

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

*Judgment Reserved On: May 09, 2014*  
% *Judgment Delivered on: May 19, 2014*

+ **WP(C) 17624/2004**

RAJESH SINGH ..... Petitioner  
Represented by: Ms.Hema Sahu, Advocate  
with Mr. Rajendra Sahu, Advocate  
  
versus

UOI & ANR. .... Respondents  
Represented by: Ms.Richa Kapoor, Advocate with  
Ms.Saahila Lamba, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MR. JUSTICE JAYANT NATH**

**PRADEEP NANDRAJOG, J.**

1. The writ petitioner challenges the order dated May 16, 2002, holding him guilty of the first and the third charge framed against him and inflicting punishment of dismissal from service. Appeal and revision preferred by the petitioner were rejected vide orders dated October 23, 2002 and March 28, 2003 respectively. Though the same have not been challenged in the prayer made, we treat the same to be challenged in the present writ petition.
2. The petitioner was enrolled as a Constable in CRPF and was attached to the 88<sup>th</sup> Bn. It was alleged against him that detailed to proceed to duty at 08:00 hours on July 03, 2001 he did not report for duty and when searched in the male lines of the 88<sup>th</sup> Bn. he was found consuming alcohol. When questioned by Insp.Abhilash Singh he assaulted/quarrelled with him. The

next day i.e. July 04, 2001 he deserted the lines at 07:15 hours. All acts of commission and omission were alleged to be misconduct.

3. Vide memo dated October 12, 2001 three articles of charge were served upon the petitioner. They read as under:-

#### **“ARTICLE-I**

*That the aforesaid NO.-910470152 Ct/GD Rajesh Singh of B/88 (M) Bn, while functioning as Ct/GD was detailed to proceed on duty on 3/7/01 at about 08:00 hrs. to Vasant Kunj (N/Delhi) but he did not report for duty on the above date and time. Then he was searched in the male lines of B/88 (M) Bn CRPF where he was found consuming alcohol. Thus he has committed an act of negligence of duty/misconduct in his capacity as a member of the Force under Section 11(1) of the CRPF Act, 1949.*

#### **ARTICLE-II**

*That the aforesaid NO.910470152 Ct/GD Rajesh Singh of B/88(M) Bn while functioning as Ct/GD committed an act of misconduct/misbehaviour in his capacity as a member of the force under section 11(1) of CRPF Act, 1949 in that he assaulted/quarrelled with Insp.Abhilash Singh under the influence of alcohol when he directed him (Ct/GD Rajesh Singh) to report to DCO-88(M) Bn. which is prejudicial to good order and discipline of the force.*

#### **ARTICLE -III**

*On 4/7/2001 at about 07:15 hrs while functioning as Ct/GD in the aforesaid office the said NO.910470152 Ct/GD Rajesh Singh of B/88(M) Bn was found guilty of misconduct and negligence of duty under Section 11(1) of CRPF Act, 1949 in that he deserted from lines of B/88 (M) Bn without obtaining prior permission/sanction of leave from the competent authority. Thus he committed on act of misconduct/remissness in the discharge of his duty while functioning as a member of the force which is prejudicial to*

*good order and discipline of the force.”*

4. Ten witnesses were examined by the Department to substantiate the charges levelled against the petitioner.

5. Since the report of the Inquiry Officer has exonerated petitioner of Article II of the charge, a finding which has been accepted by the Disciplinary Authority, we would concentrate on such testimony of the witnesses which would be relevant to deal with the submissions advanced by learned counsel for the petitioner.

6. Ct.Lakshminarayan PW-1 deposed that on July 03, 2001 at 07:30 hours as he was wearing his uniform in the male lines he heard petitioner speak in a loud voice to HC P.K.Murty (PW-8) and one Sh.Sunil Indulkar (PW-9). He returned to the male lines at around 22:00 hours and saw the petitioner in the lines. The next day i.e. on July 04, 2001 at around 19:00 hours he learnt that the petitioner had absconded from the camp. Questioned by the Inquiry Officer as to what the petitioner was loudly speaking about he clarified that the petitioner was talking about some wedding and was using abusive language. The civilian Sunil Indulkar was the husband of one SI Devaki.

7. Ct.Shobha N.S. PW-2 deposed that she learnt that on July 03, 2001 her brother-in-law Sunil Indulkar had gone to the male lines to meet HC P.K.Murty whom he knew personally. As she met Sh.Sunil Indulkar he told her that the petitioner had spoken ill about her character and she made an oral complaint to CHM HC Chandra Mohan Bhandari (PW-6).

8. Insp.Abhilash Singh PW-3 deposed that at 08:30 hours on July 03, 2001 HC P.K.Murty and Sunil Indulkar, the husband of SI Devaki met him in his room. Sunil Indulkar complained that the petitioner had misbehaved with him and had spoken ill about his sister-in-law Ct.Shobha N.S. He

asked HC Chandra Mohan Bhandari (PW-6) to summon the petitioner and present him before the Assistant Commandant Shashi Negi. He was informed that the petitioner had not reported for duty and was resting in his cot in the male lines. He proceeded to the lines and saw the petitioner in his cot. The petitioner staggered out of his cot and after washing his face went somewhere. HC Chandra Mohan Bhandari could not find the petitioner. After some time the petitioner came back and had a verbal altercation with him. Assistant Commandant Shashi Negi ordered the petitioner to be medically examined. Petitioner refused to cooperate and when compelled by HC Chandra Mohan and HC Prabhu Nath Yadav to proceed to the medical ward, the petitioner resisted and did not allow his blood and urine sample to be collected. He disappeared. The next day the petitioner absconded from the camp.

9. HC Prabhunath Yadav PW-4 deposed in sync with what was deposed to by Insp.Abhilash Singh.

10. Ct.Zile Singh PW-5 deposed that on July 04, 2001 the petitioner absconded from the camp and as instructed by Insp.Abhilash Singh he deposited the belongings of the petitioner at the store.

11. CHM HC Chandra Mohan Bhandari PW-6 deposed in sync with Ct.Shobha N.S. and Insp.Abhilash Singh.

12. Asst.Comdt.Shashi Negi PW-7 corroborated Insp.Abhilash Singh regarding facts deposed to by Insp.Abhilash Singh of what happened when the petitioner was produced before her.

13. HC P.K.Murty PW-8 deposed in sync with Ct.Shobha N.S. PW-2.

14. Sh.Sunil Indulkar PW-9 deposed in sync with HC P.K.Murty (PW-8) and Ct.Shobha N.S. (PW-2).

15. Ct.Rajesh Kumari PW-10 deposed that on the day of the incident Ct.Shobha N.S. (PW-2) informed her that the petitioner spoke ill things about her character to her brother-in-law.

16. Making a statement in his defence, petitioner stated that on the day of the incident he was marked for duty at P.S.Vasant Kunj. At around 08:00 hours he went back to the male lines where he saw HC P.K.Murty (PW-8) sitting in his room with a civilian who was later introduced as the husband of SI.Devaki. The two were looking at photographs of some men and were talking about the marriage of Ct.Shobha N.S. He also looked at the photographs and remarked that a person in one of the photograph could be a good match for Ct.Shobha N.S. He was told that the person is a cripple. HC P.K.Murty and Sunil Indulkar got angry. He left the lines. HC Chandra Mohan Bhandari directed him to undergo a medical examination. He replied that he had wanted to urgently speak to his family but was prevented from using the telephone to make an STD call. He volunteered to be medically examined but his blood or urine sample was not taken. Salary for the months of March to June was paid to him in July and thus he was compelled to leave the camp.

17. It is apparent that a small little issue concerning some photographs of a few male persons being seen by Sunil Indulkar and HC P.K.Murty to find a suitable match for Ct.Shobha N.S. took a quarrelent form probably for the reason the petitioner identified a crippled person as the most suitable match for Ct.Shobha N.S. Nobody was assaulted. This explains the Inquiry Officer holding Article II of the charge as not proved. But as regards Article I of the charge, even as per the statement made in defence by the petitioner he never stated that he reported for duty at 08:00 hours on July 03, 2001 and thus Article I of the charge is obviously proved with respect to its first limb.

As regards the second limb that the petitioner was found consuming alcohol, though nobody has spoken of having seen the petitioner consume alcohol, but from the testimony of Insp. Abhilash Singh who deposed of petitioner staggering out of his cot and from the fact that the petitioner firstly refused to go the medical ward so that his blood and urine samples could be collected and thereafter the petitioner absconded, we have enough evidence to draw an inference that the petitioner had consumed alcohol. It is settled law that a writ Court would not re-appreciate evidence and as long as there is some evidence to sustain a verdict of guilt, the Court must adopt a hands off approach.

18. The argument that in the absence of a blood report or a urine sample analysis report it could not be said that the petitioner had consumed alcohol is neither here nor there for the reason the petitioner absconded from the medical ward and his conduct would require an inference to be drawn against him that he knew that if his blood or/and urine was subjected to an analysis, the report would be against him.

19. As regards Article III of the charge, the petitioner has admitted that without sanction he left the unit lines on July 04, 2001.

20. From the record we find that the petitioner remained unauthorizedly absent from July 04, 2001 till November 11, 2001 i.e. for 4 months and 7 days.

21. The reason given by the petitioner that his salary for 3 months was paid late cannot be a reason justifying him to abscond if at all the salary was paid late.

22. At this stage we must note that Insp. Abhilash during cross-examination by the petitioner explained that salary was paid late to the petitioner because he had overstayed leave and said period had to be

accounted for in the leave account before salary for said period could be paid.

23. The only issue of concern would then be whether the penalty of removal from service inflicted upon the petitioner is proportionate to the gravity of the offence keeping in view that past service record of the petitioner is spotless.

24. From the fact that the petitioner had overstayed leave and till the same was accounted for in the leave record salary for the month of March to June was paid only in July, we have the fact that the petitioner was under some kind of a stress : this would explain his overstaying leave. The stress got aggravated because salary was not being released. It is apparent that on July 03, 2001 the petitioner was under stress. He was obviously nurturing some kind of an ill feeling towards the system and this explains his snide comment that a crippled male would be a suitable match for Ct.Shobha N.S. This explains his having consumed alcohol in the early hours of July 03, 2001. This explains his absconding the next day. Being a victim of circumstances, cause whereof has remained in the dark, the mitigating circumstances in favour of the petitioner would be his past good conduct and his being stressed when the unfortunate incident took place. By no means are we to condone the act of a force personnel running away from the unit lines without informing the superior officers and reporting back after 4 months and 7 days.

25. The petitioner, as noted above was dismissed from service on May 16, 2002 and since then he has received no salary. The unfortunate docket explosion in this Court has resulted in the writ petition being decided after 12 years.

26. Balancing the wrong done and the circumstances enwombing the wrong and keeping in view the past good conduct of the petitioner, there being no moral turpitude in the wrong, the penalty of dismissal from service is held to be disproportionate. We quash the same. Loss of salary for 12 years would in our opinion be sufficient penalty to be suffered by the petitioner and because we are not directing any back wages upon reinstatement, we do not permit any penalty to be levied upon the petitioner.

27. The petition is disposed of quashing the order dated May 16, 2002, October 22, 2002 and March 28, 2003, being the appellate and the revisional order. The petitioner is directed to be reinstated in service without any back wages to be paid. In what manner this 12 year period should be reckoned for purposes of service record shall be decided by the Competent Authority of the petitioner and the said decision would be conveyed to the petitioner. The petitioner shall report to the Director General CRPF at his office in Delhi on June 01, 2014. By that time his file would be processed and the petitioner would be issued an order conveying the place where he has to join for duty.

28. No costs.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(JAYANT NATH)**  
**JUDGE**

**MAY 19, 2014**  
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