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HC/GD Naresh Kumar

... Petitioner

## Versus

Union of India &amp; Ors.

... Respondents

**Advocates who appeared in this case:**

For the Petitioner :      Mr.Kirpal Singh, Advocate.

For respondents : Mr.B.V.Niren, Mr.Utkarsh Sharma &  
Mr.P.Jain, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KUMAR**

**HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA**

**ANIL KUMAR, J.**

1. The petitioner has challenged the order dated 28<sup>th</sup> April, 2010 passed by the respondents, directing the removal of the petitioner from the service and has also sought directions to the respondents to reinstate the petitioner in the service with back wages, seniority, promotion and all the consequential benefits.

2. The petitioner was a Head Constable (General Duty) and was posted at CISF Unit, CPT, Cochin. The petitioner was given earned leave from 25<sup>th</sup> November, 2008 to 9<sup>th</sup> December, 2008 for 15 days. The petitioner after the expiry of his earned leave had to report to the unit on 10<sup>th</sup> December, 2008 (Forenoon), however, the petitioner did not report back after the expiry of his earned leave and remained absent

from 10<sup>th</sup> December, 2008 upto 8<sup>th</sup> April, 2009 for 120 days. The petitioner thereafter, reported to the unit CPT at Cochin only on 9<sup>th</sup> April, 2009.

3. During this period when the petitioner remained absent without leave (overstayed the leave), 4 call letters were also sent to the petitioner, however, no reply to the same was received from the petitioner.

4. During his service the petitioner had also been penalized 12 times by different disciplinary officers. However, despite the various penalties awarded to him, the attitude of the petitioner did not reform. The petitioner was issued another chargesheet dated 3<sup>rd</sup> July, 2009 under Rule 36 of the CISF Rules, 2001. The charges made against the petitioner were that he had committed gross misconduct while attending the rifle cleaning parade on 1<sup>st</sup> November, 2008 at about 0700 hours, by misbehaving with Inspector/Exe. K. Parmeshwar, as he had shouted at him and raised his finger in a show of insubordination and used threatening language against him. The charge of overstaying the leave for 120 days from 10<sup>th</sup> December, 2008 to 8<sup>th</sup> April, 2009 was also made out against him by stating that his absence amounted to gross negligence, misconduct and breach of discipline. The petitioner was also charged with 12 previous misconducts for which various disciplinary authorities had awarded him various punishments and

despite the earlier punishments awarded to him the petitioner had not reformed himself and had continued to indulge in indiscipline activities.

5. A chargesheet was also served on the petitioner on 8<sup>th</sup> July, 2009, however, despite the reasonable opportunity given to him no reply was filed by him. Sh.M.P.Singh, AC was, therefore, appointed as an Enquiry Officer. A presenting officer was also appointed on 27<sup>th</sup> February, 2010 in order to enquire into the charges made against the petitioner.

6. The original disciplinary proceedings file has been produced by the counsel for the respondents today on 29<sup>th</sup> May, 2012. Perusal of the original enquiry record reveals that Sh. K. Parmeshwar was examined as PW-1. The said witness was not cross examined by the petitioner on 1<sup>st</sup> February, 2010 though the petitioner was given the opportunity to cross examine the said witness. The petitioner has signed the enquiry proceedings on the said date. In the enquiry proceedings Sh.P.G.Krishnan was examined as PW-2 and the said witness was also not cross examined by the petitioner, however, he stated that at that time he did not have any questions to put to the said witness and in case of any necessity or requirement later on he would ask the necessary questions. Sh.M.S.K.Nayar was examined as PW-3, who was also not cross examined by the petitioner though the opportunity was given to him. Sh. Subba (G.D.) was examined as PW-4, who was cross examined by the petitioner. The petitioner had put three questions to

the said witness. The next witness examined during the enquiry proceedings was Sh.C.Nagar as PW-5, who was also put two questions in the cross examination by the petitioner. Another witness Sh.N.R. Murali Krishan was examined as PW-6, however, the said witness was not cross examined by the petitioner. The statement of the petitioner was also recorded in detail and in the statement the petitioner did not allege that he wanted to cross examine some of the witnesses, however, he was not allowed to cross examine them.

7. The Enquiry Officer submitted his report to the Disciplinary Authority on 27<sup>th</sup> February, 2010 holding that all the charges alleged against the petitioner were made out. A copy of the enquiry report was given to the petitioner by letter dated 3<sup>rd</sup> March, 2010 and he was given 15 days time to make his representation. The receipt of enquiry officer's report was acknowledged by the petitioner on 18<sup>th</sup> March, 2010 and he submitted a request on 30<sup>th</sup> March, 2010 seeking 30 days time for the submission of his representation. The time upto 15<sup>th</sup> April, 2010 was granted to the petitioner. However, instead of submitting the representation against the enquiry report, the petitioner had sought 30 days more time to submit the representation which was, however, rejected by the Disciplinary Authority and it was communicated to the petitioner on 28<sup>th</sup> April, 2010.

8. The Disciplinary Authority, therefore, considered the enquiry report and agreed with the findings of the Enquiry Officer and passed the final order No.(1150) dated 28<sup>th</sup> April, 2010 awarding the punishment of removal from service.

9. Aggrieved by his order of removal, the petitioner had filed an appeal before the DIG/ST Chennai. The appeal was considered by the Appellate Authority in accordance with law and the order dated 15<sup>th</sup> June, 2010 was passed dismissing the appeal.

10. Aggrieved by the order of removal dated 28<sup>th</sup> April, 2010 and the dismissal of appeal by order dated 15<sup>th</sup> June, 2010, the petitioner preferred a revision petition to the Director General, CISF. The revision petition was considered by the Revisional Authority and the plea of the petitioner that his wife had been seriously ill and that he had applied for leave on three occasions but the leave was declined without assigning any reasons were not accepted. The Revisional Authority had also considered the plea of the petitioner that there was a threat to the life of his wife and children from some unidentified persons because of which his wife Smt.Rani Devi had lodged a complaint with the Superintendent of Police, Haridwar and thus the situation was beyond his control due to tension and family problems because of which the petitioner had overstayed the leave for 120 days. After considering the depositions of the witnesses, the plea of the petitioner that the

witnesses were not independent witnesses and were tutored was also repelled by the Disciplinary Authority and the Revisional Authority.

11. The pleas and contentions raised by the petitioner were rejected on the ground that the petitioner could not have been sanctioned leave as sought by him. Considering his request, however, he had been granted 15 days E.L from 25<sup>th</sup> November, 2008 to 9<sup>th</sup> December, 2008. There was no justifiable reason for overstaying the leave for 120 days on the pretext of self medical treatment. No justifiable reason was disclosed by the petitioner for not responding to the call up notices which were sent to the petitioner. On the basis of the evidence produced before the Enquiry Officer it was also inferred that the misbehaviour with Inspector/Exe.Parmeshwar is also established as the statement of PW-1 Sh.Parmeshwar has been duly corroborated by other witnesses PW-2, PW3 & PW-4. The respondents also noticed that in his application seeking extension of 15 days leave the petitioner had not even disclosed anything about his medical treatment. In case the petitioner was sick he should have undergone medical treatment from various medical facilities available as per CCS Medical Rules and should have forwarded the copy of medical unfitness certificate to the leave sanctioning authority. It was also observed that the certificate which was produced by the petitioner at the time of his joining was from 8<sup>th</sup> December, 2008 to 2<sup>nd</sup> March, 2009 for Jaundice and from 3<sup>rd</sup> March, 2009 to 9<sup>th</sup> April, 2009 for Headache which in any case were not in accordance with the

prescribed procedure. The respondents has, therefore, inferred that the petitioner was not entitled to overstay his leave for the alleged reason of 'Headache'.

12. The plea of the petitioner that the Enquiry Officer should have been appointed from some other unit was also repelled on the ground that the petitioner had not alleged any bias against the Enquiry Officer, nor had he raised any objection about the conduct of the departmental enquiry by the Enquiry Officer, either during the preliminary hearing or thereafter.

13. The respondents also categorically stated that the petitioner misbehaved with the superior officer and overstayed the leave without any justifiable reason for 120 days and in a disciplined Paramilitary Force the action of the petitioner is not justifiable and he has remained incorrigible which is apparent from the fact that on earlier 12 occasions he was awarded various punishments. Consequently, the Revisional Authority also dismissed the revision petition and upheld the order of removal passed against the petitioner.

14. The orders of removal passed by the Disciplinary Authority, Appellate Authority and the Revisional Authority are challenged by the petitioner in the above noted writ petition, *inter-alia*, on the grounds that the charges made against the petitioner were not correct; that

raising a finger is not an offence, nor can it be construed as indiscipline and misbehaviour; the witness did not support the case of the petitioner and, therefore, the petitioner is innocent and the order of removal is liable to be set aside and the petitioner is entitled to be reinstated; that the petitioner had not remained absent for 120 days unauthorisedly as he had sent medical certificate of illness of his wife and himself which were, however, not considered; that raising finger while talking to superior officer and talking with a loud voice cannot be construed to be an offence so serious so as to entail removal from service, as in any case the offence alleged is such a minor thing.

15. The learned counsel for the petitioner while making submissions on behalf of the petitioner also contended that the petitioner was not allowed to cross examine the witnesses and that he was forced to sign that he does not want to cross examine the witnesses. The learned counsel for the respondents Mr. Utkarsh Sharma who appears on advance notice has repelled the pleas and contentions raised on behalf of the petitioner and has produced the original record pertaining to the disciplinary action taken against the petitioner which concluded in the punishment of removal awarded to him. The learned counsel for the respondents has contended that the perusal of the original record reflects unequivocally that the petitioner was given due opportunity to cross examine the witnesses, however, the petitioner opted not to cross examine some of the witnesses and, in fact, had cross examined only

two witnesses. In the circumstances, the allegation by the learned counsel for the petitioner that he was not allowed to cross examine and that he was forced to write that the opportunity was given to him but he declined to cross examine the witnesses is not borne out from the record and is false to the knowledge of the petitioner. The learned counsel has also pointed out that no such plea was taken by the petitioner either in appeal or in the revision petition filed before the Appellate Authority and the Revisional Authority and that no such plea has also been taken by the petitioner in the writ petition.

16. This Court has heard the learned counsel for the parties and has also perused the original record. The perusal of the original record reveals that the petitioner had declined to cross examine some of the witnesses and that, in fact, he had cross examined two witnesses. In the circumstances, the plea of the counsel for the petitioner that the petitioner was not allowed to cross examine the witnesses cannot be sustained. It is also pertinent to note that no such plea has been raised by the petitioner either in the writ petition or in the appeal or in the revision filed by the petitioner before the Appellate Authority and the Revisional Authority. Consequently, this plea of the petitioner is repelled.

17. This fact has not been denied by the petitioner that he had been punished on 12 different occasions previously by the Disciplinary

Authority. In the circumstances, overstaying the leave by 120 days cannot be construed to be a minor offence as has been sought to be canvassed by the learned counsel for the petitioner. The petitioner also failed to produce any relevant medical record that could have justified the misconduct of overstaying the leave granted to him. The medical record which was produced by the petitioner after 120 days of overstaying the leave is also in respect of headache. In the circumstances, if the Disciplinary Authority has not relied on the medical certificate produced by the petitioner, which was also, in any case, not in accordance with the rules, as it was not endorsed by the appropriate authorities, it cannot be held that there was sufficient reason for the petitioner to overstay his leave by 120 days. There is also no justifiable reason for the petitioner for not responding to four call letters which were issued to him. Even the application which was filed by the petitioner for extension of leave was only for 15 days in which application also the petitioner had not disclosed about his medical condition. In the circumstances, if the respondents have not relied on the pleas taken by the petitioner, the same cannot be faulted on account of any of the grounds raised by the petitioner.

18. While going into the correctness of the facts established against the petitioner, this Court cannot take over the function of the Disciplinary Authority, nor can it sit in appeal on the findings of the Disciplinary Authority and assume the role of the Appellate Authority.

However, if there is any irrationality, illegality or procedural impropriety, the Court can interfere with such irrationality and illegality in the decision making of the respondents. It also cannot be disputed that the Court can interfere with the findings of the fact arrived at by the disciplinary procedure in case there is no just evidence to support the finding or the finding is such that no rational person acting reasonably or with objectivity could have arrived at the same conclusion or where a reasonable opportunity has not been given to the delinquent to defend himself or if it is a case where there has been non application of mind on the part of the Disciplinary Authority or if the charges are vague or if the punishment imposed is shocking to the conscience of the Court. The Court will have no option but to interfere if the decision is tainted by vulnerability, illegality, irrationality or procedural impropriety.

19. The Court can also interfere if on material, the decision is so outrageous so as to be in utter defiance of logic or moral standards. If the power is exercised on the basis of the facts which do not exist and which are patently erroneous, such exercise of power shall be vitiated. Exercise of power is likely to be set aside if there is any manifest error in the exercise of such power or the exercise of power is manifestly arbitrary. To arrive at a decision on 'reasonableness' the Court has to find out if the respondents have left out a relevant factor or factors or have taken into account an irrelevant factor or factors.

20. None of these grounds and conditions have been made out by the petitioner so as to require any interference by this Court. In the totality of facts and circumstances and for the foregoing reasons there are no grounds to interfere with the orders of the respondents removing the petitioner from service as the petitioner has failed to make out any illegality, irregularity or such perversity which will require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition, in the facts and circumstances, is without any merit and it is, therefore, dismissed.

**ANIL KUMAR, J.**

**SUDERSHAN KUMAR MISRA, J.**

**MAY 29, 2012**

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