

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

% Date of Decision: 24.04.2012

+ **W.P.(C) No.2409/2012**

Ex.Const.Praveen Kumar ... Petitioner

Versus

Union of India & Ors. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr.Anupam Raina, Advocate.

For Respondents : Mr.B.V.Niren, CGSC with Mr.Utkarsh Sharma and
Mr.Prasouk 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 enquiry report dated 20th October, 2009 and order dated 30th November, 2009 passed by the Commandant, SSG, CISF imposing the punishment of removal from service and order dated 16th February, 2010 passed by the Deputy Inspector General (Personnel), SSG, CISF dismissing the appeal of the petitioner against the order of his removal from service. The petitioner has also challenged the order dated 12th July, 2010 passed by the Inspector General/Airport Sector, CISF dismissing the revision petition of the petitioner against the dismissal of his appeal.

2. The relevant facts to comprehend the controversies are that the petitioner was chargesheeted under Rule 36 of the CISF Rules and the following charges were framed against him:-

CHARGE -1.

No. 9721180087 Constable Parveen Kumar, SSG, CISF , Mahipal Pur, New Delhi (Now Greater Noida, UP) remained absent from duty without leave for total 34 days from 30.09.2007 to 02.11.2007, from 23.12.07 to 26.12.07 for total 4 days and from 01.2.08 to 24.3.08 for total 53 days. Therefore being the members of discipline force like CISF, the above said act of Constable Parveen Kumar, shows grave carelessness and indiscipline towards his duty.

CHARGE-2

No. 9721180087 Constable Parveen Kumar, SSG, CISF , Mahipal Pur, New Delhi (Now Greater Noida, UP) overstayed without sanctioned leave for total 09 days from 19.11.2007 to 27.1.2007, from 10.12.07 to 11.12.07 for total 2 days and from 01.2.08 to 24.3.08 for total 53 days. Therefore being the members of discipline force like CISF, the above said act of Constable Parveen Kumar, shows grave carelessness and indiscipline towards his duty.

CHARGE-3

No. 9721180087 Constable Parveen Kumar, SSG, CISF, Mahipal Pur, New Delhi (Now Greater Noida, UP), during his service tenure, has been given minor punishments seven (07) times for over stay from sanction leave and remained absent from duty without leave. From this it appears that above said force member is in the habit to over stay from leave and to remain absent from duty without leave. Therefore being the members of discipline force like CISF, the above said act of Constable Parveen Kumar, shows grave carelessness and indiscipline towards his duty.”

3. The memorandum of charges was issued to the petitioner and he submitted his representation denying the charges levelled against him. An enquiry was conducted against the petitioner and an Enquiry Officer namely, Inspector Ramender Singh was duly appointed. Presenting Officer was also appointed in accordance with the CISF Rules, 2001. Before the Enquiry Officer, the petitioner had admitted that he had received the chargesheet. The petitioner had sought to produce Constable Manoj Kumar, another constable also named Manoj Kumar, Constable Harbhajan and HC/GD Mathura Prasad as defence witnesses, and he also proposed to produce the medical certificates issued by RML Hospital as the documents in his defence.

4. The Enquiry Officer recorded the evidence of the witnesses produced on behalf of the respondents and also gave the petitioner the opportunity to cross examine the said witnesses. The defence witnesses which were proposed by the petitioner were, however, later on withdrawn and no document was produced by the petitioner in support of his defence.

5. On the basis of the evidence and documents before the Enquiry Officer, he gave a report which was submitted to the disciplinary authority on 21st October, 2009, wherein it was held that the charges were made out against the petitioner. A copy of the enquiry report was given to the petitioner on 26th October, 2009. The petitioner was also

given an opportunity to make a representation against the said enquiry report. The disciplinary authority considered the enquiry report and agreed with the findings of the Enquiry Officer holding that the charges against the petitioner were duly established.

6. The disciplinary authority noted that the petitioner was detailed for refresher course at RTC, Deoli with effect from 30th September, 2007 but he remained absent without leave with effect from 30th September, 2007 without any proper permission/information and reported back on his own only on 3rd November, 2007, i.e. after 34 days of absence without leave. On rejoining his duty, the petitioner submitted a medical certificate & OPD slip issued by Rao Tula Ram memorial Hospital, Jaffar Pur, New Delhi which stipulated that the petitioner was advised medical rest with effect from 28th September, 2007 upto 2nd November, 2007.

7. The disciplinary authority after perusing the evidence on record also noticed that the doctor who had advised the petitioner 36 days rest with effect from 28th September, 2007 to 2nd November, 2007 had done so without going through any X Ray report, though the plea of the petitioner was that he had sustained severe injury in his leg. In the circumstances, it was held that the medical treatment report given by the petitioner was doubtful. The disciplinary authority also noted that thereafter, the petitioner was sanctioned 2 days medical rest with effect

from 17th November, 2007 to 18th November, 2007 and the petitioner had to report for duty on 19th November, 2007, however, the petitioner overstayed the leave and reported only on 28th November, 2007. After 9 days of overstay, he again submitted the OPD slips, however, on the OPD slips it was noticed that the number of days advised for rest had been overwritten which created doubt about the authenticity of the medical papers produced by the petitioner. The petitioner did not produce any witness who had treated the petitioner or who had been conversant with his medical conditions nor produced any document in the enquiry proceedings.

8. Thereafter, the petitioner again availed one day casual leave on 7th December, 2007 and he was to report for duty on 10th December, 2007 however, he reported for duty on 12th December, 2007 after remaining absent for two days and the plea taken was that he had overstayed on account of the death of his maternal uncle. However, again the petitioner had not sought any permission for overstaying the leave, nor had sent any intimation, nor produced any evidence to substantiate the death of his maternal uncle.

9. Thereafter, the petitioner was detailed for night shift at Gate no. 1 for vehicle checking at CISF campus at Mahipalpur on 23rd December, 2007, but he did not report for duty and absented himself. For absenting himself from the duty the petitioner was required to obtain

prior permission from the competent authority. However, after remaining absent the petitioner reported on his own only on 27th December, 2007 and the reason disclosed was his sickness. The petitioner, however, did not produce any documents or oral evidence of any concerned medical doctor or hospital to establish his sickness.

10. The petitioner was again detailed for vehicle checking on 1st February, 2008 and yet again the petitioner did not turn up. It had transpired that the petitioner had been removed from service in another disciplinary case with effect from 25th March, 2008 and thus he was marked as absent without leave for 53 days with effect from 1st February, 2008 to 24th March, 2008. The disciplinary authority noticed that the brother and wife of the petitioner had informed the unit control room that the petitioner was hospitalised in RTM M Hospital, New Delhi. Two call letters dated 11th February, 2008 and 10th March, 2008 were sent to the petitioner directing him to send medical papers in support of his sickness or report immediately to the unit. But the petitioner failed to report and also failed to provide the supporting medical papers to the respondents.

11. The disciplinary authority thus held that the charges against the petitioner were made out and it was also noticed that he had been awarded four minor punishments earlier for the offences of over staying the leave and absence without leave. On another occasion during his

posting in CISF 2RB at Mahipalpur he had been awarded two other minor punishments for the offence of over staying the leave and absence without leave. Another minor punishment for the offence of absence without leave, when the petitioner was posted in CISF Unit, SSG also came to the notice of the disciplinary authority. Thus it was inferred that the petitioner is a habitual offender of remaining OSL & AWL as despite several punishments he had not corrected himself. The medical papers produced on behalf of the petitioner from Rao Tula Ram Memorial Hospital, Jaffar Pur, New Delhi were considered and it was held that the medical papers were doubtful and had been produced just to cover up his OSL & AWL periods as there were lot of discrepancies in the medical papers. It was further noted that the petitioner also could not adhere to the official procedure to prevent from being dubbed as OSL/AWL.

12. The disciplinary authority also noticed that though the copy of the enquiry report was received by the petitioner on 26th October, 2009, however, no representation was made by the petitioner against the enquiry report and in the circumstances, it was held that the charges against the petitioner were made out and thus the disciplinary authority awarded the punishment of removal from service in view of the fact that the CISF is a disciplined force and discipline is of paramount importance and the petitioner is unfit for further retention in the force.

13. The appeal of the petitioner was also dismissed after considering his pleas. The pleas raised by the petitioner were that he was not given sufficient time and opportunity to prove his case; that the petitioner could not produce all the facts properly before the Enquiry Officer as he was doing his duty; the Enquiry Officer had not considered the fact of withdrawal of defence witnesses; the medical records produced by the petitioner were not verified; the medical officers from the medical hospitals were not summoned; that the brother and the wife of the petitioner had sent the intimation on 1st February, 2008 about the medical health of the petitioner; and the Enquiry Officer was biased and the punishment awarded to the petitioner was harsh. The Appellate Authority considered all the pleas and contentions raised by the petitioner and dismissed the appeal by order dated 16th February, 2010.

14. The petitioner filed a revision petition against the order of dismissal of his appeal which was also dismissed by the Revisional authority/respondent No.3 by order dated 12th July, 2010. In the revision petition also the petitioner had reiterated the pleas and contentions which were raised before the appellate authority.

15. The learned counsel for the petitioner has very emphatically contended that the enquiry report is not in consonance with Rule 36(19) (ii) (b) & (c) of Central Industrial Security Force Rules, 2001 as it does not incorporate the defence of the petitioner, nor does it categorically

and specifically deal with the oral and documentary evidence produced in the case before the Enquiry Officer. According to the learned counsel, the requirements of Rule 36 detailing the procedure for imposing major penalty are mandatory and thus the violation of any of the said provision shall vitiate the enquiry proceedings and consequent thereto the punishment awarded by the disciplinary authority deserves to be set aside. No other plea was raised by the learned counsel for the petitioner challenging the order of removal.

16. The learned counsel for the respondents, Mr.B.V.Niren who appears on advance notice has refuted the plea of the petitioner that the provisions of Rule 36(19) (ii) (b) & (c) have not been complied with.

17. This Court has heard the learned counsel for the parties and has also perused the enquiry report in detail. The statement of Inspector/Min.K.S.Dhankad has also been perused who had categorically deposed that the petitioner had not sent any intimation and any application seeking permission for leave in reply to the questions which were asked from the said witness. The petitioner had also put to the said witness that he had sent the relevant medical documents bearing registration No.21390 dated 1st February, 2008 and document bearing registration No.21390 dated 12th March, 2008 and fitness certificate dated 12th March, 2008 which facts were denied by the said witness. The said witness, however, admitted that other

medical documents i.e. medical certificate of Rao Tula Ram Hospital registration No.174309 dated 2nd November, 2007; registration No.174309 dated 28th September, 2007 and registration No.204274 dated 17th November, 2007 to 27th November, 2007 were available in the record. The enquiry report also considered the statement of Inspector/Ex.P.K.Sharma who had denied that all the documents in relation to the treatment of the petitioner at Rao Tula Ram Hospital were sent and were available with the respondents.

18. Perusal of the enquiry report repels the plea of the counsel for the petitioner that the enquiry report is in violation of Rule 36(19) (ii) (b) & (c) of Central Industrial Security Force Rules, 2001. In paras 7 to 12 of the enquiry report, the enquiry officer has dealt with the documents referred to by the petitioner and the pleas and contentions of the petitioner.

19. The relevant paragraphs of the enquiry report are as under:-

7. It is clearly evident that Const. Praveen Kumar was detailed for refresher course at RTC, Deoli wef. 30.09.2007, but he became AWL wef. 30.09.2007 without any prior permission/information of the competent authority. He reported back to the unit on his own on 03.11.2007 after remaining AWL for 34 days. On rejoining his duty, he has submitted the medical certificate & OPD slip issued by Rao Tula Ram Memorial Hospital, Jaffar Pur, New Delhi which shows medical rest wef. 28.09.2007 to 02.11.2007. The charged official has stated during the course of the departmental enquiry that he received severe injury on his right leg which was caused due to heavy dash with a motor cycle on 28.09.2007. On perusal of the medical papers produced by the charged official, it is revealed that the

treating doctor advised him 36 days medical rest wef. 28.09.2007 to 02.11.2007 without going through any X-ray report. It appears inexplicable that a medical treatment for as long as 36 days for leg injury which compelled the treating doctor to advice for 36 days medical rest without any investigation raises serious doubts about the genuinity of the case.

8. He was sanctioned 02 days medical rest wef. 17.11.2007 to 18.11.2007 by the competent authority and was supposed to report for further duty in the unit on 19.11.2007. But he failed to do so and remained OSL without any authorised permission of the competent authority. He reported in the unit on 28.11.2007 after remaining 09 days OSL wef. 19.11.2007 to 27.11.2007. At the time of reporting in the unit, he has submitted the OPD) slip issued by Rao Tula Ram Memorial Hospital, Jaffar Pur, New Delhi. On perusal of the medical paper, it was evident that the number of days advised for rest have been overwritten which creates suspicion about authenticity of medical papers.

9. He was permitted to avail 01 day CL on 07.12.2007 alongwith eligible permissions and was supposed to report for further duty on 10.12.2007. But he failed to do so and remained OSL without any prior permission of the competent authority. He reported in the unit on 12.12.2007 after remaining 02 days OSL wef. 10.12.2007 to 11.12.2007 and stated that due to death of his maternal uncle, he overstayed. This shows that the charged official did not bother to seek permission from the competent authority to extend his leave, if he had any necessity.

10. On 23.12.2007, the charged official was detailed for night shift at Gate No. 1 for vehicle checking at CISF campus at Mahipalpur, but he did not report for the said duty and absented himself from his bonfaide duty without prior permission of the competent authority. He reported in the unit on his own on 27.12.2007 after remaining 04 days AWL wef. 23.12.2007 to 26.12.2007. He has stated that due to his sickness, he remained 04 days AWL wef. 23.12.2007 to 26.12.2007. But the charged official failed to produce any supporting documents which could prove his sickness.

11. On 01.02.2008, he was detailed for vehicle checking at Gate No. I of CISF Campus, Mahipalpur in `C` shift. But he did not turn up for the said bonafide duty and remained

AWL, without any prior permission of the competent authority. Since, he was removed from service in another disciplinary case wef. 25.03.2008, he was marked as AWL by 53 days wef. 01.02.2008 to 24.03.2008. However, his brother & wife had informed the unit control room stating that Const. Praveen Kumar was hospitalized in the RTMM Hospital. New Delhi. In response of their telephonic intimation, this office had sent two call up letters bearing No.F24018/CISF/SSG/Doc./Call up/08-106 dated 11.02.2008 and letter of even No. (176) dated 10.03.2008 with direction to either send medical papers in support of his sickness or report immediately in the unit. But he failed to comply with the official communications. Moreover, he did not produce any supporting documents which could justify his 53 days AWL wef. 01.02.2008 to 24.03.2008, which shows that the charged official had managed to mislead the department by sending concocted information to the unit through his family members just to cover up his intentional offence.

12. From the corroborative statements of the PW & the charged official it is revealed that Const. Praveen Kumar while posted in CISF Unit. BNP, Devas (MT) was awarded four minor punishments for the offence of OSL/AWL,. Similarly, during his posting in CISF 2RI3 at Mahipalpur, he was awarded two minor punishments for the offence of OSL/AWL. In addition, he was also awarded one minor punishment in CISF Unit. SSG for the offence of AWL.”

20. From the abovenoted paras it is apparent that the defence of the petitioner has been considered and dealt with by the Enquiry Officer along with the oral and documentary evidence produced before the Enquiry Officer. The plea of the petitioner that the respondents ought to have got the record verified from the medical authorities cannot be accepted in the present facts and circumstances. The burden was on the petitioner to establish the documents produced by him in support of his defence, that on account of reasons beyond his control and on

account of medical exigencies he was absent without leave and overstayed the leave. The petitioner was given the opportunity to examine the witnesses and relevant medical record in support of his defence. The petitioner during the preliminary hearing had given the names of Constable Manoj Kumar, another constable Manoj Kumar, Constable Harbhajan and HC/GD Mathura Prasad as his defence witnesses and had also proposed to produce the medical certificate issued by RML Hospital as part of his defence documents.

21. For the reasons best known to the petitioner during the course of the enquiry, he not only withdrew the names of the defence witnesses but also did not produce the relevant record from the concerned medical authorities and the hospitals. The petitioner cannot blame the respondents for his failure to discharge his burden and prove his defence by oral and documentary evidence. In the circumstances, it cannot be held that the enquiry proceedings are vitiated on account of non compliance of the procedure contemplated under Rule 36 of the Central Industrial Security Force Rules, 2001 and the plea of the petitioner in this regard is rejected.

22. The writ petition is not an appeal against the findings of enquiry officer and the orders passed by the Disciplinary Authority and Appellate Authority nor this court is exercising or assuming the role of the Appellate Authority. It cannot interfere with the findings of the fact

arrived at by the respondents except in the case of mala-fides or perversity i.e where there is no evidence to support a finding or where the finding is such that no one acting reasonably or with objectivity could have arrived at or where a reasonable opportunity has not been given to the accused to defend himself or it is a case where there has been non application of mind on the part of the enquiry officer, disciplinary authority or if the charges are vague or if the punishment imposed is shocking to the conscience of the Court. Reliance in respect of jurisdiction of the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India has been placed on State of U.P & Ors. Vs Raj Kishore Yadav & Anr., (2006) 5 SCC 673; V.Ramana Vs A.P. SRTC & Ors., (2005) 7 SCC 338; R.S.Saini Vs State of Punjab & Ors., JT 1999 (6) SC 507; Kuldeep Singh Vs The Commissioner of Police, JT 1998 (8) SC 603; B.C.Chaturvedi Vs Union of India & Ors, AIR 1996 SC 484; Transport Commissioner, Madras-5 Vs A.Radha Krishna Moorthy, (1995) 1 SCC 332; Government of Tamil Nadu & Anr. vs A. Rajapandia, AIR 1995 SC 561; Union of India & Ors. Vs Upendra Singh, (1994) 3 SCC 357 and State of Orissa & Anr. vs. Murlidhar Jena, AIR 1963 SC 404.

23. It also cannot be disputed that the grounds on which action of the respondents is subject to control by judicial review are, "illegality"; "irrationality" and "procedural impropriety". The Court will 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 or reaching conclusions 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 factor 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

reappreciate 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.'

24. The Supreme Court had also in (2006) 5 SCC 88, *M.V.Bijlani Vs Union of India & Ors.* that the Judicial review is of decision making process and not of re-appreciation of evidence. The Supreme Court in para 25 at page 96 had held as under:

'25. 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 proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing 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.'

25. The learned counsel for the petitioner has not pointed out any such illegalities, irrationalities or any procedural improprieties which shall vitiate the enquiry report and the orders of the disciplinary

authority. It cannot be denied that while exercising the power for judicial review what is to be seen is whether the actions of the respondent fall within any of the categories mentioned above, has to be established and mere assertion in this regard is not sufficient. This has not been denied that the petitioner had been absent without leave and had overstayed the leave which is not a normal thing. Since the petitioner admitted his absence without leave and overstay after leave, it was for him to give plausible and justifiable reason and to establish the same with documentary evidence. If the petitioner failed to produce reliable oral and documentary evidence in support of his pleas and contentions and in the circumstances, if the respondents have held that the charges against the petitioner have been established, it cannot be held that the decision of the respondents is irrational. The respondents had held that since the charges framed against the petitioner had been proved, therefore, it is apparent that he was habitually absent without leave and overstayed from sanctioned leave without any prior permission/intimation of the competent authority, which in an Armed Force like CISF, where discipline is of paramount importance is a serious offence, and thus the serious offence on the part of the petitioner warrants severe punishment. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India will not substitute its inferences if any different from the enquiry officer and the disciplinary authority so long as the inferences drawn by the enquiry officer and the disciplinary authority are reasonably possible.

Consequently, the punishment of removal from service, which shall not be a disqualification for further employment under the Government, imposed on the petitioner is justified and cannot even be held to be disproportionate consider past conduct of the petitioner.

26. The learned counsel for the petitioner has not been able to show or demonstrate any patent error or manifest error in exercise of power by the respondents. No such factors have been made out which will make the decision of the respondents unreasonable or establish that the respondents have taken into consideration any irrelevant factors while awarding the punishment of removal from service to the petitioner.

27. In the totality of the facts and circumstances, the petitioner has not been able to make out any such illegality, irregularity or perversity in the decisions of the respondents which will require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit, and it is, therefore, dismissed.

ANIL KUMAR, J.

APRIL 24 , 2012
'k'

SUDERSHAN KUMAR MISRA, J.