

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

+ **WP(C) No.8805/2011**

% **Date of Decision: 09.01.2012**

Ex.Const. Dinesh Kumar Petitioner

Through Mr.P.K.Bhardwaj, Advocate

Versus

Union of India & Ors. Respondents

Through Ms.Sweety Manchanda, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE J.R.MIDHA

ANIL KUMAR, J.

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CM No.19908/2011

Allowed subject to all just exceptions.

Application is disposed of.

WP(C) No.8805/2011

1. The petitioner has sought the quashing of order dated 25th September, 2007 imposing the removal of the petitioner from the service, by exercising the power conferred under Rule 32 Schedule-I of CISF Rules, 2001 (Amended 2003) and also the quashing of order dated 18th July, 2008 passed by the Dy.Inspector General, Central Industrial Security Force dismissing the appeal and agreeing with the Disciplinary Authority, by holding that the charges against the petitioner are made

out. The petitioner has also challenged the order dated 29th April, 2011 passed by the Director General dismissing the revision petition of the petitioner and upholding the order of removal from service.

2. The brief facts to comprehend the pleas and contentions of the petitioner are that he was posted with the CISF initially at Bihar, 4th Reserve Bn. Ranchi. During the said posting he proceeded for 10 days sanctioned leave and 16 days half pay leave from 27th March, 2006. The petitioner was to report for duty on 22nd April, 2006, however, he failed to report on 22nd April, 2006 and instead reported on 27th April, 2006 after five days. The petitioner thus, got over stay leave (OSL) and was permitted to join the duty at Ranchi and he was directed to proceed to Orissa at NDRF Bn. Mundali.

3. At Mundali in NDRF Bn. he was granted 15 days casual leave w.e.f. 29th April, 2006 with permission to avail 30th April, 2006, 7th May, 2006 and 14th May, 2006 and 13th May 2006 (SS). On expiry of leave, the petitioner had to report for duty on 18th May, 2006. The petitioner, however, over stayed for more than one year and four months.

4. Therefore, the petitioner was served with the memo of article of charge under Rule 36 of the CISF Rules. The charges framed against the petitioner were that he remained on OSL without permission/intimation to the competent authority and he reported for

duty only on 27th April, 2006 after five days and thus, the action of the petitioner tantamounts to gross indiscipline and dereliction of duty. The second charge framed against the petitioner was that on the expiry of 15 days leave w.e.f. 29th April, 2006 he had to report for duty on 18th May, 2006 but he over stayed on leave till 25th September, 2007 (about one year and four months) and thus, committed dereliction of duty and conducted himself in a manner very unbecoming of a member of the Armed Force of the Union of India.

5. An Inspector/Fire of CISF DM Mundali, Sh. Ramesh Kumar was appointed as Inquiry Officer by order dated 19th April, 2007. The order regarding appointment of the Inquiry Officer and Presiding Officer were sent at the address of the petitioner. Later on, due to administrative reasons, Sh.R.C.Mahto was appointed as the Inquiry Officer by order dated 30th June, 2007.

6. Despite the notice to the petitioner to attend the departmental enquiry on 14th May, 2007, he failed to appear before the Inquiry Officer. Inquiry notices dated 22nd May, 2007, 5th June, 2007, 20th June, 2007, 3rd July, 2007 and 16th July, 2007 were issued directing him to appear before the Inquiry Officer, however, the petitioner failed to appear. The petitioner was therefore, proceeded against *ex parte* and the inquiry report pertaining to him was given. The copy of the brief note of the presenting officer was sent at the address of the petitioner

with a direction to submit his representation. The charged officer/petitioner, however, did not submit any representation. Inquiry Officer completed the inquiry and submitted the report to the Disciplinary authority on 31st August, 2007 holding that the charges against the petitioner were proved.

7. The copy of the inquiry report was sent to the petitioner by letter dated 31st August, 2007 with a direction to submit the representation, if any, against the inquiry report. The petitioner, however, did not file any representation. As the petitioner failed to appear before Inquiry Officer and failed to file any representation against the findings of the Inquiry Officer, the Disciplinary Authority on the basis of the inquiry report and considering the facts and circumstances, passed the order of removal on 25th September, 2007. Before passing the order of removal of the petitioner, the Disciplinary Authority considered the statement of the Inspector Rajendra Singh (PW-1) and Inspector A.K.Mallick (PW-2).

8. Against the order dated 25th September, 2007, imposing the punishment of removal from service on the petitioner, he filed an appeal contending, inter-alia that on account of inadvertence and at the instance of the representatives of the Commandant who has gone to his native village on 11th April, 2007 he had stated that his representation to the article of charge be treated as an application for acceptance of resignation as the petitioner was unable to join the duty due to severe

injuries on his left foot/ankle. The petitioner challenged the ex parte inquiry proceeding taken against him on the ground that it was conducted despite the fact that he was unable to join the duty on account of his medical unfitness and that he was assured that he could join the duty after complete recovery. The petitioner asserted that he was under the impression that the departmental proceedings would be kept in abeyance and that his request for extension of leave might have been acceded to by the Disciplinary Authority. The petitioner also pleaded that the punishment awarded to him was disproportionate and extremely harsh and unsustainable in the eyes of law.

9. The Appellate Authority considered the pleas and contentions of the petitioner, however, dismissed the appeal by order dated 18th July, 2008.

10. The petitioner thereafter challenged the order of removal from the service by the Disciplinary Authority and the dismissal of his appeal by the Appellate Authority by filing a writ petition being W.P(C) No.4799/2010 titled as 'Dinesh Kumar v. Union of India & Ors.'. Since the petitioner had a statutory remedy available with him of challenging the orders of removal from the service and the dismissal of his appeal, by filing a revision petition within a period of six months. The Court after considering petitioner's humble socio-economic background, was allowed to withdraw the writ petition and permitted to file the revision

petition within four weeks. It was further directed to the respondents that the revision petition of the petitioner be treated as within time and to decide the revision petition on merits. The above said writ petition was decided by the Division Bench of this Court by order dated 11th February, 2011 pursuant to which the petitioner preferred a revision petition dated 3rd March, 2011.

11. The revision petition was dismissed by the Director General, Central Industrial Security Force by order dated 29th April, 2011. While dismissing the revision petition it was held that since the petitioner did not appear before the enquiry officer despite various notices, therefore, the enquiry officer was justified in conducting the ex-parte enquiry against the petitioner. Considering the material produced before the enquiry officer it was also inferred that the charges against the petitioner had been made out and that there was no procedural lacunae in the enquiry. Noticing the absence of the petitioner for 482 days, the punishment of removal from the service was held to be proportionate on commensurating with the gravity of the misconduct.

12. The petitioner has challenged in the present writ petition, the order of the Disciplinary Authority, Appellate Authority and Revisional Authority on the grounds that the orders are in violation of principles of natural justice and that the orders by the Appellate and Revisional authority were without jurisdiction. The petitioner also contended that

the appeal which was re-filed before the competent appellate authority i.e. the headquarter, New Delhi has not been disposed of by the said authority but had been disposed of by respondent No.5, DIG, CISF, Eastern Zone, Headquarter, Patna. The petitioner also asserted that the punishment of removal from the service is disproportionate to his alleged act of indiscipline. The decisions of the respondents were also challenged on the ground that the death certificate as well as the medical certificate pertaining to the daughter of the petitioner and the petitioner himself were not taken into consideration.

13. However, along with the writ petition, no documents regarding the medical condition of the petitioner explaining his absence of about 482 days was filed. The petitioner, instead, filed the death certificate of his daughter named Neha Rani, who had died on 19th April, 2006. The writ petition came up for hearing on 19th December, 2011, however, the writ petition was adjourned at the request of counsel for the petitioner. Thereafter on 5th January, 2012 the petitioner filed the copies of the medical certificate dated 19th March, 2008 issued by the Primary Health Centre (Bagpat) by Dr.R.K.Siroha stipulating that the petitioner suffered from fracture of the left foot injury and that he had been advised bed rest for about 20 months with effect from 15th May, 2006 up to 4th February, 2008. The petitioner also filed the prescriptions from the Primary Health Centre, Khekra dated 15th May, 2006, 3rd July, 2006, 5th September, 2006, 25th November, 2006, 16th January, 2007, 5th

March, 2007, 17th April, 2007, 7th June, 2007, 17th July, 2007, 31st August, 2007, 26th November, 2007, 25th December, 2007 and 11th January, 2008.

14. This Court has heard the learned counsel for the petitioner and Ms.Sweety Manchanda, Advocate, who has appeared on behalf of the respondents pursuant to the advance notice given to the respondents by the petitioner.

15. The Revisional Authority has categorically stated in the order dated 29th April, 2011 that the petitioner had never genuinely explained as to what had stopped him from participating in the enquiry proceedings before the enquiry officer, which was conducted in consonance with the rules and procedure established in law, whereby he could have explained his conduct.

16. From the record produced it is apparent that the petitioner had to report for duty after 15 days of casual leave. On 18th May, 2006, however, he did not send any intimation nor did he appear at the Btn. headquarter despite the call up notices dated 20th September, 2006 and 20th October, 2006 directing the petitioner to report for duty. The learned counsel for the petitioner has also not been able to refute the plea that the call up notices were duly acknowledged by the petitioner.

In the writ petition also nowhere has it been averred that the call up notices were not received by the petitioner.

17. The documents produced by the petitioner on 5th January, 2012 were not produced before the Enquiry Officer and even before the Disciplinary Authority, the Appellate Authority, and the Revisional Authority. No justification or reason has been given for not producing them before the appropriate authorities. However, even if they are considered, it is apparent that they have been manipulated as the prescriptions from the Primary Health Centre dated 15th May, 2006, 3rd July, 2006, 5th September, 2006, 25th November, 2006, 16th January, 2007 and 5th March, 2007 were available with the petitioner when he had sent the reply dated 11th April, 2007 to the memorandum of charges dated 10th April, 2007. The petitioner, however, did not produce the copies of these alleged prescriptions from the Primary Health Centre, Bagpat nor has he given any reason for not sending them or relying on them at that time. The petitioner did not even disclose in his representation dated 11th April, 2007 that he had sustained a fracture in his left foot on account of an accident with a truck.

18. In his representation dated 11th April, 2007 pursuant to the charge memo which was received by him, which was sent to him through a special messenger, the petitioner ought to have disclosed that he had an accident on 15th May, 2006. In the circumstances, it is

apparent that the petitioner has fabricated the story of his accident after the final order was passed against him.

19. The falsity of the pleas and contentions of the petitioner are also apparent from the fact that in his representation dated 11th April, 2007 against the charge memo, the petitioner had rather sought that his resignation may be accepted due to domestic problems. The petitioner at that time had not mentioned the reason for his alleged immobility to assume the duties, due to the severe injuries received by him in the alleged truck accident.

20. In the earlier writ petition W.P(C) No.4799/2010 a counter affidavit dated 28th October, 2010 was filed on behalf of the respondents in which in para 2 (d) they had categorically averred that the petitioner in his representation dated 11th April, 2007 to the charge memo dated 10th April, 2007 had sought acceptance of his resignation and had not disclosed about his alleged truck accident. However, no explanation has been given by the petitioner regarding this discrepancy, in his revision petition dated 3rd March, 2011 which was filed pursuant to order dated 11th February, 2011 passed in W.P(C) No.4799/2010 titled as 'Dinesh Kumar v. Union of India & Ors' nor has any plausible and cogent reason been given by the petitioner in his present writ petition.

21. Perusal of the documents now produced by the petitioner also reveal that even in the prescriptions produced by the petitioner, though it is mentioned that he suffered injuries in the left foot, however, the prescriptions do not disclose the need for any bed rest for about 20 months. The learned counsel for the petitioner has also not been able to answer satisfactorily that if the petitioner being a resident of the Village New Vikram Nagar, Post Office Nakati, Police Station Loni, Ghaziabad, U.P could go all the way to Primary Health Centre at Bagpat, then why could he not travel to his battalion Headquarter. From the certificates produced by the petitioner and from the above noted facts it is apparent that petitioner was not completely immobile on account of his alleged fracture. The petitioner ought to have reported to his battalion headquarter after the expiry of his leave even if he had sustained an injury to his left foot. In the circumstances, the pleas and contentions raised by the petitioner are apparently not reliable and therefore, not acceptable.

22. Though the petitioner has asserted the violation of the principles of natural justice, however, the learned counsel for the petitioner has not been able to point out any such violations. The charge memo was served on the petitioner, various notices to appear before the enquiry officer were given to the petitioner, however, the petitioner did not appear before the enquiry officer despite many notices issued to him which were duly served on him. In the circumstances, proceeding ex-

parte in the enquiry proceedings against the petitioner is justified and no cogent reason has been shown nor have any other factors been disclosed which would entitle the petitioner to have the *ex-parte* proceedings set aside against him.

23. The writ petition against the order of removal seeking judicial review is not an appeal from the decision of dismissal but a review of the manner in which the decision has been made. The power of judicial review is meant to ensure that the individual had received fair treatment and not to ensure that the conclusion which the authority reached is necessarily correct in the eyes of the Court. Reliance for this can be placed on *B.C.Chaturvedi v. Union of India & Ors.*, (1995) 6 SCC 749 where 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 re-

appreciate 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 learned counsel for the petitioner in the facts and circumstances has also not been able to substantiate the plea that the removal of the petitioner from the service is not proportionate to the charges proved against him. In any case in the totality of the facts and circumstances, this Court does not find any such illegality, irregularity or perversity in the actions of the respondents which will justify 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.

J.R.MIDHA, J.

January 09, 2012

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