

GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 199

OF 199 2001

Applicant(s)

Sri. Jayanta Kr. Sahie

Respondent(s)

UOI & OSA

Advocate for Applicant(s)

Mr. D. Mazumdar, N. Barnah, S. Saikia,

Advocate for Respondent(s)

C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time. Condonation Petition is filed vide M.P.N. for Rs 50/- deposited vide IPO/BD No 66-792675. Dated 23/5/01.</p> <p>Dy. Registrar.</p> <p>Requisites for hearing filed.</p> <p>Notice intimated and sent to D/S for D.O.M. the Respondent No. 1, to D.O.M. by Regd. A.D.L. vide S.I.No. 101.</p>	28.5.01	<p>Heard Mr. D. Mazumdar, learned counsel for the applicant. The application is admitted. Call for the records.</p> <p>Also, heard Mr. D. Mazumdar, learned counsel for the applicant and Mr. B.C. Pathak, learned Addl. C.G.S.C. on the stay matter.</p> <p>Issue notice as to why an interim order shall not be passed as prayed for, returnable by three weeks. In the meantime, the respondents are directed, more for the respondent No.2 is directed not to take any final decision of enhancing the penalty as proposed in the notice No. V-11014/32/SZ/LC/SWS/2000/3042 dated 01 April/May, 2001.</p> <p>List on 21-6-2001 for orders.</p>

Vice-Chairman

bb

do

Dr. H. K. Deka

Notes of the Registry	Date	Order of the Tribunal
① Service report are still awaited.	21.6.01	<p>Mr.B.C.Pathak, learned Addl.C.G.S.C. appearing for the respondents prays for and granted four weeks time to file written statement. Learned counsel for the applicant may have two weeks time thereafter to file rejoinder.</p> <p>List on 22-8-2001 for further orders. Interim order shall continue till then.</p> <p>IC Usha Member</p>
<u>Copy of order dtd 21/6/01 communicated to the parties concerned. Vide D/Mu</u> <u>----- dtd</u> <u>Br 22/6/01.</u>	bb	<p>Vice-Chairman</p>
No. left has been filed.	22.8.01	<p>AS 22/6/01</p> <p>List again on 20/9/01 to enable the respondents to file written statement. Meanwhile the interim order shall continue.</p> <p>IC Usha Member</p>
No. written statement has been filed.	20.9.01	<p>Vice-Chairman</p> <p>List on 19/10/01 to enable the respondents to file written statement.</p>
No. written statement has been filed.	19.10.01	<p>Vice-Chairman</p> <p>Request is made on behalf of Mr.B.C.Pathak, learned Addl.C.G.S.C for time to file written statement.</p> <p>Request is accepted. List the case on 3.12.2001 for order.</p> <p>IC Usha Member</p>
W/S on behalf of the respondents has been submitted.	3.12.01	<p>None present for the applicant. The respondents have filed written statement objecting to the application on the ground that C.I.S.F. is an armed Force for which this Tribunal has no jurisdiction. Issue notice to the applicant.</p> <p>List on 9.1.2002 for order.</p> <p>⑥ Member (J)</p>
<u>Copy of order dtd 3/12/01. Communicated to the parties concerned.</u> <u>Br 6/12/01 D/S ----- dtd.</u>	bb	<p>IC Usha Member (A)</p>

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O.A. No. 199/2001

Notes of the Registry	Date	Order of the Tribunal
	9.1.2002	Heard Mr. N. Baruah, learned counsel for the applicant and also Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents. In this application the applicant has assailed the legality and validity of the order of removal from service. It seems that the applicant was a member of Central Industrial Security Force as Constable before removal from the service. The member of the CISF belongs to the "other armed forces of the union." The <u>present</u> Administrative Tribunals Act, 1985 is not applicable in this case. Since the Act is not applicable, the application therefore dismissed as not maintainable leaving it open to the applicant to approach the appropriate forum as per law
<u>18.1.2002</u> Copy of the order has been sent to the Office for issuing the same to the L/Advocates for the parties <i>[Signature]</i>		<i>I C Chakrabarty</i> Member

mb

[Signature]
Vice-Chairman

es of the Registry Date Order of the Tribunal

25/5/2001

केन्द्रीय प्रशासनिक अधिकार अदायक Central Administrative Tribunal 25 MAY 2001 IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI Guwahati Bench

O. A. NO. 199 OF 2001.

Shri Jayanta Kumar Sahu

.....Applicant

- VS -

Union of India & Ors.

....Respondents.

I N D E X

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Signature

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O. A. No. OF 2001

Shri Jayanta Kumar Sahu

..... Applicant

- VERSUS -

Union of India

..... Respondents

DETAILS OF THE APPLICATION

Particulars of the Applicant

(i) Name of the applicant : Shri Jayanta Kumar Sahu

(ii) Father's name :: Late Jadunath Sahu

(iii) Age of the applicant : 29 years

(iv) Designation and Office : No.922299113 constable,
in which employed . CISF,

(v) Office Address : CISF Unit, ONGC
Nazira, Assam.

(vi) Address of service : As above.
of all notices .

Respondents with Address : 1. Union of India repre-
sented by Secretary,
Ministry of Home Affairs.

Contd.....2/-

Filed by the
Applicant
Joyanta Kr. Sahu
Through Nitinanda Baruah
Advocate
25-5-2001

2. Inspector General/ SWS

Central Industrial Security

Force (Ministry of Home Affairs)

R C F Complex, Chambar ,

Mumbai- 400074

3. Deputy Inspector General ,

CISF (MHA) South Zone, Rajaji

Bhavan, 'D' Block, Basant Nagar,

Chennai, Tamil Nadu, PIN -600090.

4. Commandant, CISF, O N G C ,

Nazira, Assam.

1. Particulars of the : i) Show Cause Notice dated

order against which 1.5.2001 (Annexure-G)

the application is made.

ii) Part of the appellate
order dated 17-11-99 and
order dated 28-12-99 treating
the intervening period of
the service of the applicant
as 'Dies-Non'.

2. Jurisdiction of the Tribunal

The applicant declares that now he is posted in Assam
as Constable, CISF, ONGC, Nazira and received the
impugned notice there as such this Hon'ble Tribunal
has jurisdiction.

3. Limitation

The application is filed within the period of limitation.

Contd.....3/-

4. Facts of the Case :

4.1 That the applicant is presently serving as No.922299113 constable of Central Industrial Security Force (CISF) Unit, ONGC Nazira. While he was serving in CISF Unit, Visakapatnam Vizag a disciplinary proceeding was drawn up against him levelling some false allegations. The article of charge is as follows :-

" An act of gross indiscipline and misconduct on the part of No.922299113 Constable J.K.Sahu of CISF Unit VSP Vizag on 27-1-99 during surprise checking of Shri S.K.Trivedi, Asstt.Commandant on 27.1.99 at about 1800 hrs in that Constable J.K.Sahu was found in possession of Rs.110/- (Rupees One hundred ten only) against the declared amount of Rs.10/- in the money declaration register maintained in the pass section, CISF Unit, VSP Vizag. This is in violation of office order No.E-42024/CISF/DC(P)/29/94- 01 dtd. 8.7.94. On being questioned about the found excess money Constable J.K.Sahu confessed that he accepted Rs.100/- from contractor as illegal gratification for issuing passes ."

4.2 That the applicant submitted his written statement of defence denying all the charges. An enquiry officer was appointed to enquire into the charges who after the completion of enquiry submitted his charge sheet holding that the charge was proved. The disciplinary authority i.e. the commandant inflicted the punishment of removal

Contd.....4/-

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from service by order dated 24th July 1999.

Copies of the enquiry report and the penalty are annexed as annexures as 'A and 'B' to this application.

4.3 That the applicant being aggrieved preferred an appeal before the Deputy Inspector General, CISF (MHA) against the punishment of removal from service stating various grounds on which the order of penalty was assailed. The applicant stated therein that due to a personal enmity the charge was ~~was~~ levelled against me. He did not possess alleged excess amount of Rs.100/- nor was it recovered from him. In fact Shri S.K.Trivedi, Asstt. Commandant/Plant assaulted him in a closed room and obtained his signature in a blank paper which was converted into the alleged confessional statement. The alleged confessional statement is written not in his hand writing. The search and seizure was illegal. Moreover the entire enquiry was vitiated because of the influence exerted on the Enquiry Officer and all the PSs by the Asstt. Commandant Shri S.K. Trivedi who was the complainant, by remaining Physically present when the PWs were examined and cross examined.

4.4 That the appellate authority i.e. the Deputy Inspector General, CISF, Considering the gravity of the allegation/charge brought against the applicant and the nature of punishment imposed on him came to the finding that the punishment was disproportionate to the gravity

Contd.....5/-

of offence. The punishment of removal from service was therefore reduced by him by order dated 17-11-99 to reduction of pay of the applicant by one stage from Rs.3275/- to Rs.3200 for a period of one year without cumulative effect. The applicant was accordingly directed to be reinstated in service. But the intervening period from the date of removal from service to the date of reinstatement was proposed to be regularised as 'Dies- Non' giving the applicant an opportunity to represent against such proposal. However the applicant's prayer invoking the provision of F R 17A for treating the period of absence aforesaid as on duty for all purposes was rejected by order dated 28-12-99.

Copies of the appeal petition, the appellate order dated 17-11-99 and order dated 28-12-99 are annexed as Annexure- 'C', 'D' and 'E' to this application respectively.

4.5 That the applicant being aggrieved preferred a revision petition before the Inspector General CISF Head Quarters (SWS) on 12-4-2000. Now this revising authority by the impugned order dated 1st May 2001 has proposed to enhance the penalty to Removal from service on the plea that the appellate authority has taken a lenient view without adequate justification on records.

Copies of the revision petition and the order of the Revising authority are annexed as annexure-F & G to this application respectively.

Contd....6/-

- 6 -

4.6 That the applicant states that the allegation of gross indiscipline and misconduct levelled against him for alleged violation of office order No.E-42024/CISF/DC(P)/ 20/94-01 dated 8-7-94 does not have any statutory force. A perusal of the contents ~~is~~ of the said order would show that the same is issued with a view only to discourage the CISF personnel to keep excess money for incidental expenses during duty hours.

In the instant case in the absence of a charge of accepting illegal gratification even assuming there was violation of the officer order dt.8-7-94 by the applicant, it can not be said that there was gross indiscipline and misconduct so as to justify the major penalty of dismissal from service.

A copy of the office order dated 8-7-94 is annexed as Annexure- H to this application.

5. Grounds for relief with legal provisions :

(a) For that the impugned order is bad in law and therefore not sustainable in as much as the findings recorded in the impugned order dated 1-5-2001 that the Appellate Authority has taken a licentient view without adequate justification and that the modification of punishment does not appear to be commensurate, are absolutely baseless, unfair and unreasonable. The Appellate Authority on careful

Contd.....7/-

consideration of the gravity of offence came to a specific finding that the punishment imposed was disproportionate as such there is no question of taking a lenient view by the Appellate Authority.

(b) For that even assuming but not admitting that the allegation of possession of money (i.e. Rs.110/-) in excess of the declared amount of money (of Rs.10/-) has been proved a major punishment of removal from service would be shockingly disproportionate because there is no allegation of accepting illegal gratification and regarding the alleged confession except the complainant i.e. P W 2 non of the PWs who were present in the place of occurrence stated anything about the confession by the applicant. As such the punishment of removal from service is excessive, arbitrary and shockingly disproportionate. The Appellate Authority has rightly modified the penalty.

(c) For that the Office Order dated 8-7-1994 does not have any statutory force and aimed at discouraging CISF Personnel from keeping excess money during duty hours and in the absence of a charge of accepting illegal gratification the alleged violation of the said Office order could not be construed as gross indiscipline and misconduct justifying the major penalty of dismissal from service.

(d) For that in the facts and circumstances of the case

the intervening period from that date of removal from service to the date of reinstatement could not be treated as Dies- Non and the applicant is entitled to have this period as on duty for practical purposes of his service.

(e) For that the provisions of rule 49 of the Central Industrial Security Force Rules, 1969 which gives unfettered and excessive power to the revising authority is ultra vires the provisions of Article 14 of the Constitution of India and therefore liable to be struck down.

(f) Details of remedies exhausted :

The applicant could not file any representation against the proposed enhancement of punishment apprehending that he would be removed from service resulting in deprivation of his means of livelihood.

6. Matters filed in any other court.

No application or petition has been filed before any other court.

7. Relief Sought :

(a) It is prayed that the impugned order show cause notice dated 1-5-2001 may be set aside and quashed ;

(b) the intervening period of the applicants service between the removal from service and the date

of reinstatement may be directed to be treated as on duty for all purposes of his service ;

(c) the provisions of rule 49 of the CISF Rules, 1969 conferring power to enhance punishment may be declared as ultra vires the Constitution of India and the same may be struck down ;

(d) the applicant may be granted any other reliefs he is entitled to under the law.

8. Interim Relief :

Further proceedings pursuant to the impugned show cause notice dated 1st May 2001 issued by the Inspector General/SWS, CISF, (M H A), may be stayed till the disposal of this application.

9. Particulars of the Postal Order :

IPG No. 6 G 792635

Date : 23-5-2001

Issued from : Director General Posts.

Payable at : Guwahati.

10. List of enclosures :

1. Annexure - A
2. Annexure - B
3. Annexure - C
4. Annexure - D
5. Annexure - E
6. Annexure - F
7. Annexure - G
8. Annexure - H

Jagantaon (or. S. Khan)

VERIFICATION

I, Shri Jayanta Kumar Sahu, aged about 29 years
S/o. Late Jadunath Sahu, resident of Konwarpur Gohain
Gaon, P.O. - Konwarpur, Dist.- Sibsagar, Assam, do hereby
verify that the statements in paragraphs 1, 2, 3, 7, 8, 9, 10
..... are true to my knowledge and
belief and those made in paragraphs 4, 5, 6, 11, 12, 13
..... are true to my information based on
records and the rest are my humble submission and
I sign this verification on 25th day of ^{May} May
May 2001 at Guwahati.

Jayanta K. Sahu.

OFFICE OF THE COMMANDANT
CENTRAL INDUSTRIAL SECURITY FORCE
(MINISTRY OF HOME AFFAIRS)

VISAKHAPATNAM STEEL PLANT,
VISAKHAPATNAM - 31 (A.P.)

No. V-15014/VSP/AD.III/Maj.1/JSK/99/5792 DATED: 24 JUNE '99

OFFICE MEMORANDUM

Subject: SUPPLY OF COPY OF ENQUIRY REPORT OF THE E.O. : REC

Reference charge memorandum No. V-15014/Maj. - /Disc/JSK/VSP/99/18 dated 4.2.99.

2. The report of the Enquiry Officer is enclosed. The Disciplinary Authority will take a suitable decision after considering the report. If you wish to make any representation or submission, ~~if any~~, you may do so in writing to the Disciplinary authority within 15 days of receipt of this letter.
3. This letter should be acknowledged by you.

Enclos:- Copy of enquiry report (T. D. PETER)
containing pages 01 to 41. COMMANDANT

To,

No. 922299113, Constable, : Through Coy. Commander, 'E' Coy.
J. K. Sahoo, in duplicate for service and
CISF Unit, VSP, Vizag. return the ackd. copy to this
office.

Certified to be true copy
N. Boraiah
Advocate

MINUTES OF DEPARTMENTAL ENQUIRY AND FINDINGS OF THE ENQUIRY OFFICER INSPECTOR/
EXE. J.SWAIN OF CISF UNIT VSP, VISAKHAPATNAM IN NO. 922299113
CONSTABLE J.K.SAHU, CISF UNIT VSP, VISAKHAPATNAM-31(A.P.T.L)

MINUTES OF DEPARTMENTAL ENQUIRY

INTRODUCTION:- I, CISF No. 763200011 Insp/Exe.J.Swain was appointed as enquiry
vide Commandant, CISF Unit VSP, Visakhapatnam letter No. V-15014/VSP/Ad.II/
Maj.I/JES/99-2935 dated 21.04.99, to enquiry in to the article of charge
framed against No. 922299113 Const.J.K.Sahu of CISF Unit VSP, Visakhapatnam-32
vide charge Memorandum No. V-15014/Maj/Disc/JKS/VSP/99-18 dated 04.02.99.

ARTICLE OF CHARGES:-

" An act of gross indiscipline and mis-conduct on the part of
No. 922299113 Const.J.K.Sahu of CISF Unit VSP Visakhapatnam on 27.01.99,
during surprise checking of Shri S.K.Trivedi, Asstt. Commandant on 27.01.99
at about 1800hrs. in that Constable J.K.Sahoo was found in possession of
Rs.110/- (Rupees One Hundred Ten only) against the declared amount of Rs.10/-
in the money declaration register maintained in the pass section, CISF Unit,
VSP, Visakhapatnam. This is in violation of Office order No. E-42024/CISF/DC(P)/
20/94-601 dated 08.07.94. On being questioned about the found excess money,
Const. J.K.Sahoo confessed that he accepted Rs.100/- from Contractor as
illegal gratification for issuing passes.

The case file 'A' containing page 1 to 23+5 and 'B' file containing page
1 to 33 was received on 24.04.99 from disciplinary authority. After going through
the case file it was learnt that a charge Memorandum No. V-15014/Maj./Disc/
JKS/VSP/99-18 dated 04.02.99 was sent to the charged official through I/C
pass section and it was received by the charged official No. 922299113 Const.
J.K.Sahoo submitted his written statement of defence and pleaded not guilty
of the charges. The disciplinary authority appointed Insp/Exe. V.K.Sharda
as enquiry Officer vide order No. V-15014/VSP/Ad.II/Maj/JES/99-1376 dated
22.02.99 to enquire in to the article of charges framed against charged official
Const. No. 922299113 Const.J.K.Sahoo. Insp/Exe. V.K.Sharda, E.O. sent an
enquiry notice to Const. J.K.Sahoo, charged official and PW's vide notice
No. V-15014/VSP/Disc/Maj/JES/99/'D'Coy/529 dated 25.02.99 fixing the date of
enquiry on 04.03.99 at 1000hrs. at P.P.Gate CISF Unit VSP Visakhapatnam.
The date of enquiry was changed by E.O. from 04.03.99 to 11.03.99 due to
administrative reason vide Enquiry Notice No. V-15014/VSP/DISC/Maj./JKS/99-
'D'Coy/544 dated 28.03.99. On 11.03.99 all PW's appeared before the E.O.
but the charged official did not appear for depositing evidence for which the
statements of PW's could not be recorded.

Contd.... P/-2

Again on 12.03.99 another enquiry Notice was sent to charged official Const.J.K.Sahoo and all PW's to appear for Inquiry on 16.03.99 at 1000hrs. at P.P.Gate. The Charged Official and all PW's appeared for the enquiry on 16.03.99. The Enquiry Officer recorded the first plea of the charged official and received an application with consent letter of the defence assistant, HQ/GD G.Venkatachalam of CISF Unit DCC Dankuni from the charged official. The E.O. fixed the next date of enquiry at 1000hrs. on 23.03.99 and sent Enquiry Notice to Const. J.K.Sahoo, Charged official , all the PW's and defence assistant HQ/GD G.Venkatachalam of CISF Unit DCC Dankuni(W.B.). Since, Insp/Exe. V.K.Sharda was detailed to proceed on re-inforcement duty to CISF Unit SHAR Centre, Shri B.C.Das, Insp/Exe. was appointed to Enquiry Inquiry in to the charges vide order No.V-15014/VSP/Ad.II/Maj/JKS/99-2118 dated 23.03.99. Insp/Exe.B.C.Das, issued Enquiry Notice No.CISF/VSP/EO/Raj-JKS/'B'Coy/99-339 dated 27.03.99 to charged official, all PW's and defence assistant HQ/GD G.Venkatachalam fixingxx fixing the date of Enquiry on 30.03.99 at 1000hrs. at P.P.Gate. Since, defence assistant HQ/GD G.Venkatachalam did not appear for the enquiry, the E.O. fixed the next date of enquiry on 19.04.99 after informing the charged official. Further the E.O. informed the all concerned vide Enquiry Notice No.V-15014/VSP/E.O./Maj/JKS/'B'Coy/99-268/ dated 10.04.99 that the charged official Const J.K.Sahoo is proceeding on 15 days CL and the next date of enquiry will be intimated. The E.O. Submitted an application to Disciplinary Authority expressing his inability to conduct departmental enquiry on health ground. I was appointed as Inquiry Officer in place of Insp/Exe B.C.Das by the disciplinary authority vide Commandant, CISF Unit VSP Visakhapatnam letter No.V-15014/VSP/Ad.II/Maj.I/JKS/99-2935 dated 21.04.99. On 3.5.99, I issued Enquiry Notice to charged official Const.J.K.Sahoo, all PW's and defence counsel H/C(GD) G.Venkatachalam to appear for enquiry on 17.5.99 at 1000hrs. at Quarter Master Store,CISF Unit,VSP.Visakhapatnam Vide Enquiry Notice No-V-15014/CISF/VSP/EO/Maj-JKS/99-27 dated 3.5.99 with the Instruction that the Enquiry will be conducted on day to day basis. On 17.5.99, the charged official Constable J.K.Sahoo, his defence counsel H/C(GD) G.Venkatachalam, PW-II Inspector (Exe) D.Oraon and P.W-III H/C(GD) M.J.Rao appeared for the Enquiry in Q.M store. The charged official submitted an application to the E.O to conduct the entire Enquiry proceedings in English. I recorded the first plea of the charged Official on 17.5.99 and also recorded statement of P.W.II Insp/Ex D.Oraon in presence of the charged official and his defence counsel H/C(GD) G.Venkatachalam. The P.W.II Was cross examined by the defence counsel of the charged official. P.W.II Inspector/Exe D.Oraon was asked some clarifying question by the E.O. H/C (GD) G.Venkatachalam given in writing a certificate that he is not a practising advocate and has no more than two cases in hand including this case. The Enquiry was fixed at 1000hrs on 18.5.99 at

contd...P/3

the same place. On 18.5.99 all the party including charged official, Defence counsel, PW-III H/C (GD) M.J.Rao and P.W.5V Constable Robin Kumar appeared at 1000hrs for the Enquiry. The statement of H/C(GD) M.J.Rao and Const. Robin Kumar were recorded. The defence counsel H/C(GD) G.Venkatachalam cross Examine P.W. III & P.W-5 and also re-examined P.W-III after examination by the E.O. The charged Official stated to postponed the enquiry as his defence counsel has got some appointment as defence assistant in some other case at CISF Unit, HPCL, Vizag on 22.5.99. The charged Official, defence counsel, P.W-I and P.W-IV were informed vide enquiry Notice NO.V-15015/CISF/VSP/EO/MAJ-JES/99-32 dated 22.5.99 to attend the Enquiry on 24.5.99 at 1000hrs at Q.M.Store. Accordingly the charged official, Defence counsel, H/C(GD) G.Venkatachalam and P.W-IV Constable D.G.Rao appeared for the Enquiry on 24.5.99. Statements of Constable D.G.Rao was recorded in presence of the charged official and his defence counsel H/C(GD) G.Venkatachalam. H/C(GD) G.Venkatachalam cross examined constable D.G.Rao. On 25.5.99 the statement of P.W.I Asstt. Commandant S.K. Trivedi was recorded in presence of charged official const.J.K.Sahoo and H/C (GD) # .Venkatachalam. The defence counsel H/C(GD) G.Venkatachalam cross examined P.W.I Asstt. Commandant S.K. Trivedi on behalf of the charged official. PW.I S.K.Trivedi, Asstt. Commandant exhibited Office order dated 08.07.94 as Exhibit-I and seizure Memo as Exhibit-II on which the seized currency Note numbers and denominations were written by Inspector/Exe.D.Oran during seizure on 27.1.99. The charged Official refused to sign on the seizure Memo as well as the envelop in which the seized notes of Rs.110/- was kept during seizure on 27.1.99. The envelop was opened in presence of PW.I Asstt. Commandant S.K. Trivedi, Defence counsel H/C(GD) G.Venkatachalam by the E.O as PW.I stated to Exhibit these seizure memo and currency notes and shown to the charged official const.J.K.Sahoo. P.W.I also exhibited the confession statement of the charged official dated 27.1.99 as exhibit-III.

GIST OF THE STATEMENTS OF PROSECUTION WITNESSES:

ASSTT.COMMANDANT S.K.TRIVEDI (PW-1):

Asstt. Commandant S.K.Trivedi deposed in his statement on 25.05.99 that on 27.01.99 approximately at 1800hrs. he visited pass section and directed Insp/Exe.D.Oran In-Charge of Pass Section CISF Unit VSP Visakhapatnam to search the staff working in Pass Section i.e. H/C/GD M.J.Rao, Const.J.K.Sahoo, Const. Robin Kumar and Const.D.G.Rao. Insp/E D.Oran searched the pockets and found Rs.110/- (Ruppes One hundred Ten only) from the pockets of Const.J.K.Sahoo.

Contd....P/-4

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A meagre amount was recovered from the other staff. Asstt. Commandant S.K.Trivedi directed Insp/Exe.D.Oran to bring the money declarations register. From the money declaration register it was found that Const. J.K.Sahoo has detained his pocket amount as Rs.10/- (Rupees Ten only). After checking the money declaration register it was found that there was an excess amount of Rs.100/- (Rupees One hundred only) in the pocket of Const. J.K.Sahoo which was in violation of the office order No.B-42024/CISF/DC(P)/20/94/601 dated 08.07.94. PW-1 exhibited the Office Order as exhibit-1 to PW-1. On asking by Asstt.Comdt. to Const. J.K.Sahoo apart the excess money, Const. J.K.Sahoo confessed that he accepted money from some Contractors for ~~making~~ making and issuing passes. Then the amount of Rs.110/- recovered from the pocket of Const.J.K.Sahoo was seized by Insp/Exe.D.Oran In-Charge of Pass Section and kept in a Sealed cover . PW-1 Asstt.Comdt.S.K.Trivedi exhibited the ~~carry~~ notes after opening the sealed cover in presence of charged official which was as under:-

Fifty Rupee Note - One Currency	No.7-43-095432
10(Ten) Rupee Note - Six Currency	No.86M-844740
	No.77E-673426
	No.4JA-237369
	No.75B-238684
	No.J0E-020120
	86M-844739

(Exhibit-II to PW-1)

There after he directed Insp/Exe.D.Oran, In-Charge of Pass Section to take the statement from Const.J.K.Sahoo. Insp/Exe.D.Oran recovered the statement of Const.J.K.Sahoo. He produced the statement of Const.J.K.Sahoo as Ex-III to PW-1 which was available in the case file. Asstt.Comdt.S.K.Trivedi further directed Insp/Exe.D.Oran to take the statements of the other staff whose pockets have been searched and to make a G.D.Entry. He informed ~~the~~ the matter to Commandant, CISF Unit VSP Visakhapatnam and forwarded a report to the Commandant on 28.01.99.

STATEMENT OF INSPIRE. D. ORAN PW-II

Insp/Exe.D.Oran deposed in his statement that he was detailed as In-Charge of Pass Section CISF Unit VSP Visakhapatnam on 27.01.99 at about 1800hrs. he was ordered by Asstt.Comdt. S.K.Trivedi to call all the CISF staff of Pass Section. He called HQ/GD H.J.Rao, ~~MR~~ Const.J.K.Sahoo, Const.D.G.Rao and Const.Robin Kumar in front of Asstt.Comdt.S.K.Trivedi. On the verbal order of Asstt.Comdt.S.K.Trivedi he carried out checking of Pass Section CISF SF staff and found Rs.110/- from the possession of

Contd...P/-5

Const.J.K.Sahoo which have been noticed by all other staff of Pass Section present including Asstt.Comdt.S.K.Trivedi. On money declaration register Const.J.K.Sahoo has declared on Rs.10/- as his pocket money. But Rs.110/- (Rupees One hundred Ten only) was recovered from his possession during search by him. He ~~had taken~~ made a seizure list of the money after taking the statement of Const.J.K.Sahoo. He had taken the statement of HC/GD M.J.Rao, Const.Robin Kumar and Const. D.G.Rao and made a G.D.Entry at Plant Control Room of CISF Unit WSP Visakhapatnam. On 28.01.99 he submitted the report to Asstt.Comdt. for further action. On a clarifying question by the E.O., PW-II stated that the details of the incident was recorded by him immediately after the incident at 1955hrs. on 27.01.99 on General Shift diary and he exhibited the same as exhibit -I to PW-II.

03. STATEMENT OF HC/GD M.J.Rao (PW-III)

CISF No.803390089 HC/GD M.J.Rao deposed in his statement that on 27.01.99 at about 1800hrs Asstt.Comdt. S.K.Trivedi arrived in Pass Section and stood for 2/3 minutes near Pass issue Counter. Asstt.Comdt. asked him about Insp/E D.oran of Pass Section. On the direction of Asstt.Comdt.(Pass) HC/GD M.J.Rao called Insp/E D.oran from his office. Asstt.Comdt. directed Insp/E D.oran to call the Pass Section staff and after all the CISF Staff of Pass Section reached in front of him, he ordered Insp/E D.oran to search them. Insp/E D.oran carried out searching and found Rs.110/- from Const. J.K.Sahoo. Insp/E D.oran took Const.J.K.Sahoo to his office ~~from~~ alongwith Asstt.Comdt. S.K.Trivedi. Other staff of Pass Section went to their respective counters. After in 15/20 minutes Insp/E D.oran came to Pass Section and called all the staff to came to his office room. He asked all to give their written statement ~~about~~ the money recovered from Const. J.K.Sahoo. HC/GD M.J.Rao gave his statement in English. During cross examination by the defence counsel HC/GD Venkatachalam PW-III HC/GD M.J.Rao stated that Asstt.Comdt.(Pass) directed PW-II to sent out all the contractors ~~and~~ and close the door of Pass Section. In answer to the clarifying question asked by E.O. PW-III replied that Asstt.Comdt. did not locked the door of Pass Section and confirmed the charged official.

04. STATEMENT OF CONST. D.G.RAO PW-IV

CISF No.884523358 Const.D.G.Rao of Pass Section deposed in his statement that at about 1830hrs. on 27.01.99 Asstt.Comdt.S.K.Trivedi came to Pass Section and directed Insp/E D.oran to close all the CISF

staff of Pass Section. ^{1/2} He directed Insp/E D.Oran to search pockets of Pass Section duty staff. Accordingly Insp/E D.Oran checked pockets of all the CISF Staff present and working in Pass Section and found Rs.110/- (Rupees One hundred and Ten only) from the possession of Const. J.K.Sahoo. Insp/E D.Oran took the statements of pass section CISF staff in writing. In answer to the questions during cross examination PW-IV replied that the search of persons were carried out by Insp/E D.Oran at the open hall of Pass Section. He heard Insp/E D.Oran saying to Asstt.Comdt. S.K.Trivedi that a sum of Rs.110/- was recovered from Const. J.K.Sahoo after search.

STATEMENT OF PW-V CONST. ROBIN KUMAR,

CISF No. 942294055 Const.Robin Kumar stated that on 27.01.99 at about 1800hrs. Const.B.G.Rao informed him that Asstt.Comdt.(Pass) ^{1/2} was calling all the CISF staff of Pass Section. He and all other staff came inside the room. Asstt.Comdt. sent all the Contractors out from Pass Section and close the door when Const. Robin Kumar came to Asstt.Comdt.(Pass) he saw all the staff pf of Pass Section were standing infront of him. Insp/E D.Oran carried out search to all the CISF staff of Pass Section and found Rs.110/- from Const. J.K.Sahoo. Other CISF staff of Pass Section had not more money than the money declared by them on money declaration register. There after he give his statement regarding the incident. During ~~now~~ cross examination PW-V Const. Robin Kumar replied that he had not seen who had closed the door of Pass Section. After search, the money was counted in his presence to which he has seen Rs.110/- recovered from Const. J.K.Sahoo. While the defence counsel repeatedly questioned him about the money recovered from Const. J.K.Sahoo and its denominations in subsequent questions PW-V Const. Robin Kumar explained in details stating that one Rs.50/- Note and Six 10/- (Ten) Rupee Note was recovered from the charge official during search by Insp/E D.Oran. He also replied that nothing about In-human action or compelling the charge official to give his statement by Asstt.Comdt. Pass Section happened in his presence in Pass Section.

Const. 17/

DEFENCE VERSION/WRITTEN STATEMENT

CISF No.922299113 Const. J.K.Sahoo of CISF Unit V&P Visakhapatnam was working in CISF Pass Section since January 1999 and on 27.01.99 he was entrusted in making and issuing Passes to the Contractors. On 27.01.99 pocket searching was made to the duty staff of Pass Section including Const. J.K.Sahoo by Insp/E D.oran, Pass Section In-Charge on the direction of Asstt. Commandant (pass) S.K.Trivedi. The charged official further stated that PW-II Insp/E D.oran had taken his signature on a white paper. On asking the charge official as to why he has given that his signature on a plain paper, he replied that his life was in danger and he put his signature in a plain paper. On further question as to why he has not reported the matter to Unit Commandant, charged official replied that he has informed all the facts in his reply to charge Memorandum submitted on 14.02.99. While the E.O. asked the charged official as why he has not reported this incident immediately to the Unit Commandant, he replied that it was his wish and will that when he will inform the Commandant. He stated that excess money was not recovered from his pocket. In his defence written statement the charged official stated that he and his defence counsellor HC/GD G.Venkatachalam appeared before E.O. on 17.05.99 to conduct of the enquiry proceedings in respond to the enquiry Notice issued by the E.O. The statement of PW-II Insp/E D.oran was recorded and the charged official was allowed to cross examine to PW-II Insp/E D.oran. There after the charged official stated in his statement that Insp/E D.oran PW-II carried out of search of body of the charged official as per the direction of PW-I Asstt. Comdt. S.K.Trivedi. He has stated that in his written statement that as per CISF Act 1968 and Rules 1969 no authority is empowered to carry out physical search of the Govt. servant except section 46 of Cr.P.C. and the provision of Section 47 shows that the search should be made in front of two respectable civilian persons to which PW-II Insp/E D.oran did not follow during search and acted beyond the frame work of Rules, under the stress of PW-I. PW-II Insp/E D.oran is not concerned that he along with the charged Memoranda, has not produce any documentary evidence in support of his statement. PW-II Insp/E D.oran crossed the door of Pass Section and obtained the signature of charged official on a false statement prepared by him confining the charged official in side the room. All the staff of Pass Section prepared their statement and submitted to PW-II. It seems that the charged official was not allowed to give statement of his own. Reply to question No.06 by PW-II is admitted the fact and his reply to question No.07 is supported statement of PW-II. As per the confession statement given by the charged official as shown in article of charge, const.J.K.Sahoo confessed that he accepted money from contractors, PW-II neither produced any document nor stated in person

He has also stated in his written statement that P.W-I Asstt. Commandant S.K.Trivedi,in his reply stated that at the time of confession the remaining personnel were present but they have not indicated in their statement regarding confessional statement of the charged official in support of article of charge. The earlier statement of the charged official can not be taken as fact,as the confined statement of the charged official does not bears any merit. P.W-I Asstt. Commandant S.K.Trivedi replied to question No.3 that he has not seen of his own eyes while the charged official taking money from the contractors and also stated that question No-4 is not relevant. All the staff of pass section are sub-ordinate to P.W-I and he threatened all the P.W's to deposed false statement against charged official,to which all the staff had acted accordingly. In absence of two respectable civilian witness P.W-I statement is not acceptable. P.W-I Asstt. Commandant S.K.Trivedi directed P.W.II to carry out search while he was present there along with all P.W's of the case. He can do the search himself but he did not do for which it seems that the entire report against the charged official is fabricated intentionally by P.W-I. CISF Act And Rules not permit to carry body search of person except section 46 & 47 of code of criminal procedure at the time of implementation of judicial direction. The action of P.W-I is not sustainable before the law. In absence of material evidence under Rule 3 of conduct Rules 1964 the article of charge is not established by the P.W-I. H/C(OD) M.J.Rao ,P.W-III did not produce any documentary evidence in support of his statement that the charged official confessed the excess amount and he has no knowledge about the allegation on the charged official. Q.P 24-5-99 Const.D.G.Rao, P.W-IV did not state any thing about the confession of the charged official. He did not produce any documentary evidence in support of his statement.

On 18-5-99 const.Robin Kumar appeared before the E.O and deposed nothing about the confession ~~that~~ of the charged official. He is also not aware of the allegation and did not produce any documentary evidence in support of his statement. Hence, the article of charge is not established either by documentary evidence or by the statement of any person.

FACTS ADMITTED:-

The charged Official admitted that he had taken Rs.10/- (Rupees Ten only) with him while he turned up for duties back in his reply to the charge Memorandum dated 14.2.99.

DISPUTED FACTS:-

An excess amount of Rs.100/- was recovered from the pocket of the charged official const.J.K.Sahoo which is in violation of Office order No.E-42024/CISF/DC(P)/20/94/601 dated 08.07.94 and he confessed that he accepted money from the contractors as illegal gratification for issuing passes.

DISCUSSION:-

After going through all the statements given by the prosecution witnesses, the exhibits as well as the documentary evidence available in the case file the following facts came to light.

CISF No.922299113 Const.J.K.Sahoo was working in Pass Section CISF Unit VSP Visakhapatnam since January 1999. On 27.01.99 he was entrusted with the duties of making and issuing passes to the Contractors in Pass Section. At about 1800hrs on 27.1.99, Asstt. Commandant S.K.Trivedi came to pass section and directed Inspector/Exe.D.Oran, In-charge of pass section to search all the constables and Head constable i.e., Constable Robin Kumar, Constable D.G.Rao, Constable J.K.Sahoo and Head constable M.J.Rao. Inspector/Exe. D.Oran called all the staff of pass section who came in front of Asstt. Commandant S.K.Trivedi. P.W-II Insp. D.Oran got the contractors/civilians out from the pass section on the direction of Asstt. Commandant S.K.Trivedi and shut the door. When Inspector/Exe. D.Oran searched the pocket of constable No.922299113 J.K.Sahoo a sum of Rs.110/- (Rupees one hundred ten only) was recovered which denominations are shown as under:-

Fifty Rupee Note-one. No-7 A0095432

Ten Rupee Note - six No.4JA-237369, 86K-844739, 86K-844740, 75E-231684,
77E-673426 and J0E-020120.

(Total Rupees one hundred ten only).

Other staff were having money as per their declaration in the money declaration Register, counter signed by inspector/Exe. D.Oran, in-charge of pass section.

Const. J.K.Sahoo had declared his pocket money as Rs.10/- (Rupees Ten only) which he has accepted in his reply to the charge Memorandum dated 14.2.99. On perusal of the extract copy of page No.14 of Money declaration Register it is also established that const. J.K.Sahoo had brought Rs.10/- (Rupees Ten only) as his pocket money while reporting for duties on 27-1-99. During search by Insp. D.Oran PW-II, a sum of Rs.110/- was recovered from the pocket of constable J.K.Sahoo against his pocket money of Rs.10/- declared by him in the money declaration Register. P.W.I, Asstt. Commandant S.K.Trivedi deposed in his statement that const. J.K.Sahoo was found Rs.110/- in his possession while checked by Inspector/Exe. D.Oran. P.W.II Inspector D.Oran, in his statement has stated that const. J.K.Sahoo was found with Rs.110/- (Rupees One hundred ten only) on his pocket during search made by P.W.II. Similar statements are given by P.W-III H/C(GD) M.J.Rao, PW-IV Constable D.G.Rao and Constable Robin Kumar P.W-5 of this case. P.W-I Asstt. Commandant S.K.Trivedi Exhibited the seizure list /the Envelop containing Rs.110/- showing the currency notes to the delinquent which was recovered on 27.1.99 during search as exhibit-II. When enquiry officer asked the delinquent to acknowledge the same by putting his signature

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Signature in seizure memo as well as the envelop in which the amount of Rs.110/- was kept showing denominations and currency numbers, the delinquent deliberately refused to sign on it which has been recorded on the order sheet dated 25.5.99. As per the instructions contained in Office Order No. B-42024/CISF/DC(P)/20/94/601 dated 08.07.94 every individual will give declaration in the duty register about the amount in his possession. In the instant case Constable No. 922299113 J.K.Sahoo, being a member of the Force miserable failed to comply with the above shown Office Order by possessing Rs.110/- against his declared amount of Rs.10/- in the money declaration register, which was recovered from his pocket during search by PW-II Insp/Exe D.Oran, In-Charge of Pass Section. PW-I Asstt. Comdt. S.K.Trivedi exhibited Office Order No. B-42024/CISF/DC(P)/20/94/601 dated 08.07.99 as exhibit-I in taken of proof.

On being questioned by Asstt. Comdt. S.K.Trivedi (PW-I) about possessing excess money with him than the amount declared in the money declaration register, the delinquent confessed that he had collected Rs.100/- (Rupees One hundred only) out of which M/S Mecon Co. had given Rs.20/- and rest of the amount was received by the delinquent from other companies for making the passes. The confession statement of the delinquent was recorded by Insp/Exe D.Oran in Hindi on 27.1.99 immediately after recovery of Rs.110/- from the pocket of the delinquent. The same was readover to const.J.K.Sahoo in Hindi who acknowledged and signed as correct. During cross Examination PW-II Inspector/Exe. D.Oran stated the above facts in answer to question No.6 put by the delinquent. Asstt. Commandant S.K. Trivedi P.W-I exhibited the statement of the delinquent dated 27.1.99 as exhibit-III while depositing his statement. On a clarifying question to P.W-II Insp/Exe D.Oran by Enquiry Officer, he produced the extract copy of General diary Entry No.14 dated 27.1.99 in which he had written about the confession of the delinquent ~~that~~ regarding his acceptance of Rs.100/- (Rupees One hundred only) from the contractors for making passes. He has also exhibited the same as Exhibit-I to P.W-I. As such the fact of accepting money from the contractors as illegal gratification and accepting his guilty by giving statement in written on 27.1.99 established that the delinquent is totally involved in the case and charge sheeted accordingly.

Const No.922299113 J.K.Sahoo with the help of his defence Counsel brought points regarding his honesty that he was not seen taking money from the contractors and there was no any written complaint against the delinquent. As per the statements and available documents it is established that Const. J.K.Sahoo was found Rs.110/- is Rs.100/- excess in his possession during search by Insp/Exe D.Oran on 27.01.99 He failed to produce any defence witness or documents in support of his defence that he was not having excess amount of Rs.100/- during search.

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He also alleged PW-1 in reply to his charged Memorandum that Asstt. Comdt. S.K.Trivedi fabricated a false case due to personal enmity. In reply to the charge Memorandum and putting question No.09 to PW-I, he also asked PW-I that PW-I confined that delinquent inside pass Section Office and man handled and obtained signature on a false statement which was ~~xxxxxxxxxx~~ recorded on 27.01.99. PW-I replied the same as totally false and the approach of the delinquent seems to dilute the charges by blaming his Superior Officer. During examination of the delinquent by R.O. he has stated that PW-II has taken his signature in plain paper and in question No.09 during cross examination to PW-I, the delinquent asked that his signature was taken on a false statement written by PW-II D.Ora on 27.01.99. Further he has not produced any documentary evidence in support of his defence or by any person. He is merely criticising the procedures quoting search procedure as per Section-46,47 of Cr.P.C. and silent of CISF Act 1968 and CISF Rules 1969 regarding possessing money to a certain amount which is not relevant with this case.

Keeping in view of the above shown facts and points discussed above it is established that in possession of Rs.110/- (Rupees One hundred Ten only) against the declared amount of Rs.10/- (Rupees Ten only) in the money declaration register maintained in Pass Section CISF Unit VSP Visakhapatnam violating the office Order No. B-42024/CISF/DC(P)/20/94/601 dated 08.07.94. He confessed that he accepted Rs.100/- (One hundred only) from the Contractors as illegal gratification for issuing Passes.

Findings

Considering the above discussion, I find that article of charge levelled against charge Official No.922299113 Const. J.K.Sahoo of 'E' Coy of CISF Unit VSP Visakhapatnam vide Commandant, CISF Unit VSP Visakhapatnam Memorandum No.V-15014/Maj./Disc/JMB/VSP/99-18 dated 04.02.99 stands "Proved" beyond doubt.

Kno-3
(J.SWAIN, INSP/EXE.)
ENQUIRY OFFICER.

Certified that the departmental enquiry has been conducted in accordance with the laid down Rule-34 of CISF Rules 1969.

Kno-3
(J.SWAIN)
INSP/EXE., ENQUIRY OFFICER.

OFFICE OF THE COMMANDANT
 CENTRAL INDUSTRIAL SECURITY FORCE
 (MINISTRY OF HOME AFFAIRS)

Visakhapatnam Steel Plant
 Visakhapatnam - 31 (A.P)

No.V-15014/VSP/Ad.II/Maj-1/JKS/99. 6/95/9

Dated: 24 July, 1999

FINAL ORDER

No.922299113 Const. J.K. Sahu of CISF Unit, VSP, Visakhapatnam was charge sheeted under rule 34 of CISF Rules, 1969, vide charge memorandum No.V-15014/Maj/Disc/JKS/VSP/99/18 dated 04-02-99 wherein the following charges were imputed against him:-

ARTICLE OF CHARGE:

"An act of gross indiscipline and misconduct on the part of No.922299113 Constable J.K. Sahu of CISF Unit, VSP Visakhapatnam on 27.1.99 during surprise checking of Shri S.K.Trivedi, Asstt. Commandant on 27.1.99 at about 1800 hrs. in that Const. J.K. Sahu was found in possession of Rs.110/- (Rupees one hundred ten only) against the declared amount of Rs.10/- in the money declaration register maintained in the pass section, CISF Unit, VSP Visakhapatnam. This is in violation of Office order No.E-42024/ CISF/DC(P)/20/94-601 dated 8-7-94. On being questioned about the found excess money Const. J.K.Sahu confessed that he accepted Rs.100/- from Contractor as illegal gratification for issuing passes".

02. He acknowledged the charge memorandum on 4-2-99 and submitted his reply dated 14-2-99 to the Charge Memorandum pleading not guilty of the charge levelled against him. As such it was felt necessary to appoint an Enquiry Officer to enquire into the charge. Accordingly Shri V.K.Sharda Insp/E CISF Unit, VSP, Visakhapatnam was appointed as Enquiry Officer vide Order dated 22-2-99. Since Insp/E V.K.Sharda, (Enquiry Officer) was detailed to proceed on reinforcement duty to CISF Unit, SHAR Centre, Shri B.C.Das, Insp/E was appointed as Enquiry Officer in place of Insp/E V.K.Sharda vide order dated 25-3-99. Again, since the Insp/E B.K. Das submitted an application stating his

Received 20.7.99

Certified to be true
 COPY
 N. B. Mehta
 Advocate

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inability to conduct the departmental enquiry due to his sickness, Shri J. Swain, Insp/E, VSP, Visakhapatnam was appointed as Enquiry Officer vide order dated 21-4-99 to enquire into the charge levelled against the Charged Official. The Enquiry Officer, after completing the Departmental Enquiry, submitted the Case file 'A' & 'B' alongwith his findings holding the Article of charge framed against the Charged Official as proved. To afford reasonable opportunity to the charged official, a copy of Enquiry Report was supplied to him vide letter dated 24-6-99. The charged official submitted his representation dated 10-7-99 against the Enquiry report.

3. I have carefully gone through the charge memorandum, reply to charge memorandum, report of the enquiry officer, reply of the charged official against the enquiry report and other connected documents held in the case file. I find that on 27-1-99, the charged official alongwith all other staff on duty at Pass Section were subjected to a special checking which was conducted on the instructions of AC/Plant S.K. Trivedi (PW-1 herein). It is also a fact that the PW-1 did not perform the search on the duty personnel himself, but he ordered Shri D. Oran, Insp/E, the Incharge of Pass Section (PW-2 herein) to do the search to ensure that no malpractice is indulged in by the duty personnel in the pass section. During the searching, the charged official only was found in possession of excess money to the tune of Rs.100/- in addition to the money that he declared to have brought, while mounting on duty. From the extract of Money Declaration Register produced by the Prosecution side, it was confirmed that the charged official had declared only Rs.10/- in his possession while mounting on duty. It is corroborated from the statements of all the P.Ws that excess money of Rs.100/- was recovered from the charged official during search by PW-2 in presence of PW-1. The statement given by Charged official on 27-1-99 (Exhibit-3/PW-1 herein) also shows that the charged official had collected those excess money of Rs.100/- from some firms' personnel for making the Passes. Keeping excess

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money in one's possession while on duty by CISF personnel is a violation of Office Order dated 8-7-94 (Exhibit-1/PW-1 herein). The very aim and purport of the Order issued under Exhibit-1/PW-1 is to check and curb the malpractices of taking illegal gratification, if any, among the unit personnel who have to deal with different types of personnel such as employees, Contract workers, Visitors and others who have business with the Steel Plant. The contention of the charged official during examination by the Enquiry officer that his signature was taken on a white paper while he was confined in a Room can not but be construed as no more than an afterthought of the charged official to conceal the fact and avoid responsibility for his misconduct, since there is no hint whatsoever in the statements of all the P.Ws about such confession under duress, nor is there any evidence to confirm this specious plea of the charged official. There appears no reasonable cause to implicate an innocent person in such a grave offence (as claimed by the charged official) by taking his signature in a white paper to fabricate his statement. In his reply to charge memorandum, the charged official also made a plea that PW-1 (i.e., Shri S.K.Trivedi, AC) searched him, and there after, closed the room, arrested him, kicked him, and beat him with shoes and muscle force etc. If ever such a thing other than the search happened, the charged official does not explain as to why he failed to report about it to the higher authorities. This allegation which appears to have been concocted as an after thought, being un-supported by any oral or documentary evidence does not have any real bearing on the essence of the charge being defended by the charged official, namely his possession of excess money during the search.

04. Like wise, the contention of the charged official in his reply that the charges are false and fabricated due to personal enmity is not sustainable for want of any evidence whatsoever. The reply to charge memorandum filed by the charged official contains a set of wild allegations against PW-1 which the charged official could not at all substantiate in

course of the enquiry proceedings. The contention of the charged Official during examination by Enquiry officer that he signed in the white paper because his life was in danger is nothing but a pretext to conceal the real fact, as the charged official when asked by the Enquiry Officer as to why he had not informed the matter immediately after the incident stated in his reply to the enquiry officer that it was his will and wish when to report the matter to the Unit Commander. The charged official in his reply to another question, stated that in the absence of the payee, the excess amount of Rs.100/- in his possession does not arise, and that no P.Ws has seen him taking money from any one. It is a well known fact that no person will expose himself publicly while collecting money through illegal means. Keeping this in view, an Office Order dated 08-7-94 (Exhibit-1/PW-1) was notified to check and curb such illegal activities, if any, indulged in by the Force Personnel. The said order categorically prohibited any CISF Personnel from keeping any money in excess of Rs.10/- which was to be declared during duty hours. The plea of the charged official that the entire CISF Act, 1968 and CISF Rules, 1969 does not restrict any member of the Force, as well as the charged official to keep more than Rs.10/- itself shows that he pays scant regard towards adherence to the lawful orders of the commanding officer who is responsible for the proper management and administration of the Force and for upholding high discipline and moral bearings of its members, towards which and Office Orders such as that dated 8-7-94 were issued. The charged official has conveniently glossed over the primary duty cast upon him under Sec-10 (A) of the CISF Act which bound him to "promptly obey and execute all orders lawfully issued to him by his Superior authority".

5. The plea of the charged official in his written defence statement that the search of the charged official was not conducted according to the provisions envisaged in Cr.PC is not acceptable. The charged official was searched in front of his colleagues who were marked as Pws-3,4 & 5 and in whose presence the

excess money was recovered from his possession. The plea that no authority is empowered to carry out the physical search of the Govt. Servant except under section 46 of Cr.PC is not applicable in the case of the petitioner who, being a member of the disciplined Armed Force of the Union, was searched by his superior authorities with a view to ensuring that no illegal activities under the garment of the Force was taking place in the department. The departmental action intended to implement the executive order stands distinctly justified in contrast to the provisions of Sec 46 of Cr.P.C which has no applicability in this departmental case.

6. In his representation against the enquiry report the charged official has alleged that the enquiry officer did not hold the enquiry in a very free and fair manner, but the same was nowhere alleged by the charged official nor did he protest about any such aberration during the course of enquiry. Hence there is no justification in his above plea. The contention of the charged official that the Prosecution Exhibit-3/PW-1 was supposed to be produced by PW-2 who recorded the same, but was produced by PW-1 and PW-2 did not produce any documentary evidence is not a matter of consequence relating to the fact in issue. What really matters is that the exhibit was a valid documentary piece of evidence produced in support of the allegation irrespective of who exhibited it. Moreover, since the very origin of all the incidents stemmed from the order of PW-1 to PW-2 to check the duty personnel at Pass Section, there is no irregularity in his having produced the document. I do not agree with the averment of the charged official that since the enquiry officer is a subordinate officer of the PW-1, the enquiry officer acted very partially in the entire proceedings and manipulated the enquiry minutes and also the plea that the enquiry officer is not having common knowledge to distinguish the contradictory facts. The enquiry officer has conducted the enquiry as per rules, with care and due regard to the principles of natural justice. He also discussed the defence case including cross examination at

length before arriving at his conclusion. The other pleas brought out by the charged official do not contain any new fact to disprove the charge levelled against him. The charged official was given sufficient and reasonable opportunity to defend the case, but he failed to produce any witness or evidence to disprove the charge. The undersigned, therefore, has no hesitation to agree with the findings of the enquiry officer, which is based on incontrovertible evidence.

7. The plea of the charged official that the currency notes which are prosecution exhibits were produced by PW-1 instead of PW-2 during the enquiry, does not constitute any extenuating evidence in favour of the charged official in as much as the notes were in fact recovered from his possession during search, and were the same as verified from the currency note numbers. Likewise, the plea of innocence by the charged official on the ground that no PW testified about any direct money transaction between the charged official and other parties can hardly be upheld by virtue of the fact that the excess sum of Rs.100/- was indeed found in his possession as against Rs.10/- declared by him, which is amply corroborated by the oral and documentary evidence tendered by the P.Ws, and which categorically constituted contravention of the office order dated 8-7-94. The question is not so much one of who paid what sum when to the charged official, but has to whether and why and wherefore he was found in possession of Rs.100/- in excess of Rs.10/- declared by him. The fact of his excess possession of Rs.100/- and the source thereof was admitted by him vide document (exhibit-3/PW-1), and the fact that it breached the lawful order dated 8-7-94 is a matter of record, while the beholder can not but add two and two together to indubitably conclude that the excess sum of Rs.100/- could not have been earned by the charged official except through the illegal means. Even on discounting the credibility of his retracted confession, the wealth of oral and documentary evidence tendered by the prosecution case in controvertibly establish the essence of the charge as proved beyond doubt, as concluded by the Enquiry officer.

5. It is the prime responsibility of every member of the Force to obey the lawful orders issued to him. But the charged official miserably failed to obey the lawful order in as much as he was found in possession of excess money in violation of Office Order dated 8-7-94. It is clearly established in the enquiry proceedings that the charged official was found in possession of excess money of Rs.100/- in addition to his declared amount of Rs.10/- in money declaration register while mounting duty on the same day, in violation of Office order dated 8-7-94 which clearly shows that the charged official had indulged in illegal activities which amount to a grave breach of integrity and discipline which strikes at the very root of the charter of an Armed Force of the Union, entrusted with the onerous and noble task of providing industrial Security by preventing offences, and requiring the highest standards of morality, integrity and loyalty. The indulgence of the charged official to the contrary has sadly tarnished the good image of Force besides calling for the most stringent and exemplary penalty in public interest.

9. In consideration of the above facts and circumstances of the case the undersigned holds the charged official guilty of the charge levelled against him. He has committed a serious offence that is most unbecoming of a Member of the Force. The CISF being an Armed Force of the Union, the charged official's conduct has to be considered in accordance with the dictates of a disciplined Armed Force. In such nature of conduct as established in this case, any lenient view taken by the disciplinary authority would be highly pernicious to the maintenance of discipline and decorum in the Force. The undersigned, therefore, in exercise of powers conferred under Rule 29(A) and Schedule-II thereunder read with Rule-31 (b) of CISF Rules, 1969, hereby awards the penalty of REMOVAL FROM SERVICE to No.922299113 Const. J.K.Sahu with immediate effect..

10. No.922299113 Const. J.K.Sahu is also informed that he may prefer an appeal against the above penalty, if he so desires, and the same should be addressed to the DIG(SZ) CISF Chennai within 30 days from the date of receipt of this order.

21/12/93
(T.D.PETER)
COMMANDANT

To

No.922299113 Const. : Through Coy Comdr., 'E' Coy in duplicate for service
J.K. Sahu, and return the ackd. copy to this office for record.
CISF Unit, VSP (V)

Copy to:

01. P/File of the Individual (AD.IV)
02. Accounts Sec, 3. Case file. 4. QM Sec. 5. Ad.I, III, V

From :

JAYANTA KUMAR SAHU
S/o. SRI JADUNATH SAHU
Konnerpur Gohain Gaon (Village)
Konnerpur (Post),
SIBSAGAR (DISTRICT)
ASSAM (STATE)
PIN 785 667.

To

The Deputy Inspector General
CISF (MHA) South Zone,
Rajaji Bhavan, 'D' Block,
Besant Nagar,
CHENNAI (TAMILNADU- 600 090).

SUB : Appeal against order or dismissal dt.
24-07-1999 in Proceedings No.V-15014/
VSP/Ad.II/Maj-1/JKS/99, passed by
Commandant CISF unit, Vishakapatnam
Steel Plant - Vishakapatnam.

REF : 1. Charge Memorandum No.V-15014/Maj/
Disc/JKS/VSP/99/18, dt. 04-02-1999.
2. Explanation dt. 14-02-1999.
3. Office Memorandum dt. 24-06-1999
4. Representation dt. 10-07-1999.
5. Final Order dt. 24-07-1999.

*** *** ***

I, JAYANTH KUMAR SAHU CISF No.92229913, Constable CISF
Vishakapatnam Steel Plant, Vishakapatnam, hereby submit this
appeal before your good selves for your kind consideration and
favorable decision.

STATEMENT OF FACTS :

I submit that while I was serving in CISF at
Vishakapatnam steel plant A.P. I was issued charge Memorandum dt.
04-02- 1999 where in following charge was levelled against me.

ARTICLE OF CHARGE :

An act of gross indiscipline and misconduct on the part of
No.922299113 Constable J.K. Sahu of CISF Unit, VSP, Visakhapatnam

Contd...2

*Certified to be true
Copy to Mr. Boruah
Advocate*

AB

On 27-01-1999 during surprise checking of Shri S.K. Trivedi, Asst. Commandant on 27-01-1999 at about 1800 hrs in that Const. J.K. Sahu was found in possession of Rs.110/- (Rupees one hundred ten only) against the declared amount of Rs.10/- in the money declaration register maintained in the pass section, CISF Unit, VSP Visakapatnam. This is in violation of Office order No:E-42024/CISF/DC(P)/28/94-601, dt. 08-07-1994. On being questioned about the found excess money Const. J.K. Sahu confessed that he accepted Rs.10/- from Contractor as illegal gratification for issuing passes".

Was Aled
I submit that detailed explanation dt. 14-02-1999 to
drop proceedings stating that :

On 27-01-1999 at about 1800 hours when I was in my duty Shri S.K. Trivedi, Asst. Commandant/Plant conducted a surprise checking at Pass Section located at P.P. Gate. He searched all the Constables and Head Constable present and working in the pass section. Suddenly, the Asst. Commandant closed the room and manhandled me causing injuries on my body for which I had to take treatment.

The allegations which are mentioned in the memo dt. 14-02-1999 are absolutely false and fabricated due to my innocence and personal enmity they are levelled. I belong to respectable family and ~~was~~ completed my six years duty successfully without any allegations against me. Unfortunately the above mentioned Asst. Commandant fabricated a false case of recovery more amount than declared.

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I have more respect for my duty and ~~for~~ ^{for} higher authority. I always abide the rules and regulations of the higher authority and I am law abiding citizen. The Asst. Commandant with ulterior motive in order to cover up his mistake and ~~to~~ ^{to} that I will complain of manhandling and injuries received by me to higher authorities concocted the story of recovering excess money. I obtained previous injuries by Asst. Commandants Sri S.K. Trivedi. I was admitted in K.G.H. on 27-01-1999 about 2100 hours. I took treatment for 3 days and paid Rs.1,500/- (Rupees Fifteen hundred only) towards Medical expenses. Also I lost 2 days leave due to the injuries, illness caused by Sri S.K. Trivedi, Asst. Commandant. Sri S.K. Trivedi, Asst. Commandant did not hear me properly. He took my signature on empty white paper and used it for recording my statement so called confessional statement. All the statements of witnesses are in their own handwriting but so called my confessional statement is in the hand writing of third party.

Actually on 21-01-1999 when I was in my duty I have Rs.10/- only in my pocket which is mentioned in the money declaration register. I never acted ~~against~~ ^{against} the rules and regulations of the department and also the orders of the Superior Authority. Inspite of my several repeated request he did not consider and beaten me blue and black. I also requested higher authorities to take action against Sri S.K. Trivedi Assistant Commandant but there was no response. I denied the contents of Annexure -II which is mentioned that I have received Rs.100/- from Constactors illegally for issuing of passes. I never took any money from any person. During surprise check by of Sri S.K. Trivedi, Asst. Commandant at about 1800 hrs I was found in possess of an amount of Rs.10/- only as per the money declaration register maintained in our pass section, CISF Unit, VSP, Visakhapatnam, but without

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considering the same properly proceeded further and went on appointing one enquiry officer after another who are all subordinate to PW-1 complainant in the case. At last enquiry Officer submitted Enquiry Report without conducting the enquiry in fair manner. The enquiry Officer acted in a most biased manner as PW-1 Sri S.K. Trivedi who is Assistant Commandant as enquiry Officer is subordinate to PW-1. I once again submitted detailed explanation dt. 10-07-1999 in response to office memorandum dt. 24-06-1999 against enquiry report for dropping disciplinary proceedings stating that Enquiry Officer, Inspector/Exe Shri J. Swain is subordinate office of the PW-1, Assistant Commandant Shri S.K. Trivedi, hence the Enquiry Officer acted very partially in the entire proceedings. As the PW-1 is the controlling authority of the Enquiry Officer, the enquiry minutes manipulated by the enquiry officer intentionally. Under the enumerated rules, the enquiry officer, should be very senior officer, other than all PWs of this case. Hence the entire proceedings are vitiated.

The enquiry Officer willfully not considered my written defence statement which is submitted to the enquiry office on 26-05-1999, in which all contradictions of the PW-1 are quoted by me point to point. The Enquiry Officer stated in his findings on the heading of 'DISCUSSIONS' that I refused to sign on the exhibit No.II is very false which is manipulated by the enquiry officer, because, the PW-1 did not produce the exhibit No.II. On the other hand the PW-1 is not supposed to produce these exhibits, and the PW-II was ~~not~~ supposed to produce the same exhibits if he wishes to do so. But the PW-II did not produce any exhibits in support of his statement. All these aspects are not considered by the enquiry officer wantonly.

The enquiry officer discussed in his report that the PW-1 on being questioned about the possession of excess money

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with me confessed that he collected money from contractor is not acceptable. Because except the PW-1, the other PWs No.2, 3, 4 and 5 have not stated anything on their statement, about the confession made by me during the course of enquiry. Hence sole statement of the PW-1 is not acceptable. This very fact is not discussed by the enquiry officer in his enquiry report.

Stated in my reply that I was beaten by the PW-1 very brutally and confined inside the pass section room and compelled me to sign on a white paper. This fact was very clearly brought by the cross examination of PW-II by the question No.6 and 7. The manipulated exhibit No.III was not supposed to produced by the PW-1. The PW-1 not recorded my statement on 27-01-1999 which was produced by the PW-1 as exhibit No.III.

On the other hand the PW-II did not produce any documents in support of his statement during the course of enquiry. And also the PW-1 was not supposed to produce the statement which was recorded on 27-01-1999 by the PW-II. This irregularities are not considered by enquiry and disciplinary authorities.

During the cross examination the PW-II replied to the question No.10 and 11 that the PW-1 directed the PW-II to record my statement. But I was not allowed to give my written statement at my own stress like other pass section staff. Hence it is clearly evident that the PW-1 and II confined me inside room of the pass section and obtained signature on the plain paper. The Statement obtained under coersion is no statement in the eye of law.

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were not considered by the enquiring officer. In the absence of payer/payers no one can say that the excess amount was recovered from me. In the absence of complaint of payer/payers and also in the absence of material documents the article of charge cannot be said to be proved.

I submit that once again my representation was not properly considered and Commandant CISF unit Visakapatnam Steel Plant passed final order dt. 24-07-1999 removing me from service which is illegal, arbitrary and unconstitutional for the following grounds raised.

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GROUNDS

- a) The enquiry officer who is Shri J. Swain Inspector is Subordinate to PW-I and complainant Sri S.K. Trivedi, Assistant Commandant as such entire proceedings of Enquiry Officer are conducted in biased manner which violates principles of natural justice.
- b. The so called search made by PW-I and PW-II in respect of my person and so called recovery are all false, concocted and invented for initiating present disciplinary against me lest PW-I, Sri S.K.Trivedi will be in trouble as there was ample Medical evidence, evidencing the injuries inflicted by PW-I on my body. This is nothing but invented as counter blast to suppress the incident of manhandling me by PW-I.
- c. The so called search and seizure are not valid in the eye of Law without jurisdiction and against provisions of Section 45 of Cr.P.C.

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The enquiry officer admitted in his report on the heading of 'GIST OF THE STATEMENTS OF PROSECUTION WITNESSES' that the PW-II, Inspector/Exe D. Oran not produced any currency notes as stated in his statement and also not produced any statement which was recorded by him on 27-01-1999. Hence the PW-II statement does not support the article of charge.

The PW-1, Assistant Commandant S.K. Trivedi was not supposed to produce any currency notes because, he has not searched me and he did not record any statement on 27-01-1999, hence the PW-1 is not concerned authority to produce the serial number 5 of the listed documents of Annexure-III of the charge memo.

It is clear that there was no ~~any~~ money transaction between me and others while on duty on 27-01-1999. During the course of enquiry, all PWs of this case admitted that there was no money transaction between me and others. Hence there is no possibility to find excess money from my possession.

Apart from the above stated facts, all PWs of this case had not seen any money transaction against me while on duty as stated in the article of charge. Hence it is very clearly established with the PW-1 by the question No.3. The PW-II also admitted the fact to the question No.13.

The question about the alleged excess amount Rs.100/- by whom it was paid and who was the payer/payers, these aspects
Contd. 6



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d. The statements of witnesses are inconsistent which is not considered either by enquiry officer or by the disciplinary authority.

e. The witnesses were not allowed to speak truth as PW-1 who is complainant was present during enquiry.

f. The enquiry and in fact entire disciplinary procedure were not conducted in a fair manner.

g. The disciplinary authority should have seen that PW-I and PW-II has no power to search the person of Charged Official and provisions of Section 45 of Cr.P.C in respect of search and seizure are not followed which vitiates entire proceedings.

h. The search and seizure by PW-1 is also against Article 21 and 22 of constitution of India as procedure prescribed for the same is not followed.

i. At any rate punishment imposed is shockingly excessive to the charge levelled and it cannot stand to the scrutiny of Law.

j. A person like appellant who worked for 6 years without any blemish cannot be shunted out in this fashion when his bread and butter is involved.

No. V-11014/157/99/L&R (S2) 8698
 Office of the Deputy Inspector General
 Central Industrial Security Force
 (Ministry of Home Affairs)

Annexure - D

'D' Block Rajaji Bhavan,
 Besant Nagar, Chennai-50.
 Dated: 10 Nov'99.

APPELATE ORDER

No. 922299113 Constable J.K.Sahu of CISF Unit VSP Vizag has submitted an appeal petition against the penalty of 'Removal from Service' imposed by Commandant VSP Vizag vide his final order dated 24.7.99.

2. The appellant was dealt U/R 34 on the following charge:-

ARTICLE OF CHARGE-I

'An act of gross indiscipline and misconduct on the part of No. 922299113 Constable J.K.Sahu of CISF Unit VSP Vizag on 27.1.99 during surprise checking of Shri S.K.Trivedi, Asstt.Commandant on 27.1.99 at about 1800 hrs in that Constable J.K.Sahu was found in possession of Rs. 110/- (Rupees One hundred ten only) against the declared amount of Rs. 10/- in the money declaration register maintained in the pass section, CISF Unit, VSP Vizag. This is in violation of office order No.E-42024/CISF/DC(P)/20/94-601 dtd 8.7.94. On being questioned about the found excess money Constable J.K.Sahu confessed that he accepted Rs. 100/- from contractor as illegal gratification for issuing passes".

3. As the appellant denied the charge levelled against him an Enquiry Officer was appointed and a proper enquiry was conducted to enquire into the charge. Enquiry Officer submitted his findings proving the charge. The Disciplinary Authority, to afford another reasonable opportunity to the appellant, supplied a copy of the enquiry report. The appellant has submitted a representation against the enquiry report. The Disciplinary Authority after taking into consideration all factors in the matter imposed the penalty of 'Removal from Service'.

4. I have carefully gone through the charge, enquiry report, the final order passed by the Disciplinary Authority and the points put forth in the present appeal petition. The appellant has raised the following main points among other points which are discussed seriatim:

a. The enquiry officer Inspector J.Swain is subordinate to PW-I and complainant Shri S.K.Trivedi, Asstt. Commandant, as such the entire proceedings was conducted in biased manner which violates the principles of natural justice.

... The contention of the appellant is baseless. There is no bar in conducting an enquiry by an officer subordinate to the PW. Moreover, the appellant has not raised such a point during the course of enquiry. The Enquiry Officer has extended all opportunities to the appellant to cross examine the PWs. The defence assistant helping the appellant had cross examined PW-I i.e. Shri S.K.Trivedi, Asstt.Comdt by asking 16 questions.

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Certified to be true
 Cpt - N. Borseh
 Advocate

b. The so called search made by PW-I and PW-II and so called recovery of money from the appellant are all false, concocted and invented for initiating disciplinary action last PW-I Shri S.K.Trivedi will be in trouble as there was ample medical evidence, evidencing the injuries inflicted by PW-I on the body of the appellant.

... The PW-I i.e. S.K.Trivedi, Asstt.Commandant and PW-II Inspector R.N.Ram made the search not only on the person of the appellant but also on all personnel working in the pass section. During the search the appellant alone was found having excess money than the amount what he has declared while assuming the shift duty. The story of inflicting injury by PW-I on the body of the appellant is not proved by any evidence. PW-II during cross examination by the defence assistant of the appellant had clearly denied for any assault on the appellant. The defence assistant of the appellant had ~~misleading~~ asked about the alleged assault of the appellant by PW-I from all the PWs but no one has stated that the appellant was assaulted by the PW-I. In case he was assaulted he should have brought the fact before his superior officers which he failed to do so. The allegation against the PW-I appears to be an after thought.

c. The so called search and seizure are not valid in the eye of Law without jurisdiction and against provisions of Section 45 of Cr.P.C.

... The appellant being a member of the Armed Force was searched by his superior officers with a view to ensure that no illegal activities by the CISF personnel while on duty. Hence, the provisions of Section 45 of Cr.P.C is not applicable in this case.

d. The statement of witnesses are inconsistent which is not considered either by Enquiry Officer or by the Disciplinary Authority.

... The statement of the witnesses are consistent with the case which have been elaborately discussed by the Enquiry Officer and the Disciplinary Authority in their findings.

e. The witnesses were not allowed to speak truth as PW-I who is complainant was present during the enquiry. The enquiry and in fact entire disciplinary procedure were not conducted in a fair manner.

... From the records it is seen that the proceedings were conducted in a fair & free manner, there was no question of disallowing of PWs to speak the truth in the presence of PW-I. It is also noticed that the PW-I was present during the course of enquiry only when his statement was recorded and he was not present while recording the statement of other PWs as alleged by the appellant in this para.

f. The Disciplinary Authority should have seen that PW-I and PW-II have no power to search the person of the charged official. The search and seizure by PW-I is also against article 21 and 22 of the constitution of India.

... The departmental officials have the right to check any member of the Force who is on duty to see whether he was indulging in any malpractices etc. Such act of the subordinate officers over the member of the force is not violative of any article of the constitution and Cr.P.C.

g. At any rate punishment imposed is shockingly excessive to the charge levelled and the appellant cannot be shunted out in this fashion.

... The charge of having excess money than the money what he has declared before assuming duty has been clearly proved with reference to the statements of PWs. The appellant was given all opportunities to prove his innocence. Inspite of having the assistance of ~~a defence~~ of a defence assistant the appellant failed to prove his innocence. The appellant has repeatedly stated that the amount of Rs.110/- was not recovered from him. Whereas 5 PWs in their statement clearly stated that the money was recovered from the pocket of the appellant while he was checked and searched by PW-II Inspector R.M. Ram. The appellant has made allegation against the PW-I i.e. Shri S.K.Trivedi, Asstt.Commandant, that he was man-handled and kicked by him because of which he sustained injury. He has not produced any evidence for this allegation.

5. The enquiry was conducted as per the existing procedure and the findings of the Disciplinary Authority is also justified. The punishment imposed is disproportionate to the gravity of offence.

6. I, therefore, modify the punishment to that of "Reduction of pay by one stage for a period of one year." It is therefore, ordered that the pay of Constable J.K.Sahu be reduced by one stage from Rs.3275/- to Rs.3200/- for a period of one year with effect from the date of re-instatement. It is further directed that Constable J.K.Sahu will earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing his future increments of pay."

7. Ex-Constable J.K.Sahu is reinstated in service and he is directed to report to CISF Unit VSF.Vizag within 15 days from the date of receipt of this order. If he fails to report for duty within the stipulated period, it will be presumed that he has no interest to join duty and orders as deemed fit will be passed without any further notice.

8. It is proposed to regularise the intervening period from the date of Removal from Service to date of reinstatement as 'DIES NON'. He is given an opportunity to make representation, if any against the above proposal within 10 days from the date of joining duty on reinstatement.

(Dr. V.R. SAMPATH)
DEPUTY INSPECTOR GENERAL/SZ.

To

Jayanta Kumar Sahu,
 S/o. Sri Jadunath Sahu, : Through Regd/AD.
 Vill: Konwerpur Gohain Gaon,
 Post: Konwerpur, Dist: Sibsagar
 State: Assam - 785 667

ct.p/..4

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Copy to:-

1. The Commandant,
CISF Unit VSP,
Visakhapatnam.
2. Case file.
3. Personal file.

: For information. The ~~BB/ABP~~
~~and~~ DE cases files 'A' & 'B' L
are returned herewith re-
ceipt of which may be ack-
nowledged.

L m 2/0. U. S. Salur

31 DEC 1999
No. V-15014/97/99/L&R(SZ)

9664 Annexure E

Office of the Deputy Inspector General
Central Industrial Security Force (CISF)
(Ministry of Home Affairs)

Comdt

DC

D Block Rajaji Bhavan,
Besant Nagar, Chennai-90.
Section

Dated: 26 Dec 99 Registration No.

ORDER

No. 922299113 Constable J.K.Sahu of CISF Unit VSP, Vizag was dealt under Rule 34 of CISF Rules, 1969 for possession of Rs.110/- against the declared amount of Rs.10/- in the money declaration register and was awarded with the penalty of 'Removal from Service' by Commandant, CISF Unit VSP, Vizag vide his final order dated 24.7.99. Later, while disposing his appeal petition, the punishment was modified to that of Reduction of pay by one stage from Rs.3275/- to Rs.3200/- for a period of one year without cumulative effect by DIG/SZ vide Appellate order dated 17.11.99 and he was reinstated in service. It was further proposed to regularise the intervening period from the date of Removal from Service to the date of rejoining duty on reinstatement as 'DIES-NON' and the Appellant was given an opportunity to make representation, if any against the said proposal.

2. Now, the individual, who has reported at VSP Vizag and joined duty on 30.11.99(AM) has submitted his representation dated 8.12.99 against the above proposal. In his representation he has not brought out any new cogent reasons. Further, the points have already been discussed in the final as well as Appellate order. Moreover, he has not been exonerated from the charge rather his punishment has been reduced to meet the ends of justice, since the punishment earlier imposed by the Disciplinary Authority was found to be disproportionate to the gravity of proven offence.

3. I, therefore, confirm the earlier proposal and the intervening period from the date of 'Removal from Service' to the date of rejoining duty on reinstatement in service is regularised as 'DIES-NON'. The Dies-Non period will be treated as non-qualifying service. However, it will not have the effect of break in service i.e. past service rendered by the Constable will count for grant of pension etc.

Signature
DEFUTY INSPECTOR GENERAL/SZ

To

No. 922299113, Const.
J.K.Sahu, CISF Unit,
VSP, Vizag.

1. Through Comdt/VSP(V) for service and return of ack copy to this office for record.

Copy to:-

The Commandant,
CISF Unit, VSP(V)

1. W.r.t. his letter No. V-15014/VSP/Ad.II/Maj-1/99-11340 dtd. 11th Dec '99. Necessary entries to be made in the Service Book of the individual. A copy of the S.O. be sent to this office for record.

(S.O. be published and)

14
P. S. (Signature)
1999-12-21
Date: 21.12.99
1999-12-21

Qualified to be true
Copy N. Bhowmik
Advocate

From:

J. K. Sahu,
 Constable No. 922299113,
 CISF Unit ONGC/ER,
 Nazira Gelakay Sector,
 Dist.: Sibsagar Assam 783 696.

.....PETITIONER

To:

The Inspector General,
 CISF Head Quarters (SWS),
 RCF Complex Chembur,
 MUMBAI - 400 074.

// Through proper channel //

Sub: Revision petition against the Appellate order
 No.V-11014/57/97/C&R/(S2)/8698 dt. 17-11-99 &
 even Nos. 9964 dt. 28-12-99, 1397 dt. 19-1-2000
 of the DIG CISF South Zone C H Z N N A I.

Respected sir,

- 1 It is kindly submit that the above petitioner while serving in the CISF Unit VSP Visakhapatnam Steel Project was charge sheeted under Rule 34 of CISF Rules 1969 by alleging that the petitioner was found excess money Rs.100/- in his possession against the office order of the unit dt. 03.7.94. The petitioner submitted his reply against the charge memorandum and pleaded that he is not guilty of the charge.
- 2 The disciplinary authority i.e. the commandant CISF Unit VSP Visakhapatnam was not satisfied with the reply of the petitioner and appointed an enquiry officer to enquire into the article of charge. The enquiry officer not hold the enquiry with free and fair manner as stated in the enumerated rules. The enquiry officer submitted his enquiry report that the article of charge is proved. After that the disciplinary authority supplied the enquiry report to the petitioner and called representation if any against the enquiry report. The petitioner also submitted representation against the enquiry report and contented init that the enquiry officer was very junior against the PW-1. The PW-1 S. K. Trivedi Assistant Commandant was the controlling authority of the enquiry officer, hence the enquiry officer feared very much towards his superior and submitted his findings according the will and wish of the PW-1. Thus the enquiry officer not hold the enquiry with free manner. The disciplinary authority also not considered the plea of the petitioner and merely agreed with the findings of the enquiry officer and imposed the penalty of 'REMOVAL FROM SERVICE'.
- 3 After that the petitioner filed an appeal petition before the DIG Southern Zone Chennai who in turn modified the Removal order and reinstated the petitioner into service reducing the pay one stage from Rs.3275/- to Rs.3200/- and also an opportunity given to the petitioner against the proposal of DISCH-NOW. The petitioner also submitted a representation against the DISCH-NOW by quoting the PR-17-A conferred with Rule 49-A of CISF Rules 1969. The appellate authority did not considered the representation properly and confirmed his earlier proposal.

Received by
 Const. D. V. R.
 9 A.S.O 28/8/94

Cont.. P/2

Certified to be true
 Copy - N. Boruah
 Advocate

4 The appellate authority in his order dt. 17-11-99 modified the final order of removal from service to reinstate into service by reducing one stage from Rs.3275/- to 3200/- for a period of one year from the date of reinstatement and the reduction will not have the effect of postponing his future increments of pay. Subsequently issued another order No.1397 dt. 19-1-2000 amended the earlier order No.8698 dt. 17-11-99 by reducing one increment of Pay from RS.3125/- to Rs.3050/-.

5 As stated in the foregoing facts the petitioner prefers this revision petition among other following grounds:-

- a The enquiry officer Inspector/Ece J. Swain is subordinate to the PW-1 and complainant S. K. Trivedi Assistant Commandant as such the entire proceedings in biased manner which violates the principles of natural justice.
- b The so called search and seizure are not valid in the eye of law without jurisdiction and against the frame work of rules and Act of CISF and also against the provision of section 45 of Cr.P.C.
- c During the course of enquiry, all PWs of this case admitted that there was no money transaction between the petitioner and others. Hence there is no possibility to find excess money from the petitioner possession.
- d The question about the alleged excess amount Rs.100/- by whom it was paid and who was the payee/payers etc. not established properly.
- e The statements of witnesses are inconsistent which is not considered either by the enquiry officer or by the disciplinary authority.
- f The witnesses were not allowed to speak the truth as the PW-1 who is the complainant was present during the course of enquiry.
- g The direction of the PW-1 to search upon the Govt. servant while on duty is against the Article 21 & 22 of Indian Constitution.
- h The PW-1 & II has no power vested to them under the CISF Rules 1969 & CISF Act 1968 to search any duty personnel. The disciplinary authority also not considered the provision reasonably.

Under the foregoing plea of this submission, the petitioner has not committed any kind of negligence on his part. Therefore it is request to set aside the order of the disciplinary authority and the appellate authority and the intervening period absence from duty may be treated as duty with all monetary benefits and pray for justice according to law.

Place : NAZIRA Gelekey Sector.

Yours faithfully,

Date : 19.4.2000

(J. K. SINGH)

ABD

Final Copy

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Annexure - G

Office of the Inspector General/SWS
Central Industrial Security Force
(Ministry of Home Affairs)

RCF Complex, Chembur,
Mumbai - 400 074.

No. V-11014/32/SZ/LC/SWS/2000/ 3042

Dated: 01 ^{May} 2001

SHOW CAUSE

Whereas, No.922299113, Constable J. K. Sahu of CISF Unit, ONGC Nazira, while serving in CISF Unit, VSP Vizag, was awarded the punishment of "Removal from Service", by Commandant, CISF Unit, VSP Vizag vide order dated 24.7.99, for the following article of charge:-

"An act of gross indiscipline and misconduct on the part of No.922299113, Constable J.K.Sahu of CISF Unit, VSP Visakhapatnam on 27.1.99 during surprise checking of Shri S.K.Trivedi, Asstt.Comdt. on 27.1.99 at about 1800 hrs in that Constable J.K.Sahu, was found in possession of Rs.110/- (Rupees one hundred and ten only) against the declared amount of Rs.10/- in the money declaration register maintained in the Pass Section, CISF Unit, VSP Visakhapatnam. This is in violation of office order No.E-42024/CISF/DC(P)/20/94-601 dated 8.7.94. On being questioned about the found excess money, Const. J.K.Sahu confessed that he accepted Rs.100/- from contractor as illegal gratification for issuing passes".

2. AND WHEREAS, being aggrieved against the penalty aforesaid, No.922299113, Constable J.K.Sahu, had preferred an Appeal petition dated 29.7.99, to the Appellate Authority, who after considering the said appeal held that the DE has been conducted as per the existing procedure and the findings of the Disciplinary Authority was also justified, but the punishment imposed was disproportionate to the gravity of offence, and modified the punishment of Removal From Service", to that of "Reduction of pay by one stage for a period of one year i.e. from Rs.3125/- to Rs.3050/- with effect from the date of re-instatement without cumulative effect", vide Appellate order dated 17.11.99, and order dated 19.1.2000.

3. AND WHEREAS, being aggrieved against the punishment so modified by the Appellate Authority, No.922299113, Constable J.K.Sahu preferred a revision petition dated 12.4.2000, to the Revisioning Authority, to set aside the order of the Disciplinary and the Appellate Authorities respectively and the intervening period be treated on duty with all monetary benefits.

4. AND WHEREAS, on a careful consideration of disciplinary proceedings, final order and Appellate Order, I have provisionally come to the conclusion that the Appellate Authority has taken a lenient view, without adequate justification on the records. No.922299113, Constable J.K.Sahu, being a member of the disciplined force of the Union and his prime duty being protecting and safeguarding the property of the

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copy
N. Bawali
Advocate

Undertaking, has himself indulged in illegal activities, which is a serious nature of offence. The punishment so modified by the Appellate authority, vide order dt.17.11.99 does not appear to be commensurate. The Revisioning Authority accordingly proposes to enhance the penalty to "Removal from Service".

5. NOW, THEREFORE, No.922299113, Constable J.K.Sahu, is hereby given an opportunity of making representation on the penalty proposed above. Any representation which he may wish to make against the penalty proposed will be considered by the undersigned, such a representation, if any should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this memorandum by No.922299113, Constable J.K.Sahu.

6. The receipt of this memorandum should be acknowledged.

6/1
(KANCHAN CHAUDHRY BHATTACHARYA)
INSPECTOR GENERAL/SWS

✓ No.922299113, Constable
J.K.Sahu,
CISF Unit, ONGC Nazira.

- Through Comdt. ONGC Nazira.

7 copies

-48-

Annexure-J

①

SI

Mo. E-42024/CISF/IN(1)/20/94
Office of the Dy. Commandant/Plant
Central Industrial Security Force
(Ministry of Home Affairs)

Tel: 2215

Visakhapatnam Steel Plant,
VISAKHAPATNAM-31.

Date: 28 Jul'94.

OFFICE ORDER

It has come to the notice of the undersigned that some of the CISF personnel on duty are keeping ex-cess money with them to meet their incidental expenses during duty hours. It is therefore directed that before going for duty, the individual will give declaration in the duty register about the amount in his possession. In no circumstances, the on duty personnel will carry more than ten rupees. The shift in-charge of the concerned shift will ensure that declaration about money is taken from the individuals.

Violation of the order will be dealt seriously.

Distribution:-

69 DY. COMMANDANT/PLANT

1. All Coy. Comdts. : A,B,C&D
2. BHM - HQ Coy.
3. Notice Board.

Copy to:-

The Commandant,
CISF Unit, VSP,
VISAKHAPATNAM-31.

- For kind information.

*Certified to be true
copy
N. Boruah
Advocate*

केन्द्रीय न्यायालय अधिकार
Central Administrative Tribunal

15 NOV 2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Bench
GUWAHATI BENCH AT GUWAHATI.

O.A.No. 199/2001

Shri Jayanta Kumar Sahu

..... Applicant.

- Vs -

Union of India & Ors.

..... Respondents.

(Written statements on behalf of the respondents)

The Written statements of the respondents are as follows :-

1. That the copy of the O.A.No.199/2001 (referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of all the respondents being similar in the case, the respondents have filed written statements as common for all of them.

Contd....2-

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File A by
B.C. Pathak
15/11/2001
(B. C. Pathak)
Addl. Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

2. That the statements made in the application, which are not specifically admitted by the answering respondents are hereby denied.

3. That before traversing the various paragraphs of the application, the respondents give a brief resume of the case as under :-

No.922299113 Constable Jayant Kumar Sahu was detailed to perform duty in pass section at P.P.Gate on 27.01.99. A surprise checking was conducted in pass section by Assistant Commandant/Plant on 27.01.99 at about 1800 hours. During the surprise check, Constable J. K.Sahu was found in possession of Rs.110/- (Rupees one hundred ten only) against the declared amount of Rs.10/- in the money declaration register maintained in pass section before mounting duty. Accordingly, he was issued charge sheet under rule 34 of CISF Rules, 1969 vide memorandum No.V-15014/Maj/Disc/JKS/VSP/99/18 dated 04.02.99 for the following delinquency: -

ARTICLE OF CHARGE

“An act of gross indiscipline and misconduct on the part of No.922299113 Constable J. K.Sahu of CISF Unit, VSP, Visakhapatnam on 27.01.99 during surprise checking of Shri S. K.Trivedi, Assistant Commandant on 27.01.99 at about 1800 hours in that Constable J. K. Sahu was found possession of Rs.110/-

50

(Rupees one hundred ten only) against the declared amount of Rs.10/- in money declaration register maintained in the pass section, CISF Unit, VSP Visakhapatnam. This is in violation of office order No.E-42024/CISF/DC(P)/20/94/601 dated 8.7.94. On being questioned about the found excess money Constable J. K. Sahu confessed that he accepted Rs.100/- from a contractor as illegal gratification for issuing passes".

The above Constable acknowledged the said memorandum on 4.2.99 and submitted his written reply to the charge sheet denying the charge levelled against him. Accordingly Inspector (Exe) J. Swain was appointed as Enquiry Officer to enquire into the charge levelled against Constable J. K. Sahu. The enquiry officer completed the enquiry as per laid down procedure and submitted his findings holding the charge as Proved. Thereafter a copy of enquiry report was supplied to the individual providing him an opportunity to make or submit representation against the enquiry report. The said Constable submitted his representation on 10.07.99 pleading not guilty of the charge. The disciplinary authority having gone through the entire case file and other relevant documents pertaining to the case file and found Constable J. K. Sahu guilty of the charge framed against him. Accordingly, Constable J. K. Sahu was

Contd.....4-

awarded the punishment of "REMOVAL FROM SERVICE" vide final order No.V-15014/VSP/Ad.II /Maj.IJKS/99/6959 dated 24.7.99. Being aggrieved with the aforesaid punishment, the said Constable submitted an appeal dated 29.7.99 addressed to the Deputy Inspector General / SZ, Chennai. The Deputy Inspector General/SZ Chennai considered his appeal and the punishment of "REMOVAL FROM SERVICE" has been modified as "Reduction of pay by one stage from Rs.3125/- to Rs.3050/- for a period of one year and the reduction will not have the effect of postponing his future increments of pay" vide Deputy Inspector General/ SZ, Chennai appellate order No.V-11014/57/99/L&R (SZ)/8698 dated 17.11.99 and order of even No.(1397) dated 19.1.2000. In the above said order, the Appellate Authority directed the petitioner that the intervening period from the date of removal to the date of re-instatement is proposed to be regularize as "dies-non" and directed the petitioner to make representation, if any against the proposal within 10 days from the date of re-joining duty on re-instatement. Accordingly, the said Constable had submitted his representation dated 08.12.99 which was not considered and the intervening period from the date of removal to the date of re-instatement in service has been regularised as "Dies non" vide DIG/SZ- Chennai order No.V-11014/57/99/L&R (SZ)/9664 dated 28.12.99. Being aggrieved with the above order Constable J. K. Sahu preferred a Revision

contd....5-

Petition dated 12.4.2000 to Revisioning Authority to set aside the order of Appellate Authority. Accordingly, the Revisioning Authority has issued a show cause notice No.V-11014/32/SZ/LC/SWS/2000/3042 dated 01.05.2001. Being aggrieved with the decision of the Revisioning Authority, Constable J. K. Sahu has filed O.A. No.199/2001 before the Hon'ble CAT Guwahati Bench.

4. That respondents reiterate the facts and circumstances of the case with regard to the statements made in Para 1 of the application.

5. That with regard to the statements made in Para 2, the respondents state that the Hon'ble Central Administrative Tribunal has no jurisdiction for entertaining such case of Para military personnel within the meaning of "Armed Forces" as laid down in section 2 (a) of the CAT Act 1985.

6. That the respondents have no comments to offer against the statements made in Para 3 of the application.

7. That with regard to the statements made in Para 4.1 the respondents state that on 27.01.99 Shri S. K. Trivedi, Asstt. Commandant/

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b

/Plant has directed Inspector (Exe) D. Oraon, I/C of Pass Section to conduct a search of all the personnel working in pass section including the applicant. During, the search, Rs.110/- was recovered from the pocket of the applicant against his personal money declared, in the money declaration register in violation of office order No.E-42024/CISF/DC(P)/20/94/601 dated 08.07.94 (Annexure -A). On being questioned about the excess money, the applicant confessed in presence of Inspector (Exe) D.Oraon, I/C Pass Section and other staff of pass section that he accepted Rs.100/- from a contractor as illegal gratification for making and issuing passes. Accordingly, departmental proceedings under rule 34 of CISF Rules, 1969 has been initiated against the applicant and the article of charge framed against him as stated hereinabove. Hence, the argument of the applicant about the false allegation is not correct and is denied.

8. That with regard to the statements made in Para 4.2, the respondents state that the petitioner in his written statement denied the charged framed against him. In accordance with sub-rule (4) of Rule 34 of CISF Rules, 1969 Inspector (Exe) J. Swain was appointed as Enquiry Officer and the enquiry officer has conducted the said enquiry with laid

down procedure under CISF Rules and afforded ample opportunity to defend the case of petitioner himself or by getting appointed any member of the force as his defence assistant. The Enquiry Officer has completed the enquiry and submitted the enquiry report to the Disciplinary Authority by holding the charge as proved. On receipt of enquiry report, a copy of the said enquiry report has been supplied to the petitioner to make representation if any against the enquiry report within 15 days from the date of receipt of O.M.No.V-15014/VSP/AD.II/Maj-1/JKS/99/5792 dated 24.06.99. The petitioner had submitted his written representation against the enquiry. Since the petitioner was found in possession of money of Rs.110/- in addition to his declared amount of Rs.10/- in money declaration register which is violation of office order dated 08.07.94, it clearly proves that the petitioner had indulged in illegal gratification which amounts to grave breach of integrity and discipline which articles at the very root of the character of an Armed Force of the Union and tarnished the good image of Force. Hence the disciplinary authority inflicted the penalty of "Removal from Service" vide final order dated 24.7.99.

9. That with regard to the statements made in Para 4.3, the respondents state that during the surprise checking of on duty personnel working in pass section where the petitioner was found having excess

money of Rs.100/- in his pocket alone than the amount what he had declared in money declaration register on 27.1.99 kept in pass section while he was mounting for duty. The same has been corroborated in the statements of the all PWs during the departmental enquiry which clearly specify that the excess amount of Rs.110/- has been recovered from the pocket of the petitioner during the checking and disciplinary action under rule 34 of CISF Rules, 1969 has been initiated against the petitioner. Hence, the question of enmity does not arise for issuing of charge sheet against the petitioner. The allegation that Shri S.K.Trivedi, Asstt. Commandant / Plant assaulting him and extracting a confessional statement by obtaining his signature on a blank paper is not supported by any material evidence on record. It is made with the intention of escaping the punishment. During the cross examination, the defence assistant of the petitioner during his cross examination of PW-II has confirmed that no assault was made by the Asstt. Commandant/Plant. In case, there was any assault, he should have brought the fact before his superior officer at that time itself. Hence it is clear that there was no assault on the petitioner as alleged. Further the enquiry officer had extended all opportunities to the petitioner to cross examine the all PWs. The argument of the petitioner that Shri S. K. Trivedi, Assistant Commandant/Plant remained physically

present at the time when the PWs were examined is not correct because the statement of PWs have been recorded by the enquiry officer in presence of the petitioner on scheduled dates. Hence the argument of the petitioner in this Para is irrelevant.

10. That with regard to the statements made in Para 4.4, the respondents that the applicant submitted his appeal petition to DIG/SZ, Chennai against the order of the Disciplinary Authority. The Appellant Authority vide Appellate order dated 17.11.99 reduced the punishment of "Removal from Service" awarded by the Disciplinary Authority to "Reduction of pay by one stage from Rs.3125/- to Rs.3050/- for a period of one year". In the said order, the petitioner was informed of Removal from Service to the date of reinstatement as "Dies non" and was given an opportunity to make his representation, if any, against said proposal within 10 days from the date of joining duty on reinstatement. Accordingly, the petitioner again submitted another petition dated 8.12.99 against the above proposal. Since the petitioner has not brought out any new cogent reasons except the points already discussed in the final order as well as appellate order and since he has not been exonerated from the charge, the Appellate Authority (DIG/SZ, Chennai) has confirmed the earlier proposal and the intervening period from the date of "Removal from Service" to the date of

rejoining duty on reinstatement in service has been regularised as "DIES-NON" vide order dated 28.12.99.

11. That with regard to the statements made in Para 4.5, the respondents state that the applicant being a member of the disciplined Armed Force of the Union and his prime duty being protecting and safe guarding the property of the Govt. undertaking, has himself indulged in illegal activities which is a serious offence and hence the applicant is liable for stringent punishment for such an offence. The Revisioning Authority considered the facts and circumstances of the case. The applicant did not deserve a lenient view and hence the decision to enhance the penalty to "REMOVAL FROM SERVICE" taken by the Revisioning Authority is justified vis-à-vis the gravity of offence.

12. That with regard to the statements made in Para 4.6, the respondents state that while mounting on duty the applicant petitioner had declared in possession of Rs.10/- in the money declaration register kept in the pass section. During the surprise checking of personnel working in pass section the petitioner was found in possession of Rs.110/- in violation of office order dated 8.7.94. The said order categorically prohibits

possession of any money in excess of Rs.10/- which he declared while reporting for duty. For upholding high discipline and moral, the above office order were issued. Under the provisions of 10 (a) of CISF Act, 1968 (Annexure -"B") every member of the force shall promptly obey and execute all orders lawfully issued by superior authority. But the petitioner has failed to follow the bonafided instructions/orders dated 8.7.99 and indulged himself in illegal activities which is serious in nature. The applicant is liable for stringent punishment. Hence the argument made by the applicant in this Para is irrelevant.

13. That with regard to the statements made in Para 5(a), the respondents state that the Revisioning Authority after careful consideration of the gravity of the offence and circumstances of the case arrived at the conclusion that the petitioner did not deserve a lenient view and to be awarded a stringent punishment. Hence show cause order dated 1.5.2001 proposing the penalty of "Removal from Service" to the petitioner has been issued. The argument made by the petitioner against the order dated 1.5.2001 is irrelevant.

14. That with regard to Para 5 (b), the respondents state that during the surprise checking in pass section on 27.01.99, the petitioner alone was

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found in possession of excess money of Rs.110/- which is violation of office order dated 8.7.99 the amount was recovered from him by P.W-II (Inspector/Exe D.Oraon), in presence of all the personnel deployed in the pass section. The above matter has been corroborated in the statement of all PWs during the course of enquiry. When questioned about the excess money, the petitioner confessed that he accepted money from some contractors for making and issuing passes. Further during the course of enquiry, the defence assistant of the petitioner cross examined PW-1 and confirmed by PW-1 in question No.2 that the petitioner confessed accepting illegal gratification during his duty hours in violation of office order dated 8.7.99. Hence the proposed punishment of removal from service is commensurate with the gravity of offence committed by the petitioner on 27.1.99 and the petitioner deserves the punishment of "Removal from Service" to maintain discipline of the Force.

15. That with regard to the statements made in Para 5 (c), the respondents state that as per office order dated 8.7.94 all the CISF personnel were directed not to keep more than Rs.10/- with them. Moreover, the petitioner declared carrying Rs.10/- while mounting for duty in pass section on 27.1.99. During the course of checking he was found in possession of Rs.100/- than the declared amount of Rs.10/- and

he also confessed before the checking officer as well as all other duty personnel working in pass section which proves that the petitioner was involved in accepting illegal gratification. Supporting documents to prove the offence committed by the petitioner is held in the case file.

16. That with regard to the statements made in Para 5 (d), the respondents state that as per the provisions of Rule 49-A of CISF Rules, 1969 (Annexure -"C") the petitioner is not entitled to regularize the intervening period from the date of removal from service to the date of reinstatement in service because the Appellant Authority has not exonerated the punishment earlier imposed on the petitioner. Hence the argument made by the petitioner regarding regularization of intervening period does not arise.

17. That with regard to the statements made in Para 5 (e), the respondents state that the Revisioning Authority acted within the purview of the established rules and there is no ultravires the provisions of Article 14 of Constitution of India. Hence the argument of the petitioner is irrelevant.

18. That with regard to the statements made in Para 5 (f), the respondents state that the applicant failed to submit the representation against the proposed enhancement of punishment on plea that he would be removed from service. It shows that the petitioner is involved in accepting

illegal gratification while he was on duty in pass section and there is no ground to prove his innocence. Hence the petitioner deserves for proposed punishment by the Revisioning Authority.

19. That the respondents have no comments to offer against the statements made in Para 6 of the application.

20. That with regard to the statements made in Para 7 (a), the respondents state that under the provisions of CISF Rules, 1969, the Revisioning Authority applied Judicial mind and an order dated 1.5.2001 issued proposes the punishment of "Removal from Service".

21. That with regard to the statements made in Para 7 (b), the respondents state that under the provisions of CISF Rules, 1969, the petitioner is not entitled to regularize the intervening period from the date of removal from service to the date of reinstatement. The Hon'ble Court may please not to pass any order in favour of the petitioner in order to uphold the rules framed by the Government for administrative purpose.

22. That with regard to the statements made in Para 7 (c), the respondents state that the Revisioning Authority acted within the purview of the established rules and there is no ultra virus the provisions of Article 14 of Constitution of India as the claimed by the petitioner.

23. That with regard to the statements made in Para 7 (d), the respondents state that since the punishment proposed to enhance as "Removal from Service" as the petitioner has been involved in the case of taking illegal gratification while he was on duty in pass section in violating of Unit order dated 8.7.94 which amounts to gross indiscipline and misconduct on the part of petitioner.

24. That with regard to the statements made in Para 8, 9 and 10 of the application, the answering respondents state that in view of the facts of the case, law and rules and grounds as shown, the applicant is not entitled to any relief whatsoever as prayed for. As the grounds cannot sustain in law, the application is liable to be dismissed with cost as devoid of any merit.

In the premises aforesaid, it is therefore, prayed that 'Your Lordships' would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records, shall further be pleased to dismiss the application with cost and also declare that the applicant being a member of "Armed Forces" the applicant cannot come within the jurisdiction of Central Administrative Tribunal Act, 1985.

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VERIFICATION

I, Shri S. Subramaniam

presently

working in CISF Group HQrs. Guwahati.

as being duly authorized and competent to sign this verification do hereby solemnly affirm and state that the statements made in Para 1, 2, 4, 5, 10, 11, 13 to 15, 17 to 24 are true to my knowledge and belief, those made in Para 3, 7, 8, 9, 12 and 16 being matter of records, are true to my information derived there from and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this 15th day of
Nov/ October, 2001 at Guwahati.

S. SUBRAMANIAM

11/11/2001

SP. Commandant
CISF GP, HQ, Guwahati

DEPONENT



ANNEXURE - "A"

No.E-42024/CISF/DC(P)/20/94/601
Office of the Dy. Commandant/Plant
Central Industrial Security Force
(Ministry of Home Affairs)

Tel: 2215

Visakhapatnam Steel Plant
Visakhapatnam - 31

Date : 08 Jul '94

OFFICE ORDER

It has come to the notice of the undersigned that some of the CISF personnel on duty are keeping excess money with them to meet their incidental expenses during duty hours. It is therefore directed that before going for duty, the individual will give declaration in the duty register about the amount in his possession. In no circumstances, the on duty personnel will carry more than ten rupees. The shift in-charge of the concerned shift will ensure that declaration about money is taken from the individuals.

Violation of the order will be dealt seriously.

Sd/-xxx
DY. COMMANDANT/PLANT

Distribution:-

1. All Coy. Comdrs. A, B, C & D
2. BHM - HQ Coy
3. Notice Board

Copy to :-

The Commandant,
CISF Unit, VSP
Visakhapatnam-31. - for kind information

Certified as typed and true copy
Aug 13/94
B. Mahanta
Asstt. Commandant
CISF G.P. HQrs. Guwahati
Assam

ANNEXURE - "B"

EXTRACT OF CENTRAL INDUSTRIAL SECURITY FORCE ACT, 1968

ACT - 10 - Duties of member of the Force : It shall be the duty of every member of the Force:-

- (a) Promptly to obey and execute all orders lawfully issued to him by his superior authority;
- (b) to protect and safeguard the Industrial Undertaking owned by the Central Government together with such other installations as are specified by that Government to be vital for the carrying on of work in those Undertakings, situate within the local limits of his jurisdiction;
Provided that before any installation not owned or controlled by the Central Government is so specified, the Central Government shall obtain the consent of the Government of the State in which such installation is situate;
- (c) to protect and safeguard such other Industrial Undertakings and installation for the protection and security of which he is deputed under section 14;
- (d) to protect and safeguard the employees of the Industrial Undertakings and installations referred to in clauses (b) and (c),
- (e) to do any other act conducive to the better protection and security of the Industrial Undertakings and installations referred to in clauses (b) and (c) and the employees referred in clause (d),
- (f) to provide technical consultancy service relating to security of any private sector industrial establishments under section 14A;
- (g) to protect and safeguard the organizations owned or funded by the Government and the employees of such organizations as may be entrusted to him by the Central Government;
- (h) any other duty which may be entrusted to him by the Central Government from time to time.

*typed and
Certified as
true copy*

*8/2/1961
B. Mahanta,
Asstt. Commandant,
CISF GP. HQs. Guwahati,
Assam.*

ANNEXURE - "C"

EXTRACT OF CENTRAL INDUSTRIAL SECURITY FORCE RULES, 1969.

Rule - 49-A : Dies non : Notwithstanding anything contained in these Rule an appellate Authority or a Revision Authority may, on reinstatement of a member of the Force in service after setting aside a penalty of dismissal, removal or compulsory retirement without exonerating such member of the Force of charges which resulted in any of those penalties, after giving an opportunity to the member of the Force concerned to show cause against such action and for reasons to be recorded in writing order that the intervening period between the date of dismissal, removal or compulsory retirement, as the case may be and the date of reinstatement be treated as dies non for purposes of his service."

*Celilngadas typed and
true copy*
26/2/1971
*B. Mohanta,
Asstt. Commandant,
CISF G. P. O. S. Guwahati,
Assam.*