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

Decided on : 03.12.2015

+ **W.P.(C) 6833/2004**

ASI/EXE RANBIR SINGH SOLANKI

.....Petitioner

Through: Sh. O.P. Agarwal and Sh. Deepak Agarwal,
Advocates.

Versus

UOI AND ORS.

.....Respondents

Through: Ms. Rishika Katyal, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. The petitioner is aggrieved by an order dated 18.03.2002 of the Central Industrial Security Force (CISF) imposing the penalty of reduction in his pay by four stages with cumulative effect for three years.
2. The petitioner was initially selected to the post of Head Constable in the CISF under the Sports Quota in Judoka. He was charged with having engaged in misconduct and an *ex-parte* enquiry was conducted resulting in imposition of penalty of removal from service on 31.12.1997. The charges are two-fold, i.e. that he did not obey a lawful command to report for a sports event at Bhilai and that he consequently absented without cause for a period of 60 days.
3. The enquiry proceedings were conducted *ex-parte*. The petitioner's initial appeal was rejected. Subsequently, he preferred a revision petition to

the concerned authority on 05.03.1999. By an order dated 02.04.2000, the revisional authority was of the opinion that the penalty imposed, based upon the enquiry conducted, could not be sustained. The revisional authority, i.e. the Inspector General (North Sector) *inter alia* stated that:

“03. Being aggrieved with the punishment awarded by the disciplinary authority, he preferred an appeal petition to DIG/Bhilai being the appellate authority in the case, who considered it and rejected the appeal petition vide order No.V-11014/81/7/RS/98-210 dated 18.3.98.

04. Against the aforesaid penalty imposed by the disciplinary authority and upheld by the appellate authority that No.881020151 Ex-ASI/Exe Ranbir Solanki submitted a revision petition dated 5.3.99. I have carefully gone through the departmental enquiry proceedings, the pleas advanced by the petitioner and the related papers held on files and have observed that there is a serious procedural lacunae in the departmental proceedings. The EO has not followed the proper procedure for conducting the ex-parte enquiry. Further, the presumption by the disciplinary authority that the petitioner was trying to avoid service of the notices is not a valid presumption and such presumptions cannot be legitimately raised as no serious and proper efforts were made to serve the communication to the petitioner which vitiate the entire proceedings.”

4. After the above order was made, *de novo* proceedings were conducted. In the course of these, the petitioner was afforded full opportunity after which the Enquiry Officer (EO) submitted a report, holding the petitioner “guilty” in respect of the second and more serious charge.

5. The disciplinary authority accepted the findings and recommendations of the EO. The authority noticed that the petitioner’s defence for second charge of absence was that he was on medical rest for the period 01.05.1997

to 30.07.1997. To say so, he relied upon certain medical certificates. Most prominently, he relied upon a medical certificate dated 30.06.1997 which stated that the petitioner was suffering from “lower backpain” from 01.05.1997 and that he needed 60 days’ time for recovery. The EO as well as the authority was of the opinion that this certificate could not substantiate the petitioner’s claim of sickness or illness because there was no known method by which the doctor could verify and state with precision some previous date from which a patient was suffering from a particular ailment. Therefore, the EO and the CISF ultimately were of the opinion that at best the medical certificate be given credence from the date it was issued, i.e. after 30.06.1997. The petitioner’s defence that he had informed his coach was also disbelieved since there was no document to evidence that aspect; even the coach was not summoned to make any statement in the proceedings.

6. The disciplinary authority, after reviewing the entirety of evidence imposed the following penalty:

“It is therefore ordered that the pay of CISF No.881020151 ASI/Exe Ranbir Solanki be reduced by four stages from Rs.4600/- to Rs.4200/- in the time scale of pay of Rs.4000-100-6000 for a period of three years with effect from 18.3.2002. It is further directed that CISF No.881020151 ASI/Exe Ranbir Solanki will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay.”

7. By a subsequent order under Rule 55 of the CISF Rules, 2001, the Commandant, CISF – on 15.11.2002 directed that the period from 01.01.1998 to 07.05.2000 (i.e. when the initial order of removal was in force) to be treated as *dies non*.

8. Learned counsel submitted that the impugned orders of the disciplinary authority – imposing the penalty and also treating the period when the removal order was in force as *dies non* are arbitrary. It was submitted that the petitioner had clear material to show that he was in fact sick and, therefore, could not join his duties. Learned counsel submitted that the petitioner's whereabouts were always known and sought to rely upon two documents to say that his ACR forms and other documents were furnished to CISF headquarters. It was submitted furthermore that the treatment of the period of absence after removal until the second punishment order was made, as *dies non* was unjustified. The revisional authority was of the opinion that the *ex parte* enquiry was not justified. In these circumstances, the removal had been set aside. However, the *dies non* order had the effect of the benefits of the petitioner's future prospects and terminal benefits getting impaired.

9. Learned counsel for the respondents, on the other hand, highlighted that the findings of IO cannot be faulted given that there was nothing on the record that the petitioner had suffered in the manner it was alleged for two months between 01.05.1997 and 30.06.1997. It was also submitted that the order treating the period as *dies non* was legal since it was made under Rule 55 of the CISF Rules.

10. This Court has carefully considered the submissions. So far as the findings of the EO are concerned, the materials on record clearly show that the petitioner did not seek, much less obtain any prior permission or leave for his period of absence between 01.05.1997 and 30.06.1997. This omission led the EO to conclude that the certificate relied upon dated 30.06.1997 appear to be an afterthought. The certificate, to the extent it sought to justify

the petitioner's absence for two months, in our opinion, was correctly rejected because the doctor quite unnaturally stated that the petitioner was actually suffering from 01.05.1997 when concededly the petitioner had not sought treatment from that date. Furthermore, the petitioner could not produce even a written statement from his coach, stating that he had informed him about the illness which constrained his absence.

11. In these circumstances, we are of the opinion that in judicial review, the interference with pure findings of fact of the kind that the EO rendered, would not be justified. Likewise, with respect to the penalty of withdrawing of three increments with cumulative effect for three years, the Court is of the opinion that no interference is called for on the ground of proportionality. So far as the treatment of period when the petitioner's initial removal was in force, as *dies non* goes, we are of the opinion that this was too severe a consequence for the CISF to impose. Concededly, the previous enquiry was held to be vitiated as the Inspector General (revisional authority) felt that holding *ex parte* enquiry was not warranted. Such being the case, upon the setting aside of the previous penalty, as a matter of course, the previous period of absence at least should have been treated as having spent in service even though the petitioner might not have been provided financial benefits. On the other hand, to deny any service benefit altogether was too severe a consequence and in our opinion, arbitrary exercise of power under Rule 55 of the CISF Rules, 2001. Consequently, the order dated 15.11.2002 is hereby set aside. The period between 01.01.1998 to 07.05.2000 shall be treated as period having been spent in service and with consequential benefits except arrears of salary for the said period. The respondents shall issue consequential orders within six weeks.

12. The writ petition is partly allowed to the extent of setting aside of the order dated 15.11.2002. No costs.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

DECEMBER 3, 2015

