

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

Judgment Reserved on: March 19, 2015

% *Judgment Delivered on: March 25, 2015*

+ W.P.(C) 7606/2012

SANGEETA

..... Petitioner

Represented by: Mrs.Rekha Palli, Mrs.Punam
Singh and & Ms.Shruti Munjal,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.Vikas Mahajan, CGSC for
UOI/R-1.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. Aggrieved by the order dated December 01, 2011 whereby the Disciplinary Authority imposed a penalty of compulsory retirement on the petitioner against which the appeal preferred was dismissed and against which order the revision filed was dismissed on December 27, 2011, the writ petition has been filed praying that the orders be quashed and the petitioner be reinstated in service after imposing such penalty as may be found proportionate to the wrong committed by the petitioner. In other words, the proportionality of the penalty has been questioned.
2. Petitioner was enrolled as an ASI Clerk in CISF on September 07, 1990 and was promoted as a Sub-Inspector in September 2000. The petitioner claims of having rendered meritorious service and having earned 25 cash awards and 4 commendation certificates.
3. On May 13, 2011 a charge memo was served upon the petitioner

alleging as under :-

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Charge No. 1

Force No.903180012 Lady SI/Min.Sangeeta, deployed in CISF Unit DMRC, Delhi remained absent from her duty without leave between 25.10.2010 to 02.12.2010 for total 39 days without permission of the Competent Authority. The said act symbolize gross dereliction of duties and indiscipline and arbitrary behaviour. Hence the charge.

Charge No. 2

Force No.903180012 Lady SI/Min.Sangeeta, deployed in CISF Unit DMRC, Delhi remained absent from her duty without leave between 01.01.2011 to 05.01.2011 for total 05 days, between 11.01.2011 to 23.01.2011 for total 13 days, on 19.02.2011 for 01 day, between 28.02.2011 to 02.03.2011 for 03 days, between 28.03.2011 to 03.04.2011 for 07 days and on 06.04.2011 for 01 day without permission of the competent authority. Apart from above direction was given for report for duty on Saturday on 16.04.2011 (GH) and 17.04.2011 (Sunday) due to the visit of the Director General. But she did not report for duty on both days. Hence the charge.

Charge No. 3

Force No.903180012 Lady SI/Min.Sangeeta, deployed in CISF Unit DMRC, Delhi remained absent from her duty without leave from 18.04.2011 till date without permission of the competent authority. Hence the charge.

Charge No. 4

Force No.903180012 Lady SI/Min.Sangeeta, deployed in CISF Unit DMRC, Delhi reported late for duty in office on 20.10.2010 and remained absent from her duty without leave between 21.10.2010 to 22.10.2010 for total 02 days without permission of the competent authority and was taken on duty on 23.10.2010 despite coming late and was ordered to sign on the

register on 23.10.2010 but she signed for 20.10.2010 to 22.10.2010 for three days thereby manipulated the records. Apart from the above she manipulated the attendance register on getting opportunity by iterating the same for the dates on January 2011, 01.01.2011, 03.01.2011 to 06.01.2011 and 18.01.2011 to 23.01.2011, 15.02.2011, 22.02.2011, 26.02.2011, 28.02.2011 and 01.04.2011 despite remaining absent from duty. Hence the charge.

Charge No. 5

Force No.903180012 Lady SI/Min.Sangeeta, deployed in CISF Unit DMRC, Delhi is habitual to remain absent from duty and is careless and irresponsible towards her duty. She failed to mend her attitude despite 07 punishment and 13 explanation, warning and memorandum issued by this office. The aforesaid reflects her gross dereliction towards duty, indiscipline and arbitrary attitude.”

4. Seven witnesses were examined by the department during enquiry and thirty five documents were proved. The seven witnesses are :-

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|-------|--|------|
| (i) | No.754480031 Insp/M B M Rao (Head Clerk) | PW-1 |
| (ii) | No.842090054 SI/M B L Saw (IC/Accounts) | PW-2 |
| (iii) | No.983440055 ASI/Clk Yashpal Gautam (Cashier) | PW-3 |
| (iv) | No.984460010 ASI/Clk Piyush Tiwari IC/Discipline | PW-4 |
| (v) | No.854330052 Insp/Min G.C.Pramanik | PW-5 |
| (vi) | No.954670106 ASI/Clk Rajesh Babu Shankwar | PW-6 |
| (vii) | No.083750029 Lady/SI/Exe Anita Kusum Dang | PW-7 |

5. The petitioner produced fifty one medical prescriptions and reports mostly from private doctors/hospitals and some from Government dispensaries/hospitals.

6. The Inquiry Officer noted overwriting on a certificate of RML

Hospital as to what was initially written as October 15, 2010 was changed to October 25, 2010 and certificates of CGHS dispensary were not in original. The Inquiry Officer has noted the facts admitted by both the sides as well the disputed facts as under:-

“Facts admitted by both the side

01. *Charged official was performing duties in Accts III Section of CISF Unit DMRC Delhi after reporting on regular posting and thereafter in Accts.V. She was not present in the office w.e.f 25.10.2010 to 02.12.2010.*

02. *Charged official remain absent at her own during regular interval without applying for leave in the month of January to April 2011. She knew that fact that all the office staff have to report on 16.04.2011 and 17.04.2011 for preparation of DG/Visit.*

03. *Charged official did not reported for duty w.e.f.18.04.2011 to date of issuance of charge sheet and reported on 07.06.2011.*

04. *Charged official reported late on 23.10.2010 and was instructed to mark her attendance.*

05. *Charged official was issued with 07 minor penalty in her service and was issued with 13 communication in the form of explanation, warning and memorandum while posted at CISF Unit DMRC Delhi.*

Disputed Fact

01. *Whether Charged Official remain absent w.e.f. 25.10.2010 to 02.12.2010 for 39 days without permission of competent authority.*

02. *Whether Charged Official remain absent on regular interval during the month of January to April 2011 for 30 days (i.e. on 01.01.2011 to 05.01.2011=05 days, from 11.01.2011 to 23.01.2011 for 13 days, on 19.02.2011=01 day, from 28.02.2011 to 02.03.2011 for 03 days, 28.03.2011 to 03.04.2011 for 07 days,*

from 06.04.2011 for 01 day) and whether she knowingly remained absent during DG visit.

03. Whether Charged Official remain absent w.e.f. 18.04.2011 to till date (i.e. date of issue of Charge Sheet) without permission of competent authority.

04. Whether Charged Official had deliberately sign the attendance register after reporting late on 23.10.2010 for the period from 20.10.2010 to 23.10.2010, whereas she did not reported for duty on 20.10.2010 to 22.10.2010 and whether she had also marked her presence on 01.01.2011, from 03.01.2011 to 05.01.2011, from 18.01.2011 to 23.01.2011, on 15.02.2011, 22.02.2011, 26.02.2011, 28.02.2011 and 01.04.2011 whereas she was not present on the said day and was marked as absent in attendance register, thus manipulated the official record.

05. Whether Charged official is habitual offender, incorrigible and failed to improve herself despite of the fact that she was awarded 07 punishment in her carrier and 13 letters in the form of explanation, warning and memorandum at CISF Unit DMRC Delhi.”

7. On disputed facts the Inquiry Officer returned the findings as under:-

Disputed Fact No.1

(i) She did not inform any Unit Authority about her sickness knowing fully well that on the basis of medical advice she was required to apply for leave and submit the medical certificate. Even during visit of DIG despite being informed through call up notices she failed to report for duty on 16th and 17th April 2011.

(ii) Medical prescription is dated October 15, 2011 but medically unfit certificate is of October 25, 2011 with no proof that she visited the Doctor on October 25, 2011, suggesting manipulation.

(iii) The petitioner was holding a responsible post dealing with CEA and medical claims and her unauthorized absence caused grave inconvenience to the Unit personnel whose claims

remained unsettled.

Disputed Fact No. 2

After remaining absent without leave she did not submit medical papers which were submitted on September 17, 2011 during inquiry.

Disputed Fact No.3

The petitioner remained AWL with effect from April 18, 2011 till the issuance of charge-sheet which was served on her on May 19, 2011 and she reported only on June 07, 2011 of her own sweet will.

Disputed Fact No.4

The petitioner remained AWL on 21/22 October, 2010 and reported late on 23rd October, 2010 but marked presence for all the days though permitted only to date of October 23, 2010 as established from the remarks of DC (Admn.) that he permitted her only for October 23, 2010. The petitioner is in the habit of doing so and on earlier occasions also she remained absent in the month of January 2011 on 01.01.2011 for 01 day, 03.01.2011 to 05.01.2011 for 03 days from 18.01.2011 to 23.01.2011 for 06 days, in the month of February on 15.02.2011, 22.02.2011, 26.02.2011 and 28.02.2011 for 04 days and in April on 01.04.2011 for 01 days total 15 days. The petitioner admitted having done so as she reached late and had no other options but to sign above the 'X' mark.

Disputed Fact No.5

The petitioner had been awarded 7 punishments and 13 warnings and given several opportunities to mend her ways. She had shown no improvement and is incorrigible.

8. The details of the seven punishment inflicted upon the petitioner in the past are as under:-

<u>Punishment awarded</u>	<u>Date</u>
Postponement of one increment for two years	September 30, 1992
Pay fine equivalent to seven days salary	December 11, 1992
Censure	November 18, 2002
Censure	August 28, 2010

Pay fine equivalent to five days salary	October 18, 2010
Withholding one increment of salary for one year	December 03, 2010
Censure	December 03, 2010

9. Conceding to the fact that the petitioner availed leave without any prior intimation or a permission for the durations as alleged in Charge No.1 to Charge No.5, learned counsel for the petitioner urged that the reason was sudden illness of the petitioner and her family members. Conceding that the petitioner had made an overwriting in the attendance register for three days (as per Charge NO.4) counsel urged that it was not a case of tampering in the register on the three days being 21st, 22nd and 23rd October, 2010. As per learned counsel since the petitioner came late and found a cross put in the column against her name, the petitioner marked her attendance and put her signatures. Learned counsel urged that the petitioner had sufficient leave to her credit in the leave account and thus would urge that there was no reason for the petitioner to avail unauthorized leave.

10. The pleadings in the counter affidavit that during the period November, 2009 to December, 2011 the petitioner had been sanctioned leave on 21 occasions as per details given in para 12 of the counter affidavit have not been denied. Meaning thereby, in two years, the petitioner availed leave 21 times.

11. The record of the leave of absence, both sanctioned and unauthorized of the petitioner is tabulated as follows:-

1.	Casual Leave	1 day	05.12.2009	Husband illness
2.	Casual Leave	1 day	11.12.2009	Personal reason
3.	Casual Leave	7 days	19.12.2009 to 25.12.2009	Son's examination
4.	Casual Leave	1 day	25.1.2010	Domestic work

5.	Commuted medical leave	3 days	28.1.2010 to 30.1.2010	Sick leave on medical grounds
6.	Earned leave	27 days	22.02.2010 to 20.3.2010	Son's Board Examination
7.	Commuted medical leave	4 days	15.4.2010 to 18.4.2010	Sick leave on medical grounds
8.	Commuted medical leave	7 days	1.5.2010 to 7.5.2010	Sick leave on medical grounds
9.	Casual leave	1 day	25.5.2010	Domestic work
10.	Casual leave	1 day	19.6.2010	Self medical treatment
11.	Casual leave	1 day	25.8.2010	Rakhi celebration
12.	Late for duty		20.10.2010	
13.	Leave without permission	2 days	21.10.2010 to 22.10.2010	Absent from duty
14.	Late for duty	-	23.10.2010	
15.	Leave without permission	39 days	25.10.2010 to 2.12.2010	Absent from duty
16.	Casual leave	4 days	23.12.2010 to 26.12.2010	Mother-in-law serious
17.	Casual leave	2 days	29.12.2010 to 30.12.2010	Mother-in-law serious
18.	Leave without permission	5 days	1.1.2011 to 5.1.2011	Absent from duty
19.	Casual leave	1 day	7.1.2011	To meet husband
20.	Leave without permission	13 days	11.1.2011 to 23.1.2011	Absent from duty
21.	Casual leave	1 day	29.1.2010	Self illness
22.	Casual leave	1 day	5.2.2011	Fever/Acidity/Vomiting
23.	Leave without permission	3 days	28.2.2011 to 2.3.2011	Absent from duty
24.	Casual leave	2 days	18.3.2011 to 19.3.2011	Holi Festival
25.	Leave without	7 days	28.3.2011 to 3.4.2011	Absent from duty

	permission			
26.	Leave without permission	1 day	6.4.2011	Absent from duty
27.	Did not report for duty due to the visit of the DG	2 days	16.4.2011 to 17.4.2011	Saturday & Sunday
28.	Leave without permission	25 days	18.4.2011 to 13.5.2011	Absent from duty
29.	Casual leave	1 day	2.7.2011	Domestic work
30.	Casual leave	1 day	18.8.2011	Father illness
31.	Casual leave	2 days	3.10.2011 to 4.10.2011	Nephew's marriage
32.	Casual leave	2 days	22.11.2011 to 23.11.2011	Brother's marriage

12. We have put in bold the periods when leaves were obtained without permission.

13. It is apparent that during the period December 05, 2009 till November 23, 2011, the petitioner has not worked for 168 days. The breakup of 168 days would further be that on 30 days the petitioner was on casual leave, on 14 days she was on commuted medical leaves, on 27 days she was on earned leave and on 95 days she was unauthorisedly absent. On two days being Saturday and Sunday, though a holiday, required to report for work due to visit of the Director General, the petitioner did not report for work.

14. It is trite that leave cannot be claimed by an employee as a matter of right, it may being a matter a entitlement. The difference being entitlement is something which one may have subject to fulfilment of certain conditions and right is something which one should have regardless of any conditions being fulfilled.

15. Remaining absent or taking leaves without prior sanction exhibits irresponsibility and lack of interest in work on part of the employee. Such an employee appears to be least interested in the duties and is not somebody who is devoted or maintains integrity. Such an employee is guilty of misconduct. Graver is the misconduct when the employee remains absent even without intimating the employer. In such cases the employer suffers for two reasons. First, the employee remaining absent, the work cannot be done. Second, since the employer has no intimation of the intention of the employee not to report for duty, the work cannot even be delegated to some other employee.

16. It is pertinent to note that for 95 days the petitioner was absent without any prior intimation or a sanction. Further, it seriously disturbs the work of the employer if an employee works for four days and then avails leave for three days followed by working for nine days and then availing leave for six days and then being absent for nine days followed by working for fourteen days and then being absent for another four days, and so on. The employer would not know when the employee would be working and when would the employee not be working. Such an employee is worse than an employee who with prior intimation obtains a leave for six months at a stretch for the reason at least the employer is able to reorganize the work in the department and entrust the same well in time to somebody else.

17. Considering the past record of the petitioner, which belies her claim that she had rendered meritorious service, noting that seven punishments were inflicted upon the petitioner, we do not find the penalty imposed disproportionate to the wrong committed by the petitioner. For the service rendered by her benefit has been given because the penalty imposed is one

of compulsory retirement with full pensionary benefits.

18. The writ petition is dismissed but without any order as to costs.

19. No costs.

(PRATIBHA RANI)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

March 25, 2015

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