

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

+ **WP(C) No.7716/2011**

% **Date of Decision: 22.12.2011**

Randhir Singh Petitioner

Through Mr.Subhashish Mohanty, Advocate.

Versus

Central Industrial Security Force & Anr. Respondents

Through Mr.Jatan Singh, Central Government
Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE INDERMEET KAUR

ANIL KUMAR, J.

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CM No.17479/2011

Allowed subject to all just exceptions.

WP(C) No.7716/2011

1. The petitioner has challenged the order dated 15th February, 2006 and order dated 30th June, 2007 imposing major penalty on the petitioner of "reduction of pay by three stages from Rs.3800 to 3575/- in the time scale of pay of Rs.3050-75-3950-80-4590/- for a period of 2 years with further directions that the petitioner will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay."

2. The petitioner was appointed as a constable in Central Industrial Security Force on 28th June, 1988 and was on deputation with Delhi Administration Police, New Delhi on September, 2001. The petitioner contended that Central Industrial Security Force is under the Ministry of Home Affairs having its headquarter at New Delhi and Deputy Inspector General is one of the subordinate officers and he was the appellate authority of the petitioner.

3. According to the allegations of the petitioner he had underwent treatment from 20th May, 2004 upto 23rd March, 2005 for multiple diseases in Central Government Health Scheme Dispensary, Kingsway Camp, New Delhi. The petitioner had applied for leave under Central Civil Service (Medical Attendance) Rules, 1944 on account of his various ailments. He also produced medical certificates issued by doctor/medical attendants for grant of leave. The petitioner was declared fit by the doctors to assume duty and thereafter the petitioner was repatriated to his parent department by movement order dated 23rd March, 2005 from Delhi Police and he joined the duty with Central Industrial Security Force, Headquarter on 24th March, 2005.

4. On repatriation to the Central Industrial Security Force petitioner was posted to F.B.P., Farakka. The petitioner was issued a memorandum of charge dated 14th June, 2005 framing three Article of

Charges for the alleged misconduct and indiscipline on the part of the petitioner. According to the article of charge issued against the petitioner he was relieved from Delhi Armed Police with effect from 28th May, 2004 and he was to report to his parent department, however, he remained absent unauthorisedly for 299 days from 29th May, 2004 upto 23rd March, 2005 without any intimation to the respondents or permission from the competent authority and thus committed a gross misconduct and an act of indiscipline. The other article of charge against the petitioner was that with effect from 29th March, 2005 when he was relieved from CISF Unit, Farakka after availing the eligible joining time he was to report to the Unit on 11th April, 2005 but he failed to do so and reported to the Unit after one day. The third charge made against the petitioner was that he submitted medical certificates bearing No.205478 dated nil, No.359919 dated nil, No.359920 dated nil, No.359921 dated nil, No.359922 dated nil and No.96817 dated 23rd March, 2005 to cover up his prolonged unauthorized absence which certificates were manipulated by him and this amounted to gross misconduct and indiscipline on his part.

5. The petitioner denied the charges made against him. However, the disciplinary authority proposed a departmental enquiry under Rule 36 of CISF Rules, 2001. The petitioner objected to conduct of departmental enquiry by the respondents and relied on Rule 41 of CISF Rules, 2001 and contended that the disciplinary proceedings should have been

commenced and concluded by Delhi Police and not by the respondents. Rule 41 of CISF Rules, 2001 is reproduced for the sake of reference which as under:

“Rule 41- Provision regarding enrolled member of the Force, lent to State Government etc. –

(1) Where the services of an enrolled member of the Force and lent to a State Government or other authority herein after in this rules referred to as “borrowing authority”, the borrowing authority shall have the powers of the appointing authority for the purpose of placing such member of the Force under suspension and of the Disciplinary Authority for the purpose of conducting a disciplinary proceedings against him.”

6. The respondents, however, conducted the disciplinary proceedings and enquiry officer after examining the witnesses and the documents produced before him and considering the statements of the witnesses and the petitioner submitted the report on 18th January, 2006 holding that the article of charge 1 and 3 were proved against the petitioner. The enquiry officer, however, held that the charge 2 against the petitioner was not made out.

7. The copy of the enquiry report dated 18th January, 2006 was supplied to the petitioner and the petitioner replied to show cause notice of the respondents. The disciplinary authority of the petitioner, Commandant, CISF, Unit: FBP, Farakka, however, by order dated 15th February, 2006 and order dated 30th June, 2007 awarded the major

penalty of reduction of pay by 3 stages for a period of two years with further stipulation that the petitioner will not earn increment of pay during the period of reduction and on expiry of this period, the reduction will have the effect of postponing his future increments.

8. Against the final order dated 30th June, 2007 the petitioner preferred a revision petition dated 18th October, 2008 contending that there had been violation of the principles of natural justice in the enquiry conducted against him. The petitioner also alleged discrimination contending inter-alia that identical allegations were made against four other enlisted members of respondent No.1 namely Prakash Singh, Md.Raisuddin, Onkar Singh Panwar and Manjit who were however, absolved of the charges made against them by the appellate authority by his order dated 21st August, 2006, however, the petitioner has been punished on similar charges.

9. The revision petition filed by the petitioner was however, returned by order dated 31st May, 2008 holding that a statutory appeal is provided under Rule 46(ii) of CISF Rules, 2001 and without filing the appeal, the revision filed by the petitioner was not maintainable. The petitioner, thereafter, filed an appeal on 28th June, 2008 and also sought condonation of delay in filing the appeal. The petitioner also relied on Rule 47 of CISF Rules, 201 contemplating that the appeal can be maintained even after the expiry of the period within which the

appeal has to be filed, if the appellant shows sufficient cause for not preferring the appeal in time.

10. The respondents, however, by order dated 13th July, 2009 rejected the appeal being barred by time. Aggrieved by the order of the disciplinary authority and the appellate authority, the petitioner has preferred the present writ petition contending inter-alia that the respondents were not the competent authority for conducting the departmental proceedings against the petitioner and relied on Rule 41 of CISF Rules, 2001. The petitioner contended that the borrowing authority could only initiate the disciplinary proceeding against him as he was on deputation at the time the alleged misconduct was committed by the petitioner. The orders of punishment passed against the petitioner have also been challenged on the ground that the enquiry officer had overlooked the statements of the doctors attending the petitioner to the effect that the said doctor was attending the illness of the petitioner from 20th May, 2004 to 23rd May, 2005. According to the petitioner the enquiry officer had not considered the medical certificates issued by the concerned medical doctors advising bed rest to the petitioner. The petitioner asserted that the bed rest advised to him was in consonance with the medical certificates issued as per CISF Rules, 2001 and CCS (MA) Rules, 2001 and CCS (Leave) Rules, 1972. The petitioner's grievance is also that the enquiry report is vitiated as the medical certificates issued by the competent authority which were

produced before the enquiry officer were not considered by the enquiry officer which had been overlooked and therefore the findings of the enquiry officer are completely vitiated. The petitioner asserted that he had intimated the respondents when he was on deputation with Delhi Administration Police that he is unwell and could not have attended the duties from 20th May, 2004 to 23rd March, 2005 with the respondents.

11. The petitioner has challenged his order of punishment on the ground that he has been discriminated as four other personnel of CISF namely Prakash Singh, Md.Raisuddin, Onkar Singh Panwar and Manjit were charged with similar charges, however, they have been absolved of the charges by the appellate authority and their period of absence has been regularized. According to the petitioner the respondents ought to have accepted the medical certificates issued by the medical attendants of CGHS Dispensary and in the circumstances there was sufficient reason for the petitioner not to have joined duty during the relevant period.

12. This Court has heard the learned counsel for the petitioner in detail and has perused the record produced before this Court and has also heard the learned counsel for the respondent Sh.Jatan Singh who has appeared on advance notice.

13. The first submission of the learned counsel for the petitioner that the disciplinary action could be initiated by the borrowing authority under Rule 41 of CISF Rules, 2001 is misconceived and is contrary to tenor and import of the rule. Rule 41 does not stipulate that any alleged misconduct by any official who is on deputation has to be tried necessarily and only by the borrowing department. The said rule only vests the borrowing department with powers of appointing authority for purpose of placing such member of the Force under suspension and of the Disciplinary Authority for the purpose of conducting the disciplinary proceedings. The said rule does not lay down in any manner divesting the parent department or authority to take away the power of disciplinary action of the parent department against the charged officer. In any case perusal of the charges reveals that the petitioner was repatriated from Delhi Armed Police on 28th May, 2004 and he was to report to the parent department on 29th May, 2004. The petitioner, however, remained absent unauthorisedly from 29th May, 2004 to 23rd March, 2005 for a period of 299 days without sanction of any leave from the parent department. If the petitioner was relieved on 28th May, 2004 (afternoon) which fact has not been denied by the petitioner, the absence of the petitioner from his parent department from 29th May, 2004 to 23rd March, 2005 has to be tried by the parent department and not by borrowing department. In the circumstances the disciplinary authority would be the parent department of the petitioner that is Central Industrial Security Force and not the borrowing department,

Delhi Armed Police. This submission of the petitioner is, therefore, not acceptable and is rejected.

14. The other plea raised by the petitioner is that the enquiry office did not consider the medical certificates produced by the petitioner. The petitioner has produced the medical certificates dated 24th May, 2004 which stipulates that petitioner was suffering from Diarrhea. The date of certificate is 24th May, 2004. This is not clear as to how on 24th May, 2004 that is on the date of the certificate it could be held by the medical authorities that the petitioner would be entitled for 52 days period of absence on account of an ailment like Diarrhea. The petitioner has also produced a prescription dated 4th November, 2004 in which on various dates he has been allegedly advised bed rest for two weeks on every occasion that is on 4th November, 2004, 16th November, 2005, 13th January, 2005, 10th February, 2005, 2nd December, 2004, 30th December, 2004, 27th January, 2005 and 24th February, 2005. On every occasion on the abovenoted dates the petitioner has been advised rest for two weeks. However, it has not been stipulated as to what was the ailment of the petitioner. The petitioner has also produced another certificate dated nil advising a period of absence for 12 weeks from 15th July, 2004. It is alleged that his absence would be absolutely necessary and the ailment described in the said medical certificate though illegible appears to be colic. The petitioner has produced yet another prescription dated 4th November, 2004 and a certificate dated nil

advising 10 weeks rest from 30th December, 204 without specifying his ailment.

15 Perusal of the enquiry report reveals that all these certificates which were produced by the petitioner including other documents like prescriptions etc. were considered by the enquiry officer in detail. The enquiry officer has also considered in detail the statement of Dr.Ram Kishan, Sr.CMO who deposed on the basis of medical OPD slip/prescription deposing that general medicines are issued to the patient on the basis of prescription by the pharmacist in the dispensary counter and no account is maintained regarding issue of general medicines nor the issue of general medicines are registered by the person in the counter. Regarding petitioner he had deposed that he was given treatment on the basis of DAP Belt No.848 and Dr.R.K.Dixit had attended him on 20th May, 2004. According to him the petitioner was suffering from Colic pain and thereafter the petitioner had Diarrhea and he had been issued general medicines. According to the said doctor the petitioner suffered Jaundice only for two weeks from 15th July, 2004 to 3rd August, 2004 and he was given bed rest for two weeks. After 4th November, 204 it was alleged that the petitioner was suffering from back pain.

16. After considering the testimonies and the documents the enquiry officer analyzed in detail whether the charged official was officially sick and whether it was accepted by the Delhi Armed Police authorities. This has not been challenged that the petitioner was repatriated on 28th May, 2004. Whether the charged official was entitled for treatment under the CGHS Scheme and whether the charged official was actually sick and his treatment is well supported by both medical papers and documents has also been considered in great detail by the enquiry officer. Considering the various facets of various documents and contradictions in them, the enquiry officer inferred various controversies and held that there was reasonable doubt about the sickness of the petitioner. It has also been held that the charged official had knowledge of his repatriation from Delhi Armed Police on 28th May, 2004 and in the circumstances it was held that it can be reasonably be inferred that the medical certificates had been manipulated and had been managed by the petitioner to create a defense for his unauthorized absence on account of his alleged sickness.

17. Regarding the entitlement of the petitioner for medical treatment it was inferred that the OPD prescriptions of the petitioner were made on the basis of his belt No.848/DAP. The petitioner did not have a CGHS Card nor the said belt number from date of his repatriation. Therefore, the medical papers produced by the petitioner to substantiate his prolonged absence on account of his alleged sickness

could not be accepted even for the alleged treatment in Ayurvedic Dispensary, Kingsway Camp. The prescription/OPD slip and medical certificates were, therefore, managed and manipulated by the petitioner by impersonation which has no value and do not justify his unauthorized absence.

18. The enquiry officer has also referred to the major contradictions in the medical certificate as for the same period the certificates reveal that he was suffering from Jaundice and other medical certificate No.A359921 details that he was suffering from back pain. The enquiry officer has gone to the extent of considering the medicines which were issued to the petitioner which were Liv 52, Livotrit, Rohotakarist. Taking into consideration various medicines, prescription and contradictory certificate showing that the petitioner was allegedly suffering from Jaundice according to some certificates and back pain according to him other certificates, it has been inferred that on account of contradictions which causes reasonable doubt about the alleged prolonged treatment of the petitioner from the period 15th July, 2004 to 23rd May, 2005, the medical documents produced by the charged official do not justify his absence and the documents are manipulated and managed by the petitioner in his personal capacity to mislead the respondents. The enquiry officer also referred to the statement of the doctor that he had given the treatment to the petitioner on the basis of his belt No.848 DAP assuming that he was serving in DAP whereas in

the verification report it appeared that constable Randhir Singh holding Belt No.843 DAP was under the treatment of CGHS. The petitioner was not issued any medicine from the dispensary whereas the verification report reflects that the charged official was prescribed and issued medicine from Ayurvedic Dispensary which was found to be highly contradictory.

19. This cannot be disputed that the judicial review of a decision is the review of decision making process and not re-appreciation of the evidence unless there is apparent irregularity or perversity in the findings of the enquiry officer and the disciplinary authority. The learned counsel for the petitioner is unable to point out that while analyzing the evidence and the documents, the enquiry officer and the disciplinary authorities have taken into consideration irrelevant facts or have refused to consider the relevant facts. From the perusal of the enquiry report it is apparent that the relevant testimony of the witnesses have been considered and the testimonies have not been rejected on the basis of surmises and conjectures nor the respondents have enquired into the allegations with which the petitioner has not been charged with. In fact it is not the case of the petitioner that the enquiry officer has gone into the allegation with which he has not been charged with. The Supreme Court in 92006) 5 SCC 88, M.V.Bijlani v. Union of India had held at page 95 as under:-

“It is true that the jurisdiction of the Court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

20. The learned counsel for the petitioner is also unable to show any procedural lapse in conducting the enquiry and awarding the punishment by the disciplinary authority. Though the petitioner had filed the revision petition and thereafter filed an appeal, however, while filing the appeal the petitioner failed to make out sufficient cause for condonation of delay and thus the appeal was also dismissed as barred by time. Even on merits the petitioner has not been able to make out sufficient grounds which would show any illegality, irregularity or perversity in the findings of the enquiry officer or the action taken by the disciplinary authority in awarding the punishment to the petitioner.

21 In the totality of the facts and circumstances the petitioner has failed to make out any such grounds which will entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India against the punishment imposed upon the petitioner. The writ petition is bereft of any merits and, therefore, it is dismissed.

ANIL KUMAR, J.

INDERMEET KAUR, J.

December 22, 2011.

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