

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision :4th December, 2009

+ **W.P.(C) No.11666/2009**

AJIT SINGH Petitioner
Through Mr.R.K.Shukla, Advocate

versus

UOI & ORS. Respondents
Through Mr.Ankur Chhiber, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J. (Oral)

CM No. 11567/2009

Allowed.

W.P.(C) No.11666/2009

1. The record of inquiry has been produced.
2. After serving a charge memo an inquiry was held at which the petitioner pleaded guilty. Notwithstanding the plea of guilty, evidence was led and it was successfully established that the petitioner remained unauthorizedly absent i.e. deserted duty. With reference to his past service record which reveals that even in the past the petitioner had been deserting with periodical frequency and lesser punishment imposed were

not having the desired effect i.e. chastening the petitioner, the disciplinary authority, inflicted the penalty of removal from service.

3. Appeal filed before the Appellate Authority has been found to be without any merit and hence even the appeal has been dismissed.

4. Conceding before us that the petitioner had remained absent without duty, it is sought to be urged that the reason thereof was the medical infirmity of the petitioner and for which it is stated that the petitioner had filed the requisite medical certificates.

5. The record of inquiry shows that after the prosecution led the evidence, the petitioner made a statement that he does not desire to lead any evidence. This is recorded in the proceedings dated 11.12.2007

6. Thereafter, on 28.12.2007, the petitioner gave a typed application in which he stated that he does not intend to lead any evidence in defence.

7. It is urged by learned counsel for the petitioner that evidenced by the answer to question No.6, when petitioner was generally examined on 11.12.2007, the reply thereto shows that the petitioner had stated that he had already furnished the requisite documents. Therefrom, learned counsel for the petitioner seeks to urge that it is apparent that the

petitioner had furnished the requisite medical documents.

8. Suffice would it be to state that when examined, whatever answer is given by the charged officer has to be correctly recorded. But that would not mean that the answer is correct.

9. Learned counsel for the petitioner has not been able to show to us any acknowledgement received by his client or even an application or even a letter under cover of which the so called documents were furnished.

10. The record of the inquiry shows that the petitioner did not file any document during the inquiry.

11. Thus, the plea that the inquiry is vitiated on account of non consideration of the documents filed by the petitioner is incorrect.

12. It is urged that the penalty imposed is disproportionate. It is urged that for the solitary act of desertion for 9 days the penalty of removal from service is shockingly disproportionate.

13. We find that in the statutory appeal filed by the petitioner no such contention was raised.

14. It is settled law that before a writ court is called upon to render opinion on a question, the same has to be raised before the appropriate forum and decision of the forum invited on the issue raised.

15. That apart, we see nothing shockingly disproportionate in

the penalty imposed, being that of removal from service, for the reason this is not the solitary instance where the petitioner has deserted.

16. As noted by the disciplinary authority, while imposing the penalty of removal from service, there was past instances of the petitioner absenting from duty without leave and that the lesser penalties imposed in the past were not having the desired effect.

17. It is urged that the disciplinary authority could not have referred to the past misdemeanour.

18. It is settled law that while imposing a penalty, with reference to the subject matter of the current misdemeanour, on the issue of penalty to be imposed if the current misdemeanour is found to be correct, the past service record of any employee can be considered.

19. We find no merit in the writ petition, the writ petition is dismissed.

20. The record of inquiry has been returned to the respondents.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

DECEMBER 04, 2009
hk