

\$~4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision : April 07, 2015

+

W.P.(C) 1892/2013

PREM CHAND

..... Petitioner

Represented by: Mr.Vijay Kumar and Mr.Rahul
Kumar Singh, Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Represented by: Mr.Vikram Jetly, CGSC.

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 26, 2010 passed by the Disciplinary Authority impugning the penalty of removal from service on account of his continuous overstaying leave despite repeated call up notices. Since the statutory remedy before the Appellate and Revisional Authorities resulted in upholding the order of Disciplinary Authority, the petitioner has invoked the writ jurisdiction of this Court with a prayer for setting aside the penalty with direction to the respondents to reinstate him with all consequential benefits.

2. Brief facts relevant for the decision of this writ petition are that the petitioner was enrolled as Constable in CISF on March 27, 1996. In the year 2009 the petitioner was posted at CISF ASG, NSEBI Airport, Kolkata. The petitioner was informed by his Unit about a summon being issued by District Court, Bulandshahr requiring the appearance of the petitioner in Criminal Case No.81-A/305A/2007 under Sections 364/302 read with

Section 201 IPC. To facilitate the appearance of petitioner before the Court, the respondents sanctioned thirty days earned leave to the petitioner. At the request of the petitioner HPL for a period of thirty days was further sanctioned to the petitioner who was required to report for duty on November 21, 2009 (F/N).

3. Since the petitioner failed to report for duty on expiry of sanctioned leave various call up notices were sent to him and in response thereof the petitioner sought extension of leave on account of his illness. The petitioner was called upon to report to his Unit at Kolkata and undergo his treatment at his Unit. The petitioner failed to comply with the directions to resume duty and memorandum of chargesheet dated April 01, 2010 with following Article of Charge was served upon him at his residential address requiring him to submit his written representation against the same within ten days from the date of receipt of the charge memorandum:-

'Article of Charge-I

'No.961402044 Constable Prem Chand of CISF Unit, NSCBI Airport Kolkata was granted 30 days EL w.e.f. 22.09.2009 to 21.10.2009 with eligible permission and further he was granted extension of 30 days HPL w.e.f. 22.10.2009 to 20.11.2009. After expiry of the said leave period, he was supposed to report back for duty on 21.11.2009 (F/N). However, he did not re-join duty and is overstaying leave from 21.11.2009 (F/N) to till date without any permission from the competent authority. His overstay after the expiry of leave from 21.11.2009 to till date un-authorisedly, tantamount to gross misconduct and dereliction of duty which is unbecoming of a member of a disciplined force like CISF.'

4. Admittedly the petitioner failed to submit any representation to the charge memorandum hence a decision was taken to hold a regular departmental inquiry wherein Sh.Sanjay Goswami, Inspector (Executive) was appointed as an Inquiry Officer. Preliminary hearing was fixed for July

09, 2010 for which notice was sent to the petitioner by registered post. The petitioner expressed his inability to appear due to medical illness. Thereafter inquiry notices No.5502 dated June 25, 2010, No.6002 dated July 09, 2010, No.6596 dated July 28, 2010, No.7379 dated August 18, 2010 and No.7722 dated August 31, 2010 were sent to the petitioner but he failed to turn up resultantly the Inquiry Officer was constrained to proceed ex-parte against the petitioner.

5. The Inquiry Officer recorded the statement of Company Commander 'C' Coy, ASG NSCBIA, Kolkata as PW-I and In-charge Document Section, CISF Unit, NSCBIA, Kolkata as PW-II. The Inquiry Officer submitted his report that charge against the petitioner stands proved. The copy of the inquiry report was sent to the petitioner giving him an opportunity to submit representation, if any, within fifteen days. The petitioner again failed to avail this opportunity to defend himself or bring the circumstances to the notice of the Disciplinary under which he was unable to resume the duty.

6. The Disciplinary Authority by a reasoned order agreed with the report of the Inquiry Officer and noting the defiant attitude of the petitioner who was member of a disciplined force, holding him guilty of the charge awarded the penalty of removal from service. The petitioner preferred the appeal wherein he explained that when he went to attend the criminal case, due to mental stress of the criminal case and the harassment his health was adversely affected and he remained under treatment at District Hospital, Bulandshahr. His daughter also fell ill. He surrendered before the District Court Bulandshahr on May 25, 2010 and released on bail on May 29, 2010. Finally on being acquitted on December 07, 2010 he reported for duty on December 17, 2010 but was not taken on duty as penalty of removal from service had already been awarded to him. He requested the Appellate

Authority to consider his case sympathetically.

7. The Appellate Authority vide its reasoned order observed that the petitioner was granted thirty days earned leave and thereafter thirty days HPL and on expiry of the sanctioned of period leave the petitioner continued overstaying till finalisation of his case without permission of the competent authority. Even the call up notices were sent to him with direction to report for duty but the petitioner had been sending copies of some medical papers wherein the nature of disease was mentioned as acid peptic with low back pain. The Appellate Authority also considered that the petitioner was resident of Delhi and taking treatment from Bulanshahr which was 100 Kms. away from his place of residence at Delhi from which inference can be drawn that he was not bed ridden. The petitioner also never informed about he being taken into custody and even after release from custody he did not respond to various communications sent by the department. Thus the inquiry had to be conducted ex-parte. The Appellate Authority also observed that the grounds raised in the appeal were only with a view to gain sympathy and regain his lost job.

8. The Revisional Authority also independently considered grounds raised by the petitioner for setting aside the order of removal from service but finding no merit, rejected the same.

9. In the writ petition, the petitioner has challenged the impugned orders mainly on two grounds i.e. (i) violation of principles of natural justice; and (ii) proportionality of punishment.

10. Mr.Vijay Kumar, Advocate for the petitioner submitted before this Court that the petitioner was falsely implicated in a murder case. The trial was going on day to day basis. The petitioner was not in a position to resume his duty because of the pendency of the trial in which he was

ultimately acquitted. Thus, in the given circumstances the penalty of removal from service for overstaying the leave which was for the reasons not within the control of the petitioner, needs to be interfered with.

11. Mr. Vikram Jetly, learned counsel for the respondents submitted that all the leave applications submitted by the petitioner were on account of illness and not due to his involvement in the criminal trial. Learned counsel for the respondents submitted that the petitioner remained unauthorisedly absent till the date of issuance of chargesheet. He also failed to respond to the notices sent by the Inquiry Officer and admittedly reported for duty only on December 17, 2010 whereas the penalty of removal had already been imposed on him on October 26, 2010. It has been submitted that in view of the gross misconduct of the petitioner, penalty of removal cannot be termed as harsh or disproportionate, hence the writ petition may be dismissed.

12. The petitioner does not dispute that when he was posted at CISF ASG, NSEBI Airport, Kolkata, summons issued by District Court, Bulandshahr was received by his Unit and he was sanctioned thirty days earned leave to enable him to comply with the order of the Court. It is also admitted case of the petitioner that his request for extension of leave was also acceded to and that HPL for thirty days i.e. from September 22, 2009 to October 21, 2009 was also sanctioned. The petitioner failed to report for duty on expiry of his sanctioned leave i.e. on November 21, 2009.

13. In paragraph 20 of the writ petition the petitioner has given the dates of hearing of the criminal trial as under:-

*'01.01.2010, 11.02.2010, 11.03.2010, 25.5.2010, 27.5.2010,
29.5.2010, 31.5.2010, 14.6.2010, 30.6.2010, 7.7.2010,
22.7.2010, 28.7.2010, 30.7.2010, 2.8.2010, 6.8.2010,
10.8.2010, 20.8.2010, 7.9.2010, 9.9.2010, 16.9.2010,
20.9.2010, 29.9.2010, 12.10.2010, 15.10.2010, 18.10.2010,
20.10.2010, 26.10.2010, 4.11.2010, 19.11.2010, 22.11.2010,*

23.11.2010, 7.12.2010'

14. The petitioner did not appear before the Court of Session on January 01, 2010, February 11, 2010 and March 11, 2010 and only on the date of hearing May 25, 2010 he had surrendered. Once the petitioner was admitted on bail on May 29, 2010, on the next date of hearing i.e. on May 31, 2010 the petitioner was a free man. The next date of hearing thereafter was June 14, 2010 i.e. after two weeks. The dates of hearing as mentioned by the petitioner reveal that the case was not being taken up on day to day basis and petitioner was in custody just for about five days from May 25, 2010 to May 29, 2010. The fact that the petitioner surrendered only on May 25, 2010 establishes that despite being granted leave by his department and even extended further, the petitioner did not appear before the Court of Sessions till May 25, 2010. The petitioner was required to report for duty on expiry of period of sanctioned leave which was further extended by thirty days i.e. on November 21, 2009 and his date of surrender being May 25, 2010, there was nothing to prevent the petitioner from reporting for duty instead of feigning illness and procuring medical service from a hospital 100 Kms. away from his place of resident in Delhi. The nature of ailment as mentioned in the prescription slip has rightly been considered by the competent authorities to be not of such a nature to keep a person bed ridden.

15. During the course of hearing we have repeatedly questioned learned counsel for the petitioner to point out to us even a single application/communication by the petitioner to the respondent wherein he has applied for leave on the ground of his detention in criminal case or any condition imposed on him by the Court of Session while releasing him on bail that he was not permitted to leave the jurisdiction of the Court. Even with this writ petition the bail order is not annexed. On the one hand, in

response to the call up notices as well the notices sent by the Inquiry Officer the petitioner was claiming illness to be a reason for his absence, in the writ petition pendency of criminal case has been made a major ground by projecting the petitioner to be a person who became victim of circumstances due to his alleged involvement in a murder case and his compulsion to attend the Court case on day to day basis.

16. Charge memorandum dated April 01, 2010 was sent to the petitioner with the imputation that he was overstaying leave from November 21, 2009 (F/N) till the date of issue of charge memorandum without permission from the competent authority. The petitioner was informed that this amounted to gross misconduct and dereliction of duty. The petitioner was informed that if he fail to submit his written statement of defence within the stipulated time or fail to appear before the Inquiry Officer or refuse to comply with the provisions of Rule 36 of CISF Rules 2001, the Inquiry Officer may hold the inquiry against him ex-parte. Admittedly the petitioner did not submit any defence statement or appear in person before the inquiry officer despite various notices by the Inquiry Officer either for preliminary hearing or at subsequent stage. Even after submission of the inquiry report to the Disciplinary Authority, when copy of the inquiry report was sent to him he failed to respond to the same. Although the petitioner has prayed for setting aside the order of removing him from service on violation of principles of natural justice but the petitioner has failed to substantiate this contention from the record. The petitioner had been receiving all the communications and responding to the same expressing his inability to attend the proceedings or resume duties on medical grounds. The nature of ailment has been considered by the Disciplinary Authority to be not of such as to keep a person bed ridden for the purpose of reporting for duty but fit enough to take

treatment from a hospital 100 Kms. away from his residence in Delhi.

17. In the given facts and circumstances, the Inquiry Officer was constrained to proceed ex-parte against the petitioner. We do not find any cogent reason disclosed by the petitioner which would entitle the petitioner to impugn the order of the Disciplinary Authority on account of violation of principles of natural justice. Even otherwise the writ petition against the order of removal is not an appeal from the decision of the Disciplinary Authority but a review of the manner in which the decision has been made i.e. decision making process. The power of judicial review is to ensure whether the charged officer has received a fair treatment and not about the correctness of the conclusion arrived at by the competent authority unless the same is impugned on the ground of perversity. The petitioner does not dispute the factum of his unauthorised absence for the period he was charged. The petitioner has failed to point out that the proceedings against him have been conducted in violation of rules of natural justice or the statutory rules so as to require any interference by this Court.

18. On the aspect of proportionality we may refer to the circumstances compelling the competent authority to award the penalty of removal. In the impugned order dated October 26, 2010 the Disciplinary Authority after noting the conduct of the petitioner by not responding to the various call up notices and submit the medical record in support of his illness, his failure to report for duty and take treatment at Kolkata. Verification was also done from BBD Govt. Hospital from where the petitioner was allegedly taking treatment and statement of Dr.Dinesh Kumar was also recorded who informed that petitioner Constable Prem Chand had not presented himself for treatment after March 10, 2010. The Disciplinary Authority observed that :

‘.....Hence, it is crystal clear that the CO is not willing to join his duty. In fact he is simply not interested in continuing his service which is quite evidence from his sheer reluctant and disobedient attitude. The charged official did not even bother to pay any heed to the direction of the competent authority to join the unit, he simply informed that he is not able to join due to his illness but no medical documents in support of his illness has been forwarded after 10.03.2010. The CO did not pay any heed to the official communications, which were in form of several call up notices and enquiry notices issued to him from time to time, which also depicts his utter disregard for his department. Therefore, it is clearly established that the charged official is deliberately overstaying leave and does not have any intention to rejoin his duty. If it is at all considered that the CO was sick, then he should have forwarded valid medical documents in support of his illness. But it was also clear that the CO is not completely bed ridden and he can travel because he used to travel from Delhi to Bulandshahr for the purpose of taking treatment before 10.03.2010. Hence, he have should have obeyed the order and directions of the competent authority to join this unit and continue his treatment at Kolkata. But he simply ignored and misled the department that he is not able to join the unit due to his illness. Hence, the CO has shown sheer negligent attitude towards his bonafide duty and is reluctant to continue in the service. The continuous and unauthorized overstay from leave without any permission from the competent authority and such kind of defiant attitude from a member of a force cannot be tolerated at any cost and deserves to be dealt severely. This act of sheer negligence, indiscipline and insubordination on the part of the charged official is a gross misconduct and unbecoming as a member of force hence, I hold him guilty of the charge.

Hence, in exercise of powers conferred upon me under Rule 32(1) read with 34(ii) of CISF Rules, 2001 award to No. 961402044 Constable Prem Chand of CISF ASG NSGBIA Kolkata the penalty of “Removal from service“ with immediate effect. Further, the period from 21.11.2009 to the date of issue of this order will be regularized separately by the competent authority.’

19. In (2005) 13 SCC 709 Union of India v. Datta Linga Toshat Vad, the Supreme Court it was held that:-

'8. The present case is not a case of a constable merely overstaying his leave by 12 days. The respondent took leave from 16-6-1997 and never reported for duty thereafter. Instead he filed a writ petition before the High Court in which the impugned order has been passed. Members of the uniformed forces cannot absent themselves on frivolous pleas, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if it goes unpunished, will greatly affect the discipline of the forces. In such forces desertion is a serious matter. Cases of this nature, in whatever manner described, are cases of desertion particularly when there is apprehension of the member of the force being called upon to perform onerous duties in difficult terrains or an order of deputation which he finds inconvenient, is passed. We cannot take such matters lightly, particularly when it relates to uniformed forces of this country. A member of a uniformed force who overstays his leave by a few days must be able to give a satisfactory explanation. However, a member of the force who goes on leave and never reports for duties thereafter, cannot be said to be one merely overstaying his leave. He must be treated as a deserter.'

20. Learned counsel for the petitioner has not been able to point out any circumstance which may even suggest that the penalty of removal of the petitioner from service is not proportionate to the charge proved against him.

21. We find no illegality, irregularity or perversity in the act of the respondents which may justify any interference by this Court.

22. Writ petition is dismissed.

23. No costs.

PRATIBHA RANI, J.

PRADEEP NANDRAJOG, J.

APRIL 07, 2015/st