

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

Judgment Reserved on : July 11,2016

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Judgment Delivered on : July 15,2016

+ W.P.(C) 20072/2005

PANKAJ KUMAR PARIHAR

..... Petitioner

Represented by: Mr.Abhishek Kukkar,
Advocate.

versus

UOI & ORS

..... Respondents

Represented by: Ms.Archana Gaur, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The petitioner has sought quashing of the order dated June 20, 2003 by the Disciplinary Authority imposing penalty of 'Dismissal from Service' as well the order dated September 29, 2003 by the Appellate Authority and the order dated May 06, 2004 by the Revisional Authority dismissing his appeal and revision respectively.
2. The petitioner joined CISF as Constable on March 30, 1996. When he was posted at BSP Unit, Bhilai, for his undesirable activities, he was placed under suspension.
3. During the period of suspension, he applied for leave and was sanctioned 20 days leave but he failed to report on the due date.
4. During his service of above six years, the petitioner had overstayed leaves four time. A decision was taken to initiate disciplinary proceedings against the petitioner under Rule 36 of CISF Rules 2001. The petitioner was

served with the following Articles of Charge:-

“Charge Article No.1

Ct.Pankaj Kumar suspended F.No.961402585, C.I.S.F. unit, B.S.P. Bhillai, was granted 20 days permission leave w.e.f. 15-11-2000 to 4-12-2000 and he was ordered to be present in unit on 5-12-2000 but he failed to comply with the order and remained unauthorizedly absented for 57 days and thereafter came in the unit on 21-1-2001. The above said act committed by Ct. Pankaj Kumar suspended F.No.961402585 is introductory of act of indiscipline, disobedience and disobedience of order, his senior officers.

Charge Article No.02

Ct.Pankaj Kumar suspended F.No.961402585, C.I.S.F. unit, B.S.P. Bhillai was granted 2 days leave w.e.f. 25-6-2001 to 26-6-2001 and he was ordered to be present in the unit on 27-6-2001 but he failed to comply with the above said order and remained unauthorizedly absented for 3 days and thereafter on 30-6-2001 came in the unit. The above said act committed by Ct.Pankaj Kumar suspended F.No.981402585 is introductory of act of indiscipline, disobedience and disobedience of order, his senior officers.

Charge Article No.03

Ct.Pankaj Kumar suspended F.No.961402585, C.I.S.F. unit, B.S.P. Bhillai was granted 29 days leave w.e.f. 2-5-2002 he was ordered to be present in the unit on 31-5-2002, but he failed to comply with the order and remained unauthorizedly absented for 26 days and thereafter came in the Unit on 26-6-2002. The above said act committed by Ct.Pankaj Kumar suspended F.No.981402585 is introductory of act of indiscipline, disobedience and disobedience of order, his senior officers.

Charge Article No.4

Ct.Pankaj Kumar suspended F.No.961402585, C.I.S.F. unit, B.S.P. Bhillai was granted 30 days leave w.e.f. 12.9.2002 to 11.10.2002 and he was ordered to be present in unit on 12.10.2002, but he failed to comply with the order and remained unauthorizedly absented for 39 days and thereafter came in the Unit on 20.11.2002. The above said act committed by Ct.Pankaj Kumar suspended F.No.981402585 is introductory of act of indiscipline, disobedience and disobedience of order,his senior officers. '

5. During departmental inquiry, all the four charges against the petitioner were held to be proved and he was awarded the penalty of 'dismissal from service'. The order of dismissal from service was concurred by the Appellate and Revisional Authorities.

6. The petitioner has impugned the order of dismissal interalia on the following grounds:-

- (i) Complete copies of the documents regarding intimation of overstaying the leave were not provided to him despite being repeatedly asked by the petitioner.
- (ii) Statement of PW-1, 2 and 4 have been recorded in the absence of the petitioner without giving him an opportunity to cross examine these witnesses.
- (iii) The petitioner had communicated his inability to attend the inquiry proceedings vide communication dated April 19, 2003 and April 25, 2003.
- (iv) The petitioner has been denied fair and reasonable opportunity to defend himself due to the malafide intention of the inquiry officer.
- (v) The penalty of dismissal from service is disproportionate to the charge for which he has held guilty.

7. On behalf of the petitioner, it has been submitted that the reasons compelling the petitioner to overstay, had been detailed in the written submissions filed in this writ petition and that there is no discrepancy in the date of death of younger brother of the petitioner as the death had taken place on May 08, 2002 but communicated by him vide letter dated May 12, 2002. It has also been submitted that in the appeal preferred before DIG, CISF, Bhilai the prayer made was to remand the case to R-5 so as to enable him to consider all the documents lying with the department. However, his appeal was dismissed mechanically on September, 29, 2003 and the revision was also dismissed on May 06, 2004 without taking into consideration the entire material.

8. On behalf of respondent, it has been submitted that after the petitioner was appointed as Constable on March 30, 1996 he was directed to report to DSP Bhillai on regular transfer w.e.f. March 14, 1997. During his posting at Bhilai, the petitioner was involved in undesirable activities for which he was chargesheeted and also placed under suspension w.e.f. June 27, 2000. During his period of suspension, on his request, he was granted leave but on all four occasions, he overstayed the leave period. This resulted in issuance of chargesheet on December 10, 2002 and after conducting inquiry and examining the evidence adduced during inquiry proceedings, all the charges were held to be proved against him. As per rules one copy of substance of inquiry was handed over to the petitioner vide official letter No.345 dated May 09, 2003 to enable him to file the representation within fifteen days of receipt thereof. The competent authority vide order dated June 20, 2003 ordered dismissal of the petitioner from service.

9. Learned counsel for the respondent has also submitted that in this case

the death certificate is from Gram Pradhan mentioning the date of death of younger brother of the petitioner as May 08, 2002 while the charged official in his representation mentioned the date of death as May 12, 2002. Learned counsel for the respondent has submitted that on the basis of evidence, all the four charges were established making out a case where it was proved that the petitioner was habitual in overstaying the leave, hence the impugned order may not be interfered with.

10. We have considered the rival contentions and perused the record.

11. The instances of overstaying the leave, which are undisputed, as detailed in the chargesheet issued on December 10, 2002, are as under:-

(i) He was sanctioned leave for 20 days w.e.f. November 15, 2000 to December 04, 2000 but he failed to comply the order and unauthorisedly remained absented upto 57 days and reported on January 31, 2001.

(ii) He was granted two days leave from June 25, 2001 to June 26, 2001 but he failed to comply the order and remained absented for three days and reported on June 30, 2001.

(iii) He was granted 29 days permission leave on May 02, 2002 and he was to be reported on May 31, 2002 but he failed to comply the order and remained absented upto 26 days and reported on June 26, 2002.

(iv) He was granted 30 days permission leave from September 12, 2002 to 11.10.2002 but he failed to comply the order and remained absent for 39 days and reported on November 20, 2002.

12. In respect of charge No.1, the inquiry officer had noted that the petitioner remained under observation at two different Ayurvedic Swasthya Kendra but none of them had issued any medical-cum-fitness certificate. He got treatment from Katholi Swasthya Kendra without being referred by

the doctors of Amrela Swasthaya Kendra.

13. In respect of Charge No.2, it was recorded that no justification for overstaying the leaves by three days was provided by the petitioner.

14. Regarding Charge No.3, he recorded that on sudden demise of younger brother of the petitioner, the leave period was extended by four days on the request of the petitioner i.e. upto May 30, 2002 and intimated through telegraphic message No.361 dated May 22, 2004 but he failed to report on the due date. Only a certificate issued by Gram Pradhan Amrela, Distt. Kangra, Himachal Pradesh was produced about the death of his brother Nirmal Kumar.

15. In respect of Charge No.4, the inquiry officer has considered the evidence about the petitioner being called vide letter dated 759 dated October 25, 2002 while he overstayed the leave as well the fact that the petitioner claimed to have remained under observation at two different Ayurvedic Swasthya Kendra but none of them had issued any medical-cum-fitness certificate and that he got treatment from Katholi Swasthya Kendra without being referred by the doctors of Amrela Swasthaya Kendra. Inquiry officer has also noted that no document relating to the treatment like medicine bills, investigation carried out or pathology lab bills were filed thereby creating a doubt regarding the genuineness of the certificates from the two Ayurvedic Swasthya Kendras.

16. The contention raised on behalf of the petitioner that he was not supplied with the complete documents needs to be ignored for the reason that it was a case of overstaying of leave. In such a case, onus to prove justified grounds for leaves being overstayed lies on the person concerned and in such a case imputation of malafide on the part of inquiry officer is

irrelevant.

17. The propensity of the petitioner of overstaying leave cannot be overlooked. No doubt, a government servant is entitled to avail leave and in case of any medical emergency or death in the family during the period he was on leave he could have got the leave extended by sending the supporting documents to the competent authority. It may be necessary to record here that lastly when the petitioner overstayed, the leave was sanctioned from September 12, 2002 to October 11, 2002 but he reported only on November 20, 2002 thereby overstaying the leaves by thirty-nine days. The death of brother of the petitioner had taken place in May 2002 which pertained to Charge No.3 but so far as charge No.4 is concerned, it was not a case of overstaying due to any death in the family or serious ailment of any other family member.

18. It may be necessary to record here that in the written submissions, in respect of charge No.4 the petitioner's defence is as under:

- (i) Delayed due to the personal medical issues of the petitioner.
- (ii) On 09.10.2002 telegram.
- (iii) On 28.10.2002 telegram.
- (iv) Medical certificate dated 28.10.2002.
- (v) Fitness certificate dated 16.11.2002.

19. The petitioner cannot claim denial of fair opportunity to defend himself as it was he who preferred not to cross examine the witnesses examined by the department. Otherwise also the articles of charge clearly specified the period of overstay and the fact of overstaying the leaves was never disputed by the petitioner. Whatever defence he wanted to lead to justify overstay was to be led by him, being a fact in his personal

knowledge. If he failed to lead his defence, the inquiry cannot be vitiated.

20. In the instant case, the inquiry officer has carefully considered the record while returning the finding that the charges stood proved. The Disciplinary, Appellate and Revisional Authorities had accepted the finding given by the inquiry officer.

21. The contention raised on behalf of the petitioner of not considering the material carefully or not being given a fair opportunity to defend himself are not established from the record.

22. The petitioner is a member of paramilitary force and best medical facilities are provided to the member of the forces at State expenses. Thus, by sending the telegram or obtaining a medical-cum-fitness certificate from Ayurvedic Swasthya Kendra could not have justified overstaying of leave despite three similar instances in the past.

23. The petitioner has placed reliance on the medical certificate by two different Ayurvedic Swasthya Kendra without there being any medical prescription or bills for the said treatment. If the petitioner was genuinely sick to the extent that he was unable to resume duties, he could be hospitalised in any nearby hospital. The nature of the ailment from which the petitioner claims to be suffering did not require any hospitalisation. The instances of overstaying the leave show that the petitioner despite being member of a disciplined force, placed under suspension for his undesirable activities, treated his service with utmost casualness which falls in the zone of 'zero tolerance'. The paramilitary force cannot brook indiscipline of this kind.

24. It is trite that a challenge to a sentence on grounds of proportionality can be successfully laid only if the sentence of punishment is so

disproportionate to the gravity of the allegations that it shocks the conscience of the Court.

25. The scope and manner of judicial review of disciplinary action raising an issue of proportionality of a sentence imposed by the Disciplinary Authority or Appellate Authority is limited to the extent that unless the sentence imposed shocks the conscience of the Court there is no scope of interference in exercise of writ jurisdiction.

26. Legal position is well established that Courts can interfere where the Disciplinary Authority held the proceedings against the delinquent official in violation of the principles of natural justice or in violation of the statutory rules or the finding record by the Disciplinary Authority are perverse. In the instant case, there is nothing to even remotely suggest that the inquiry has not been properly held or it has been conducted against the principles of natural justice.

27. The petitioner is a member of CISF which is a paramilitary force requiring him to maintain discipline. Repeated acts of overstaying leave if condoned are capable of sending wrong signal to the other members which may lead to a situation that other members of force may also feel tempted to commit such an act of misconduct. This may cause serious indiscipline in paramilitary forces.

28. Taking into consideration that the petitioner was habitual in overstaying the leaves, the penalty of dismissal from service cannot be termed as disproportionate to the misconduct committed as during the said period he was already under suspension.

29. Finding the impugned order to be in conformity with the prescribed procedure and that the penalty awarded to the petitioner cannot be termed to

be disproportionate to the misconduct committed, the petitioner does not deserve any relief from this Court in exercise of its power under writ jurisdiction.

30. We are unable to find any illegality, irregularity or perversity in the action of the respondents.

31. The writ petition is dismissed.

32. No costs.

PRATIBHA RANI, J.

PRADEEP NANDRAJOG, J.

JULY 15, 2016

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