

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

% Date of Decision: 02.05.2012

+ W.P.(C) No.2599/2012

Rajeev Kumar Bansal ... Petitioner
versus

Union of India & Ors. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms.Malini Poduval, Advocate.
For Respondents : Ms.Barkha Babbar, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.

1. The petitioner has sought the quashing of order of dismissal dated 16th February, 2009 passed by the Deputy Inspector General Sector HQ SSB Lakhimpur and order dated 31st January, 2012 passed by the Director General, Sashastra Seema Bal dismissing the appeal of the petitioner. The petitioner has sought his reinstatement with continuity of service, arrears of pay and allowances and all other service benefits.

2. Brief facts to comprehend the disputes raised by the petitioner are that he was enrolled in Sashastra Seema Bal (SSB) in 1991 as Sub Inspector (P). The petitioner was thereafter, transferred by order dated 28th December, 2005 from Delhi to Palia Kalan. The petitioner had sought the cancellation of the transfer order, however, the petitioner

was relieved from FHQ by order dated 24th January, 2006, and he was directed to report to the Commandant 25th Bn. It was also pointed out that in the transfer order dated 28th December, 2005 the name of the petitioner was, mentioned as Rajesh Kumar Bansal in place of Rajeev Bansal.

3. The petitioner however, did not join the 4th Bn.SSB at Palia Kalan and consequently, by order dated 23rd February, 2007 he was declared as 'deserter' from the force with effect from 1st April, 2006 under Rule 31 of CRPF Rules, 1955.

4. The petitioner had challenged the order dated 23rd February, 2007 declaring him as 'deserter' by filing a writ petition being W.P(C) No.2097/2007 titled as 'Rajeev Kumar Bansal v. Director General SSB & Ors.' which was disposed off by order dated 19th March, 2007. While disposing off the writ petition of the petitioner, the Court had directed that the petitioner be not arrested pursuant to the impugned order declaring him as a 'deserter' for the period of 10 days ending 29th March, 2007, and the petitioner was also given the liberty to join the unit on or before the said date at Palia Kalan, Uttar Pradesh. This Court had, however, clarified that if the petitioner does not join the duties in the Battalion within the time fixed by the Court that is by 29th March, 2007, the authorities would be entitled to apprehend the petitioner. The

respondents were, however, permitted to initiate such action against the petitioner as were permissible in law for overstaying of leave.

5. A departmental enquiry was conducted against the petitioner under Rule 27 of CRPF Rules, 1955 in respect of three charges i.e. conducting gross misconduct and neglect of duty and remissness in discharge of duty as after being relieved on 31st March, 2006 from FHQ, Delhi, the petitioner did not join his duty at 4th Bn, SSB, Palia Kalan and remained absent at his own will without permission of the competent authority; the petitioner on completion of temporary attachment did not report to join duty at 4th Bn. HQ Palia Kalan; and that the petitioner had sought sanction of leave without pay upto 31st December, 2006 due to family problems whereas by application dated 8th January, 2007 and 1st February, 2007 he had intimated the respondents that he is taking treatment since May, 2006 due to severe backache which allegations were found to be contradictory, misleading and amounted to gross misconduct. The third charge against the petitioner was that the resumption notices were sent to the petitioner which were received back undelivered as the postal authorities had given the report/remarks that he is staying away from his home and thus the petitioner was charged with avoiding to receive official communication sent to him and thus had committed an offence of misconduct in discharge of the duty.

6. The chargesheet was issued to the petitioner and thereafter, the Enquiry Officer conducted the enquiry in respect of all charges made against the petitioner. During the enquiry, the petitioner was given reasonable opportunity by the Enquiry Officer as per rules and instructions to defend himself. A copy of the enquiry report was also sent to the petitioner and he was given an opportunity to make submission on the report of the enquiry. The petitioner had submitted a reply dated 9th October, 2008. The Disciplinary Authority, however, agreed with the findings of the Enquiry Officer and disbelieved the OPD card and other documents produced by the petitioner in respect of his alleged disability. The Disciplinary Authority, therefore, awarded the penalty of dismissal from Government service and the unauthorized absence period of the petitioner was ordered to be dealt with by the Commandant 4th Battalion, Palia Kalan as per rules, with regard to 665 days from 1st April, 2006 to 25th January, 2008 and 272 days from 6th March, 2008 to 2nd December, 2008. Aggrieved by the order of the Disciplinary Authority, the petitioner preferred an appeal dated 16th March, 2009 against the punishment of dismissal imposed upon him.

7. The appeal was disposed off by order dated 4th June, 2009 holding that the decision of the Disciplinary Authority awarding the punishment of dismissal from the service is in consonance with the gravity of charges established against the petitioner and thus the punishment order was upheld.

8. Aggrieved by the order of the Appellate Authority, the petitioner had filed a writ petition being W.P(C) No.11051/2009 titled as 'Rajeev Kumar Bansal vs. Union of India & Ors.' which was disposed off by this Court by order dated 26th July, 2011 holding that since the petitioner has not availed the alternative remedy of revision, he is not entitled to invoke the jurisdiction under Article 226 of the Constitution of India and therefore, the petitioner was given four weeks time from 26th July, 2011 to prefer a revision petition to the Director General (SSB).

9. Pursuant to the order dated 26th July, 2011, the petitioner preferred a revision petition which was rejected by the respondents by order dated 31st January, 2012.

10. Aggrieved by the decision dated 31st January, 2012 and other orders dismissing the revision petition and appeal of the petitioner and dismissing the petitioner from service, the above noted writ petition has been filed, *inter-alia*, on the grounds that the Enquiry Officer had not considered the independent medical evidence produced on behalf of the petitioner regarding his absence and overstaying the leave, and that the punishment imposed upon the petitioner is disproportionate to the alleged charges made against him.

11. The petitioner has also challenged the order on the ground that the medical record produced by him had not been considered by the respondents. The order of punishment is also impugned on the ground that it was incumbent upon the respondents to get the petitioner examined from the medical board. The petitioner has also contended that while dismissing the petitioner from the service the respondents have not considered the fact that the petitioner had already rendered 16 years of service.

12. The learned counsel for the respondents, Ms.Barkha Babbar who appears on advance notice has refuted the pleas and contentions raised by the respondents. The learned counsel for the respondents has contended that perusal of the enquiry report rather reveals that all the documents produced by the petitioner had been considered and dealt with by the Enquiry Officer. The Enquiry Officer has held that the medical record/certificates produced by the petitioner do not disclose the name of the petitioner and the registration number. The learned counsel has also pointed out the contradictions in the medical record in as much as on 4th May, 2006 the petitioner was advised medicine for 15 days and he was also advised to admit himself. The petitioner, however, has not produced any record about his admission/discharge from the hospital. The learned counsel has further pointed out that after completion of the 15 days the petitioner should have got himself re-examined on 19th May, 2006 but he reported only on 6th June, 2006

after a lapse of 19 days. The learned counsel in the circumstances has contended that the Enquiry Officer has considered the entire medical record produced by the petitioner and this Court will not re-appreciate the evidence produced by the petitioner, which has been disbelieved by the Enquiry officer. The learned counsel contended that this Court will not substitute the findings of the Enquiry Officer with the findings of this Court. The learned counsel has also asserted that the grounds on which the decision of the respondents in dismissing the petitioner from the service can be reviewed are illegality, irrationality and procedurally impropriety. The learned counsel has further contended that the counsel for the petitioner has not made out any illegality, irrationality or any procedural impropriety in the decision taken by the respondents.

13. Ms.Babbar, the learned counsel has also emphatically contended that it was not incumbent upon the respondents to get the petitioner examined from the medical board. Since the petitioner had overstayed the leave and had absented himself without permission and sanction, it was for the petitioner to have produced the cogent evidence in support of his contentions, that he was not medically fit to rejoin the duty. In the circumstances, it is asserted that there is no provision under the relevant rules to make the respondents liable to have the petitioner examined by a medical board. In any case, at the time of the enquiry the medical board, if any, could not have opined about the earlier unfitness or the disease or the problems of the petitioner. The burden to

establish his absence without authorization was on the petitioner and he should have discharged the same, which he failed to do leading to the Enquiry Officer giving the findings against the petitioner, which report had been carefully considered by the Disciplinary Authority and after due opportunity to the petitioner, the punishment was imposed in accordance with law. The learned counsel for the respondents has also contended that the respondents have considered even the service of the petitioner already rendered for 16 years before awarding the punishment. Considering the various lapses on the part of the petitioner which have been duly proved, the punishment imposed on the petitioner cannot be termed as disproportionate.

14. This Court has heard the learned counsel for the parties and has perused the writ petition and the annexures filed with the writ petition. The plea of the learned counsel for the petitioner that the medical record of the petitioner had not been considered is belied by the detailed consideration of the medical record submitted by the petitioner before the Enquiry Officer. The Disciplinary Authority while awarding the punishment has considered the medical record of the petitioner and had observed as under:-

“(II). SI (p) Rajeev Kumar Bansal had submitted OPD card in connection with his treatment w.e.f. 04/05/2006. On examining the OPD card during the course of inquiry following discrepancies have been noticed:-

(i) There is no name, registration No. find mention in the OPD

card.

- (ii) On 04/05/2006 medicine advised for 15 days. At the same time he was advised to admit. But he has not produced any records about his admission/ discharge from the Hospital.
- (iii) After completion of 15 days he should have reported to the Medical Officer for re- examination on 19/05/2006 but he did not do so whereas he reported on 06/06/06 after lapse of 19 days which could be seen in OPD card. On 06/06/2006 medicine advised for one month. After completion of 30 days the individual was liable to report the medical officer concerned on 05/07/2006. However, he reported the Medical officer on 10/7/2006 i.e. after 05 days. On 10/07/2006 he was prescreened medicine for me month thereafter he was required to report to Medical Officer concerned on 10/08/2006 for re-check up. However he submitted OPD card on dated 07/08/2007 and in that card there is no signature of Medical Officer. Moreover, a perusal of the OPD Card reveals that same has been prepared in one go. He reported Medical Officer on 01/09/2006 i.e. after one month from the due date and than he was prescribed medicine for 15 days.
- (iv) Thereafter he was required to report on 16/09/2006 but he reported to medical officer on 26/12/2006 i.e. after about 3 and half months. Moreover, from the period w.e.f. 04/05/2006 to 26/12/2006 neither he was advised and medical rest nor any test was conducted during this period. He was advised MEDICINE ON OPD Card but the individual has not produced any. Cash Memo of the medicines for reimbursement From the facts on records it could be said that the individual has prepared unauthentic medical papers on 26/12/2006 in one go to cover up his unauthorized absence under question.
- (v) SI(Pioneer Rajeev Kumar Bansal has also not submitted any documentary evidence in connection with his family problems for which he was compelled to apply leave without pay upto 31/12/2006 as per his contention.
- (vi) During the course of inquiry SI(P) Rajeev Kumar Bansal was asked vide Question No. 13 of the statement of the individual dated 13/02/2008 by the I.O. to express his statement in right whether he was ill and getting treatment w.e.f. 04/5/2006 from Dr. Tantia or due to family problem for which he remained absent. In turn he stated that he has no word to say about this question. Therefore he

admitted his mistake and also pleaded guilty of article of charge No. II. Accordingly the article of Charges —II has been proved beyond doubt by the I.O.”

15. In view of the detailed consideration of the Disciplinary Authority, the pleas of the learned counsel for the petitioner that the medical record of the petitioner had not been considered by the respondents is not made out. The plea of the petitioner is contrary to the record. The medical record of the petitioner produced by him had been considered by the Enquiry Officer and the Disciplinary Authority and, therefore, this plea is not sustainable. The learned counsel for the petitioner has failed to point out any illegality, irrationality in the consideration of the medical record of the petitioner in the facts and circumstances.

16. It cannot be disputed that the Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, has no jurisdiction to go into the correctness of the truth of the charges. It cannot re-appreciate the evidence already considered by the disciplinary authority, nor can it sit in appeal on the findings of the disciplinary authority and assume the role of the appellate authority. Normally the Court cannot interfere with the findings of the fact arrived at in the disciplinary proceedings except in the case of mala fides or perversities i.e. where there is no evidence to support a finding or where the finding is such that anyone acting reasonably or with objectivity could not have arrived at or where 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 enquiry authority or if the charges are vague or if the punishment imposed is shocking to the conscience of the Court. Reliance for this can be placed on State of U.P & Ors. v. Raj Kishore Yadav & Anr., (2006) 5 SCC 673; V.Ramana v. A.P. SRTC & Ors., (2005) 7 SCC 338; R.S.Saini v. State of Punjab & Ors., JT 1999 (6) SC 507; Kuldeep Singh v. The Commissioner of Police, JT 1998 (8) SC 603; B.C.Chaturvedi v. Union of India & Ors, AIR 1996 SC 484; Transport Commissioner, Madras-5 v. A.Radha Krishna Moorthy, (1995) 1 SCC 332; Government of Tamil Nadu & Anr. v. A. Rajapandia, AIR 1995 SC 561; Union of India & Ors. v. Upendra Singh, (1994) 3 SCC 357 and State of Orissa & Anr. v. Murlidhar Jena, AIR 1963 SC 404.

17. The plea of the learned counsel for the petitioner that the respondents should have got the petitioner examined from the medical board can also be not accepted. No rule or regulation has been shown by the learned counsel for the petitioner which will make it obligatory on the part of the respondents to get him examined from the medical board after the petitioner failed to show sufficient cause for his absence. Though his prayer for 60 days leave with effect from 1st April, 2006 to 30th May, 2006 on the ground of personal/family problem was not sanctioned at the time of relieving him, yet the petitioner had absented himself. The leave could not be claimed by the petitioner as a matter of right in view of the exigencies of public service. If the leave was refused,

the petitioner could not decide on his own that he is entitled to absent himself. In any case, if during the pendency of the disciplinary proceedings, had any medical board constituted, such a medical board could not have ascertained the reasons for the absence of the petitioner after he was allegedly cured. The petitioner had to produce the evidence of those doctors who had treated him or if he was admitted to the hospital, then the record of such an hospital. The medical record produced by the petitioner has been disbelieved and no other relevant medical record has been produced. In the circumstances, the plea of the petitioner that he should have been examined by the medical board cannot be accepted in the facts and circumstances of the present case.

18. Considering the serious allegations and the conduct of the petitioner earlier, it cannot be held that the punishment of dismissal from service awarded to the petitioner is disproportionate in any manner as has been alleged by the petitioner.

19. No procedural impropriety has been pointed out by the learned counsel for the petitioner. The petitioner has also failed to show any vulnerability like illegality, irrationality or procedural impropriety. Another relevant thing is that whether the actions of the respondents falls within any of these categories has to be established by the

petitioner and the mere assertion by the petitioner in this regard is not sufficient.

20. The grounds on which administrative action is subject to control by judicial review are, "illegality"; "irrationality" and "procedural impropriety". The Court is not interfere in such matters unless the decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories is to be established and mere assertion in that regard may not be sufficient. To be "irrational" it has to be held that on material, it is a decision "so outrageous" as to be in total defiance of logic or moral standards. If the power is exercised on the basis of facts which do not exist having which are patently erroneous, such exercise of power shall be vitiated. Exercise of power will be set aside if there is 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 factors or taken into account irrelevant factors. In (1995) 6 SCC 749, B.C.Chaturvedi v. Union of India & Ors. Supreme Court at page 759 has held as under:-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the

inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

21. In the facts and circumstances, there are no grounds to interfere with the order of the respondents dismissing the petitioner from service.

The writ petition is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J

SUDERSHAN KUMAR MISRA, J

MAY 02, 2012

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