

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

**Reserved on: March 15, 2016**

**Pronounced on: April 04, 2016**

+ **W.P.(C) 3289/2006**

SAMAY SINGH ..... Petitioner

Through: Mr. Samir Malik, Advocate

versus

UOI & ORS. .... Respondents

Through: Dr. Ashwani Bhardwaj, Advocate

**CORAM:**

**HON'BLE MS. JUSTICE HIMA KOHLI**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**SUNIL GAUR, J**

1. In this petition, the petitioner, a Constable in the Central Reserve Police Force (hereinafter referred to as the 'CRPF'), challenges his removal from service due to habitual absenteeism. The petitioner was granted casual leave for 15 days w.e.f. 16<sup>th</sup> July, 2004 to 2<sup>nd</sup> August, 2004 and without information, he had absented himself from duty for a period of 123 days i.e. from 3<sup>rd</sup> August, 2004 to 12<sup>th</sup> December, 2004. The service record of the petitioner revealed that prior thereto also, he had remained absent from duty on five occasions during his short tenure of four years and the total period of his absence prior to his absence of 123

days, was 118 days. It is so reflected in the impugned order of 18<sup>th</sup> November, 2005 (*Annexure A-4*), which has been assailed in this petition.

2. Vide impugned order of 18<sup>th</sup> November, 2005 (*Annexure A-4*) the petitioner's revision petition was dismissed. Sequential facts, as disclosed in the impugned order, are that on account of unauthorized absence of 123 days, a disciplinary inquiry was held against the petitioner on the following two charges:-

“ ARTICLE-I

*That Force No. 015080299, constable Samey Singh, B/55, while working as a Constable in Central Reserve Police Force being the member of the force under CRPF Act, 1949, Section 11 (1) had done laxity in his duty and indiscipline in which the above individual after the expiry of casual leave granted by competent officer for 15 days dated 16.7.2004 to 2.8.2004 without the acceptance/ permission of competent officer and without any information remained absent from his duties from dated 3.8.2004 to 3.12.2004, total 123 days. In this way, despite being the member of a disciplined Force, had done a punishable offence under Section 11 (1) of C.R.P.F. Act, 1949.*

ARTICLE II

*That Force No. 015080299, constable Samey Singh, B/55, being the member of the force under the CRPF Act, 1949, Section 11 (1) had done laxity in his duty and indiscipline in which the above said individual is habitual of remaining absent*

*from leave. Above individual in the year 2002 from dated 11.8.2002 to 14.8.02 total 4 days remained absent from leave, dated 20.12.02 to 27.01.03 total 39 days, dated 4.7.03 to 8.8.03 total 36 days, dated 27.11.03 to 29.11.03 total 03 days and 29.3.04 to 2.5.04 total 35 days remained absent. In this way, despite being the member of a disciplined Force had done punishable offence under CRPF Act, 1949, Section 11 (1).”*

3. During the course of inquiry, evidence of four witnesses was recorded. The first witness- *Sh. Pal Siwal (PW-1)* had deposed that after expiry of the sanctioned leave of 15days, the petitioner had not reported for duty despite sending two letters to him, which were not even replied to. He further stated that arrest warrants were issued against the petitioner and in pursuance thereto, he had reported on duty on 3<sup>rd</sup> December, 2004.

4. The second witness- *Havaldar B.K. Nawaar (PW-2)* had deposed about the leave record as well as the past record of the petitioner. The third witness- *Havaldar Mukesh Chander (PW-3)* had also deposed about the petitioner proceeding on sanctioned leave of 15 days and thereafter, remaining unauthorizedly absent for 123 days. The deposition of *Constable Raju K.S. (PW-4)* goes on to corroborate the deposition of afore-referred PW-2 & PW-3.

5. It is evident from the Inquiry Officer's report of 5<sup>th</sup> February, 2005 that the petitioner's earlier absence was regularized by converting the period of absence to commuted leave, half pay leave and leave without pay respectively. It is a matter of record that the petitioner had participated in the inquiry proceedings and the evidence was recorded in

his presence and a copy of the inquiry proceedings as well as report were duly furnished to him. Pertinently, the petitioner had not cross-examined the afore-referred four witnesses, who had deposed against him during the inquiry proceedings.

6. The stand taken by the petitioner during the inquiry proceedings was that he was administered something and he was not in his senses and so, it was not possible for him to intimate the authorities concerned or to seek extension of leave. According to the petitioner's counsel, the wife of the petitioner is illiterate and so, she could not inform the authorities concerned about the illness of the petitioner.

7. As per the medical documents placed on record by the petitioner, The Chief Medical Officer of MCD hospital in Nangloi, Delhi had declared him fit to join duty on 9<sup>th</sup> August, 2004. The petitioner has placed on record a medical certificate from Shaili Nursing Home, Jhajjar, Haryana where he was an OPD patient from 2<sup>nd</sup> September, 2004 up to 26<sup>th</sup> September, 2004. Relevantly, there is no medical document on record to show that the petitioner was under treatment from 10<sup>th</sup> August, 2004 to 17<sup>th</sup> August, 2004.

8. The penalty of removal from service inflicted upon the petitioner was challenged by him by way of a statutory appeal, which stood dismissed vide order dated 19<sup>th</sup> August, 2005 (*Annexure A-2*). As already noted above, the petitioner's revision petition against the appellate order already stands dismissed vide impugned order dated 18<sup>th</sup> November, 2005.

9. The challenge to the impugned order and the penalty imposed upon

the petitioner is on the ground that he was suffering from fever and psychotic disorder, for which he was being treated at Shaili Nursing Home. According to the petitioner's counsel, he was advised bed rest for two months and twenty five days i.e. from 2<sup>nd</sup> September, 2004 up to 26<sup>th</sup> November, 2004 by the doctors at Shaili Nursing Home and since the petitioner had joined back on duty on 3<sup>rd</sup> December, 2004, therefore, the penalty imposed upon him is unjustified. He further submitted that the petitioner had remained absent from duty from 27<sup>th</sup> November, 2004 till 2<sup>nd</sup> December, 2004 i.e. only for six days and for which, the penalty of removal from service is disproportionate to the misconduct alleged.

10. It was vehemently argued by learned counsel for the petitioner that the past conduct of the petitioner could not have been taken into consideration as his earlier absence was regularized by commuting it to the kind of leaves due. Reliance was placed upon a Single Bench decision of the Jammu and Kashmir High Court in *Manoj Singh Vs. Union of India*, 2002 (8) SLR 705 to submit that in case of unauthorized absence, action taken under Section 11 (1) of the CRPF Act does not visualize the punishment of removal from service. Finally, it was urged by learned counsel that a sympathetic approach needs to be adopted, as due to his illness, the petitioner could not report for duty and so, it is a fit case to regularize the period of absence and to reinstate him.

11. On the contrary, learned counsel for respondents' submitted that the medical record from a private hospital has rightly not been relied upon, as the petitioner ought to have taken treatment from the Base Composite Hospital, CRPF, Jharoda Kalan, New Delhi, particularly when

he is a resident of Delhi and there is no justification for him to travel to a remote place in Jhajjar, Haryana for taking treatment from a private nursing home. It was pointed out by the respondents' counsel that it is not the case of the petitioner that he was not satisfied with the treatment given to him at the MCD Hospital at Nangloi, Delhi and the impugned medical record produced by the petitioner, though from a private nursing home, indicates that he was taking treatment therefrom as an outdoor patient and was not admitted in the hospital and there is no whisper in any of the medical documents produced by the petitioner that he was suffering from any kind of delirium or was not in his senses. It was further pointed out that as per the medical certificate of 26<sup>th</sup> November, 2004, the petitioner was suffering from psychotic disorder, which was diagnosed as depression only.

12. It was submitted by the respondents' counsel that the past record of the petitioner can certainly be taken into consideration and to submit so, reliance was placed upon a decision of the Supreme Court in State of Punjab and ors. Vs. Charanjit Singh, (2003) 8 SCC 458 and the decision of 3<sup>rd</sup> October, 2012 of a Division Bench of this Court in W.P.(C) 6657/1999 Sunil Kumar Vs. Union of India & ors. to submit that by treating the period of absence as leave, the misconduct of unauthorized absence does not get condoned. Thus, it was submitted that in view of the fact that the petitioner habitually absented himself from duty, the punishment awarded is commensurate with the misconduct committed by him and so, this petition lacks substance.

13. We have considered the submissions advanced by both the sides in

the light of the evidence on record and the decisions cited. A bare perusal of the counter affidavit and copy of medical record of the petitioner reveals that the petitioner had been taking treatment as an outdoor patient from Shaili Nursing Home, Jhajjar, Haryana and none of the medical prescription indicates that the petitioner was suffering from any kind of delirium or that he was not in his senses. At best, the petitioner was found to be suffering from depression, which was not of such a magnitude that would leave him senseless. So, there was no justification whatsoever for the petitioner for not seeking extension of leave. It is a gross act of indiscipline that a member of the Armed Force remains unauthorizedly absent. Such kind of misconduct, as committed by the petitioner, infact deserves the penalty of '*dismissal from service*'. However, the Authorities concerned have been lenient to award the penalty of '*removal from service*'.

14. The argument advanced by learned counsel for the petitioner that the petitioner was served with a minor penalty charge-sheet under Section 11(1) of the Act whereas at the end of the inquiry, a major penalty of *removal from service* was inflicted upon him, is of no consequence as the said issue is no longer *res integra*. In a case of similar nature, the view taken by the Jammu and Kashmir High Court in the case of Manoj Singh (supra), that the order of *removal from service* passed under Section 11 (1) of the CRPF Act and Rule 27 of the Rules was unjustified, has been negated by the Supreme Court in Union of India Vs. Ghulam Mohd. Bhat, (2005) 13 SCC 228 by categorically declaring that the punishment of removal from service for absence without sanctioned leave, can be

awarded by competent authority under Section 11(1) read with Rule 27 of the CRPF Rules, even if the delinquent is not prosecuted for an offence under Section 9 or Section 10.

15. While examining the scope of Section 11 (1) of the CRPF Act read with Rule 27 of the CRPF Rules, 1955 the pertinent observations made by Supreme Court in Ghulam Mohd. Bhat (*supra*), are as under:-

7. *It may be noted that [Section 9](#) of the Act mentions serious or heinous offences and also prescribes penalty which may be awarded for them. [Section 10](#) deals with less heinous offences and clause (m) thereof shows that absence of a member of the force without leave or without sufficient cause or overstay without sufficient cause, is also mentioned as less heinous offence and for that also a sentence of imprisonment is provided. It is, therefore, clear that [Section 11](#) deals with only those minor punishments which may be awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of dismissal can certainly be awarded thereunder even if the delinquent is not prosecuted for an offence under [Section 9](#) or [Section 10](#).*

8. *It is fairly well settled position in law that removal is a form of dismissal. This Court in Dr. Dattatraya Mahadev Nadkarni (since deceased by his L.Rs.) v. Municipal Corporation of Greater Bombay (AIR 1992 SC 786) explained that removal and dismissal from service stand on the same footing and both bring about termination of service though*

*every termination of service does not amount to removal or dismissal. The only difference between the two is that in the case of dismissal the employee is disqualified from future employment while in the case of removal he is not debarred from getting future employment. Therefore, dismissal has more serious consequences in comparison to removal. In any event, [Section 11\(1\)](#) refers to Rules made under the Act under which action can be taken. Rule 27 is part of Rules made under the Act. Rule 27 clearly permits removal by the competent authority. In the instant case the Commandant who had passed the order of removal was the competent authority to pass the order.”*

16. Coming next to the argument of the learned counsel for the petitioner that the period of the petitioner’s absenteeism ought to have been regularized by treating it to be leave period or treating it as leave without pay, we find no substance in it, as the Supreme Court in the case of Charanjit Singh (supra) has reiterated in no uncertain terms that a dismissal order stipulating that the period of absence is treated as leave, would not amount to condonation of the misconduct. In the instant case, no leave was due to the petitioner and there is no justification to treat the period of the petitioner’s absence as leave without pay because his medical record does not justify it from any angle. A Division Bench of this Court in the case of Sunil Kumar (supra) has gone to the extent of holding that even if a charge is not framed in respect of the past conduct, still it can be taken into consideration unless it can be demonstrated that

any prejudice is caused. In the instant case, the second charge is regarding the past record of the petitioner and in view of the dictum of Division Bench of this Court in Sunil Kumar (supra), the petitioner's counsel is not justified in contending that the past record of petitioner cannot be taken into consideration. The Supreme Court in the case of Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad, (2010) 5 SCC 775, after taking note of a conspectus of decisions on the scope of judicial review in disciplinary matters, had concluded as below:-

*“14. The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal. The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the Court or a Tribunal would not substitute its opinion on reappraisal of facts.”* (emphasis added)

17. Upon considering the instant case in its totality, we find that neither the impugned order, nor the inquiry proceedings suffer from any procedural irregularity or any illegality and that the punishment inflicted upon the petitioner is legal and just, which does not call for any interference by us.

18. The petition is accordingly dismissed, while leaving the parties to bear their own costs.

**SUNIL GAUR, J**

**HIMA KOHLI, J**

**APRIL 04, 2016**

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