

A.F.R.

Reserved on : 28.10.2025

Delivered on : 18.11.2025



2025:AHC-LKO:74212-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 384 of 2025

Union of India Thru. Secy. Ministry Home Affairs C.g.o. Complax New
Delhi and 4 others

.....Appellant(s)

Versus

Vijay Kumar Pandey

.....Respondent(s)

Counsel for Appellant(s)	: Anand Dwivedi,
Counsel for Respondent(s)	: Durgesh Mishra,

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE RAJEEV BHARTI, J.**

(Per Rajan Roy,J)

1. Heard Shri S.B. Pandey, learned Senior Advocate & D.S.G.I. assisted by Shri Anand Dwivedi, learned Counsel for the appellants and Shri Durgesh Mishra, learned Counsel for the respondent.

2. This special appeal has been filed by the Union of India challenging the judgement and order dated 21.8.2024 passed by learned Single Judge in Writ -A No.22248 of 2021 (Vijay

Kumar Pandey Vs. Union of India and others) by which the writ petition filed by the respondent petitioner has been allowed.

3. In the writ petition, the petitioner sought the following reliefs :-

" i) Issue a writ, order or direction in the nature of Certiorari quashing impugned orders dated 17.12.2019; 04.02.2020 & 16.03.2021 passed by opposite party no. 5, 4 and 3 respectively (contained as Annexure No.1, 2 & 3 to the writ petition).

ii) Issue a writ, order or direction in the nature of Mandamus directing the opposite parties to reinstate the petitioner in service and pay regular salary.

iii) Issue a writ, order or direction in the nature of Mandamus directing the opposite parties to pay the forfeited remaining dues of suspension period.

iv) Issue a writ, order or direction in the nature of Mandamus directing the opposite parties to pay the back wages from the date he was ordered to be removed from service i.e. from 17.12.2019 till the date he gets reinstated in service along with interest."

4. The facts of the case in brief are that the respondent/petitioner was appointed and was working as Head Constable in the Central Industrial Security Force (hereinafter referred to as "**CISF**") ever since 4.10.2009. Prior to it, he was working in the Indian Army having been appointed therein on 23.1.1984. His engagement in the CISF was after his retirement from Indian Army on 31.1.2005. The respondent/petitioner was an accused in case Crime No.58/2019, under Sections 302, 201, 120-B I.P.C. lodged at Police Station Khampar, District Deoria and in this context, he was incarcerated from 1.5.2019 to 20.9.2019. He was enlarged on bail on 23.9.2019. He requested the appellant

therein of being allowed to join duties consequent to his enlargement on bail but he was placed under suspension under Sub rule 2 of Rule 33 of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as "**Rules, 2001**").

5. The respondent/petitioner remained under suspension and he was served with a chargesheet dated 26.9.2019. Ultimately, he was removed from service.

6. The charge against the respondent /petitioner is being reproduced as under :-

"के.ओ.सुब इकाई ए०एस०जी० लखनऊ में कार्यरत बल क्रमांक: 091890012 प्रआ/जीडी (निलंबित) विजय कुमार पाण्डेय को दिनांक 29.04.2019 थाना-खामपार, जनपद देवरिया पुलिस द्वारा पंजीकृत मु०आ०सं० 58/2019 के संबंध में पूछताछ हेतु शांति नगर लखनऊ से लेकर गई तथा दिनांक 30.04.2019 से दिनांक 01.05.2019 तक पुलिस अभिरक्षा में रखने के उपरान्त दिनांक 01.05.2019 को माननीय न्यायालय देवरिया के समक्ष प्रस्तुत किया। उक्त बल सदस्य को दिनांक 01.05.2019 से दिनांक 20.09.2019 तक न्यायिक अभिरक्षा में जिला कारागार देवरिया में बन्द रखा गया। दिनांक 20.09.2019 को माननीय उच्च न्यायालय इलाहाबाद के आदेशानुसार वह जमानत पर रिहा हुआ। एक अनुशासित सशस्त्र बल के सदस्य द्वारा, पुलिस अभिलेखानुसार आपराधिक कृत्य में संलिप्त पाया जाना, के.ओ.सुब जैसे सशस्त्र बल की छवि धूमिल करने जैसा गंभीर दुर्व्यवहार प्रदर्शित करता है। अतः आरोप है"

7. The grounds for the charges were separately reduced in writing as Schedule -1 to the chargesheet which read as under :-

"के.ओ.सुब इकाई ए०एस०जी० लखनऊ में कार्यरत बल क्रमांक : 091890012 प्रआ/जीडी (निलंबित) विजय कुमार पाण्डेय को दिनांक

29.04.2019 को कर्तव्य निर्वहन के उपरान्त उसके निवास स्थान शांति नगर (सरोजनी नगर) पहुंचने पर उसे देवरिया पुलिस के 04-05 बल सदस्य मिले तथा उन्होंने उसके विरुद्ध आपराधिक कृत्य में पंजीकृत मु०आ०सं० 58/2019 के संबंध पुलिस के वरिष्ठ अधिकारियों से पूछताछ का हवाला देकर उसे लखनऊ से थाना-खामपार, जनपद देवरिया ले गए तथा दिनांक 30.04.2019 से दिनांक 01.05.2019 तक पुलिस अभिरक्षा में रखने के उपरान्त दिनांक 01.05.2019 को माननीय न्यायालय देवरिया के समक्ष प्रस्तुत किया। दिनांक 01.05.2019 को पुलिस अधीक्षक जनपद देवरिया के पत्रांक संख्या: एसटी-एसपी-सी-43/2019 दिनांक 01.05.2019 के तहत यह सूचना प्राप्त हुई कि के०सुब इकाई एसजी लखनऊ में तैनात विजय कुमार पाण्डेय पुत्र स्व० मैनेजर पाण्डेय थाना-खामपार, देवरिया के विरुद्ध मु०आ०सं० 58/2019 धारा 302/201/120 बी भादवि की विवेचना से साक्ष्य पाए जाने पर पुलिस टीम द्वारा गिरफ्तार कर दिनांक 01.05.2019 को न्यायालय के समक्ष प्रस्तुत किया गया। उक्त बल सदस्य को पुलिस अभिरक्षा में होने के कारण दिनांक 03.05.2019 को कार्यालय पत्रांक संख्या (472) दिनांक 03.05.2019 के तहत निलंबित किया गया। उक्त बल सदस्य को दिनांक 23.09.2019 को इकाई में उपस्थित हुआ और बताया कि उच्च न्यायालय से जमानत मिलने के पश्चात् जिला कारागार से रिहा किया गया तथा बल सदस्य द्वारा दिनांक 30.04.2019 से दिनांक 20.09.2019 तक न्यायिक अभिरक्षा में जिला कारागार देवरिया में बन्द रखा गया। एक अनुशासित सशस्त्र बल के सदस्य द्वारा, पुलिस अभिलेखानुसार आपराधिक कृत्य में संलिप्त पाया जाना, के०सुब जैसे सशस्त्र बल की छवि धूमिल करने जैसा गंभीर दुर्व्यवहार प्रदर्शित करता है। अतः आरोप है।"

8. On a bare perusal of the aforesaid charge, it is evident that all that was alleged against the respondent/petitioner was that he had remained incarcerated from 1.5.2019 to 20.9.2019 in connection with the above mentioned criminal case, till he was enlarged on bail. The charge alleged was of gross misconduct on the part of the respondent/petitioner on account of his involvement in the aforesaid criminal case.

9. At the time of issuance of the chargesheet in disciplinary proceedings, the respondent/ petitioner had not been convicted.

10. Ultimately, the said disciplinary proceedings resulted in removal of the respondent/ petitioner vide order dated 17.12.2019. Obviously, consequent upon his removal, suspension of the respondent/ petitioner came to an end. The entire emoluments which would have been paid to the respondent/ petitioner were forfeited in view of his removal from service.

11. It is this removal order which was put to challenge apart from other reliefs sought as already quoted hereinabove, by means of the Writ -A No.22248/2021, which has been allowed.

12. Before the writ court, the appellant relied on Section 8 (i) of the C.I.S.F.Act, 1968 (hereinafter referred to as "**Act of 1968**") to justify the removal of the respondent/ petitioner from service.

13. Section 8 of the Act of 1968 reads as under :-

"8. Dismissal, removal, etc., of members of the Force. Subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act, any supervisory officer may-

(I). Dismiss, [remove] [order for compulsory retirement of,] or reducing in rank, any [enrolled member] of the

Force whom he thinks remiss or negligent in the discharge of his duty, or unfit for the same."

14. We may in this context also refer to Rule 32 of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as "**Rules, 2001**") which pertain to disciplinary proceedings. Sub rule 3 of the Rule 32 of the Rules, 2001 reads as under :

"32(3). A disciplinary authority competent under Schedule 1 to impose any of the penalties specified in Clause (vi) to (x) of rule 34, may institute disciplinary proceedings against any enrolled member of the Forces for imposition of any of the penalties specified in Clauses (i) to Clause (v) of Rule 34, notwithstanding that such disciplinary authority is not competent under Schedule -1 to impose any such penalty."

15. These disciplinary rules have to be read conjointly with Section 8(i) of the Act of 1968 at least for the purpose of these proceedings.

16. Now when we read Section 8, it provides that subject to the provisions of Article 311 of the Constitution of India and to such rule as the Central Government may make under this Act, any supervisory officer may dismiss, remove, order for compulsory retirement, or reduce in rank any enrolled member of the Force whom he thinks remiss or negligence in discharge of his duty, or unfit for the same.

17. The other provisions of this Section are not relevant for our purposes, as, in this case, the respondent/petitioner has been removed from service.

18. Learned counsel for the appellant before us has also relied upon Rule 77, according to which, members of the Force, shall in respect of all matters regarding conditions of service for which no provision or insufficient provisions have been made in these rules be governed by the rules and orders for the time being applicable to officers holding corresponding posts in the Central Government in respect of all such matters.

19. In this context, learned counsel for the appellant refers to Rule 3 (i), (ii), (iii) and (xviii) of the CCS (Conduct) Rules, 1964 (hereinafter referred to as "**Rules, 1964**") applicable to Central Government employees, to contend that because of the respondent/petitioner's involvement in the commission of criminal offence, which is of the heinous nature, he was liable to be removed. Accordingly, he was so removed after drawing disciplinary proceedings against him. Rule 3 (i), (ii), (iii) and (xviii) of the Rules, 1964 read as under :-

" (1) Every Government servant shall at all times--

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Government servant.

.....

....

(xviii) refrain from doing anything which is or may be contrary to any law, rules, regulations and established practices;

....

...."

20. The learned Single Judge did not accept the abovementioned contention in view of language used in

Section 8 of the Act of 1968 according to which such dismissal or removal of any enrolled member of the Force would be made for the supervisory officer finds him to be remiss, negligent in discharge of his duty or unfit for the same which was not the case here.

21. The only charge against the respondent/petitioner was that he was incarcerated for a certain period in connection with a criminal case, which was of a heinous nature. As on the date of initiation of disciplinary proceedings, the respondent/petitioner had not been convicted. Even today, the trial is pending and the respondent/petitioner has not been convicted for the offence alleged for which he has been charged. It is therefore, unthinkable as to how, at the stage of initiation of disciplinary proceedings or passing of the removal order, any authority whether it be the supervisory officer or the disciplinary authority could have formed any opinion based merely on the incarceration of the respondent/ petitioner in respect of a criminal case and his alleged involvement therein, even if the offence was of a heinous nature, that he was remiss or negligent in the discharge of his duties or unfit for the same. Learned Single Judge therefore, cannot be faulted for having quashed the removal order, as, the very initiation of disciplinary proceedings, in the facts and circumstances of this case, for imposing punishment of removal was without any factual and legal basis. Merely because a person has been

incarcerated in connection with an offence of murder or conspiracy to murder, cannot be a ground for removal though it may be a ground for suspending him i.e. if the trial is pending.

22. As regards reliance placed by the learned counsel for the appellant upon Rule 3 of the C.C.S. (Conduct) Rules, 1964, assuming that the said rules are applicable when read conjointly with Rule 77 of the CISF Rules, 2001, one fails to understand as to how, in absence of any finding in the trial and in the absence of his conviction for the offence punishable under Sections 302, 201, 120-B I.P.C., any such conclusion could have been arrived at, that the respondent/petitioner had not maintained absolute integrity; he had not maintained devotion of duty; he had done something which was unbecoming of a government servant and that he had not refrained from doing anything which may be contrary to any law, rules, regulations and established practices, so as to lead to his removal from service. There was no finding by the trial court that the respondent had committed an offence for which he had been charged. There is no such finding even today. Therefore, all these were merely presumptions which were drawn and were without any factual and legal basis.

23. The appropriate course should have been to place the respondent/ petitioner under suspension under Rule 33 (1) (b) of CISF Rules, 2001 which was not done, instead the

respondent/petitioner was placed under suspension under Rule 33 (2) of the Rules, 2001.

24. As regards deemed suspension of an official/employee on account of his incarceration, the law has been discussed and elucidated by the Hon'ble Supreme Court of India in the case of ***Union of India Versus Rajiv Kumar : 2003 (6) SCC 516*** albeit in the context of Rule 10 of the CCS Rules, 1957 etc. which is substantially similar to Rule 33 of Rules, 2001. It has been held that such suspension cannot continue automatically or mechanically after his release, and there has to be due and proper application of mind whether to continue or not to continue such suspension, but we see no such exercise in this regard. We say no more as it is the punishment order which is in issue.

25. In view of the reasons already given hereinabove, we are of the opinion that there was absolutely no basis for initiation of the disciplinary proceedings and issuance of chargesheet to the respondent/petitioner merely because of his incarceration in respect of a criminal case, nor was there any factual or legal basis for removing the applicant from service on the said count.

26. Learned Single Judge has rightly quashed the order of removal as also the appellate and Revisional order.

27. As regards suspension of the respondent/petitioner is

concerned, he attained the age of superannuation on 31.1.2025, therefore, there is no question of his continued suspension during pendency of the trial.

28. As regards the period of suspension and the emoluments which would be payable to him, considering the fact that chargesheet was filed against respondent/petitioner and trial was/is pending and as there are provisions contained in FR-53, FR-54A and FR-54B of Financial Handbook Volume II Part II to IV which cover the subject, we are of the opinion that in the facts of this case, instead of issuing a direction to pay the dues payable to the respondent for the period of suspension, and/or for the period he remained out of service based on an illegal order of removal till his attaining the age of superannuation/ retirement, the writ court should have directed the competent authority to take a decision as per the Rules applicable. Accordingly, we direct the appellant to take a decision in this regard keeping in mind the observations/ findings given hereinabove, but in accordance with relevant Rules pertaining to the subject in question such as FR-53, FR-54A and FR 54B of Financial Handbook Volume II Part II to IV as may be applicable or such other Rules as may be applicable. This exercise is to be done within a period of three month from the date of submission of a certified copy of this order.

29. As regards payment of post retiral dues, although

according to the Counsel for the appellant, there is a provision in CCS (Pension) Rules, 1972 which contains an embargo regarding payment of retiral dues where a criminal trial is pending and the said Rules are applicable to the C.I.S.F., in view of Rule 77 of the Rules, 2001, this aspect has not been considered by Id Single Judge, therefore, in this regard also a considered decision should be taken by the competent authority as per relevant rules and law applicable within aforesaid three months.

30. We therefore, while sustaining the judgement of the writ court to quash the order of removal from service dated 17.12.2019 as also the appellate and revisional orders in this regard, modify the remaining portion of the judgement by which dues for the period of respondent's suspension and post retiral dues have been ordered to be paid to him, in terms as already mentioned earlier.

31. Subject to above, the appeal is **allowed** but only in part.

(Rajeev Bharti,J.) (Rajan Roy,J.)

November 18, 2025
Shukla