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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : January 20, 2015

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W.P.(C) 3702/2014

CT. (MAH.) SANTOSH KUMARI

..... Petitioner

Represented by: Mr.S.K.Tyagi, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.B.S.Shukla, CGSC with
Mr.Vinod Tiwari, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

1. The present writ petition has been filed by the petitioner assailing the following orders:-

- (i) Order of dismissal dated July 16, 2010.
- (ii) Order dated January 18, 2011 by the Appellate Authority.
- (iii) Order dated October 30, 2013 by the Revisional Authority dismissing her appeal and revision.

2. As per the averments made in the petition the petitioner was enrolled as CT(Mah) in CRPF on July 10, 1992 and she had performed her duties with full devotion and dedication. She proceeded on casual leave for six days from May 04, 2009 to May 11, 2009 to arrange repayment of loan taken by her from her colleagues but could not arrange the same as she was beaten by her family and thrown out of the house. The petitioner was in deep depression and in a hope of some guidance and support she requested the

respondent to extend her leave for 30 days vide postal receipt Ex.P-2 (dated May 13, 2009). Petitioner failed to discharge her duty and under deep shock and despair she took her motorcycle to unknown destination and because of her mental state she met with an accident sustaining multiple injuries on her body and head and was treated at Pyare Lal Hospital, Meerut, U.P. Her medical treatment record and certificates have been annexed as Annexure P-3 (Colly). In state of depression she stayed in Haridwar for some time. Her efforts to contact the Company C.H.M. on phone proved futile.

3. The respondent did not try to know about the whereabouts of the petitioner and D.E. was conducted ex-parte and finding of Inquiry Officer was also accepted by the Commandant vide impugned order. After some improvements petitioner preferred an appeal against the impugned order which was rejected without trying to know the mental state of the petitioner. The revision preferred by her was also rejected without realising that petitioner was penniless and without shelter.

4. The writ petitioner complains of violation of principles of natural justice by the Disciplinary Authority by proceeding ex-parte against her as well the order of dismissal being disproportionate to the misconduct allegedly proved against her. As per petitioner the impugned orders have been passed without looking into her family circumstances resulting into her unauthorized absence. The order of dismissal has been passed without following the principles of natural justice and in violation of Rules governing the petitioner. The petitioner has also prayed for her reinstatement with full back wages and seniority of service and in the alternative dismissal to be converted into discharge with all pensionary benefits and release of her dues.

5. Notice of the writ petition was sent to the respondents. Although the

petitioner has annexed copies of the relevant record with the writ petition, we have also perused the departmental file in respect of the disciplinary proceedings conducted against the petitioner.

6. The petitioner has impugned the order of dismissal upheld by the Appellate and Revisional Authority on the ground that she was the only earning member in the family and bothered by her family members.

7. Learned counsel for the petitioner submitted that petitioner was turned out of her house and she had never received any communication from the respondents. The physical and mental condition of the petitioner was such that she could not report for duty. Learned counsel for the petitioner emphasized that it could not be termed as a case of unauthorized absence for the reason that the petitioner applied for 30 days EL by sending the application by registered post and she did not receive any communication that her prayer for grant of EL for 30 days has been rejected. Learned counsel for the petitioner urged that in view of the medical record annexed with the writ petition and violation of principles of natural justice, impugned orders may be set aside.

8. On perusal of the record we are satisfied that averments made in the petition as well the medical certificate placed on record do not support the case of the petitioner in any manner whatsoever. The documents placed on record are in conflict with the averments made in the petition and it is difficult to find out as to from what ailment the petitioner was suffering i.e. whether it was depression or injury suffered in an accident or Koch's abdomen SAIOC Ascites. Although the petitioner has not placed on record the copy of the leave application sent by her on May 13, 2009 received in the office of the respondent on May 15, 2009 but the departmental file shows that the reason cited for extension of leave and converting CL of six

days to 30 days EL was the motorcycle accident. The petitioner was required to report for duty on May 11, 2009 evening for R/call when she was found absent. However, the prescription starting with effect from May 11, 2009 to June 16, 2010 show that as an OPD patient she was treated for the ailment Koch's abdomen SAIOC Ascites and not for the injury suffered in motorcycle accident as claimed in the application seeking extension of leave and the treatment given was as under:-

Syp. Livmin	SS	-SS	-SS
Syp. S. CC 4 T	OD		
Cap. Clavan 625 Mg.	BD		
Syp Mufetil Spus. TS	0-	0-	0-
Syp Driphyling TD	0-	0-	0-

9. The medical record and certificates nowhere referred to any head injury or other injuries suffered in motorcycle accident. The manner in which medical certificates have been issued also reflect that they are procured one and the period suggested for medical rest is as per suitability of the petitioner at somewhere it is three months rests and at somewhere it is 2½ months rests and in the certificate dated April 10, 2010 the rests is suggested for 73 days.

10. We may note her past conduct recorded in the office order dated March 20, 2008. For the unauthorized absence from November 15, 2006 to October 05, 2007, the petitioner filed medical record stating that she was suffering from Jaundice with effect from December 09, 2006 to September 23, 2007 i.e. for 227 days at a stretch which seemed not in order. The said order also records that the delinquent official treated guilty of charge framed against her and did not challenge the evidence. A lenient view was taken at that time by imposing a penalty of stoppage of increment for a period of three consecutive years with cumulative effect.

11. During the period she remained in service, she was habitual in remaining absent from duty, over-staying the leave, never bothering to inform her superior Officers about her unauthorised absence. Despite her continuous misconduct, she was given ample opportunity to mend her ways.

12. Next contention of the petitioner is denial of principles of natural justice and she having not received any communication including memorandum of charge, article and imputation of charge, list all documents and all witnesses, subsequent communication calling upon her to join the inquiry proceedings as well the show cause notice issued by the Competent Authority before imposing the punishment of dismissal on her. The Disciplinary Authority forwarded a copy of the inquiry report to the delinquent at her home address through registered post vide letter No. P-VIII-1/10-88-Estt-II dated June 28, 2010 through regd. Post to submit her defense/representation within 10 days but even on expiry of 17 days also she has not submitted her defense/representation against ex-parte DE.

13. Perusal of departmental file in respect of disciplinary proceedings against the petitioner reveal that the office order dated March 26, 2010 by the Commandant, CCD in exercise of power conferred by Rule 27 of CRPF Rules, 1955 appointing the Inquiry Officer in the matter was communicated to Smt.Manju Thapa, AC (Inquiry Officer) along with Annexure-I to IV & copy was also sent by registered post to the petitioner at her residential address.

*Statement of Articles of Charge framed against No.920880219
CT/Mah Santosh Kumari of G/88 (M) BN, CRPF*

Article I

That No.920880219 CT/Mah Santosh Kumari of G/88 (M) Bn.CRPF while functioning as CT(Mah) in G/88 (M) Bn, CRPF committed disobedience of order/neglect of duty/ remissness in the discharge of her duty/other misconduct or misbehaviour in her capacity as a member of the Force U/S 11(1) of CRPF Act,

1949 in that she overstayed.remained absent herself after sanctioned leave (06 days CL w.e.f. 04/05/09 to 11/05/09) w.e.f. 12/05/09 (FN) without prior permission from competent authority or sufficient cause. Till date she neither reported on her duty nor any information to this effect has been received from her home which is prejudicial to the good orders and discipline of the Force.

(Seema Dhundia)
Commandant-88 (M) BN

Statement of Imputation of misconduct or misbehaviour in support of the Article of charges framed against no.920880219 CT/Mah Santosh Kumari of G/88 BN, CRPF

Article E-1

That No.920880219 CT/Mah Santosh Kumari of G/88 (M) Bn. CRPF, while functioning as CT/Mah in G/88 (M) Bn. CRPF committed disobedience of order/neglect of duty/remissness in the discharge of her duty/other misconduct or misbehaviour in her capacity as a member of the Force U/S 11(1) of CRPF Act, 1949 in that she overstay/remained absent herself after sanctioned leave 12.05.2009 (FN) without prior permission from competent authority or sufficient cause. She was sanctioned 06 days casual leave with effect from 04.05.2009 to 11.05.2009 and was required to report for duty in the evening Roll Call of 11.05.2009 but she reported for duty and is overstaying from leave without sanction of competent authority regard she was informed at her home address by OCG/88, vide letter No.L11-I/09-G/88, dated 23.05.2009 and 23.06.2009 to report her on duty. But she neither reported on duty nor information to this effect has been received from her home. A warrant of arrest was also against the individual vide letter No.W-11-05/09 Estt.II dated 11.08.2009. Further as per process COI was ordered against her vide office order No.I-X-26/09-Estt.-II, dated 13.10.2009 receipt/examination of COI proceedings she was declared as Deserter from Force 12.05.2009 (FN), vide O/O No.I-X-26/09-Estt.II, dated 19.12.2009. In the past also she remain w.e.f. 15.11.2009 to 05.10.2007 for 325 days for which DE was conducted and punishment awarded she had committed an Act of misconduct, disobedience and misbehaviour in the capacity as and of the Force under Section 11(i) of CRPF Act,

1947 read with Rule-27 of CRPF Rules 1955

14. The proceedings conducted by Inquiry Officer reveal that the petitioner was informed on April 09, 2010 about the appointment of Inquiry Officer and to appear before the Inquiry Officer on April 24, 2010 along with her defence and this communication was sent by registered letter number 1607. Subsequent proceedings conducted by the Inquiry Officer further reveal that witnesses were examined in absence of the petitioner on her failure to appear and join the enquiry proceedings on various dates.

15. The Inquiry Officer was constrained to conduct the inquiry proceedings ex-parte against the petitioner noting the fact that petitioner failed to appear despite repeated communication. After considering the documents and evidence on record the Inquiry Officer recorded the finding that the charge against the petitioner was made out. The Disciplinary Authority i.e. Commandant 88 Bn. CRPF accepted the report of the Inquiry Officer and awarded the punishment of dismissal from service after the petitioner failed to file reply to the show cause sent to her.

16. The petitioner in her writ petition does not claim change of address except for her brief stay at Haridwar. All the communications referred to her was at the address given by her i.e. as per office record. The appeal preferred by the petitioner (undated/ September, 2010) was received in the office of DIG on October 06, 2010, bears the same address of the petitioner as quoted in the various communication addressed to her. There is no averment in the writ petition that during the period the above communications were made, she was not staying at the given address. Thus, the correctness of the address of the petitioner even in the year 2010 i.e. at the stage of preferring appeal before the Appellate Authority cannot be disputed nor it has been so disputed in the writ petition. Thus, the petitioner cannot claim violation of

principles of natural justice by simply making averment denying receipt of various communications from the respondent calling upon her to participate in the inquiry proceedings as well as to respond to show cause notice issued to her. Record shows her overstay from September, 1996 till her dismissal from service. Her unauthorized absence from service as well as absence from duty without any intimation was as under:-

<i>a. September 25, 1996 to September 30, 1996=</i>	<i>06 days</i>
<i>b. November 26, 1997 to December 05, 1997=</i>	<i>10 days</i>
<i>c. April 25, 1998 to April 27, 1998=</i>	<i>03 days</i>
<i>d. July 06, 2006 to August 29, 2006=</i>	<i>55 days</i>
<i>e. November 15, 2006 to October 05, 2007=</i>	<i>325 days</i>
<i>f. May 12, 2009 to July 16, 2010=</i>	<i>431 days</i>

17. We will examine the contention on behalf of the petitioner regarding proportionality of the punishment qua the act of misconduct. The petitioner did not learn any lesson from her past conduct despite the leniency being shown by the Department/CRPF by giving her another opportunity to be a disciplined soldier. Perhaps a very lenient view taken by the authorities concerned on her unauthorized absence for 325 days during the period of November 15, 2006 to October 07, 2007 by filing documents/medical record which did not seem in order, encouraged the petitioner to follow the same practice.

18. The facts are undisputed to the extent that the petitioner was sanctioned casual leave for six days for her act of disobedience/neglect of duty/remissions in the discharge of her duty/other misconduct or misbehaviour in her capacity as a member of force under Section 11(1) of CRPF Act, 1949, in that she overstayed/remained absent after sanctioned leave (06 days CL w.e.f. May 04, 2009 to May 11, 2009) w.e.f. May 12, 2009 (FN) without prior permission of the Competent Authority or sufficient

cause. The departmental inquiry was ordered against her under Rule 27 of CRPF Act, 1949, Section 27, Clause 11(1) of CRPF Rules, 1955. Smt. Manju Thapa, Assistant Coll. 88 Bn. was appointed Inquiry Officer by the Commandant, 88 Bn. to conduct departmental inquiry against the petitioner. Despite various communications by the Inquiry Officer to the petitioner to participate in the inquiry proceedings, at every stage she preferred not to participate in the inquiry, resulting in submission of ex-parte departmental inquiry report by the Inquiry Officer to the Commandant, holding the petitioner guilty of the charge.

19. The Commandant 88 Bn. allowed 15 days time to the petitioner to put forth her defence vide letter No.P-VIII-1/10 Estt. dated June 28, 2010 along with a copy of the report sent to the residential address of the petitioner, which also remained un-responded. The petitioner preferred not to reply or join the duty. Faced with this gross act of indiscipline and misconduct by the petitioner, the Commandant ordered dismissal of the petitioner from service vide letter dated No.P-VIII-1/1-Estt.- dated July 26, 2010 in terms of the CRPF Act, 1949, Section 27, Clause 11(1) of Rules 1955.

20. After her dismissal from service, the petitioner preferred an appeal raising her family issues, illness to be the reason for her absence. She also claimed that vide registered letter dated May 13, 2009 addressed to the Commandant, 88 Bn., she requested for grant of 30 days earned leave by cancelling her Casual Leave from May 04, 2009 to May 11, 2009, claiming that she had a fall from motorcycle without mentioning any other ailment. The petitioner also denied having received any communication from the department in respect of approval/rejection of her request to grant 30 days leave or communication by the Inquiry Officer to participate in the Inquiry proceedings.

21. Despite the appeal being time barred, the Appellate Authority considered the service record of the petitioner as well the statement of the witnesses, the Appellate Authority was of the view that all the letters and documents sent at the home address of the petitioner were not deliberately received by her. She has never apprised the Commandant 88 Bn. about her ailment. The petitioner preferred not to communicate the Commandant till her dismissal from service. Her service record revealed that in past also on number of occasions she was habitual absentee. The Appellate Authority also considered that though at her treatment period as OPD patient, she had been taking treatment at Meerut, while staying at Ghaziabad, though better treatment is available at Delhi. But she preferred not to report her Unit at Delhi with her medical record. The Appellate Authority found the punishment of dismissal awarded to the petitioner commensurating with the offence for which she was charged, thus requiring no interference in appeal.

22. After dismissal of the appeal on Jan, 18 2011, the petitioner preferred revision petition dated July 19, 2013, which was again beyond the period of limitation, as per provision contained in Rule, 28 & 29 of CRPF Rules 1955, under which revision petition could have been preferred within a period of 30 days from the date of issuing orders by DIGP, CRPF, New Delhi. The revision petition has also been considered by IG, N/S, CRPF on merits despite the same being time barred. He also found that for the act of gross misconduct committed by the petitioner by not obeying the lawful orders of the competent authority and remaining absent from duty for a long time, not participating in the inquiry proceedings, despite ample opportunity being given to defend the charge against the petitioner, was proved beyond any doubt. He was also of the view that the nature of offence committed by the petitioner being prejudicial to the good orders and discipline of the Force.

Therefore, the punishment of 'Dismissal from Service' awarded to her is justified and commensurate to the gravity of offence committed by her.

23. In the writ petition the petitioner has tried to project herself as victim of circumstances but a disciplined soldier with no intention to defy the lawful command of the authorities but the record is otherwise. First of all it is necessary to mention that it was the petitioner who preferred not to participate in the inquiry proceedings. All the communications addressed to her were at the address provided by her. It is not her case that at any point of time she informed the department that she has changed her residential address and provided any fresh address for purpose of official communication. It is not open for the petitioner to challenge the inquiry proceedings and order of dismissal on the ground that she was not provided complete set of documents or the show cause notice was not served on her at the stage of initiation of the departmental proceedings and charge-sheet. Since the petitioner preferred not to appear despite various notices being sent to her by the Inquiry Officer now she cannot make any grievance for her own default. It was not the first act of unauthorized absence by the petitioner her act of misconduct from time to time have already been noticed by us above. We consider it relevant that vide office order no. P-VIII-13/08-88-EC-II dated March 20, 2008 CRPF despite unauthorized absence of the petitioner from November 15, 2006 to October 05, 2007 which was proved against her, pass the following order:-

“(i) Stoppage of increment for a period of three consecutive years with cumulative effect.

(ii) The absence period from November 15, 2006 to October 05, 2007 today 325 days is hereby regularized 325 days LHP with no leave salary.”

24. Thus, it is clear that another chance was given to the petitioner to

discipline herself. The file contains the leave and duty certificate which reads as:-

“LEAVE AND DUTY CERTIFICATE

NO EXTENSION WILL BE GRANTED

*No. 920880219 CT/M Santosh Kumari of G/88 (M)
BN CRPF is processing on 06 days C/L w.e.f. 04/5/09 to
11/5/09 W/P to avail 3/5, 10/5 being Sunday and 9/5/09
G.H.*

*She will report back on duty on 11/5/09 in evening
R/call.”*

25. Referring to the communication sent by the petitioner for extension of leave and received on May 15, 2009 in the office from CRPF which was rejected with direction to the petitioner to immediate report for duty along with her medical record. She was also cautioned that in case of her failure to report for duty further action shall be taken in the matter. Despite that she preferred to remain absent and subsequently declared as deserter. Thus, the plea of the petitioner that she sought extension of plea and was not communicated about the fate of her leave application is contrary to the record. Rather at the time of proceeding of 06 days casual leave (May 04, 2009 to May 11, 2009), she was well informed that no extension was to be granted and she was required to report for duty in the evening of May 11, 2009.

26. The petitioner who had put in 17 years of service in CRPF and already punished for her unauthorized absence, was aware of the Rules that as member of disciplined forces, she could not remain absent unauthorizedly till her leaves were sanctioned. The punishment awarded to the petitioner looking into her past record, can by no stretch of imagination be termed as not commensurating with the gross act of misconduct proved against her.

27. The Court must keep in mind that judicial review is not akin to

adjudication on merit by re-appreciating the evidence as an Appellate Authority. Thus, the Court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding. (High Court of Judicature at Bombay through its judgment reported as AIR 1997 SC 2286 Registrar v. Udaysingh s/o Ganpatrao Naik Nimbalkar & Ors., AIR 2006 SC 1214 Government of Andhra Pradesh & Ors. v. Mohd. Nasrullah Khan and (2011) 11 SCC 535 Union of India & Ors. v. Manab Kumar Guha.)

28. Since from the record we have not been able to notice any illegality, irregularity or perversity in the impugned orders the writ petition is dismissed.

29. No costs.

(PRATIBHA RANI)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

January 20, 2015
da/pg