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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6934/2012

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Date of decision: 1st August, 2013

SATISH KUMAR

..... Petitioner

Through : Ms.Archana Ramesh, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Through : Dr.Ashwani Bhardwaj, Advocate with
Maj.Mahesh Sharma.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J (Oral)

1. By way of the present writ petition the petitioner has prayed for quashing of punishment dated 19.06.2012 in a summary trial for commission of an offence under Section 63 of the Army Act. The petitioner was subjected to summary trial on the following charge:

“AA Sec 63

**AN ACT PREJUDICIAL TO GOOD ORDER AND
MILITARY DISCIPLINE**

in that he,

at peace (Jaipur), on 07 May 2012 at 1800 hours, proceeded on 02 days Casual Leave wef 08 May 2012 to 09 May 2012, while temp att with Stn HQ, Jaipur did not info IC-72947L Cap Gaurav Tewari (Adm Offr rep), JC-469996W Sub Satyvir Singh (Adm JCO rep), and also coy JCO, JC-NYA 2886459F Nb Sub Indraaj Singh present in Jaipur, which is in contravention to the laid down orders.”

2. The facts on record show that the petitioner was enrolled as a Sepoy on 10.3.2003 and posted with 22nd Battalion Rajputana Rifles. Other than the present case, the petitioner had an unblemished service record. In March, 2012, the petitioner was sent to Jaipur on temporary duty for an official attachment. He received a message of his minor daughter's sickness. The petitioner's case is that he requested the Adm Commandant of Station Headquarter Cell, Jaipur for two days casual leave from 08 to 09 May, 2012. Having been granted such leave, the petitioner proceeded to his home town; took his daughter to a nearby hospital for treatment and thereafter returned back to Station Headquarter, Jaipur Cell within time. On completion of the temporary duty, the petitioner was sent back to his parent unit on 12th May 2012.

3. It appears that the petitioner's parent unit took a strong objection to the fact that the petitioner had taken casual leave from the Administration Commandant, Station Head Quarters and not from Capt.Gaurav Tewari who was deputed as Admn. Officer of the Station Cell at Jaipur. Consequently, the petitioner was subjected to a summary trial under Section 80/82 of the Army Act, 1950 on the aforenoticed charge. On the above noted charge, the petitioner had entered a plea of guilty. The respondents have recorded that the petitioner returned a plea of guilty and was thereafter sentenced to 7 days rigorous imprisonment.

4. Learned counsel for the petitioner has urged that the petitioner could not

have disputed that he had taken casual leave and hence the admission which the petitioner made. She submits that it was a categorical stand of the petitioner that the casual leave had been duly sanctioned by the Station Commandant, who was the competent authority to have granted the station leave. In any case, it is urged that even if the petitioner was to be faulted for not having taken leave from the unit Admn Officer, the same was taking a hyper technical view of the matter. It is contended that looked from any angle, seven days rigorous imprisonment which would vest the petitioner with a red ink entry in his record is unduly harsh and completely disproportionate to the nature of the offence for which the petitioner was charged.

5. We have heard learned counsel for the parties and perused the available record.

6. The instant case is not a case where the petitioner was charged with unauthorised absence from duty. The respondents are unable to dispute the correctness of the petitioner's statement that he had sought the permission before proceeding on two days casual leave with the authority of Station head quarter at Jaipur. The petitioner has submitted that he was tense on account of sickness of his minor daughter. He had taken sanction of leave from the Station Commandant. It also cannot be disputed that the Station Commandant was the highest authority in the Station Headquarter.

7. In this regard, the petitioner has placed the copy of the sanction of the petitioner's casual leave dated 7th May 2012 between 08 May and 09 May, 2012 before this court. In the written sanction which was given to the petitioner, the Station Commandant has also noted the address at which the petitioner was to remain available during this period and that on expiry of leave he would report back to the Headquarter for duty. In view of this sanction of the leave by the Station Headquarter, the petitioner cannot be faulted for having proceeded on leave in accordance with the directives of the senior most officer at the station. The petitioner reported back as directed.

8. In view of the above, we find merit in the petitioner's challenge and submission that the petitioner could not have been summarily tried and punished in the proceedings dated 7th May 2012. No statutory provision, law or regulation which prescribes that despite the sanction by the Station Headquarter, the petitioner was required to obtain a sanction of the same from the Adm Officer has been pointed out. The Station Commandant was an officer of the rank of Colonel while the Admn. Officer was an officer of the rank of Captain. The petitioner acted as per directives of the senior most officer in the Station. The charge against the petitioner was unwarranted. Looked at from any angle, the punishment against the petitioner was unduly harsh.

9. In view of the above, it is held that the proceedings of the summary trial,

order of conviction and punishment dated 19th June 2012 were arbitrary and illegal and are thereby set aside and quashed. The punishment shall not operate against the petitioner for any purpose.

10. This writ petition is allowed accordingly.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

AUGUST 01, 2013/rb