

GAHC010000872025



2025:GAU-AS:1980-DB

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

**Case No. : WA/61/2025**

KUMAR CHETRI  
S/O SRI JOGANATH CHETRI, R/O VILL. AND P.O. GARUDHARIA, DIST.  
DIBRUGARH, ASSAM, PIN 786007

VERSUS

THE UNION OF INDIA AND 3 ORS  
REPRESENTED BY THE SECY., GOVT. OF INDIA, HOME DEPTT., NEW  
DELHI 110001

2:THE DIRECTOR GENERAL CENTRAL INDUSTRIAL SECURITY FORCE  
NEW DELHI 110003

3:THE INSPECTOR GENERAL CISF NZ  
HQRS. MAHIPALPUR NEW DELHI PIN 110037

4:THE DY. INSPECTOR GENERAL CISF  
NZ HQRS. MAHIPALPUR NEW DELHI PIN 110037

5:THE SR. COMMANDANT CISF UNIT BHEL HARIDWAR  
UTTARAKHAN PIN 24940

**Advocate for the Petitioner** : MR. B CHETRI, DOLI BORA,MS. D J BORAH

**Advocate for the Respondent** : , MR. U K GOSWAMI

**BEFORE  
HONOURABLE THE CHIEF JUSTICE  
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 19.02.2025

Date of Judgment & Order: 25.02.2025

**JUDGMENT & ORDER (CAV)**

*(N. Unni Krishnan Nair, J.)*

Heard Mr. Bimal Chetri, learned counsel, assisted Ms. Doli Bora, learned counsel, appearing on behalf of the appellant. Also heard Mr. U. K. Goswami, learned CGC, appearing on behalf of all the respondents.

**2.** The appellant, herein, by way of instituting the present intra-Court appeal, has presented a challenge to a judgment & order, dated 21.11.2024, passed by the learned Single Judge in WP(c)3747/2011.

**3.** The brief facts requisite for adjudication of the issue arising in the present proceeding, is noticed as under:

The appellant, herein, while serving as a Constable in the Central Industrial Security Force Unit, Bharat Heavy Electricals Limited, Haridwar, was issued with a memorandum of charge, dated 01.11.2016, levelling 2(two) charges against him.

The article of charge No. 1 so levelled against the appellant, herein, pertains to his unauthorized absence from duty w.e.f. 05.07.2016.

The article of charge No. 2 as framed against the appellant, herein, alleges that the appellant who was awarded 6(six) minor punishments under Rule 37 of the Central Industrial Security Force Rules, 2001, and 2(two) major punishments under Rule 36 of the Rules of 2001, for his various negligence, indiscipline and misconduct, had not reformed himself and had continued to commit negligence towards his duty and indiscipline.

The appellant, herein, on receipt of the said memorandum of charge, dated 01.11.2016, submitted his written statement of defence, thereto, on 03.12.2016. In his written statement of defence, the appellant had contended that the reason for his absence without leave(AWL), was on account of his family problems. The appellant also undertook that he will never act in such a manner in future and will do his duties. Accordingly, the appellant prayed that the proceedings so initiated against him, be dropped. The disciplinary authority not being satisfied with the written statement of defence as submitted by the appellant, herein, in the matter; directed for holding of a departmental inquiry with regard to the charges so levelled against the appellant, herein.

In the inquiry so conducted by the Inquiry Officer, several departmental witnesses were examined. The appellant, however, did not adduce any evidence in his defence in the said departmental inquiry.

The Inquiry Officer, upon conclusion of the inquiry so conducted in the matter; submitted his report on 26.12.2016, by holding both the charges so levelled against the appellant, herein, to be proved.

The Inquiry Report was forwarded to the appellant, herein, by his disciplinary authority, vide a communication, dated 03.01.2017. The appellant submitted his representation against the Inquiry Report, on 21.01.2017, and therein, reiterated that he was required to remain absent from his duties without leave w.e.f. 05.07.2016, till 23.11.2016, on account of certain family problems.

The disciplinary authority of the appellant, herein, on considering the Inquiry Report; the materials coming on record in the inquiry; as well as the representation submitted by the appellant, herein; agreed with the findings and conclusions reached by the Inquiry Officer in the matter.

The disciplinary authority, thereafter, by holding that the appellant, herein, had demonstrated gross negligence, indiscipline and disobedience to the orders of his superiors as well as his careless attitude towards his duties tarnishing the image of the Force, proceeded vide order, dated 31.01.2017, to conclude that the charges proved against the appellant, being very serious in nature and he having not improved his conduct inspite of penalties being imposed upon him, earlier; imposed upon the appellant, the penalty of "Removal from service".

The appellant, herein, being aggrieved with the imposition of the penalty as imposed upon him by the disciplinary authority vide order, dated 31.01.2017, proceeded to prefer an appeal on 01.02.2019. The appellate authority, thereafter, on considering the appeal as submitted by the appellant in the matter and finding the same to have been so preferred in violation of the prescription in this connection in Rule 47 of the Central

Industrial Security Force Rules, 2001; proceeded to reject the same, vide order, dated 25.03.2019, as being time barred.

The appellant, herein, thereafter, filed a second appeal in the matter, on 08.05.2019. However, the respondent authorities, vide communication, dated 27.05.2019, informed the appellant, herein, that his appeal, dated 01.02.2019, having already been disposed of by the appellate authority, as being time barred, vide order, dated 25.03.2019; no second appeal was permissible to be entertained in the matter. However, the appellant was informed that he may prefer a revision petition before the Inspector General, Central Industrial Security Force, Hqrs., New Delhi.

The appellant, herein, accordingly, preferred a revision petition before the revisional authority. The said revision petition was rejected by the revisional authority vide order, dated 14.01.2020, upholding the order passed by the disciplinary authority.

Being aggrieved by the order, dated 31.01.2017, passed by the disciplinary authority imposing upon the appellant, herein, the penalty of removal from service as well as the order of the appellate authority, dated 25.03.2019, rejecting the appeal of the appellant on the ground that it was time barred; the appellant, herein, approached the writ Court by way of instituting a writ petition being WP(c)3747/2021.

It is to be noticed that the order of the revisional authority, dated 14.01.2020, was, however, not assailed in the said writ petition.

The learned Single Judge upon considering the issues so arising in WP(c)3747/2021, was pleased, vide judgment & order, dated 21.11.2024, to dismiss the said writ petition by holding the same to be devoid of any merit.

**4.** Being aggrieved, the appellant, herein, has instituted the present proceeding before this Court.

**5.** Mr. Chetri, learned counsel for the appellant, herein, has, at the outset, submitted that the appellant was required to remain away from his duties on account of the fact that he was, during the said period of time; suffering from mental ailments and the appellant, herein, was receiving treatment for such mental ailments suffered by him from Dr. K. Zaman, MBBS, who was the Medical Officer of Dibrumukh State Dispensary, Dibrugarh, Assam. The learned counsel has further submitted that the appellant, herein, was under bed rest w.e.f. 10.07.2016, till he was declared fit by the Doctor attending on him on 07.05.2019, for resuming his service.

**6.** Mr. Chetri, learned counsel, has further submitted that the appellant, herein, was required to remain absent from his duties w.e.f. 05.07.2016 till 23.11.2016, on account of the mental ailments suffered by him and as such, the respondent authorities could not have construed the said period of such absence of the appellant, herein, for reasons beyond his control; to be unauthorized absence.

**7.** Mr. Chetri, learned counsel, has also submitted that the appellant,

herein, in the inquiry, had brought on record materials to demonstrate that he was suffering from mental ailments during the period, for which, he was charged to have remained unauthorizedly absent. However, the said materials were not considered by the Inquiry Officer in the inquiry so conducted by him in the matter.

**8.** Mr. Chetri, learned counsel, has submitted that the Inquiry Officer having not taken into consideration, relevant materials as produced by the appellant, herein, in the matter, pertaining to the mental ailments suffered by him, the Inquiry Report stood vitiated and basing on such vitiated Inquiry Report; no penalty could have been imposed upon the appellant, herein.

**9.** Mr. Chetri, learned counsel, by referring to the order, dated 31.01.2017, passed by the disciplinary authority imposing upon the appellant, herein, the penalty of removal from service, has submitted that the Inquiry Officer in the said Inquiry Report, had taken note of the penalties that were so imposed upon him in the earlier proceedings so drawn against him. The learned counsel has further submitted that the Inquiry Officer could not have taken note of the earlier penalties so imposed upon the appellant, herein, without giving him, a notice of the same.

**10.** Mr. Chetri, learned counsel, has submitted that the disciplinary authority having not put the appellant, herein, to notice that the penalties so suffered by him earlier, would also be reckoned for the purpose of determining the quantum of penalty to be imposed upon him; the order of

the disciplinary authority stood vitiated and accordingly, the same would call for an interference.

**11.** Mr. Chetri, learned counsel, by referring to the judgment & order, dated 21.11.2024, passed by the learned Single Judge in WP(c)3747/2011, has submitted that the learned Single Judge had noticed the contention of the appellant, herein, that he was suffering from mental ailments and the medical treatment received by him for the purpose; however, the learned Single Judge by noticing the contentions raised by the respondents, therein, on the issue, had refused to consider the contentions so made by the appellant, herein.

**12.** Mr. Chetri, learned counsel, has submitted that the learned Single Judge, had proceeded to dismiss the said writ petition so filed by the appellant, herein, without a proper appreciation of the facts and circumstances existing in the matter. The learned counsel, accordingly, has submitted that the impugned judgment & order, dated 21.11.2024, passed by the learned Single Judge in WP(c)3747/2011, along with the order, dated 31.01.2017, passed by the disciplinary authority as well as the order, dated 25.03.2019, passed by the appellate authority, would call for an interference.

**13.** In support of the submissions as made above by Mr. Chetri, learned counsel, he has relied upon the following decisions of the Hon'ble Supreme Court:

- (i). Kashinath Dikshita v. Union of India & ors., reported in (1986) 3 SCC 229;**

**(ii). Indu Bhushan Dwivedi v. State of Jharkhand & anr.**, reported in **(2010) 11 SCC 278**; and

**(iii). Krushnakant B. Parmar v. Union of India & anr.**, reported in **(2012) 3 SCC 178**.

**14.** Per contra, Mr. Goswami, learned CGC, appearing for the respondents, has submitted that the plea raised by the appellant, herein, of he being suffering, during the relevant point of time, from mental ailments, was not so raised by him during the inquiry. The appellant in the departmental inquiry so instituted against him, had justified his unauthorized absence by projecting that he was required to remain absent on account of certain family problems.

**15.** Mr. Goswami, learned CGC, has further submitted that the appellant, herein, having not established that he was prevented from attending his duties for the period, in question, for reasons beyond his control; the plea now projected of the appellant, herein, of suffering during the period, in question, from mental ailments, was rightly rejected by the learned Single Judge vide judgment & order, dated 21.11.2024, passed in WP(c)3747/2011, and such a conclusion reached by the learned Single Judge, would not call for any interference.

**16.** Mr. Goswami, learned CGC, has further submitted that in the memorandum of charge, dated 01.11.2016, along with a charge of the appellant remaining on unauthorized absence, a charge with regard to the fact that the appellant, herein, had not reformed himself in his conduct inspite of being awarded 6(six) minor penalties and 2(two) major penalties

in his service career; was so framed against him.

**17.** Mr. Goswami, learned CGC, has submitted that the Inquiry Officer basing on the materials coming on record, had held both the charges so levelled against the appellant, herein, to be proved. The learned CGC has further submitted that the contention of the learned counsel for the appellant, herein, that the past conduct of the appellant, herein, was not permissible, to be so considered by the disciplinary authority while deciding the quantum of penalty to be imposed upon the appellant, without putting him to notice about the same; is clearly perverse, in-as-much as, his past conduct was already brought on record in the memorandum of charge, dated 01.11.2016, in the form of article of charge No. 2.

**18.** In the above premises, Mr. Goswami, learned CGC, has submitted that the judgment & order, dated 21.11.2024, passed by the learned Single Judge in WP(c)3747/2011, being a well reasoned one, would mandate any interference.

**19.** We have heard the learned counsels appearing for the parties and also perused the materials available on record.

**20.** The appellant, herein, was issued with a memorandum of charge, dated 01.11.2016, framing therein against him, the following charges:

**“Article of the Charge – 1**

***Force number 097353522 Constable / GD Kumar Chetri of CISF unit BHEL Haridwar was deployed at barrier number-07 to perform duty in second shift from 1300 hrs to 2100 hrs, on 05.07.2016. On the said date, the force member remained absent from the second shift-without any prior intimation and permission of the***

***competent authority, whose absence report was recorded in the Roznamacha Register. The force member was searched at places like Unit Line Complex, Shivalik Nagar Bazar, Bus Tempo Stand and BHEL Hospital etc. but the force member was not found anywhere. Further, the force member was also absent from the evening counting parade. Thereafter, five call letters were sent by registered post with acknowledgment to the permanent residence address of the force member, in which he was instructed to appear in the unit for duty immediately, but the force member did not respond to the above call letters nor did he attend the unit for duty. The Force member has been absent from the unit without sanctioning of leave since 05.07.2016 till now. Being a member of a disciplined force, this act of a force member shows negligence towards his duty, gross indiscipline and disobeying of orders issued lawfully by the competent authority. Hence the charge.***

**Article of the charge-2**

***Force No. 097353522 Constable/GD Kumar Chetri of CISF unit BHEL Haridwar has been awarded 06 minor punishments under Rule-37 of CISF Rules 2001 and 02 major punishments Under Rule- 36 for various negligence, indiscipline and misconduct committed by him during his service of short period till date, despite of that he has not improved upon his duty, discipline and conduct. Being a member of a disciplined force, this act of a force member shows dereliction of duty and gross indiscipline. Hence the charge."***

**21.** The appellant, herein, in the proceedings of WP(c)3747/2011, as well as, in the present intra-Court appeal; had not contended that he was, in any manner, prejudiced in placing his defence in the inquiry. The only contention raised was that during the period w.e.f. 05.07.2016 till 23.11.2016, i.e. the period for which, he was charged to be on unauthorized absence; the appellant, herein, was suffering from mental ailments and was advised bed rest. The appellant, herein, in support of the same, had relied upon a medical certificate issued by a Medical Officer of Dibrumukh State Dispensary, Dibrugarh, Assam. The said medical certificate reveals that the appellant, herein, was under treatment for his mental ailments w.e.f. 10.07.2016. However, the materials brought on record goes to reveal that the appellant, herein, had, without highlighting the said position; submitted his written statement of defence against the memorandum of charge, dated 01.11.2016, on 03.12.2016. In his written statement of defence; the appellant, herein, had only highlighted that he was required to remain absent on account of certain family problems.

**22.** On conclusion of the inquiry and submission of the Inquiry Report by the Inquiry Officer; the same was forwarded to the appellant, herein, by his disciplinary authority. In the representation as submitted by the appellant on 21.01.2017, against the Inquiry Report, also, the mental ailments purportedly suffered by him, was not highlighted and again, it was reiterated therein, that the absence of the appellant from his duties was on account of certain family problems. Accordingly, the contention of the appellant, herein, that he was required to remain absent from his duties on account of mental ailments as well as the medical certificate so relied upon by him, not having been so placed and examined in the inquiry proceeding; the same cannot be taken-up for consideration by us in the present intra-Court appeal.

**23.** The learned counsel for the appellant, herein, has further contended before us that the disciplinary authority in his order, dated 31.01.2017, while deciding the quantum of penalty to be imposed upon the appellant, herein; had considered the past conduct of the appellant, without putting him to notice about the same and such course of action adopted by the disciplinary authority, was contended to have the effect of vitiating the order, impugned, in the present proceeding.

**24.** The above contention would not merit an acceptance, in-as-much as, in the memorandum of charge, dated 01.11.2016, the disciplinary authority, had, by referring to the past conduct of the appellant, herein; a specific charge was framed to the effect that he had not reformed his conduct and had continued to be negligent in discharge of his duties which was not called for on the part of a member of a disciplined Force. The said

charge having been so framed against the appellant, herein; in the memorandum of charge, dated 01.11.2016, the Inquiry Officer had also recorded findings with regard to the article of charge No. 2 in his Inquiry Report and had held that the article of charge No. 2, to be also proved basing on the materials coming on record in the inquiry.

**25.** Accordingly, the disciplinary authority in his order, dated 31.01.2017, while deciding the quantum of penalty to be imposed upon the appellant, herein, having also taken into account, the past conduct of the appellant; no error can be said to have been committed in the facts and circumstances as existing in the matter. Hence, the said contention of the appellant, would also not merit acceptance.

**26.** Having considered the above conclusions, we would now examine the judgment & order, dated 21.11.2024, passed by the learned Single Judge in WP(c)3747/2011.

**27.** The learned Single Judge, on appreciating the contentions of the parties to the proceeding and also on perusal of the materials coming on record; had drawn the following conclusions:

***“11. Upon a careful scrutiny of the documents brought on record, I find that prior to initiation of the departmental proceeding/enquiry against the petitioner due to his unauthorized absence from duty during the period from 05.07.2016 to 23.11.2016 the petitioner was subjected to departmental proceedings on as many as 8 previous occasions leading to imposition of two major penalties and six minor penalties for remaining absent from duties without permission of the competent authority or for over-stay on leave. The relevant statements, narrating the details of such proceeding made in the counter-affidavit filed by the respondents, are reproduced herein below for ready reference :-***

***“As averred by the petitioner that the petitioner was under treatment of a medical officer who was holding a MBBS degree whereas the mental imbalance for which the petitioner was taking treatment required consultation***

*with a specialized doctor. Moreover, during the course of enquiry, individual never produced any such medical documents which itself reveals the lie being averred by the petitioner before this Hon'ble Court that he was suffering from mental imbalance. The petitioner in his short service of 07 years in CISF has been awarded with 02 Major penalties and 06 Minor penalties for remaining absent from duties without permission of the competent authority and for overstaying of leave. He was a habitual offender of consuming liquor and not reporting on duty on his own, which are not acceptable in a disciplined Force. He has been awarded penalty of 'Dismissal' from service in the year 2014 vide Final order No.V-15014/01/SSTPS/K/Chetri/Disc.-36/2014-1002 dated 03.04.2014 for overstaying leave (OSL) for 41 days from 05.12.2013 to 14.01.2014. But he was reinstated by the Appellate Authority i.e., DIG, CISF NZ-II HQrs Allahabad (Now Prayagraj) vide Appellate Order No.V-1101/Disc/NZ-2/Appeal/K. Chetri dated 27.06.2014 by giving him an opportunity to mend his indisciplined ways. But he did not appreciate the opportunity and again indulged in various acts of indiscipline, misconduct and dereliction of duties. Due to his act of indiscipline being absent from duty on 01.11.2014; 02.11.2014 and 01.12.2014, he was awarded penalty of 'Removal from service' vide Final Order No.V-15014/FGUTPP/Disc-336/01/K.C./ 2015- 1794 dated 12.05.2015 by the disciplinary authority but, this time again reinstated by the Reviewing Authority vide Review Order No.V-11014/Revision-42/Disc/NS/15/5195 dated 28.04.2016 by giving the petitioner another opportunity to value the importance of the Government job and discipline in Force, but the petitioner again made mockery of the discipline of the uniformed Force by remaining absent without leave (AWL) for 142 days without permission of the competent authority and after his Appeal and Revision petitioner have been rejected by the Appellate and Revisional Authority, the petitioner has approached this Hon'ble High Court with bundle of lies for making mockery of a disciplined Force again, which gave the petitioner more than ample opportunities to mend his indisciplined ways but failed to exaggeratedly which certify his indisciplined acts and misconduct. Thus, the Writ Petition filed by the petitioner being devoid of merit is liable to reject."*

**12.** *The above statements of the respondents made in the counter-affidavit have not been denied by the writ petitioner. If that be so, this Court finds substance in the plea taken by the respondents that the petitioner is a habitual offender, who had remained absent from duty unauthorisedly and overstayed his leave on a number of occasions in the past.*

**13.** *In so far as the allegation of violation of procedural safeguard while conducting the departmental proceeding is concerned, it is to be noted herein that Rule 36 of the CISF Rules, 2001 lays down the procedure to be followed for imposing major penalty. On a careful reading of the Rules, in the light of the materials available on record, I find that the departmental authorities have scrupulously followed the rules before issuing the order of penalty dated 31.01.2017 removing the petitioner from service. It is to be noted herein that this is not a case where the petitioner had denied the allegations brought against him. Therefore, ordinarily there would be no necessity for the authorities to hold an enquiry in the matter. Notwithstanding the same, a proper enquiry was held in this case whereby, the charges brought against the petitioner, wherein the petitioner was given ample opportunity to present his case, were held to have been proved based on the evidence brought on record. The petitioner has failed to show any perversity in the enquiry report. Even after the enquiry report was submitted, the disciplinary authority had forwarded a copy of the same to the petitioner, in respect of which, he had also made his reply. Therefore, I do not find*

**violation of any procedural norms in this case prejudicing the rights and interest of the petitioner in any manner.**

**14. Coming to the plea of the petitioner of having suffered from mental imbalance during the relevant period, it deserves to be mentioned herein that no such plea was taken by the petitioner during the enquiry proceeding. The petitioner has also failed to submit any authentic medical document from any specialist doctor indicating the nature and extent of his mental imbalance, if any, nor is there any explanation as to why, instead of deserting the Unit, the petitioner could not have sought medical treatment at Haridwar itself which had the facilities of treating patients with mental problem. If he was really suffering from any such ailment, the petitioner ought to have sought medical help at Haridwar itself. In such view of the matter, the above plea of the petitioner, in the opinion of this Court, is not believable and hence, does not deserve consideration by this Court.**

**15. Rule 47 of the Rules of 2001 prescribes that an appeal against an order of penalty under Rule 46(3) can be entertained only if it is submitted within a period of 30 days from the date on which the appellant had receive a copy of the order appealed against. In the present case, the appeal was admittedly and evidently preferred beyond the period of 30 days and therefore, the same was rightly declined by the Appellate Authority by its order dated 25.03.2019. Having gone through the order, I do not find any infirmity in the order passed by the Appellate Authority.**

**16. Coming to the order dated 14.01.2020 passed by the Revisional Authority rejecting the revision filed by the petitioner, here also, it must be noted that the petitioner has not challenged the order dated 14.01.2020 in this writ petition although a copy of the order dated 14.01.2020 had been brought on record by the respondents through their counter-affidavit. Be that as it may, after going through the order dated 14.01.2020, I am of the view that the Revisional Authority has rightly exercised his discretionary power and rejected the revision preferred by the petitioner. Therefore, the order dated 14.01.2020 also does not call for any interference from this Court.**

**17. Coming to the decisions relied upon by Mr. Chetri in support of his case, as has been observed herein above, this Court does not find any procedural violation or violation of the principles of natural justice in conducting the enquiry proceeding against the petitioner. Consequently, the impugned order dated 31.01.2017 is also found to be in consonance with the mandate of Rule 36 of the CISF Rules, 2001. Since there is no element of doubt in the present case that the petitioner is, in fact, guilty of misconduct of AWL hence, the question of perversity of the enquiry report also does not arise in the facts of the present case. Notwithstanding the same, it is seen from the records that the charges brought against the petitioner have been proved by sufficient and cogent evidence brought on record. Under the circumstances, I am of the opinion that the decisions relied upon by Mr. Chetri, would be of no assistance to him in the facts and circumstances of the present case.”**

**28.** Basing on the said conclusions; the learned Single Judge proceeded to dismiss the writ petition being WP(c)3747/2011, holding the same to be

devoid of any merit.

**29.** We, on a careful scrutiny of the conclusions reached by the learned Single Judge; find that the same are well-reasoned and based on materials available on record. We are not persuaded by the submissions made by the learned counsel for the appellant, to take a contrary view in the matter than that has been so taken by the learned Single Judge vide the judgment & order, dated 21.11.2024, in WP(c)3747/2011. Accordingly, for the foregoing discussions, we are of the considered view that judgment & order, dated 21.11.2024, passed by the learned Single Judge in WP(c)3747/2011, would not call for any interference.

**30.** In view of the conclusions reached by us, hereinabove: the decisions relied upon by the learned counsel for the appellant in the matter, is not being discussed, in-as-much as, we are of the considered view that the said decisions would not advance the case of the appellant, herein.

**31.** In view of the above; the instant writ appeal is held to be bereft of any merit and accordingly, the same is hereby dismissed. However, there shall be no order as to costs.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**