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

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Date of Decision : January 06, 2015

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W.P.(C) 1719/2005

KULRAWAT SINGH

.....Petitioner

Represented by: None.

Versus

UOI & ORS.

.....Respondents

Represented by: Ms.Monika Arora, Advocate
for UOI with Mr.Abhishek
Kumar Chaudhary, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

1. Striking a balance between discharge of duties as Member of disciplined force and social obligations qua family had always been difficult for the Members of Armed Forces as well Paramilitary Forces. While a long procedure has to be followed for taking leave for attending social obligations, lack of sensitivity on the part of superior officers of forces to take a quick decision on the leave application, sometimes result into a situation in which the writ petitioner found himself when his leave application was neither rejected nor sanctioned to enable him to attend the marriage of his brother-in-law. On the one hand there was a threat of departmental action and disciplinary proceedings for unauthorisedly leaving Todapur Camp. On the other hand his matrimonial life was under threat as his wife had already warned him of serious consequences if he failed to attend the marriage of her brother.

2. Caught in the above situation, though with no previous act of indiscipline ever committed by him, after losing hope of leave being

sanctioned to him, he decided to leave the Camp to attend the marriage of his brother-in-law perhaps to save his family life and to avoid humiliation to his wife during the marriage ceremonies of his brother-in-law. He himself reported to the Station in the evening of May 26, 2003 and submitted the joining report next day morning on May 27, 2003. He was allowed to join duty but thereafter for the act of gross misconduct and indiscipline, a departmental inquiry under Rule-36 of CISF Rules 2001 was initiated against him. The article of charge framed against the writ petitioner was for deserting Todapur Camp unauthorisedly and without information/permission of the competent authority.

3. After considering the statement of PW-I ASI/EXE. C.Ashokan, PW-II HC/GD S.N.Mishra and PW-III INSP./EXE P.P.Bara and that of the charged official, the Enquiry Officer arrived at a conclusion that the charge against the charged official was proved. The findings arrived at by the Enquiry Officer is to the following effect:

- '01. No.941370066 Const.K.R. Singh was deployed on IS duty in Coy. No.723 at Todarpur Camp New Delhi since Dec' 2002*
- 02.He was applied for 06 days EL alongwith 02 days CCL wef 17.05.2003 to attend his brother-in-law's marriage on 18.05.2003 at his home.*
- 03.His leave was sanctioned by the competent authority for 02 days only wef 17.05.2003 at 2000 hrs on 16.05.2003*
- 04.Before collecting the leave certificate Const. K.R.Singh left the Camp without informing his superiors wef 16.05.2003 evening*
- 05.After completion of "A" Shift duty on 16.05.2003 he (Const. K.R. Singh) deposited only his Rifle in the Kote.*
- 06.Const. K.R.Singh retained 50 Rounds 7.62MM ammunition alongwith 02 magazines with him till rejoin from AWL.*
- 07.Const. K.R.Singh left camp area for his home on 16.05.2003 evening without any information/permission of his superiors. He remained au-authorizedly absent from Todapur Camp from 16.05.2003 to 26.05.2003 (10 days) at his own.*
- 08.During the AWL period Const. K.R.Singh did not made any*

correspondence to his superiors also.'

4. The punishment awarded to the petitioner by the Commandant CISF Unit RSP Rourkela vide final order No.V-15014/(24/03)/L&R/RSP/04-411 dated 22.03.2004 was 'Removal from Service'.

5. The appeal preferred to Deputy Inspector General, CISF was dismissed on the ground that the disciplinary authority has rightly passed the final order awarding punishment which commensurate with the gravity of offence committed by the appellant.

6. Ms.Monika Arora, Advocate for the respondents submitted that the gross act of misconduct has to be viewed seriously to send a strong message to the Members of the Force and to have a deterrent effect. She further submitted that petitioner left the Camp unauthorisedly despite two days leave being sanctioned to him with effect from May 17, 2003 but the writ petitioner was not found present when effort was made to communicate the sanction of leave to him. Counsel for the respondents submitted that leaving the Camp knowing fully well that the leave had not been sanctioned, is a grave misconduct and such type of indiscipline has to be curbed. She further submitted that the writ petitioner left Todapur Camp with the ammunition which was issued to him without depositing the same. He only deposited the rifle and leaving the Camp with the ammunition issued to him makes it more serious thus no interference in exercise of writ jurisdiction is warranted by this Court.

7. During the course of hearing, the record of enquiry proceedings has been perused by us.

8. At the outset, it is necessary to mention that the Article of Charge served on the charged official reads as under :

'STATEMENT OF ARTICLE CHARGE FRAMED AGAINST NO-

941370066 CONSTABLE K.R. SINGH OF 'D' COY CISF UNIT RSP
ROURKELA UNDER-36 OF CISF RULES

An act of gross misconduct, indiscipline, negligence and Carelessness in that No. 941370066 Constable K.R. Singh of 'D' Coy CISF Unit RSP Rourkela while deployed in I.S. Duty Coy No. 723 New Delhi deserted Todapur Camp Unauthorisedly and without information/permission of the competent authority.'

9. In the light of above charge, finding No.6 regarding retaining ammunition by the charged official till he rejoined from AWL was not warranted. Here it may be noted that undisputedly the petitioner applied for earned leave for six days well in advance alongwith wedding card of his brother-in-law. He continued making enquiry about the fate of his leave application but came to know that his leave had not been sanctioned.

10. First, we take up the issue regarding retaining ammunition by the writ petitioner while leaving the Camp without the leave being sanctioned. PW-II HC/GD S.N.Mishra was questioned by the Enquiry Officer to seek certain clarifications. The questions No.2 and 3 put to him were regarding deposit of arms and ammunition wherein he has admitted that rifle is deposited but since there was no proper arrangement for keeping the ammunition (rounds) the same used to remain with the individual member of the force and deposited only when the member of the force proceed on leave or leave for some urgent work. He also admitted that the petitioner came to deposit ammunition but as his leave was not sanctioned, he was not permitted to deposit the same.

11. The above clarifications given by PW-II HC/GD SN.Mishra makes the situation clear that the petitioner did make an attempt to deposit the ammunition issued to him at the time of leaving the Camp to attend the marriage of his brother-in-law but not permitted for the sole reason that his leave was not sanctioned.

12. The petitioner was charged for deserting Todapur Camp unauthorisedly. The situation in which the petitioner found himself i.e. despite applying for leave well in advance to attend the wedding of his brother-in-law, till the late evening of May 15, 2003 his leave was not sanctioned, no rejection was communicated, he did commit an act of indiscipline by leaving Todapur Camp on May 16, 2003 (evening) to attend the wedding. His joining report dated May 27, 2003 also incorporate his admission that he had left the Camp to attend the wedding of his brother-in-law.

13. The contention of counsel for the respondents that two days leave was sanctioned but when the same was tried to be communicated to the petitioner he was found absent, has to be rejected for two reasons :

(i) PW-III INSP./EXE P.P.Bara stated before the Enquiry Officer that on May 16, 2003 at 2030 hrs he received a message on his wireless to receive a message. He talked to Group Commandant Mr.Mondal on wireless. The Deputy Commandant asked him whether Const.K.R.Singh had applied for leave and when he replied in affirmative, he (Group Commandant Mr.Mondal) asked him to go and see and if he (Const.K.R.Singh) was there, grant two days earned leave to him which he (Group Commandant Mr.Mondal) would sanction. Thereafter he came to know that the petitioner had left the Camp with his *attachee* and had absconded/deserted the Camp. The said information was conveyed to the Group Commandant who directed for necessary action in the matter.

(ii) PW-I ASI/EXE. C.Ashokan in reply to question Nos.3 and 4 put by the Enquiry Officer stated that he came to know through Coy.Commander about two days leave being granted to K.R.Singh w.e.f. 17.05.2003 but no leave certificate was given to K.R.Singh as it was within the power of

Coy.Commander and Writer.

14. The petitioner has nowhere denied the act of indiscipline and misconduct committed by him while leaving the Camp on the night of May 16, 2003 to attend the wedding of his brother-in-law. Thus the finding of Enquiry Officer in this regard which has been upheld by the Appellate Authority calls for no interference which was passed on sufficient material in this regard.

15. What disturbs us is whether the writ petitioner deserved the penalty of removal from service just because by committing an act of indiscipline he tried to save his matrimonial life. In our considered view, the Disciplinary Authority as well the Appellate Authority should have viewed the circumstances under which the act of indiscipline was committed by the petitioner and dealt with him accordingly.

16. In the facts and circumstances, we set aside the penalty of removal from service and order reinstatement of the petitioner with all consequential benefits but without any back wages. In the peculiar facts and circumstances, we feel that denial of pecuniary benefits for the period he had remained out of service would be a sufficient penalty for him.

17. Necessary communication to the petitioner informing him to report for duty shall be made by the respondent within six weeks from the date of order.

18. No costs.

(PRATIBHA RANI)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

January 06, 2015/‘st’