

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on : 25.05.2023

Pronounced on: 18.07.2023

SWP No.209/2015

Vikrambhari Rot

.....**Petitioner(s)**

Through: Mr. Bhat Fayaz, Advocate

versus

Union of India & others

.....**Respondent(s)**

Through: Mr. Nazir Ahmad Bhat, Advocate, with
Mr. Mudasir, Advocate

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGMENT

(ANNOUNCED THROUGH VIRTUAL MODE FROM JAMMU WING)

1. Through the medium of this writ petition, the petitioner is seeking to quash order dated 14.12.2011 issued by Commandant, 73 Battalion, CRPF, respondent No.3 herein, by virtue of which the petitioner came to be dismissed from service with immediate effect. The petitioner is also seeking quashing of order dated 14.05.2013, by virtue of which the appeal preferred by him before the appellate authority, i.e., DIG Range Greater Noida came to be dismissed being devoid of merit. Petitioner is further seeking quashing of order dated 20.06.2014, by virtue of which the revision petition filed by him came to be dismissed by the IGP Northern Sector, CRPF, New Delhi being barred by time.

2. The facts as gathered from the petition are that the petitioner came to be appointed as a Sepoy in the CRPF on 05.05.1993. The petitioner was posted at various places including sensitive areas. On 29.03.2011 the petitioner was referred by the Unit Medical Officer to Composite Hospital, CRPF,

Gandhinagar for medical examination due to hypertension and he was relieved from the Hospital on 30.04.2011 for resuming his duties. It is the case of the petitioner that he could not resume his duties on 01.05.2011 as he was getting medical treatment, as such he could report for duty only on 28.07.2011. However, he was served with a notice dated 21.08.2011 informing him that an inquiry has been initiated against him for his unauthorized absence and was also served with a charge sheet. Thereafter, an inquiry officer came to be appointed. After conclusion of the inquiry, the petitioner vide order dated 14.12.2011 issued by the Commandant, 73 Battalion, CRPF came to be dismissed from service under Section 11(1) of the CRPF Act, 1949 read with Rule 27 of CRPF Rules, 1955. The appeal preferred by him before the DIG Range Greater Noida also came to be dismissed being devoid of merit vide order dated 14.05.2013. Revision petition filed before the IGP Northern Sector, CRPF, New Delhi too met with the same fate vide order dated 20.06.2014 being barred by time. Hence, the present writ petition.

3. It is the case of the petitioner that at no point of time he was permitted to peruse the documentary evidence nor the inquiry officer permitted him to cross examine the witnesses, as a matter of fact the witnesses were never examined in his presence because when the inquiry was conducted and concluded the petitioner was posted at Srinagar and was not permitted to appear in person before the inquiry officer. It is further the case of petitioner that he was made to understand that some minor punishment would be awarded and he was asked to sign the documents evidencing his presence at every stage of inquiry. It is further averred that before passing the order of dismissal the authority did not issue show cause notice containing the proposed punishment.

4. Objections have been filed on behalf of respondents contending therein that the petitioner ought to have joined the unit directly after being relieved from CH Gandhinagar on 30.04.2011, but he absented himself for 88 days without permission of competent authority from 01.05.2011 to 27.07.2011 and reported at TC Jammu on 28.07.2011. It is further averred that the Inquiry Officer conducted the departmental inquiry as per laid down procedure. It is averred that during the departmental inquiry the petitioner had failed to prove that he was actually under treatment for any serious ailment during the period he was absent from duty; further despite affording him an opportunity of 15 days, the petitioner had failed to bring any witness or document in his defence. It is further averred that since the petitioner had failed to submit the written representation against the report of Inquiry Officer, the competent authority dismissed the petitioner from service with effect from 14.12.2011.

5. Heard learned counsel appearing for the parties, considered their rival contentions, perused the file as well as the record so produced by the learned counsel appearing for Union of India.

6. It is not in dispute that on 29.03.2011 the petitioner was referred by the Unit Medical Officer to Composite Hospital, CRPF, Gandhinagar for review medical examination due to hypertension, from where he was relieved on 30.04.2011. It is also not in dispute that on 13.04.2011 the petitioner was advised by the Medial Review Board for regular treatment. Further, the petitioner was appointed as a Sepoy in the CRPF on 05.05.1993 and till 30.04.2011 when he was relieved from the Composite Hospital, i.e., during the period of about eighteen years, the respondents in their objections have not averred anything against the petitioner or that he ever remained on

unauthorized absence during this period or was a habitual absentee; meaning thereby one can assume that during this period of about 18 years the petitioner had a good track record of service. Further, it is admitted by the respondents themselves that since the petitioner had medical issues, as such he was referred to Composite Hospital, Gandhinagar, where he remained admitted for continuous 33 days. Even on 13.04.2011, while the petitioner was admitted in the Composite Hospital, he was advised by the Medical Review Board for regular treatment. The stand of the petitioner is that he was having abscess in his right thigh and after getting relieved from Composite Hospital, the abscess drainage was done after giving anesthesia by the Medical Officer of Primary Health Centre, Bhiloda on 01.05.2011 and he was advised for four weeks rest. Medical Certificate to this effect has also been annexed with the record and I do not find any reason to question the genuineness of said document. The other medical certificates are also from the Primary Health Centre, Chorimala, Bhiloda. Since the petitioner remained in Composite Hospital for continuous 33 days and in continuation of the same he was getting treatment from Primary Health Centre, Bhiloda in view of the advice of Medical Review Board dated 13.04.2011 for getting regular treatment, as such I do not find any reason to question the medical issues of petitioner. But, the fact of the matter is that the petitioner remained on unauthorized absence for a period of 88 days. However, the respondents too have failed to prove that the absence of petitioner from duty was willful.

7. What is held by the Apex Court in paragraphs 16, 18, 22 and 25 in case, titled as, *Krushnakant B. Parmar vs Union of India*, 2012 (3) SCC 178, would be relevant to reproduce hereunder:

“16. The question whether ‘unauthorized absence from duty’ amounts to failure of devotion to duty or behavior unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances.”

“18. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a Government servant.”

“22. In the present case, the disciplinary authority failed to prove that the absence from duty was willful, no such finding has been given by the Inquiry Officer or the Appellate Authority. Though the appellant had taken a specific defence that he was prevented from attending duty by Shri P. Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3rd October, 1995 addressed to Shri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office of Telephone calls dated 29th September, 1995, etc. but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the Inquiry Officer held the appellant guilty.”

“25. In the result, the appeal is allowed. The impugned orders of dismissal passed by disciplinary authority, affirmed by the Appellate Authority; Central Administrative Tribunal and High Court are set aside. The appellant stands reinstated.”

8. In the present case, from the perusal of the record and also the inquiry report, it is manifestly clear that the disciplinary authority has failed to prove that the absence of the petitioner from duty was willful and in absence of any such finding, the absence in the present case will not amount to misconduct as alleged by the respondents. Even there is no allegation in the Articles of Charge that the petitioner ever deserted the force willfully or intentionally.

9. Therefore, keeping in view the medical issues of petitioner and the advice of Medical Review Board dated 13.04.2011 as also that the respondents have not averred anything adverse against the petitioner in their objections regarding his service career from 05.05.1993 to till 30.04.2011, I am of the opinion that the respondents ought to have taken a lenient view while imposing the punishment of dismissal from service which is highly disproportionate and too excessive in so far as the alleged charges against the petitioner are concerned, that too when the absence of petitioner seems to be bonafide. As regards the contention of petitioner that during inquiry he was condemned unheard or was not allowed to cross examine the witnesses, a perusal of the record reveals otherwise.

10. Therefore, in view of what has been discussed above, I deem it proper to allow the writ petition. Accordingly, the writ petition is allowed and the order dated 14.12.2011 issued by Commandant, 73 Battalion, CRPF is, hereby, quashed. Consequently, the orders passed by the appellate as well as revisional authority are also quashed. Respondents are directed to reinstate the petitioner in service with immediate effect, if he has not already crossed the age bar, with all consequential benefits including seniority, increments, promotion, pension etc. minus the monetary benefits with effect from 14.12.2011 to till today. As regards 88 days of unauthorized absence of petitioner, he has already been punished much more since 14.12.2011. Connected miscellaneous application(s), if any, accordingly, stands disposed of.

11. Registry to return the record to the learned counsel for Union of India against proper receipt.

Jammu
18.07.2023
(Anil Sanhotra)

(Tashi Rabstan)
Judge

Whether the order is reportable ?

Yes/No

Whether the order is speaking ?

Yes/No

