

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

+ **WP(C) No.8213/2011**

% **Date of Decision: 14.12.2011**

Pradeep Kumar Singh Petitioner

Through Mr.Ranjeet Kumar, Advocate.

Versus

Union of India & Anr. Respondents

Through Mr.Rajinder Nischal, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.

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CM No.18510/2011

Allowed subject to all just exceptions.

WP(C) No.8213/2011

1. The petitioner has sought quashing of order dated 18th July, 2007 dismissing him from the service and direction to the respondents to reinstate the petitioner into service without prejudice to any of his rights and contentions.

2. The petitioner has contended that he was posted at 176th Battalion CRPF when he was dismissed from service by order dated 18th July, 2007 passed by the Commandant, 176th Battalion, CRPF, Greater

Noida. The petitioner alleged that he was appointed as constable and he had been performing his duties to the post to the best of his ability.

3. According to the petitioner, he was declared as a proclaimed offender and departmental proceedings were initiated against him. Article of Charges were framed against him alleging him to be a deserter on three different occasions. The petitioner contended that the charges of desertion were framed against him despite the knowledge of the respondents that the wife of the petitioner was unwell and was suffering from acute vulnerable diseases as Typhoid and Poly menherea which has led to her abortion of two months pregnancy.

4. The petitioner pleaded that his wife was in an acute physical disturbed state of mind and he had to be present besides her and no other family member was present to tackle the medical condition of his wife.

5. According to the petitioner, he had timely appraised his senior officer of his situation by letter dated 30th August, 2006. The petitioner has also relied on the letter dated 4th December, 2006 which was allegedly sent by the petitioner by registered post. The petitioner has produced the postal receipts in respect of the alleged letters, however, no registered acknowledgement due card has been produced nor any

certificate from the postal authorities that the registered articles sent by the petitioner were served on the addressee.

6. The petitioner has also produced some of the medical records pertaining to his wife in support of his plea that his wife was allegedly suffering from certain ailments. The petitioner alleged that no show cause notice was given to him nor the copies of the documents were given to him and the enquiry officer by his report dated 4th April, 2007 had held that the charges against the petitioner were made out. During the enquiry, seven witnesses were examined in support of the charges that the petitioner absconded from duty during the period from 11th April, 2006 to 3rd June, 2006; 28th June, 2006 to 4th July, 2006 and 15th August, 2006 to 4th November, 2006 and from 11th April, 2006 till the date of the enquiry. During the enquiry proceedings, the respondents also relied on the record of the petitioner's absence from 13th July, 2003 to 17th October, 2003; 26th November, 2003 to 2nd December, 2003; 10th December, 2003 to 11th February, 2004; 19th July, 2005 to 1st September, 2005; 18th September, 2002 to 13th November, 2002; 19th March, 2002 to 22nd March, 2003 and 21st November, 2005 to 20th December, 2005.

7. The medical record produced by the petitioner of his wife in the present petition are the prescriptions dated 16th September, 2006; 17th November, 2006 and 21st November, 2006. The blood report and other

body parameters of the wife of the petitioner has also been filed by the petitioner with the writ petition. The reports are of during the period November, 2006.

8. The enquiry officer, after considering the evidence which was produced during the enquiry proceedings and noting the fact that the petitioner did not appear despite an opportunity given to him, had proceeded ex-parte against the petitioner and after considering the documents and evidence on record gave the findings that the charges against the petitioner were made out.

9. The disciplinary authority, Commandant of 176 Battalion, CRPF, Greater Noida, accepted the report of the enquiry officer and awarded the punishment of dismissal from service after the petitioner failed to file reply to show cause notice given to the petitioner.

10. The petitioner preferred an appeal against the order dated 18th July, 2007 dismissing him from service before the DIG Range Headquarter who dismissed the appeal and upheld the order dated 18th July, 2007 by his order dated 19th March, 2009. Against the order dated 19th March, 2009, the petitioner filed a writ petition, being CWJC No.685/2010, before the High Court of Judicature at Patna which disposed of the writ petition with direction to the petitioner to avail the remedy of revision which was available to him under the CRPF Act.

After the disposal of the petitioner's writ petition by order dated 23rd February, 2010, the petitioner filed a revision petition which was also dismissed by order dated 16th April, 2010. The petitioner has filed the present petition against his order of dismissal which has been sustained in the appeal and the revision filed by the petitioner.

11. The petitioner has impugned the order of his dismissal on the ground that throughout his service career from 2001 to 2006 there was no adverse entry in his service record and he had an unblemished record and the charges of desertion against him in the circumstances are false. According to him, he is the only earning member and his wife has been suffering from diseases since the year 2005 and, therefore, he had applied for leave which was not granted. The petitioner has challenged his order of dismissal also on the ground that the complete set of documents were not provided to him nor any show cause notice had been issued to him initiating departmental proceedings and charge sheet. It is contended that in the circumstances the respondents have violated the principles of natural justice. The petitioner has also made the grievance that the enquiry officer concluded the enquiry proceedings within two months and that the punishment of dismissal is disproportionate to the misconduct attributable to the petitioner.

12. This Court has heard the learned counsel for the petitioner and Sh.Rajinder Nischal, Advocate for the respondents who had appeared on advance notice given to the counsel. From the record it has been pointed out that the petitioner was placed under suspension on account of his absence from the headquarter and the departmental enquiry was initiated on 2nd December, 2006 and letter No.P.Eight-1/06-RSJ was sent to the petitioner intimating him to appear for the preliminary hearing and for presenting any objection and comments in writing. The petitioner was granted time till 15th December, 2006, however, no reply was received from the petitioner. Another letter dated 17th December, 2006 was sent to the petitioner at his residential address. This is not disputed by the petitioner that the residential address in the record of the respondent is the correct address of the petitioner. The petitioner was asked to appear personally and to explain his position upto 30th December, 2006, however, no reply was received from the petitioner. Since the petitioner was sent the notices at the address which is the correct address of the petitioner, the plea of the petitioner that he had not received any show cause notice cannot be accepted.

13. Since the petitioner did not appear despite the notices sent to him, he cannot make any grievance about not receiving the copies of the documents which were produced during the enquiry proceedings.

14. The petitioner was proceeded ex-parte during the enquiry and in the present petition no grounds have been made on behalf of petitioner for setting aside the ex-parte proceedings. Rather, what transpires from the enquiry proceedings is that the petitioner remained absent from 2002 upto 2005 and again from April, 2006 to December, 2006 for various periods. There are no grounds disclosed by the petitioner which would show sufficient cause for non appearance of the petitioner during November, 2006 and December, 2006 when notices were sent to him to appear before the enquiry officer. If the petitioner could not appear on account of alleged medical condition of his wife, the petitioner should have replied to the allegations made against him. However, no copy of any reply alleged to have been sent by the petitioner has been produced except the copies of letter dated 31st August, 2006 and 4th December, 2006. The letter dated 31st August, 2006 is of the date prior to the show cause notice which had been issued to the petitioner and the letter dated 4th December, 2006 does not deal with anything regarding the charges made against him. Rather, in the letter dated 4th December, 2006 the petitioner sought release of his salary for eight months and requested to resolve his problem. The enquiry officer, the disciplinary authority, appellate authority and the Revisional authority has noted the unauthorized absence of the petitioner.

15. Rather in the brief history given in the order dated 16th April, 2010 it has been highlighted that the petitioner had not reported on

26th March, 2006 in 176 Battalion. On 11th April, 2006 he had been given local leave for one day, however, the petitioner did not appear for the roll call and he reported for duty thereafter on 3rd June, 2006 after 52 days from 12th April, 2006 to 2nd June, 2006 and remained absent without any justification and without availing the leave. A preliminary enquiry was, therefore, initiated and he was awarded the punishment by the Commandant of 176 Battalion of line arrest for seven days from 26th June, 2006 to 2nd July, 2006 along with packed drill for one hour daily without salary and allowance. Even during the line arrest the petitioner absconded and eloped from the line arrest on 28th June, 2006 and reported on 4th July, 2006 on his own. The petitioner thus did not complete the punishment awarded to him from 26th June, 2006 to 2nd July, 2006 nor the petitioner challenge the order of punishment imposed by the Commandant of 176 Battalion.

16. The petitioner again absconded during the line arrest on 15th August, 2006 entailing obstruction of his salary and allowance by letter dated 23rd August, 2006 to the office of the Company Commander. The petitioner was also sent a communication to be present on the date failing which legal action was to be taken against the petitioner. The petitioner was sent another communication by the headquarter of the respondent by letter dated 9th September, 2006 to report for duty within five days and on failure of the petitioner to report for the duty, to initiate disciplinary action against him.

17. The petitioner did not report for duty and thereafter arrest warrants were issued against the petitioner. The petitioner thereafter reported on 4th November, 2006 and he was suspended by order dated 4th November, 2006. While the petitioner had reported for duty, memo dated 13th November, 2006 was given to the petitioner for departmental enquiry against him and he was asked to submit his reply within 10 days. However, the petitioner again absconded from the camp on 11th November, 2006 after the initiation of departmental enquiry. The enquiry officer also sent the communication dated 2nd December, 2006 and 17th December, 2006 at the residential address of the petitioner by registered post asking him to come and participate in the enquiry till 30th December, 2006. On failure of the petitioner to appear before the enquiry officer, ex-parte proceedings were initiated against him under Section 14 of CCS/CCA Rules.

18. From the record it is also apparent that copy of the enquiry report was sent to the petitioner by letter dated 22nd May, 2007 by registered post and the petitioner was given time to file the reply within 15 days. The petitioner, however, did not file any reply and consequently the enquiry report was considered by the disciplinary authority and accepted and the punishment of dismissal from service was awarded.

19. The learned counsel for the petitioner in the facts and circumstances has not been able to substantiate that the petitioner was not given any show cause notice or that the petitioner has an unblemished record. The petitioner has not been able to show sufficient cause for his non appearance and for setting aside the ex parte enquiry proceedings initiated against him. From the record it is apparent that the petitioner has been absconding and deserting the service without any just and sufficient reason. In any case for whatsoever reason, if the leave of the petitioner was not sanctioned, the petitioner was not entitled to leave the service un-authorizedly.

20. Learned counsel for the petitioner has also contended that the punishment of dismissal awarded to the petitioner is disproportionate to his alleged misconduct of leaving the service without getting his leave sanctioned as his wife was seriously ill and there was no one to look after her. The petitioner was in a disciplined force and he could not leave the service till sanctioning of his leave. Though the petitioner has produced the copies of medical report of his wife for November, 2006, however, he had been absenting for different periods from 2003 for which he has not even given any explanation and has rather contended that he had unblemished record. The pleas and contentions raised by the petitioner cannot be accepted in the facts and circumstances.

21. It has been held by the Supreme Court that the relief granted by the Courts should be legal and tenable within the frame work of law and should not incur and justify the criticism that the jurisdiction of the Courts tend to degenerate into misplaced sympathy/generosity and private benevolence. The Supreme Court in Life Insurance Corporation of India Vs. R.Dhandapani, AIR 2006 SC 615 has held as under:-

“9. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. [See: Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and Anr. MANU/SC/0885/1993: (1994) IILLJ888SC.]”

The petitioner in the facts and circumstances is not entitled for any relief on the ground that his wife was seriously ill and that there was no one to look after her.

22. In exercise of its jurisdiction under Article 226 of the Constitution of India, it has always been the discretion of the High Court to interfere or not to interfere depending upon the facts and circumstances of the

case. In *Sangrila Food Production Ltd. & Anr. v. Life Insurance Corporation of India & Anr.*, (1996) 5 SCC 54, it was held that the court in exercise of its jurisdiction can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give a party complete and substantial justice. The jurisdiction of the High Court, in exercise of its extraordinary jurisdiction, is normally exercisable keeping in mind a principle of equity. Regarding the scope of judicial interference, it was held that in (2006) 5 SCC 88, '*M.V.Bijlani v. Union of India & Ors.*' that the judicial review is of the decision making process and it is not the re-appreciation of the evidence. The Supreme Court 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.”

23. The learned counsel for the petitioner is unable to show any procedural lapses in conducting the enquiry and awarding of punishment by the disciplinary authority after copy of the enquiry

report was sent to the petitioner. The petitioner has not been able to make out sufficient cause for his non appearance before the enquiry officer despite notice to him. The petitioner has not satisfactorily explained his act of abandoning his service and remaining absent without leave on many occasions.

24. In the totality of facts and circumstances, the learned counsel for the petitioner has not been able to show any such illegality, irregularity or such perversity in the order of the respondent dismissing the petitioner from service which would require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

25. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

December 14, 2011.

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