

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

% *Judgment Reserved on: August 12, 2013*
Judgment Pronounced on: September 23, 2013

+ **WP(C) NO. 1354/2002**

EX.CONSTABLE RAJENDER SINGH Petitioner

Represented by: Mr.Shanker Raju, Advocate

versus

UOI & ORS. Respondent

Represented by: Mr.Anuj Tyagi, Advocate for Mr.Sachin
Chopra, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. Working as a Constable with Delhi Police the petitioner was detailed for night duty at PCR Van R-65 in the intervening night of 11th and 12th May, 1996. As he did not report for duty the petitioner was marked absent as recorded in DD No.7 dated May 11, 1996. Thereafter the department sent two absentee notices dated May 28, 1996 and May 31, 1996 at the residential address of the petitioner to which he neither responded nor give reason for his absence nor resumed duties.

2. In view of the continued absence, on May 31, 1996 the petitioner was placed under suspension with immediate effect. Thereafter on June 03, 1996 the competent authority ordered disciplinary proceedings against the petitioner for continued unauthorized absence from May 11, 1996.

3. As per the Delhi Police (Punishment & Appeal) Rules, 1980 a Summary of Allegation was drawn up requiring the same to be served upon the petitioner by the Inquiry Officer before commencing recording evidence of the department.
4. The procedure required the petitioner to be served for a date to appear before the Inquiry Officer.
5. The record of the enquiry would reveal that the Inquiry Officer sent a notice dated June 07, 1996, requiring petitioner to join the enquiry proceedings on June 11, 1996, in response where to, the petitioner sent a letter to the Inquiry Officer stating that he was not in a position to join the enquiry proceedings since he was sick for the last one month; and that earlier he was undergoing treatment at different hospitals in U.P. but there was no improvement in his health due to which reason he was undergoing treatment at Delhi. Along with said letter the petitioner enclosed a medical certificate dated June 11, 1996 issued by Guru Teg Bahadur Hospital (hereinafter referred to as the 'GTB Hospital'), Shahdara, Delhi which records that the petitioner was suffering from viral fever and was advised bed rest for a period of five days.
6. In view thereof the Inquiry Officer sent another notice dated June 11, 1996 to the petitioner informing him that he would be holding the enquiry proceedings on June 17, 1996. The petitioner did not join the proceedings.
7. The Inquiry Officer required the Summary of Allegations and the documents relied upon by the department to be served upon the petitioner and record would evidence that on June 24, 1996 the summary of allegations and the documents were served upon the brother of the petitioner, named Jitender Singh, at the native place of the petitioner in Meerut, U.P. But the petitioner did not appear at the date notified. Probably for the reason the brother of the

petitioner had received the Summary of Allegations and the relied upon documents, as directed by the Inquiry Officer the summary of allegations were served once again upon the petitioner by pasting the same on June 26, 1996 at the house of the petitioner at Meerut, U.P.

8. In the meantime, on June 24, 1996 the Inquiry Officer received following three documents from the petitioner:-

(a) A medical certificate dated June 11, 1996 purportedly issued by Medical Superintendent, Upgraded Primary Health Centre, Baghpat, Meerut which recorded that the petitioner was suffering from viral fever and was not in a position to join duty for the period from May 13, 1996 to June 10, 1996.

(b) A medical slip dated May 13, 1996 purportedly issued by Medical Superintendent, Upgraded Primary Health Centre, Baghpat, Meerut which recorded that the petitioner was suffering from viral fever and is advised bed rest for a period of four weeks.

(c) An undated medical certificate purportedly issued by Shanti Bhawan Health Centre, Meerut which recorded that the petitioner was admitted at the said centre on June 15, 1996 for treatment of '*Diarrhea Vomit*' and was in need of rest for a period of 15 days.

9. Since he was of the opinion that there is no justifiable reason for the petitioner to not participate at the enquiry proceedings and that the medical documents submitted by the petitioner are not creditworthy, the Inquiry Officer sought permission from the Disciplinary Authority to proceed ex-parte against the petitioner. The permission was granted on July 2, 1996.

10. At the enquiry, the department examined three witnesses; namely: ASI Ram Pratap Singh PW-1, Ct.Davis PW-2 and HC Mohar Singh PW-3. The gist of evidence of said witnesses was that the petitioner had absented himself from

duty since May 11, 1996 and that two absentee notices dated May 28, 1996 and May 31, 1996 were sent at the residential address of the petitioner requiring him to immediately join duty and in spite of receipt of said notice(s) the petitioner did not join back.

11. As per the Delhi Police (Punishment & Appeal) Rules, 1980 in view of the evidence led by the department, being of the opinion that a charge needed to be framed, the Inquiry Officer framed a charge as under:-

“I, Insp.R.P.Tyagi charge you Ct.Rajender Singh No.2073/PCR (PIS No.28890337) that while posted in East Zone, on the night intervening 11/12.5.96, you were detailed for duty at PCR Van Romeo-65 from 8.00 PM to 8.00 AM. You were supposed to attend your duty in time but neither you reported for duty nor sent an information about your inability to resume your duty. You were thus marked absent vide DD No.7 dated 11.5.96. Two absentee notices were sent at your residential address vide No.197-R/ACP/East Zone PCR dated 28.5.96 and No.347/DO East Zone dated 31.5.95 directing you to resume your duties at once otherwise, suitable disciplinary action will be taken against you. Neither any response has been received to the absentee notices nor you resumed your duty. You remained absent continuously, in violation of the instructions contained in SO-III/88 as well as CCS (Leave) Rules 1972. You have been placed under suspension vide order No.7567-90/HAP(P-II)/PCR dated 31.5.96 for the above lapse.

The above act on the part of you Ct. Rajender Singh No.2073/PCR (PIS No.28890337), amounts to grave misconduct i.e. un-becoming a member of disciplined force which renders you liable for departmental action under the Delhi Police (Punishment & Appeal) Rules 1980.”

12. The petitioner denied the charge framed against him and participated at the continued inquiry and lead defence evidence.

13. The petitioner examined only one witness.

14. Dr.Om Prakash DW-1, deposed that on May 10, 1996 at about 11.00 A.M. the younger brother of the petitioner named Jitender came to his clinic and informed him that his brother i.e the petitioner is lying sick in the house. Thus, accompanied by Jitender he went to their house and noted that the petitioner's temperature was 104 degree Celsius. He prescribed medicines. The petitioner remained under his treatment for three days. Since condition of the petitioner did not improve he advised him to take treatment from a specialized doctor. Only June 30, 1996 the petitioner came to his clinic complaining of fever and back pain and he treated the petitioner for four days and pertaining to the treatment he had issued the medical certificates Ex.DW-1/A and Ex.DW-1/B.

15. We note that the first medical certificate Ex.DW-1/A is dated May 12, 1996 and records that the petitioner is suffering from fever and requires rest for three days from May 10, 1996 to May 12, 1996. The second medical certificate Ex.DW-1/B is dated July 4, 1996 and records that the petitioner is suffering from fever and back pain and requires rest for four days from June 30, 1996 to July 3, 1996.

16. Thereafter the petitioner submitted his statement of defense to the Inquiry Officer stating therein that the Inquiry Officer committed an illegality in proceeding against him ex-parte for the reason he did not participate at the enquiry proceedings due to a genuine difficulty, in that, he was very sick and not in a position to move at the time when he received the notices regarding initiation of departmental enquiry against him and had duly informed the Inquiry Officer about the fact of he being ill by sending medical certificates regarding his illness. Pertaining to his absence from duty the petitioner stated as under:-

“(b) Reality: The fact is that I was on duty on 9.5.1996 in East Zone, PCR at PCR Van R-65 from 08.00 AM to 08.00 PM. After finishing my duty I went to my residence at Village Nanglabari, PO: Rattel, PS: Khekhera, District Meerut (UP). Unfortunately I suffered very high fever so much so that I was taken to Dr.O.P. Verma in the village. He diagnosed me, gave me treatment and thereafter granted me 03 days medical rest from 10.5.1996 to 12.5.1996. The treatment of Dr.O.P. Verma did not have any positive effect on me and I was taken to Primary Health Centre Baghpath (Meerut). The Medical Superintendent diagnosed me and gave me medicines as per prescription. The Medical Superintendent granted me 04 week medical rest from 13.5.1996 to 10.6.1996. The doctor declared me fit to resume my duties from 11.6.1996. On my way to PCR East Zone, Vivek Vihar, Delhi the fever relapsed and I had to move to GTB Hospital, Shahdara-Delhi which granted me 05 days medical rest with effect from 11.6.1996. Thereafter, I went to my residence to avail of medical rest granted by GTB Hospital, Shahdara-Delhi. The misfortune went on haunting me. On 15.6.1996 when I was thinking to come to Delhi to resume my duties there was again an attack of ‘diahorrea and vomiting’. Family members had taken me to Shanti Bhawan Health Centre, Rataul, Dist. Meerut (UP). The Health Centre admitted me in the Centre, diagnosed me and treated me. The doctor incharge granted me 15 days medical rest with effect from 15.6.1996. Due to sickness I was completely broken mentally and physically but then as disciplined soldier I was always contemplating to resume my duties. It is all my bad luck which was playing its important role. The destiny was shaping career and life, I on 30.6.1996 in the morning again suffered from fever as a result of which I had to move to the doctor O.P. Verma who has his clinic in the vicinity of our village. Dr. Verma after giving me medical treatment, granted me 04 days medical rest. From the above, it will be seen that I was suffering from ailment from 10.5.1996 to 3.7.1996 as I was curious to join my duties as early as possible I had to move to different doctors under the belief that particular doctor will give me better treatment. From this, it becomes clear that it was sickness which has inhibited me to join my duties.”

4. *At this stage I am invoking the provisions of Standing Order No.111. Standing Order No.111 issued vide No.93202-600/CR dated 10.11.1988 lays down that commuted leave can be granted to the Applicant on production of medical certificate (s) issued by CGHS Medical Attendant or Registered Medical Practitioner who has to give the nature of illness and duration of leave. Standing Order makes it clear that commuted leave can be granted to the Applicant on production of Medical Certificate (s) issued by CGHS Medical Attendant or Registered Medical Practitioner who has to give the nature of illness and duration of leave. In the instant case at all occasions the Medical Certificates are either issued by the Medical Officer Incharge of Govt. Hospital/Dispensary/Regd. Medical Practitioner and thus the certificates issued by them are unchallengeable.”*

17. In the meantime, the Inquiry Officer received information that the petitioner had been arrested in FIR No.331/1996 dated May 04, 1996 for offences punishable under Sections 384/506/170/34 IPC PS Hauz Khas on July 04, 1996 and remained in judicial custody for the period from July 04, 1996 to August 05, 1996.

18. On August 07, 1996 the petitioner reported for duty.

19. On August 22, 1996, the Inquiry Officer submitted his report to the Disciplinary Authority opining that the evidence before him conclusively established that the charge framed against the petitioner has been proved, in that, the petitioner had wilfully and unauthorizedly absented himself from duty. In so concluding, it was held by the Inquiry Officer : -

(i) the medical certificates produced by the petitioner do not inspire confidence, particularly in view of the fact that the said certificates were produced by the petitioner nearly one month after he absented himself from service, that too, only on receipt of notice regarding initiation of departmental enquiry against him;

(ii) the evidence of Dr.Om Prakash DW-1, examined by the petitioner is not creditworthy;

(iii) a perusal of the contents of the statement of defense submitted by the petitioner itself belies the assertion of the petitioner that he was immobile during the period when the inquiry was conducted against him; and

(iv) the reliance placed upon the Standing Order No.III by the petitioner was misplaced for the reason as per said Standing Order medical leave can be granted to an employee only upon the submission of medical certificate to the authority competent to grant leave, which was not done by the petitioner.

20. It would be relevant to note the following portion of the findings submitted by the Enquiry Officer:-

“8. This point does not give any benefit to the defaulter. He was given fit to resume duty from PHC Bagpat, Meerut w.e.f. 11.6.96 but he again produced medical certificate from another hospital on the same day. The plea of defaulter regarding his inability and immobility due to sickness is not reliable as he came to GTB hospital, Delhi on 11.6.96 but did not East Zone PCR Office at Vivek Vihar, which are not more than 3/4 Kms from each other.”

21. Upon being furnished the report of the Inquiry Officer the petitioner submitted a reply essentially reiterating the same grounds which were raised by him in his statement of defence.

22. Vide order dated October 09, 1996 the Disciplinary Authority levied the penalty of dismissal from service upon the petitioner, and the reasoning being as under:-

“As per the norms of the disciplined force he did not obtain any permission to leave the station. As regards his plea that he did not violate the instruction of S.O. No.111/88, he has not taken into account the main aspect of the S.O. which clearly indicates that the grant of medical certificate does not in itself confer any right to

leave. In this respect the medical certificate should be forwarded to the authority competent to grant leave and the final orders of the authority shall be awaited. He did not bother to follow these instructions on the pretext that there was no need to either inform the department or to take permission. As regards his plea that no second medical opinion was obtained, the same is an after thought because he did not send any intimation prior to 11.6.96 which was very late. Moreover he had come up to G.T.B. Hospital in Delhi on 11.6.96 but did not attend the East Zonal Office at Vivek Vihar which hardly 3/4 Kms. from the hospital and went back to his residence in U.P.”

23. The petitioner submitted an appeal assailing the legality of the penalty order dated October 09, 1996 passed by the Disciplinary Authority. Vide order dated April 30, 1997 the Appellate Authority dismissed the appeal recording reasons as under:-

“The record discloses that the appellant along with some others was wanted in case FIR No.331/96 dated 4.5.96 U/S 384/506/170/34 IPC (offences relating to extortion and criminal intimidation etc.) P.S. Hauz Khas, Delhi. The appellant was arrested in this case and remained in judicial custody from 4.7.96 to 5.8.96 and in fact the charge in the departmental enquiry was served on the appellant on 22.7.96 while he was still in judicial custody, with the permission of the court. This fact finds mention in the report of the Enquiry Officer. It is again relevant to note that the appellant himself unauthorizedly from duty w.e.f. 11.5.96 and left station without permission of the competent authority. This shows that the appellant was apprehending his arrest in the aforesaid criminal case registered against him and absented himself unauthorizedly from duty and even left station without permission. This seems to be real reason for his unauthorized absence from duty rather than the medical grounds pleaded by him which has been rejected assigning reasons both by the E.O. and the disciplinary authority.....As stated above, the appellant remained in judicial custody in the criminal case concerned from 4.7.96 to 5.8.96; obviously, having been arrested on 4.7.96 and

that coincides with the termination of his illness. In fact, it was a fit case where the disciplinary authority should have referred the cases to the local Police and the authorities concerned from where he obtained his medical certificates for verifying the veracity of the appellant's claims in the light of requirement of maintaining of proper records etc. by the medical officers who issue such certificates. This should be done even now so that in case any falsification of records etc. is revealed, the necessary administrative or legal action could be initiated in the matter against all concerned.

...

The next plea of the appellant that the punishment is highly excessive, harsh and disproportionate to the charge is also not tenable in view of the facts and circumstances of the case brought out above. The appellant has indulged in grave misconduct rendering him unfit to be retained in police service."

(Emphasis Supplied)

24. Aggrieved, the petitioner filed an application under Section 19 of the Administrative Tribunals Act, 1985 before the Central Administrative Tribunal, Principal Bench, New Delhi contending therein as under:-

- (i) There is no obligation upon a suspended employee of Delhi Police to attend the roll call and be available to the authorities during the period of suspension and failure to do so would not amount to 'unauthorized absence from duty'.
- (ii) The conclusion arrived by the departmental authorities that the petitioner had wilfully and unauthorizedly absented himself from duty and that the medical documents produced by the petitioner do not inspire confidence is perverse.
- (iii) The punishment of dismissal from service imposed upon the petitioner is grossly disproportionate to the misconduct alleged to be committed by him.

25. The petitioner raised a very novel plea before the Tribunal. He urged that having been suspended on May 31, 1996 he could not be treated as absent from duty from June 01, 1996. The Department responded by urging that under the Delhi Police Act and the applicable Rules even a suspended police officer is required to attend the roll call and be available for duty.

26. Said issue was a non issue in our opinion for the reason the reason for suspending the petitioner was the contemplated disciplinary proceeding and when he was suspended the petitioner was unauthorizedly absent and thus notwithstanding he being suspended he was obliged to report for duty; albeit technically, which he did on August 07, 1996.

27. On this issue i.e. whether a suspended Delhi Police officer or an enrolled officer had to report for roll call, there was a difference of opinion amongst different Benches of the Tribunal in different cases and accordingly the question, as undernoted, was referred to the Full Bench:-

“Whether a police officer under the provision of the Delhi Police Act and Rules thereunder is required to attend the roll call and be available to the authorities during the period of suspension and failure to do would amount to ‘unauthorized absence’?”

28. Relying upon the provisions of Section 14 of Delhi Police Act, 1978 and Rule 26(3) of Delhi Police (Punishment & Appeal) Rules, 1980 and the law declared by the Supreme Court in the decision reported as (1997) 2 SCC 550 State of Punjab vs. Dharam Singh, vide judgment and order dated September 18, 2000 the Full Bench of the Tribunal answered the question in the affirmative.

29. Accordingly, the Original Application filed by the petitioner was placed before the Regular Bench of the Tribunal for adjudication on merits.

30. Vide impugned judgment and order dated November 16, 2000 the Tribunal has dismissed the Original Application filed by the petitioner opining that it was not open to the Tribunal to re-appreciate the evidence and arrive at a finding different from the one which has found favour with the competent authority.

31. Petitioner's argument on the proportionality of the punishment of dismissal from service has been answered by the Tribunal in the following words:-

“7. As far as the measure of penalty is concerned, the disciplinary authority as also the appellate authority have found on the facts and circumstances arising in the case that the proper measure of penalty is that of dismissal from service. If one has regard to the fact that the applicant is a member of the disciplined force, no exception can be made.”

32. Aggrieved by the aforesaid, the petitioner has filed the present petition under Article 226 of Constitution of India assailing the legality of the judgment and order dated September 18, 2000 i.e. the decision of the Full Bench and the judgment and order dated November 16, 2000 dismissing the Original Application filed by the petitioner.

33. At the hearing of the writ petition, learned counsel for the petitioner reiterated the submissions advanced before the Tribunal and thus we do not re-note the same since we have already noted hereinabove the contentions which were urged before the Tribunal.

34. In the decision reported as 2009 (8) SLR 331 Additional Commissioner of Police & Anr. vs. Jagbir Singh & Anr. a Division Bench of this Court noted the provisions of Sections 14 and 24 of the Delhi Police Act, 1978 and Rule 26(3)

of the Delhi Police (Punishment & Appeal) Rules, 1980 as also Paragraph 6 of Standing Order No.123/1989 issued by Delhi Police, which read as under:-

“14. Effect of suspension of police officer. –

The powers, functions and privileges vested in a police officer shall remain suspended while such police officer is under suspension from office:

Provided that notwithstanding such suspension such person shall not cease to be a police officer and shall continue to be subject to the control of the same authorities to which he would have been subject if he had not been under suspension.

24. Police officers to be deemed to be always on duty and to be liable to employment in any part of Delhi. –

Every police officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty and nay police officer or any number or body of police officers allocated for duty in any part of Delhi may, if the Commissioner of Police so directs, at any time, be employed on police duty in any other part of Delhi for so long as the services of the police officer or number or body of police officers may be required in such other part of Delhi.

26. Suspension -

(3) (i) During the terms of such suspension the powers functions and privileges vested in him a Police Officer shall be in abeyance but he shall continue to be subject to the same responsibilities discipline and penalties and to the same authorities, as if he had not been suspended.

(ii) A Police Officer under suspension shall be transferred to the lines if not already posted there. He shall attend all roll calls and shall be required to perform such duties and to attend such parades as the Deputy Commissioner of Police may direct provided that he shall not perform guard duty or any other duty

entailing the exercise of the powers or functions of a Police Officer, shall not be placed on any duty involved the exercise of responsibility and shall not be issued of with ammunition. A Police officer under suspension shall ordinarily be confined to lines, when off duty, but shall be allowed responsible facilities for the preparation of his defence when transferred to the line, lower or upper subordinate shall deposit their kits in the line and shall not wear any article of uniform till they are reinstated or specifically permitted by the Commissioner of Police as contained in Sub-rule (iii) of Rule 15 of the Delhi Police (General Conditions of Service) Rules, 1980.

6. Status and treatment of officers under suspension –

During the term of such suspension the powers, functions and privileges vested in him as a Police Officer shall be in abeyance, but he shall continue to be subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.

A Police Officer under suspension shall be transferred to the Lines, if not already posted there. He shall attend all roll calls and shall be required to perform such duties and to attend such parades as the Dy. Commissioner of Police may direct, provided that he shall not perform guard duty or any other duty entailing the exercise of the powers or functions of a Police Officer; shall not be placed on any duty involving the exercise of responsibility and shall not be issued with ammunition. Police Officer under suspension shall ordinarily be confined to lines when off duty, but shall be allowed reasonable facilities for the preparation of his defence.

35. The Division Bench answered the same as under:-

“11. We have considered the submissions of both the counsel and have also gone through the case law relied upon by them. We had already reproduced the language of Section 14 of the Act. Rule 16.21 of Punjab Police Rules is pari materia with Section 14 of Delhi Police Act, 1978 and reads as under:

16.21 Status and treatment of officer under suspension.

- (1) A police officer shall not by reason of being suspended from office cease to be a police officer.

During the term of such suspension the powers, functions and privileges vested in him as a police officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.

The interpretation of that Rule came up for consideration before the Supreme Court in the case of Dharam Singh (supra). In that case also the question was as to whether a suspended employee was supposed to report for duty or not.

Interpreting the rule, the Court held that even a suspended Police Officer was required to attend the Roll Calls and be available to the authorities is clear from the contents therein. Following passage from this judgment manifests this:

A reading of it would clearly indicate that even during the period of suspension the police officer is required to attend to roll-call and be available to the authorities. The payment of subsistence allowance, as ordered, under the suspension rule is one facet of it and his duty to be present is another. Non-payment of subsistence allowance does not entitle a delinquent officer to be absent from duty. It is his duty to claim subsistence allowance, go to the office and collect subsistence allowances and if it is not paid, necessary representation to the higher authorities and, if the grievance is of redressed, to the appropriate forum seeking payment, may be made. But that does not mean that the delinquent officer, in the face of the express rule, can absent himself from duty. Under these circumstances, the conclusion reached by the disciplinary authority that he was wilfully absent from duty is well justified.

12. Having regard to the aforesaid ruling of the Apex Court, we have no option but to accept the submissions of the learned Counsel for the petitioner herein to the effect that even under

suspension, the respondent was under obligation to attend roll-calls and be available to the authorities.

13. The aforesaid interpretation would also buttress the submissions of the learned Counsel for the petitioner that amendment to Rule 26 with addition of Sub-rule (3) would only be clarificatory in nature as that mandate is already provided in Section 14 of the Act. The purpose was thus to put doubts, if any, to rest.

14. Significantly, on this aspect consistent view is taken by the Supreme Court, viz., insofar as attending the roll-calls by the Police Official is concerned. It is clear from the reading of another judgment of the Supreme Court in Charanjit Singh (supra) in view of the following observations therein:

6. The submission of the learned Counsel appearing for the respondent that since the respondent was under suspension, therefore there was no occasion for him to seek permission for leave, is also erroneous. The order of suspension dated 24.11.1984 stipulated that the respondent shall remain present in police lines and will attend all the roll calls and parades and he was further ordered not to leave station without prior permission.

15. No doubt, in this case, even the suspension order stipulated that the suspended employee will attend all the roll-calls and parades. However, absence of such a stipulation in the suspension order in the case of respondent herein would not give him any benefit. We record this for more than one reasons:

a) In view of statutory provision contained in Section 14 of the Act, obligation was cast upon the respondent to attend the roll-call even if no specific stipulation is there under the suspension order.

b) More importantly, the respondent himself understood to be so inasmuch as after the suspension order he attended the roll-calls

initially, but stopped absenting afterwards. If there was no such requirement, it is baffling as to why in first instance the respondent had attended the roll-calls. This conduct of the respondent amply demonstrates that he knew his duty to attend the roll-calls but stopped doing so afterwards, which would clearly amount to his unauthorized absence.”

36. In view of aforesaid authoritative pronouncement of this Court, we repel the first submission advanced by the petitioner that he was not obliged to be present at the roll call each day after he was suspended. We hold that the Department rightly treated the petitioner as being unauthorizedly absent till when he reported for duty on August 07, 1996.

37. Pertaining to the second contention that in view of the medical certificates and the defence evidence led by the petitioner it could not be said that the petitioner was unauthorizedly absent, we note that deciding W.P. (C) No.79/1996 Sant Singh v Union of India & Ors on May 02, 2011, a Division Bench of this Court of which one of us namely Pradeep Nandrajog J., was a Member of noted the parameters of judicial review, applicability of rules of evidence and standard of proof required in disciplinary proceedings in the following words:-

“I While exercising power of judicial review under Article 226 of the Constitution of India the High Court does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural law, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority.

II Judicial review is not an appeal from the decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the delinquent officer receives fair treatment and not to ensure that the conclusion,

which the authority reaches, is necessarily correct in the eyes of the court.

III Courts can interfere where the disciplinary authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the findings or conclusions reached by the disciplinary authority are based on no evidence or perverse or such which no prudent person would have ever reached. If the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court under Article 226 of Constitution of India.

IV Neither technical rules of evidence or procedure adopted by the by the civil courts nor rules of proof of fact contained in the Evidence Act apply to the disciplinary proceedings.

V The standard of proof which is required in the disciplinary proceedings is preponderance of probabilities and not proof beyond reasonable doubt.”

38. The afore-noted conspectus of facts would evidence that the petitioner has not disputed the fact that he was absent from the duty for the period from May 11, 1996 to August 06, 1996. The petitioner sought to justify the absence by pleading that he was medically unfit. Thus, the onus to prove that the absence was justified was on the petitioner.

39. In the instant case, the Inquiry Officer and the disciplinary as well as the appellate authority have carefully examined the medical certificates produced by the petitioner and concluded that the same do not inspire confidence. A perusal of the order dated April 30, 1997 passed by the Appellate Authority goes to show that the Appellate Authority has very deeply examined the aspect of purported sickness of the petitioner and concluded that the attendant facts

and circumstances show that the petitioner had absented himself from duty in order to evade arrest in connection with FIR No.331/1996 registered against him.

40. Except for making bald assertion that the Inquiry Officer and the disciplinary and the appellate authority have not correctly appreciated the medical documents produced by the petitioner, counsel appearing for the petitioner has been able to show any flaw in the finding returned by the authorities that the medical documents produced by the petitioner do not inspire confidence.

41. We now deal with the last submission on the subject of proportionality of the penalty imposed.

42. The period of unauthorized absence commences on May 11, 1996 and ends on August 06, 1996.

43. The period may not be too long, but it has to be kept in mind that the absence was not on account of any medical infirmity suffered by the petitioner but was on account of the petitioner being involved in some anti-social activities evidenced by the fact that he was an accused in FIR No.331/1996 dated May 04, 1996 for offences punishable under Sections 384/506/34 IPC PS Hauz Khas and was arrested on July 04, 1996 and remained in jail till August 05, 1996. The fact that the FIR was registered on May 04, 1996 cannot be lost sight of. It is evidently a case where feeling the heat of being arrested the petitioner absconded and thereby absented himself from duty on May 11, 1996 and contrived medical documents which falsely recorded he being medically unfit. It is relevant to note that on June 24, 1996 the summary of allegations were received by petitioner's brother in his house and the petitioner was not in his house. Further, if the petitioner who resides in Meerut could go to Guru Teg

Bahadur Hospital at Shahdara Delhi on June 11, 1996, we see no reason why he could not at least visit the police station to which he was attached and formally apply for leave to be sanctioned.

44. It may be true that the writ petitioner has ultimately been acquitted by the learned Metropolitan Magistrate, but that would be irrelevant for the reason we are concerned with the reason for the unauthorized absent and the conduct of the petitioner to contrive documents of sickness.

45. Standard of devotion to duty by a person who wears a uniform has to be at a higher pedestal and where there is not only an unauthorized absence from duty but additionally there is contrivance in the form of creating false documents to project a defence and a police personnel is found to be using the same as a cloak to hide abscondance, it cannot be said that a penalty of dismissal from service is so shockingly disproportionate to the gravity of the offence that a Writ Court should interfere.

46. Accordingly, we dismiss the writ petition noting further that no arguments were advanced on the plea taken before the Disciplinary and the Appellate Authority that by recording evidence of the departmental witnesses after serving the summary of allegations firstly upon petitioner's brother and thereafter by pasting, the petitioner was denied a fair opportunity of defence. The reason could be that the departmental witnesses simply proved the petitioner being absent from duty from May 11, 1996, a fact which petitioner admitted. Since the defence was that the absence was on account of medical infirmity, the petitioner had to prove the same. In other words, in view of the defence taken the Department was not obliged to lead any evidence to prove any fact. With respect to the defence, the petitioner joined the enquiry and led evidence.

47. The writ petition is dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

SEPTEMBER 23, 2013
mamta/skb