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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2301 of 2008

Mohammad Ajam Khan, S/o Shri Moh. Moiezuddin Khan, aged about 36 years, Constable No. 245, 6th Battalion Chhattisgarh Armed Forces F-Company, Camp Shanna, Dist. Jashpurnagar (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Inspector General of Police, Police Head Quarter Raipur, Raipur (C.G.)

2. Deputy Director General Of Police, Chhattisgarh Armed Forces Range (Head Quarter) Bhilai, Bhilai (C.G.)

3. Commandant 6th Battalion, Chhattisgarh Armed Forces, Raigarh, Raigarh (C.G.)

---- Respondents

For Petitioner Shri Vijay K. Deshmukh, Advocate
For Respondent/State Shri S. Mazid Ali, PL

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

11/05/2015

1. The petitioner has assailed the legality and validity of the order dated 24.07.2006 passed by the Director General of Police, Chhattisgarh, Raipur dismissing his mercy appeal, which, in turn, was preferred against the appellate order dated 07.04.2005 and the order passed by the Disciplinary Authority on 10.01.2005, whereby the petitioner has been awarded punishment of dismissal from service for remaining unauthorizedly absent.

2. On account of petitioner's unauthorized absence from 21.05.2004 to 25.05.2004 (5 days), 27.05.2004 to 29.05.2004 (2 days), 22.06.2004 to 24.06.2004 (2 days), 19.09.2004 to 13.09.2004 (3 days) (*sic)* 09.09.2004 to 13.09.2004 (5 days), 11.10.2004 to 16.10.2004 (6 days), 20.10.2004 to 23.10.2004 (4 days) and 23.10.2004 to 25.10.2004 (3 days), the petitioner was served a charge sheet and a regular enquiry was constituted.

3. In the enquiry, the petitioner was afforded proper and adequate opportunity of hearing and on the basis of obtaining evidence, the charge of remaining unauthorizedly absent was found proved; also considering the fact that the petitioner was earlier dismissed from the service on identical charges on 31.05.2002 but, his representation was allowed and was reinstated on 26.09.2002, however he joined on 18.02.2004 and further considering the fact that during his previous service, he was imposed 20 minor punishments but, there has been no improvement in his conduct, the Disciplinary Authority imposed punishment of dismissal from service. Appeal and mercy petition preferred by the petitioner have also been rejected.

4. Learned counsel for the petitioner would submit that the period of unauthorized absence was very short, therefore, the authority should have taken a lenient view and considering the nature of misconduct, the punishment awarded is disproportionate.

5. Per contra, learned counsel appearing for the State would support the impugned order and contended that the petitioner remained absent without informing the higher officer or moving any application for grant of leave, therefore, the writ petition deserves to be dismissed.

6. I have heard learned counsel for the parties at length and perused the record of departmental enquiry proceeding produced by learned State counsel at the time of hearing.

7. Regulation 177 of the Chhattisgarh Police Regulations provides that a medical certificate of the Medical Board is required for the grant of leave on average pay on the strength of medical certificate, however the note appended to the rule provides that this rule does not apply in cases of Head Constables or Constables where a certificate from a medical officer under supplementary Rule 8 Fundamental Rule 74 will be sufficient for the grant of leave on medical certificate. On perusal of Fundamental Rule it appears Fundamental Rule 58 to 104 which were part of **CHAPTER X-LEAVE** have been omitted vide Finance Department Notification No.G-22/6/94/Four, Dated 29th March, 1996 as the same have been replaced by Chhattisgarh Civil Services (Leave) Rules, 1977 (for short, *'Leave Rules, 1977'*). Thus, the note appended to Regulation 177 has no application in the present case, therefore, this Court is required to consider the submission on the basis of Rule 17 of Leave Rules, 1977, the said Rule is quoted below for ready reference:-

> "**17. Grant of leave on Medical Certificate to Government servant**.-[(1) An application for leave on medical certificate, made by a Government servant, shall be accompanied by a medical certificate in Form 3 given by an Authorised Medical Attendant or a Registered Medical Practitioner, defining as clearly as possible the nature and probable duration of the illness. Such application shall be submitted, as far as possible, prior to or

simultaneously with commencement of the period for which leave is applied:

Provided that, in exceptional circumstances where it is not reasonably practicable for the Government servant to submit an application within the aforementioned time limit, it may be submitted not later than 7 days from the date of commencement of the period of leave applied for :

Provided further that, in exceptional circumstances, where the authority competent to sanction leave is satisfied that it was not reasonably practicable for the Government servant to submit the required medical certificate along with his application for leave, it may, at its discretion condone a delay of not more than 7 days, counted from the date of commencement of the period of leave applied for, in the submission of medical certificate by such Government servant.]

(2) A medical Officer shall not recommend the grant of leave in any case in which there appears to be no reasonable prospect that the Government servant concerned will ever be fit to resume his duties, and in such case, the opinion that the Government servant is permanently unfit for Government service shall be recorded in the Medical Certificate.

(3) The authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below the rank of a Civil Surgeon or Staff Surgeon, to have the applicant medically examined on the earliest possible date.

(4) It shall be the duty of the Government Medical Officer referred to in sub-rule (3) to express an opinion both as regards the facts of the illness and as regards the necessity for the amount of leave recommended and for that purpose he may either require the applicant to appear before himself or before a medical officer nominated by himself.

(5) The grant of a medical certificate under this rule does not in itself confer upon the Government servant concerned any right to leave, the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited.

(6) The authority competent to grant leave may, at its discretion, waive the production of a medical certificate in case of an application for leave for a period not exceeding [seven] days at a time. Such leave shall not, however, be treated as leave on medical certificate and shall be debited against leave other than leave on medical grounds."

8. A reading of the first and second proviso to sub-rule (1) of rule 17 would make it explicit that the application for leave on medical certificate has to be submitted within seven days of proceeding on leave and the competent authority may condone the delay of not more than seven days counted from the date of commencement of period of leave applied for. Thus, according to this rule, the application for leave on medical certificate has to be submitted within 14 days in all and not beyond that. If an application is not submitted within this period, the absence would be treated as unauthorized. Since in the present case, petitioner did not submit any application for leave on medical certificate in the manner and within the time required under Rule 17, the disciplinary authority has rightly held him guilty of remaining unauthorizedly absent for the period 14/06/1997 to 06/08/1997.

9. Learned counsel has also referred to Regulation 190 to argue that punishment for remaining absent without leave having been provided under this Regulation, the petitioner could not have been dismissed from service, however, a reading of Regulation 190 makes it manifest that for remaining absent without leave, any of the punishment

specified in Regulation 214 to 217 may also be inflicted and one of the punishment provided under Regulation 214 is dismissal from service. Similarly argument based on Regulation 217 is also not convincing because the said Regulation provides for punishment which may be imposed on a Constable but the same does not mean that punishment provided under Regulation 214 can never be imposed upon a Constable. As a matter of fact, Regulation 217 provides for different kind of punishment which may be imposed upon a Constable on a day-to-day basis depending upon the nature of indiscipline which a particular Constable has committed which may not amount to a misconduct so serious which would require Constitution of a regular enquiry against him for imposing punishment as required under Regulation 214.

10. It is settled law that writ Court cannot re-appreciate the evidence recorded in course of domestic enquiry to set-aside the finding recorded by the enquiry officer unless the findings are perverse. [See ***Union of India and Others Vs. Virpal Singh Chauhan and Others, (1995) 6 SCC 684, Lalit Popli Vs. Canara Bank and Others, (2003) 3 SCC 583***]

11. It is also settled that normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be

maintained, and the department/establishment in which the delinquent person concerned works. [See ***Director General, RPF and Others Vs. Ch. Sai Babu, (2003) 4 SCC 331, Lukhnow Kshetriya Gramin Bank and another Vs. Rajendra Singh, (2013) 12 SCC 372].***

12. In ***State of U.P. and others Vs. Ashok Kumar Singh and another, (1996) 1 SCC 302*** Supreme Court has held that a police Constable is required to be more disciplined and sincere than any other govt. servant.

13. In the case in hand, the disciplinary authority has not only found the petitioner guilty of committing misconduct on the basis of the charges found proved against him, the petitioner has previous record of suffering minor punishment on number of occasions in his career and moreover he was habitually remaining unauthorizedly absent.

14. For the foregoing, this Court has not found any error either in the finding of disciplinary authority or with the quantum of punishment. Accordingly, the writ petition sans substance, is liable to be, and is hereby dismissed.

J U D G E

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