

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

% *Judgment Reserved on: January 30, 2014*
Judgment Pronounced on: February 03, 2014

+ **W.P.(C) 880/2002**

RAM LAL MEENA Petitioner
Represented by: Ms.Manpreet Kaur, Advocate for
Mr.Arun Bhardwaj, Advocate

versus

UOI & ORS. Respondents
Represented by: Mr.Sushil Kumar Dubey, Advocate
for Ms.Sonia Mathur, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. We note the undisputed facts before noting the disputed ones.
2. Having joined service as a Constable with CISF on July 15, 1994, for overstaying leave for a period of 17 days from June 03, 1996 to June 19, 1996, penalty of withholding one increment of pay for one year without cumulative effect was inflicted upon the petitioner. The next year, for overstaying leave for 13 days from February 21, 1997 till March 05, 1997, he was punished with three days pay being deducted as fine. Soon thereafter, for overstaying leave for 16 days from May 26, 1997 to June 10, 1997 punishment of two days pay being deducted as fine was inflicted upon the petitioner. Only five days leave being in his leave account, the petitioner applied for long leave, but in view of the fact that as per the leave account only five days leave was due as of March 15, 2000, the Commandant of the Battalion to which the petitioner was

attached i.e., the 5th Reserved Battalion, stationed at Ghaziabad, sanctioned the petitioner leave for five days commencing from March 16, 2000 till March 20, 2000; requiring petitioner to report for duty in the forenoon of March 21, 2000. The petitioner did not report for duty and a G.D.Entry No.976 dated March 21, 2000 was made at 12:30 hours recording said fact and that intimation sent to the Unit Headquarter. Call notices dated March 27, 2000, April 19, 2000 and May 22, 2000 were sent at the residential address furnished by the petitioner. In spite of receiving the same, the petitioner did not join back till May 08, 2000. Required to join back on March 21, 2000, overstay period was 48 days.

3. The disputed facts are, the version of the petitioner, that on March 20, 2000 he had telephonically informed the control room that on account of his wife being seriously sick his leave should be extended. Further disputed fact is whether on March 21, 2000, the petitioner sent an application by Regd. Post to the Commandant of the 5th Reserved Battalion, Ghaziabad, annexing therewith the medical papers issued by the Government hospital at Alwar pertaining to the sickness of his wife. Further disputed fact is whether the petitioner, once again informed the control room over the telephone on March 29, 2000 that due to his wife being seriously sick, leave should be extended.

4. As per the Charge Memo, the charge against the petitioner was of overstay leave for 48 days beyond sanctioned permissible leave. The second charge was by way of intimation to the petitioner that his past service record, showing he being in the habit of overstaying leave, and penalties levied would be taken into account for deciding the quantum of punishment for the current indictment.

5. At the trial, Inspector R.S.Rana PW-1, proved that there was only five days leave to the credit of the petitioner as on March 15, 2000 and

for said reason the Commandant of the Battalion had sanctioned only five days leave to the petitioner from March 16, 2000 till March 20, 2000; requiring petitioner to report for duty in the fore noon of March 21, 2000. He proved the G.D.Entry 976 of March 20, 2000 recorded at 12:30 hours that the petitioner had not reported for duty. He proved the call up letters dated March 27, 2000, April 19, 2000 and April 22, 2000. The said documents are Exhibits PW-1/P-2, PW-1/P-3, PW-1/P-5, PW-1/P-7 and PW-1/P-8. ASI D.N.Singh, PW-2 proved Ex.PW-1/P-1, as per which the petitioner was posted at Ghaziabad.

6. The record would evidence that after the department led evidence, petitioner stated that he does not wish to lead any defence evidence or prove any document. He simply stated that due to his wife being seriously sick he could not join back on March 21, 2000. He stated that he informed the control room this fact on March 20, 2000 and on March 29, 2000. He stated that he did not respond to the call up notices because he had already informed the control room twice that he could not join back because his wife was sick. He claimed to have sent a letter by Regd. Post. But he never filed any document to establish he having made any telephone call to the control room or having sent any letter by Regd. Post.

7. Holding the charge to be proved, the enquiry officer submitted a report. Furnishing the same to the petitioner and considering his response, the Disciplinary Authority held that the charge was proved and that the repeated misconduct of overstaying leave warranted penalty of removal from service to be inflicted. The Appellate and the Revisional Authority concurred with the same.

8. It is alleged in the writ petition that Inspector R.S.Rana used to use filthy and abusive language and that even in the past he had lodged a false complaint against the petitioner. It is alleged that Inspector R.S.Rana has

manipulated everything. At the hearing on January 30, 2014, the learned counsel for the petitioner reasserted the said plea.

9. Personal malice having been alleged against Inspector R.S.Rana it was incumbent upon the petitioner to have impleaded Inspector R.S.Rana and in the absence of Inspector R.S.Rana being impleaded as a respondent said pleadings in the writ petition have to be ignored.

10. Besides the aforesaid technical reason for ignoring the pleadings pertaining to personal bias and malice of Inspector R.S.Rana, the learned counsel has no answer to the question that Inspector R.S.Rana is not the complainant, he has deposed to no version, he has stated facts at the enquiry which petitioner admits and therefore what is the relevance of the plea of the personal malice of Inspector R.S.Rana?

11. The petitioner admits that he had only five days leave to his credit, a fact stated by Inspector R.S.Rana. Petitioner admits that only five days leave was sanctioned to him from March 16, 2000 till March 20, 2000 as deposed to by Inspector R.S.Rana. The petitioner does not dispute that he overstayed leave by 48 days, a fact stated by Inspector R.S.Rana. The petitioner does not dispute that he had received call up notices, being three in number,, a fact deposed to by Inspector R.S. Rana.

12. We fail to understand the purpose of the averments in the writ petition against Inspector R.S.Rana who has simply deposed facts from the record and has proved documents. Even otherwise whatever has been stated by Inspector R.S.Rana has been admitted by the petitioner.

13. Now, where a person overstays leave, onus to prove justified grounds for leave being overstayed would be on the person concerned and in such a case the question of any malice would be irrelevant unless it relates to the defence or the justification for leave overstayed.

14. If a person wants leave to be extended he must apply for the same and if he is at a far off place he must intimate the leave sanctioning authority that he is overstaying leave and state reasons for the same. The petitioner claims that he did so.

15. The question would be : Whether the petitioner informed the control room twice as claimed by him, on March 20, 2000 and March 27, 2000 that he could not join back due to his wife being sick and further did he send a letter by Regd. Post on March 21, 2000 enclosing therewith medical papers concerning his wife? The reason being that the petitioner claims that because his wife was seriously sick it became his compulsion not to join back after five days.

16. The enquiry officer has held that no such telephone call(s) was received in the control room, for the reason if any was made the requirement of the procedures laid down that the operator on the telephone desk was required to make a G.D. Entry recording the said fact would have been reflected in the General Duty Register. None were made.

17. As regards the letter sent by the Regd. Post, since Inspector R.S.Rana deposed that no such information was received from the petitioner, the enquiry officer has reasoned that the same would establish that either no intimation was sent or that if at all any was sent the same was sent at the wrong address.

18. At the hearing of the writ petition, the learned counsel for the petitioner relied upon a photo copy of a computer generated purported receipt showing a call made on March 20, 2000 at the telephone no.05754605323. Another receipt evidencing call made on March 29, 2000 at the same number was relied upon.

19. Now, the two receipts are capable of being generated by anybody from any printing machine. These are akin to receipts which one finds

issued at departmental stores after one makes a purchase. A simple machine having a memory storage generates the receipt for the goods purchased. Counsel for the petitioner conceded that the petitioner did not file said receipts during the enquiry and made no attempt to lead any evidence, with reference to call record generated data sheet summoned from the telephone department showing a call made by a number at Alwar, the home place of the petitioner, to the number in question referred to in the two receipts.

20. Besides that we have a problem. Though it does not flow out from the evidence, but from the fact that the learned counsel for the respondent informs us that the telephone number of the control room of CISF Unit at Ghaziabad is 2652140 and 2652141.

21. Now, if the petitioner had produced the two receipts during enquiry, evidence would have surfaced as to what is the telephone number of the control room of the CISF Unit at Ghaziabad. The petitioner is to be blamed and thus the two receipts are useless documents inasmuch as they were never produced at the enquiry. The receipts are of a kind which can be generated by any person from any machine at any time.

22. Annexure P-4 to the writ petition is a photocopy of a receipt purportedly issued by the Post Office at Alwar which shows that on March 21, 2000, under Regd. Post a docket was sent. But the address is : Commandant, Makkhanpur, Ghaziabad. Pertaining to presumption of receipt of communication sent by Regd. Post, the same can be presumed to have reached the addressee upon proof that it was posted at the correct address. The receipt Annexure P-4 does not establish that the communication was sent under the postal receipt 2317 at the correct address where the CISF Unit of the 5th Reserved Battalion was stationed at Ghaziabad.

23. The past propensity of the petitioner of overstaying leave cannot be over looked. No doubt, a Government servant is entitled to avail entire leave available each year but it assumes importance to note that leave for the year 2000 had been exhausted by the petitioner by March 2000. As of March 15, 2000, only five days leave was to his credit. Any document produced by the petitioner in support of his defence at this stage i.e. the writ petition has thus to be taken with a pinch of salt. The medical papers, Annexure P-6 collectively on which the petitioner relies concerning his wife, assuming the same to be correct, would evidence that the petitioner's wife was taking treatment as an out patient at the primary health centre. The same would evidence that the wife of the petitioner was suffering from jaundice.

24. A village near the town of Alwar in Rajasthan is admittedly the home place of the petitioner. It is not so far away from Ghaziabad where the petitioner was performing duties for the petitioner being unable to physically report at Ghaziabad with the medical papers concerning his wife and sort out the issue with the Commandant i.e. obtain either half pay leave or extraordinary leave without pay. Further, it cannot be glossed over that the department had sent three call up notices, on March 27, 2000, April 19, 2000 and April 22, 2000. The petitioner admits having received the same.

25. That after March 21, 2000 i.e. the date when petitioner claims to have sent a letter requesting for leave to be extended along with medical papers concerning his wife, on April 19, 2000 and April 22, 2000, call up notices were issued to the petitioner, receipt whereof he admits, but there is no response thereto gives birth to a conduct of the petitioner which he needs to explain. If the petitioner had twice informed over the telephone and once in writing that he could not join because his wife was unwell,

normal human conduct of a person who would receive call up notices thereafter on April 19, 2000 and April 22, 2000, would be to send a communication referring to the past communication as also the previous telephone calls and thereafter write that the reason for leave overstay being still existing, further leave be sanctioned.

26. That is not the end of the matter. After he joined duties the petitioner did not submit any application seeking ex-post facto leave being sanctioned as a special circumstance with reference to the medical papers of his wife.

27. We concur that the charge alleged against the petitioner has been established.

28. On the argument concerning the quantum of punishment, we note that the petitioner has shown repeated propensity of overstaying leave. We need to speak a word upon enrolled personnel of Central Para-military Forces repeatedly overstaying leave. The enrolled persons perform active patrolling duty and thus in the absence of one person, another cannot be assigned current duty charge as is possible for clerical work. If a clerk is on leave, another clerk can be assigned current duty charge of the adjoining desk. But for a Constable this cannot be done for the reason a Constable patrols a particular area or stands guard at a particular point. He cannot be expected to be at two places. He cannot be expected to, while performing his own duty, perform the duty of another Constable. Thus, when a Constable overstays leave he causes either one of the two problems for the department. First, either a particular place or a point has to be left unguarded or in the alternative the leave of some other person has to be cancelled. The first option is a security risk. The second option creates heart burn and unrest for the reason the force personnel whose leave is cancelled may have so arranged his personal affairs keeping in

view the purpose of the leave that the sudden cancellation of the leave hits him. It is bound to irritate him.

29. Thus, as against a Government servant who is performing civilian duties overstaying leave, a personnel of a Central Para-military Force when he overstays leave causes greater disruption in the working of the organization.

30. Petitioner's propensity of not improving himself, when in the past minor penalties were levelled for overstaying leave, justifies the petitioner being inflicted with the penalty of removal of service when said misconduct was indulged for the fourth time. In less than six years span of service, the petitioner has indulged in the same misconduct four times.

31. The writ petition is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

FEBRUARY 03, 2014
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