once based on the report of the preliminary enquiry, the authority comes to a conclusion that it is necessary to proceed against the delinquent employee by issuing a charge-sheet, and if the delinquent employee refuses to accept the charge or denies the same, a proper regular enquiry needs to be conducted. In the said enquiry, the evidence has to be produced. The statement of the witnesses which was gathered during the preliminary enquiry cannot be used against the delinquent employee, unless those persons who had got their statements recorded in the preliminary enquiry is again called in the regular departmental enquiry and the delinquent employee is given an opportunity to cross-examine them. The documents also needs to be proved in the departmental proceedings.

13. The Hon'ble Supreme Court in the case of "**Nirmala J. Jhala v. State of Gujarat**", **reported in (2013) 4 SCC 301** held that the evidence recorded in a preliminary enquiry cannot be used for regular enquiry, as the delinquent is not associated with it and the opportunity to cross-examine persons, examined in preliminary enquiry is not given. Paragraph Nos.42, 43, 44 & 45 of the said judgment is quoted hereunder.

"42. A Constitution Bench of this Court in Amalendu Ghosh v. North Eastern Railway [AIR 1960 SC 992] , held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in Champaklal Chimanlal Shah v. Union of India [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under : (AIR p. 1862, para 12)

“12. ... There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [, nor prior to that].”

(emphasis added)

(See also Govt. of India v. Tarak Nath Ghosh [(1971) 1 SCC 734 : AIR 1971 SC 823. Ed. : See paras 10 to 14 thereof in SCC where the distinction between a preliminary and regular enquiry has been discussed. Tarak Nath Ghosh has however been overruled on other points in P.R. Nayak v. Union of India, (1972) 1 SCC 332 and T.V. Nataraj v. State of Karnataka, (1994) 2 SCC 32.] .)

44. In Narayan Dattatraya Ramteerthakhar v. State of Maharashtra [(1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148] this Court dealt with the issue and held as under:

“... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence.”

(emphasis added)

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.”

14. In the case of **"Satyendra Singh vs State of Uttar Pradesh and Another"** reported in **2024 SCC OnLine SC 3325 SSC**, the Hon'ble Supreme Court relying upon the judgment of **Nirmala J. Jha (supra)**, has concluded that a report of the preliminary enquiry cannot be the sole basis of punishment.

15. In the case of **"Roop Singh Negi v. Punjab National Bank"**, reported in **(2009) 2 SCC 570**, the Hon'ble Supreme Court had held that in the departmental proceeding, the charges have to be proved by leading evidence. Even if the case is based on the documentary evidence, there must be some oral evidence to prove the documents and the contents thereof. Without any proof, the delinquent employee cannot not be punished. In this case it was further held that mere production or documents is not enough, the contents of the evidence has to be proved as a departmental proceeding is a *quasi-judicial* proceeding and the Enquiry Officer performs a quasi-judicial function. It is necessary to quote Paragraph 14 of the said Judgment which is hereunder:-

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

16. This judgment of Roop Singh Negi has been relied upon and followed extensively by the Hon'ble Supreme Court in the case of "**State of Uttar Pradesh through Principal Secretary, Department of Panchayati Raj, Lucknow VS Ram Prakash Singh**" reported in **2025 SCC OnLine SC 891**.

17. In this case, admittedly after the departmental charge-sheet was filed against the petitioner on 09.03.2018, the petitioner did not accept the charge rather refuted the same by his reply dated 18.03.2018. Thereafter, as procedure demanded, the witnesses should have been called to prove the charge and documents should have been produce but nothing has been done in this case. Solely on the basis of the second preliminary enquiry report, which is dated 25.01.2018, the respondents punished the petitioner vide the impugned order dated 20.04.2018. Consequently, the appeal and the Revision also stood rejected. The process adopted by the respondents is unknown in law and is in utter violation of the principle of natural justice. It is important to note that even if the statement of the delinquent was recorded during the preliminary enquiry, it cannot be said to be his participation in the entire process. This is because all the other person were examined behind his back and he was not granted the chance to cross-examine them.

18. Considering what has been held above, I am inclined to allow this writ petition.

19. The order of punishment dated 20.04.2018 passed by the Disciplinary Authority, the order dated 12.06.2018 passed by the Appellate Authority and order dated 06.08.2018 passed by the Revisional Authority is hereby set aside.

20. The writ petition stands **allowed**. The petitioner is entitled for all-consequential benefits.

(ANANDA SEN, J.)

21.01.2026
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