

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

% *Judgment Reserved on: February 25, 2015*
Judgment Delivered on: March 04, 2015

+ W.P.(C) 8425/2014

TEJPAL SINGH

..... Petitioner

Represented by: Mr.Jagjit Singh and Ms.Nisha,
Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.Arun Bhardwaj, CGSC for
UOI with Mr.Apurva Varma
and Mr.Rishi Kapoor,
Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. For almost about a quarter of century the petitioner has been litigating to challenge the penalty of dismissal from service awarded by the Disciplinary Authority on October 19, 1990. For petitioner it appears to be cause which he is pursuing at his convenience by keeping the issue of his dismissal alive knowing fully well that during inquiry proceedings he pleaded guilty to the article of charge before the Inquiry Officer and did not retract even after the time was given to him to give a second thought before making a plea of guilt.

2. The petitioner seeks quashing of the inquiry report dated October 05, 1990 into his alleged misconduct of leaving his duty on April 16, 1990

(forenoon) without any permission. The inquiry report was accepted by the Disciplinary Authority after giving an opportunity to the petitioner to represent. He was awarded the penalty of dismissal from service. The petitioner preferred an appeal which allegedly remained undecided. Then on March 13, 1991 he filed a revision petition before the Director General, CISF.

3. The petitioner filed W.P.(C)No.3191/1992 which was disposed of on October 12, 2009. As the parties failed to appear on that date the petition was disposed of with following direction:-

“8.Suffice would it be to state that the remedy of the petitioner was to challenge the order passed in appeal before the Revisional Authority and thereafter such action as was available to the petitioner depending upon the fate of the revision petition.

9. In any case, the order passed in appeal has to be challenged.

10.We are surprised at the course chartered in the instant petition. We are surprised at the conduct of learned counsel for the petitioner who on receipt of counter affidavit should have requested this Court that since his client has not received the order passed by the appellate authority, the same should be provided to him for further action as per law.

11.Be that as it may, since none appears for the parties we dispose of the petition directing that a copy of the order dated 26.8.1991 dismissing the appeal filed by the petitioner be made available by the appellate authority to the petitioner.

12.Since neither party has appeared, the direction would be complied by the respondent if the petitioner makes a request that the order in appeal be made available to him.”

It appears that the petitioner slept over the matter and did not comply with the order dated October 12, 2009 by applying for the copy of the order

dated August 26, 1991 by the Appellate Authority. He woke up only on December 23, 2012 when a representation sent by him followed by legal notice dated March 11, 2013. Then he filed W.P.(C) No.7056/2013 complaining that the copy of the order of the Appellate Authority has not been made available to him and that order dated October 12, 2009 by this Court in W.P.(C)No.3191/1992 has not been complied with. Suffice it to note that the copy was to be made available to the petitioner only on request and to make such request the petitioner waited for more than three years from the date of order dated October 12, 2009. This writ petition was also disposed of on November 12, 2013 with direction to the respondent to provide a copy of order dated August 26, 1991 within six weeks from the date of order.

4. Brief facts relevant for disposal of this writ petition are that petitioner joined in CISF as Constable/GD in the year 1983. In April, 1990 while the petitioner was posted in CISF Unit BVFCL Namrup (Assam), he was placed under suspension on March 10, 1990 and was required to sign the suspension attendance register four times a day. He failed to sign the suspension register on April 16, 1990 in the forenoon. A visit to his quarter revealed that he had left for his native place without obtaining any permission, or getting any leave sanctioned. For this misconduct disciplinary proceedings for imposing major penalty was initiated against him under Rule 34 of CISF Rules, 1969 (Old). The petitioner was served with the charge memorandum No.V-15014(25)/GHP/Ad.I/903582 dated June 09, 1990 with the following article of charge:-

ARTICLE OF CHARGE-I

“That the said No.834290118 Constable Tejpal Singh (under suspension) of CISF Unit, HFCL Namrup (Assam) withdrew from the

duties of his office from 16.04.90(FN) without permission, which amounts to neglect of duty within the meaning of Section 18 of CISF Act, 1968.”

5. The petitioner sent his written statement while denying the charge he alleged that there was a threat to his life and that to his family. Hence he had to leave the unit and proceed to his native place. He expressed his willingness to join the duty subject to providing adequate protection to him.
6. The Inquiry Officer, J.C.Thind, Assistant Commandant, CISF Group Headquarter conducted the inquiry into alleged misconduct. The petitioner had participated in the inquiry proceedings.
7. After conclusion of the inquiry and holding that the charge against the petitioner has been proved the Inquiry Officer sent a report to the Disciplinary Authority. Again opportunity was given to the petitioner to represent against the inquiry report. Thereafter the Disciplinary Authority on going through the inquiry proceedings, representation of the petitioner and the relevant documents, imposed the penalty of dismissal from service vide its order dated October 19, 1990. The appeal preferred by the petitioner was dismissed by the Appellate Authority vide its order dated August 26, 1991.
8. Though the Appellate Authority disposed of the appeal on August 26, 1991, just to plead that there was no delay on his part in prosecuting his cause, the petitioner had been filing writ petitions just to seek copy of the order dated August 26, 1991 of the Appellate Authority. Even after obtaining the copy of the order pursuant to the direction given by this Court in W.P.(C) Nos.3191/1992 and W.P.(C) Nos 7056/2013, the petitioner did not avail his remedy for almost an year.
9. The petitioner has sought quashing of the impugned orders on

following grounds:-

- (i) The inquiry has been conducted against the principles of natural justice and the finding by the Inquiry Officer shows non-application of mind and in violation of the principles of natural justice.
- (ii) The punishment awarded to the petitioner is disproportionate to the alleged misconduct due to his dismissal from service he had not been able to seek any other government job.
- (iii) The conduct of the petitioner in leaving the unit was not wilful but due to the circumstances that he apprehended threat to his life and the family at the hands of SI/Ex. Raajroop Singh.

10. The counter affidavit filed by the respondents discloses the following facts which have not been controverted by the petitioner by filing rejoinder.

- (i) On March 08, 1990 at about 2140 hours SI/Exe Jatender Kumar was assaulted with an iron rod by the petitioner who was returning to his quarter after “B” shift duty. SI Jatender Kumar suffered head injury and was admitted in HFCL hospital. A case FIR No.14/1990 under Section 325/307 IPC was registered at Namrup Police Station against the petitioner.
- (ii) On April 12, 1990 the petitioner along with L/NK Bijender Singh assaulted SI/Exe Rajroop Singh and on the complaint of SI Rajroop Singh case FIR No.26/1990 dated April 14, 1990 under Section 325 IPC was registered against the petitioner.

11. We have heard learned counsel for the parties and also perused the record of the disciplinary proceedings initiated against the petitioner. Learned counsel for the petitioner has urged before us that petitioner had been complaining to the superior authorities about threat to his life and this fact stands admitted by H.C. T.V.Shyamal PW-4. Since neither the police

was willing to take any action nor the CISF authorities were ready to provide protection to the petitioners, to save himself and his family the petitioner left the unit. Thus, in the given circumstances the impugned orders are liable to be set aside.

12. Refuting the contentions of the petitioner learned counsel for the respondents submitted that at no point of time the petitioner had made any written communication to the superior authorities about any such threat to him or any incident in past in which he suffered injuries at the hands of SI/Ex. Raajroop Singh or any civilian. He submitted that in the absence of any report to the local police or to the superior offices, the reason for leaving the unit without any permission amounted to a misconduct for which the penalty awarded was also commensurating with the nature of offence hence the writ petition may be dismissed.

13. Perusal of the disciplinary proceedings against the petitioner reveal that during the inquiry proceedings on August 31, 1990 proceedings were drawn regarding first plea of the petitioner in question answer form. Same being relevant is reproduced hereunder:-

*"Departmental inquiry report against No. 834290118 Constable
Tejpal Singh of CISF Unit HFCL Namrup*

Record of first plea

Q1. Have you received the memorandum of charge sent by group commandant vide no.15014/(25)/GHP/Ad.1/90/3582 dated June 09, 1990?

Ans. Yes Sir.

Q2. Do you understand the charge framed against you?

Ans. Yes Sir.

Q3. Have you sent reply to the charge-sheet?

Ans. Yes Sir I have given.

Q4. I again read over the charge to you (charge read over). Do

you accept the charge and plead guilty?

Ans. Yes Sir I accept the charge. Sir this time I may be pardoned. In future it will not be repeated.

Q5. You are again given time to think once again. You give a serious thought and then only whether you accept the charge framed against you or not?

Ans. Yes Sir.”

14. Thereafter an endorsement was made by the Inquiry Officer certifying the correctness of the proceedings recording that Constable Tejpal Singh had pleaded guilty and he has been given time till the next date to again think over and inform. Copy of the proceeding dated August 31, 1990 was received by the petitioner under his signature.

“On next day i.e. September 01, 1990 plea of the delinquent constable Tejpal Singh was recorded as under:-

Q1. On August 31, 1990 you admitted the charge and given time to think over again. You are again asked whether you accept the charge and plead guilty?

Ans. Yes Sir I accept the charge without any fear or inducement. I accept my guilt.

Q2. Do you want to seek assistance of any member of force to defend you during the inquiry?

Ans. Yes Sir.

Q3. You are given name of three members of the force so that anyone of them can be nominated to assist you?

Ans. Sir I want to take help of only Head Constable No.713230044 Ramji Singh who is at present posted in CISF unit at Phulwari Shareef.

Q4. Do you have any objection to my appointment as Inquiry Officer?

Ans. No Sir.”

15. The proceedings conducted on September 01, 1990 were also read over to the petitioner and copy thereof was given to the petitioner under his

signature.

16. The record of inquiry proceedings reveal that on August 31, 1990 after petitioner voluntarily pleaded guilty, time was given to the petitioner to think over again. On next day also the petitioner pleaded guilty before the Inquiry Officer. Despite that, the Inquiry Officer proceeded to record the statement of the witnesses. The Inquiry Officer examined the following witnesses:-

<u>Witnesses No.1</u>	No.742180018	Inspector Y.Venkatram, CISF Unit HFCL Namrup
<u>Witnesses No.2</u>	No.824490065	Deputy Inspector, A.K.Solanki, CISF Unit N.A.P.P. Narora
<u>Witnesses No.3</u>	No.724501133	Head Constable Asha Ram III Reserve Battalion, Bhilai (M.P.)
<u>Witnesses No.4</u>	No.773290089	Head Constable T.V.Shyamal, CISF Unit, R.S.P.Rourkela

17. During recording of testimony of above witnesses, the relevant record was produced. Attendance Register showed that the petitioner remained absent without leave, the entries in the rojnamacha were made recording absence of the petitioner from the unit which were proved by Inspector Y.Venkatram PW-1. He stated that on April 16, 1990 he got information that the petitioner had not put his signatures in the suspension attendance register. The petitioner was also absent during the evening rollcall as well as on the next day. Then Inspector Y.Venkatram PW-1 along with Head Constable T.V.Shyamal PW-4 and other staff visited to the quarter of the petitioner. They found the main door of the quarter was bolted from inside

and back door was locked. Petitioner was also checked in HFCL hospital but he was not found there also and remained unauthorizedly absent with effect from April 16, 1990. Inspector Y.Venkatram submitted AWL report in respect of the petitioner on April 18, 1990 to the Unit Officer. SI/Exe. A.K.Solanki PW-2, Head Constable Asha Ram PW-3 and Head Constable T.V.Shyamal PW-4 had also visited the quarter of the petitioner and found the front door being bolted from inside and back door was locked.

18. The petitioner Constable Tejpal Singh in his defence stated that as he was under suspension, he was required to visit four times a day to sign on the attendance register. On April 12, 1990 at about 1300 hours when he was going to sign the register ASI Rajroop Singh along with 6/7 civilians stopped him and abused him and also threatened to kill his family. On April 13, 1990 at about 8:00 AM 8/10 civilian boys came to his quarters and picked up quarrels in which his uncle sustained injury. He reported the matter to the Assistant Commandant Mr.Prabhu at his residence but no action was taken. The police also refused to register the report. On April 13, 1990 in the night at about 10:00/11:00 PM 8-10 boys came to his quarter and asked him to come out when he did not come out they pelted stone and hurled abuses asking him to flee from there or he would be done away with this. He informed about the incident to Inspector Venkatram and Head Constable T.V.Shyamal. Since no action was taken to save his life and of his family, he had to leave.

19. The Inquiry Officer has arrived at the conclusion that the charge stands proved against the petitioner and the defence taken by him has not been proved by producing any material that there was any threat to his life. Accepting the report of the Inquiry Officer the Disciplinary Authority

imposed the penalty of dismissal from service which was challenged by the petitioner by filing an appeal which was dismissed on August 26, 1991. Here we may note that the address of the petitioner as available with the respondents remains the same right from the date of his joining till the filing of this writ petition. The petitioner had been receiving all the communications at the same address and responding to the same. The order by the Appellate Authority was also sent to the petitioner on the same address and we find this endorsement on the appellate order itself. It appears that with a view to cover the delay the petitioner had been filing various writ petitions alleging that his appeal had not been disposed of or he had not been furnished the copy of the appellate order. When the appellate order was furnished to him in the year 2013 under the covering letter dated November 15, 2013 even thereafter he preferred to sleep over the matter for almost a year.

20. The petitioner had never reported the matter to the unit commandant or any superior authorities. The communication with T.V.Shyamal PW-4 was informal and no evidence was ever produced about any threat being extended or any injury being caused to the petitioner or his family. Thus it is a case that while the petitioner was under suspension he locked his quarter from backside and without any intimation/permission to his superiors left the unit and refused to join unless proper security was provided to him. The petitioner is a member of disciplined force. During inquiry he has never produced any material to show that he ever suffered even a scratch at the hands of any civilians or SI Rajroop Singh. If the threat was also to his family he could have sent his family back and write to his Superior Officer with a request to enquire into his complaint. Prior to leaving the unit at

Namrup (Assam), it is an admitted case of the petitioner that he had never made any complaint in writing to the superior officers about the alleged threat to his life, that he left unit of his own on April 16, 1990 and never reported for duty thereafter. It appears that to evade trial in the criminal cases in FIR Nos. 14/1990 and 26/1990, he absconded.

21. The Court in exercise of writ jurisdiction under Article 226 of the Constitution of India does not interfere with the findings of the Disciplinary Authority unless the petitioner can make out a case of malafides of perversity. The petitioner in the instant case has failed to prove the violation of the principles of natural justice or procedural illegality, irregularity or arbitrary. In the absence of any material to bring his case under the categories referred to above, mere assertion to the order is perverse or being passed in violation of the principles of natural justice is not sufficient to warrant interference.

22. On proportionality of the sentence, reliance can be placed on (2005) 13 SCC 709 Union of India v. Datta Linga Toshat Vad wherein it was held that the members of the uniform forces cannot absent themselves on frivolous pleas, having regard to the nature of the duties enjoined on these forces. The Court had held that desertion is a serious matter and a member of the uniformed forces who overstays his leave even by a few days must be able to give a satisfactory explanation. A member of the force, who goes on leave and never reports for duty thereafter, cannot be said to be one merely overstaying his leave and he must be treated as a deserter. In such cases the Apex Court had held the dismissal from service justifiable and the punishment of dismissal was held not to be disproportionate to the misconduct. In that case the petitioner after leave did not join despite various

notices given to him. Even the arrest warrant was issued against him though the arrest warrant remained unexecuted. In the circumstances, after following due procedure, the official was dismissed from the service. Similarly in (2005) 13 SCC 228 Union of India v. Gulam Md.Bhat it was held by the Supreme Court that overstay by persons belonging to the disciplined forces needs to be dealt with sternly. It was further held that it is for the employee concerned to show how the penalty was disproportionate to the proved charges. In that case the order of dismissal from service was held to be in accordance with the misconduct as the employee had remained absent for 300 days and had failed to give any justifiable reasons.

23. We have already recorded that even on the first hearing before the Inquiry Officer the petitioner pleaded guilty and on next day also after availing the time to think over he admitted his guilt. The Inquiry Officer continued with the inquiry and proceeded to examine the witnesses may be to satisfy himself before returning any finding on the article of charge despite the plea of guilt by the petitioner. At this stage it is necessary to record that while disposing of the W.P.(C) No. 3191/1992 the petitioner was made aware of that instead of filing writ petition he was required to challenge the order of the Appellate Authority by filing revision. Again the petitioner has preferred to file the writ petition without challenging the order dismissing his appeal on August 26, 1991 before the Revisional Authority. We are astonished to note that in this writ petition the petitioner had mentioned in the list of dates and events that he came to know of the order dated October 12, 2009 only in December, 2012. Thus for more than three years the petitioner remained in hibernation and did not bother to know of the fate of the writ petition filed by him. Such type of conduct of the

petitioner warrants dismissal on this score alone.

24. In view of the settled legal position that the Disciplinary Authority and the Appellate Authority being fact finding authority have exclusive powers to consider the findings and are vested with the discretion to impose appropriate penalty after taking into consideration the gravity of the misconduct. It is not for this Court to substitute its own conclusion or penalty in exercising its power for judicial review.

25. Examining the case of the petitioner in the light of the above legal position we are of the considered opinion that in view of the nature of the duties assigned to Paramilitary forces, person like the present petitioner have no place in the force hence dismissal was the punishment which he deserved. In the given facts and circumstances of the case we find no ground to interfere with the order of dismissal of the petitioner from service on October 19, 1990 and dismissal of his appeal on August 26, 1991.

26. Writ petition is without any merit and the same is hereby dismissed.

27. No costs.

(PRATIBHA RANI)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

March 04, 2015

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