

\$~4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision : May 06, 2015

+

W.P.(C) 5085/2013

MAMTA BEN

..... Petitioner

Represented by: Mr.Vishwendra Verma,
Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Represented by: Mr.Dev P.Bhardwaj, CGSC for
UOI.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

1. The petitioner has sought quashing of the order dated October 22, 2011 by the Disciplinary Authority imposing penalty of "Removal from Service" as well the order dated December 27, 2011 by the Appellate Authority and the order dated April 10, 2012 by the Revisional Authority dismissing her appeal and revision respectively.

2. Brief facts relevant for the purpose of disposal of this writ petition are that the petitioner was enrolled as Constable in CISF and after completion of her training, on February 29, 2007 she was posted in BSES Unit of CISF at Delhi. Thereafter in May, 2009 she was posted in Delhi in DMRC Unit of CISF. The petitioner applied for leave and was sanctioned eleven days leave from July 22, 2010 to August 01, 2010.

3. As the petitioner failed to report for duty on August 02, 2010, three call up notices dated August 09, 2010, October 03, 2010 and November 19/20, 2010 were sent to her which were not responded to by her. A

decision was taken to initiate disciplinary proceedings against the petitioner under Rule 36 of CISF Rules 2001 for the following Article of Charge:-

‘That No.074050167 Lady Constable Mamta Ben of CISF Unit DMRC Delhi was sanctioned 11 Earned leave w.e.f. 22.07.2010 to 01.08.2010 with permission to avail CCL on 20.07.2010 & 21.07.2010. On expiry of said leave, she failed to report for duty on 02.08.2010 (FN) and remained OSL from 02.08.2010 to till date without any intimation to or prior permission from the competent authority. The above acts tantamount to indiscipline, dereliction of duty and disobedience of orders.’

4. The memorandum of charge alongwith its annexure was personally served upon the petitioner at her home town through departmental representative. The reply sent by the petitioner to the charge memorandum being not found satisfactory, Inspector/Executive Kamlesh was appointed as Inquiry Officer. After conducting the preliminary hearing on April 25, 2011 and thereafter recording the evidence giving due opportunity to the petitioner to defend herself, the Inquiry Officer concluded that the charge against the petitioner has been proved.

5. The Disciplinary Authority on receiving the copy of the inquiry report sent the copy of the report to the petitioner vide letter No.11304 dated August 01, 2011 calling upon her to submit the representation, if any, against the report. While agreeing with the report, the Disciplinary Authority awarded the penalty of “Removal from Service” vide order No.V-15014/CISF/DMRC/Disc/Rule-36/2011/16855 dated October 22, 2011.

6. Aggrieved by the order dated October 22, 2011 by the Disciplinary Authority, the petitioner preferred appeal which was rejected by a well reasoned order dealing with all the contentions raised in the appeal. The revision preferred by the petitioner against the decision of the Appellate Authority was also considered by the Revisional Authority and dismissed

the same by a reasoned order.

7. The facts are undisputed to the extent that while posted as Constable at DMRC Unit of CISF at Delhi, the petitioner applied for leave which was sanctioned to her with effect from July 22, 2010 to August 01, 2010 and she was required to report for duty on August 02, 2010. It is also undisputed that the petitioner remained absent from duty not only till the date of memorandum of charge-sheet alongwith its annexures was served upon her personally but even thereafter till June 01, 2011. She has joined duty on June 02, 2011.

8. According to the petitioner, she or her parents have not received any of the call up notices as the address given thereon was wrong. Further she was in a state of depression and not even conscious of her surroundings. She was not in a fit state of mind so as to realise that her leave period has expired. She was also new to the job and was not aware about the rules and regulations. The medical prescription and fitness certificate as well the cash memos of the medicines filed before the Inquiry Officer have been pleaded to be her defence as well reason for her unauthorised absence. Illiteracy of the parents and young age of her siblings has been given as reason for failure to send communication about her physical and mental condition. The robbery/dacoity allegedly committed at her house (for which there is not even a police report) has been claimed to be contributing factor to aggravate her ailment. The order imposing penalty of 'Removal from Service' has been challenged on the ground that the inquiry was conducted in a routine manner and atmosphere during the inquiry was such that the petitioner was in horror and not having the courage to cross examine the witnesses who were senior to her which resulted in denial of opportunity to defend herself.

9. Learned counsel for the petitioner has relied upon 2004 (4) SCC 60 Shri Bhagwan Lal Arya Vs. Commissioner of Police, Delhi & Ors.; 2003 (9) SCC 286 State of Rajasthan & Ors. Vs. Sujata Malhotra; 2008 (10) AD (DELHI) 572 B.K.Sharma Vs. Union of India & Ors.; 2009 (7) SCC 301 Jagdish Singh Vs. Punjab Engineering College & Ors.; 2012 (3) SCC 178 Krushnakant B.Parmar Vs. Union of India & Anr.; 2009 (7) SLR Coal India Ltd. & Anr. Vs. Mukul Kumar Choudhuri & Ors.; 123 (2005) DLT 596 (DB) Delhi Transport Corporation Vs. Bal Kishan & Anr.; 2009 (5) SCC 732 National Aviation Company of India Ltd. Vs. S.M.K.Khan; AIR 2009 SC 1149 State of Punjab Vs. Dr.P.L.Singla and prayed for setting aside the penalty imposed on the petitioner and directing the respondents to reinstate her.

10. With a view to appreciate the contentions raised before us, we have called for the record of disciplinary proceedings and perused the same. The contentions raised on behalf of the petitioner can be summarised as under:-

- (i) The petitioner was in state of depression undergoing treatment and unable to communicate with the authorities. Her parents were unable to do the needful as they were illiterate.
- (ii) Medical treatment record produced by her has not been considered by the authorities.
- (iii) No call up notice was ever received by her.
- (iv) She has been denied opportunity to have a fair trial as she was too scared to put any question to her seniors who appeared as witnesses.

11. After carefully going through the entire record we find that the petitioner has feigned her illness and tried to earn sympathy from the department alleging herself to be in such a physical and mental state that deprived her of understanding the realities or that her leave period has

expired. Her parents also being illiterate could do nothing for her in the given circumstances. She has denied all call up notices claiming that the address given thereon was incorrect without pointing out which part of the address was incorrect. Of course she could not deny receipt of charge-sheet which was served upon her personally by the local unit.

12. Let us start with the leave certificate dated July 19, 2010 as per which the petitioner was sanctioned earned leave with effect from July 22, 2010 and August 01, 2010 with July 20 & 21, 2010 as CCL being prefixed. It incorporates that after expiry of leave she will join on August 02, 2010 (F/N). The address during the leave period as mentioned in the leave certificate is as under:

*'Village : Islampur
Post
P.Station : Islampur
Distt. : Nalanda
State : Bihar
Pin No. : 801303'*

13. All the three call up notices have been sent at the above address. PW-2 ASI Rajesh, Clerk has stated that the three call up notices dated August 09, 2010, October 03, 2010 and November 19/20, 2011 have been sent by registered post at the address given in the leave certificate calling upon the petitioner to immediately report for duty failing which disciplinary proceedings would be initiated against her. She failed to respond to the above call up notices. PW-2 ASI Rajesh has also stated that none of the call up notices sent by registered post was returned by the postal authorities as 'undelivered'.

14. Next contention of the petitioner is about she being in a mental state of depression. The petitioner is resident of Village Islampur, Distt. Nalanda, Bihar. Before proceeding on leave, she was posted in Delhi where the best

medical facilities are available. The ground on which she applied for leave was not illness. The treatment papers available on record are of Awadh Neuropsychiatric Centre, Cantt Road, Niyawan, Faizabad which is in Uttar Pradesh. As per the prescription (photocopy) the petitioner consulted Dr.K.R.Verma on July 27, 2010. On the prescription she has been mentioned as resident of Nalanda, Bihar. No local address is given. Nature/duration of ailment, investigation about the disease advised/conducted are not mentioned. Three medicines to be taken orally were prescribed for a month. Subsequent dates of consultation have been shown as August 26, 2010, September 26, 2010, November 24, 2010, December 26, 2010, January 24, 2011, February 26, 2011, April 18, 2011, May 30, 2011. The photocopy of prescription shows overwriting on the dates and months at various places. In this prescription running into two pages, there is no observation about the mental condition of the petitioner to be such that she was not even conscious about her surroundings or with whom she has come or what is the history given by the patient or by the person accompanying the petitioner. This prescription is followed by a certificate (photocopy) dated May 31, 2011 certifying that the petitioner was under the treatment of Dr.K.R.Verma from July 27, 2010 for depression and she was fit for her duties from May 31, 2011. The petitioner has also annexed photocopies of certain cash memos by Akash Medico, G-103, P.C.Colony, Near Sri Ram Nursing Home. The photocopies of the cash memos are so dim that an effort to read them with the aid of magnifying glass is not going to yield any positive result. Neither the dates whatever is legible on the cash memos are corresponding to the prescription nor the names of the medicines can be made out. Unfortunately we cannot even make out in which State or City this Akash Medico is situated. The Inquiry

Officer has disbelieved, and we feel rightly so, this treatment record which seems to have been procured from a different State i.e. Faizabad U.P. though the petitioner is resident of Nalanda, Bihar. It is not a case where the petitioner was posted in a remote area deprived of all medical facilities. The petitioner was one of those fortunate force members who on being enrolled in CISF, a prestigious para military force, had the postings in Delhi only.

15. With a view to satisfy ourselves as to whether the petitioner was really so sick as not even conscious of the date when her leave had expired and due to her peculiar family circumstances was prevented to apply for extension of leave, we have gone through various correspondence made by the petitioner after the charge-sheet was served upon her personally on March 09, 2011.

16. Availing the opportunity to submit her response to the charge-sheet within ten days in writing, the petitioner sent an undated communication which was received in the Unit on March 23, 2011. In this communication she conveyed to the DIG :-

- (i) While posted in DMRC Unit of CISF, she visited her native place after getting eleven days earned leave sanctioned from July 22, 2010 to August 01, 2010.
- (ii) While still in the Unit, mentally she was unwell and she got herself treated with effect from July 27, 2010 from Dr.K.R.Verma and had consulted him on August 26, 2010, September 26, 2010, November 24, 2010, December 26, 2010, January 24, 2011 and February 26, 2011.
- (iii) She was not in a sound state of mind to perform her duty in the Unit and was under constant treatment.
- (iv) She has recovered from her mental ailment and denied having received any call up notices.

(v) She was not in a sound state of mind to report for duty within ten days of receipt of charge memorandum.

(vi) **Within a few days she was to get married thus not in a position to report for duty.**

(vii) She be given more time to get herself treated and to report for duty after being fully cured.

17. Suffice it to note here that alongwith this communication she did not enclose any treatment record or the other particulars of Dr.K.R.Verma, like his field of specialization and name of the hospital. She was also silent as to whether she was staying in Faizabad i.e. where Dr.K.R.Verma is practicing or she had been visiting him every month for consultation.

18. In her defence statement before the Inquiry Officer, the petitioner has stated that she was suffering from this ailment two-three months prior to proceeding on leave. When she confided about her ailment with her family, she was advised to proceed on leave and return home for treatment. The petitioner further stated that by the time she reached home her mental and physical condition aggravated and due to extreme weakness she was not even aware of her surroundings to the extent that she did not even know as to where she was and what she was doing and due to that on expiry of period of leave she could not inform her unit. She further stated that after receiving the communication at home which was received by her under her signature, her parents got the contents read over by some acquaintance who advised them to inform her unit or she would be in trouble. Then her father sent the medical prescription on 16th/17th through courier. She could not report for duty due to ill-health and after receiving another communication her father again sent a courier which was received in Ladies Hostel on April 25, 2011. She also claimed to have visited the unit and meeting Deputy

Commandant on April 26, 2011 who asked her to report only after her recovery. We may note here that in the counter affidavit, the respondents have denied any visit by the petitioner on April 26, 2011 or meeting the Deputy Commandant.

19. The petitioner does not dispute her overstaying leave with effect from August 02, 2010 till her joining on June 02, 2011. The contention of the petitioner that the atmosphere during inquiry proceedings was horrific needs to be outrightly rejected for the simple reason that the witnesses were there only to prove the record of her overstaying leave and no communication sent by her for extension of leave. Thus, the contention of the petitioner that she has been denied fair opportunity to defend herself needs to be negated for the simple reason that the fact of overstaying leave is undisputed. The medical record of the petitioner was required to be proved by her only which she failed to do. The Inquiry Officer as well the Disciplinary Authority and other superior authorities have rightly noted that the prescription of Dr.K.R.Verma did not prescribe even the bed rest to the petitioner and she had been regularly taking treatment in Faizabad, U.P. i.e. far away from her native place in Nalanda, Bihar but did not bother to inform her unit which was in Delhi .

20. We find it strange that on the one hand the petitioner has tried to gain sympathy of the respondents as well of the Court on the ground that her mental and physical condition incapacitated her to even inform her unit about her illness and inability to join the unit but at the same time preparations were on for her marriage. During the hearing, we questioned learned counsel for the petitioner as to whether petitioner had got married and reply was in affirmative. The respondents informed that petitioner has not furnished this information to her unit.

21. We are unable to reconcile the two situations i.e. that the petitioner on the one hand claimed herself to be in such a depressed state of mind that she could not even realise when her leave expired thereby requiring her to apply for extension of leave on medical grounds but on the other hand sought extension of time to report for duty as she was getting married and it was question of her future.

22. As noted above, in her undated communication received by her unit on March 23, 2011 the petitioner specifically mentioned that she had recovered from her illness and was getting married soon. Despite that she failed to report for duty as called upon through the charge memorandum. She preferred to report for duty of her own only on June 02, 2011 after being able to procure a medical fitness certificate from Dr.K.R.Verma on May 31, 2011.

23. In the above facts and circumstances placing reliance by the petitioner on the various judicial pronouncements cited above, is of no help to him. The legal principles have to be applied keeping in mind the facts and circumstances of each case. In various decisions relied upon by the petitioner lenient view was taken after considering the mitigating circumstances and in the peculiar facts and circumstances of each case. Thus, the petitioner cannot claim as a matter of right that in case of overstaying leave the punishment like removal, compulsory retirement or dismissal is disproportionate.

24. The respondents have exercised the power on the basis of facts which are not refuted by the petitioner. Learned counsel for the petitioner has not been able to show any patent illegality which has the effect of vitiating the action of the respondents. We also unable to infer any procedural impropriety in the action of the respondent.

25. In the case (2005) 13 SCC 228 Union of India v. Gulam Md. Bhat penalty of dismissal from service was imposed for remaining absent from duty for 300 days without any justifiable reason. In the report it was held that overstay by persons belonging to the disciplined forces needs to be dealt with sternly and that it is for the employee concerned to show how the penalty was disproportionate to the proved charges.

26. In the instant case also, the petitioner who joined duty in 2007 and remained posted in Delhi till she proceeded on leave with effect from July 22, 2010 to August 01, 2010, had overstayed leave for 304 days (as calculated by us though as per inquiry report 296 days). The writ petition against the penalty of removal from service imposed on the petitioner is not an appeal from the decision but review of the decision making process to ensure that the individual had received fair treatment and the conclusion is not perverse.

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

28. The writ petition is dismissed.

29. No costs.

PRATIBHA RANI, J.

PRADEEP NANDRAJOG, J.

MAY 06, 2015

st