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

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Date of Decision: August 02, 2016

+ W.P.(C) 9088/2015

SUBHASH CHANDER

..... Petitioner

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

versus

UNION OF INDIA

..... Respondent

Represented by: Ms.Shiva Lakshmi, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

CM No.20575/2015

Allowed subject to just exceptions.

CM No.20573/2015 & 20574/2015

For the reasons stated in the applications delay in filing and re-filing the writ petition is condoned.

Applications are disposed of.

WP(C) 9088/2015

1. The petitioner is aggrieved by the order dated December 16, 1993 whereby the Disciplinary Authority imposed a penalty of 'Dismissal from Service' for his misconduct of overstaying on leave. Since the appeal preferred by the petitioner was dismissed on April 21, 1994 and the revision was also dismissed on January 25, 1995, he filed mercy petition which was also dismissed vide order dated February 23, 1996.

2. After dismissal of his mercy petition, the petitioner filed Civil Suit No.S-91/06/98 filed in May, 2012 which was decreed by learned Senior Civil Judge, Delhi. However, the said decree was set aside in RCA No.49/2012 filed by the respondent herein. The petitioner again filed RSA No.247/2013 before this Court wherein he was permitted to challenge the order of dismissal by invoking writ jurisdiction of this Court hence this writ petition.

3. The petitioner was enrolled as Constable with CISF on March 01, 1988. On August 01, 1992 he was sanctioned 15 days leave from August 05, 1992 to August 26, 1992 to enable him to leave his ailing wife at his native place. The petitioner failed to report for duty on the due date i.e. August 27, 1992. Two call up notices were sent to him on August 31, 1992 and October 17, 1992 at his residential address furnished by him in his service record. The second call up notice dated October 17, 1992 was returned by the postal authorities with the remarks as “ADDRESSEE ALREADY LEFT FOR DUTY”. The petitioner, however, reported for duty only on November 03, 1992 after overstaying of leaves by 68 days. At the time of joining he furnished some papers to justify his overstay of leave on account of illness of his wife and child.

4. Decision was taken to deal with the misconduct of the petitioner in accordance with the Rule 34 of CISF Rules, 1969. Memorandum of charge dated August 14, 1992 along with its annexures containing articles of charges, imputations and list of documents and list of witnesses was served on the petitioner calling upon him to submit a written statement of his defence as well whether he desired to be given personal hearing. He was also directed to inform in respect of the charges not admitted so that inquiry could be restricted to only the charges denied by him.

5. The response submitted by the petitioner on November 23, 1992 contained the following facts narrated in his defence:-

- (i) He admitted 15 days leave being sanctioned to him to enable him to drop his wife to his native place who visited his unit all of sudden.
- (ii) His wife had some pain due to exertion during journey as she had undergone surgery.
- (iii) He requested for allotment of a quarter to him in town for two months to enable him to provide medical treatment to his wife but his request was not acceded to.
- (iv) He was forced to take his wife to the native place for the medical treatment and he being a poor person could not arrange treatment from the Government hospital on payment, hence got her treated from a civil doctor on credit.
- (v) He sent one inland letter giving complete details of illness of his wife and after his wife recovered from her illness, he left her at in-laws house and reported for duty.
- (vi) To justify the overstay he enclosed copy of some medical certificates issued by the Dr.Randhir Singh, BAMS.

6. Since the petitioner denied all the charges, an inquiry was conducted into the alleged misconduct. On finding the petitioner guilty of the charges, he was awarded the punishment of dismissal from service with effect from December 16, 1993 i.e. the date of passing of the final order. A copy of the inquiry report was also sent to the petitioner to submit his representation.

7. The petitioner was served with the following article of charges:-

Article of Charge No.-I

“An act prejudicial to good order and discipline of the Force in that No.884520838 Constable Subhash Chand of CISF Unit, IOC (GR), Baroda was granted 15 days CL from 5.8.92 to 26.8.92 with permission to avail prefix, ineterfix and suffix and

failed to report for duty on 27.8.92 (FN). He remained OSL from 27.8.92 to 2.11.92 for 68 days without any information/permission from the competent authority. Thus his above act of deliberately remained absent from duty, Constable Subhash Chand has exhibited gross misconduct and indiscipline which is highly unbecoming of a member of the Force.”

Article of Charge No.-II

“No.884520838 Const.Subhash Chand of CISF Unit, IOC(GR), Baroda, remained absent from duty voluntarily without any leave/permission from the competent authority from 27.8.92 to 2.11.92. Thus he has exhibited gross indiscipline and misconduct which is unbecoming of a member of an Armed Forces of the Union”.

Article of Charge No.-III

“Gross misconduct and grave indiscipline in that No.884520838 Const.Subhash Chand of CISF Unit, IOC(GR), Baroda has wilfully disobeyed the instructions to report forthwith for duty issue by the senior officer vide Regd. Letter No.E-24024/CISF/GR/Disc/92/3284 dated 31.8.92 and letter No.E-24024/CISF/GR Dic-7/92/2484 dated 17.10.92”.

8. At the stage of inquiry three witnesses were examined to prove OSL for 68 days. On failure of the petitioner to report for duty on the due date i.e. August 27, 1992 two call up notices sent to the petitioner at his native place (the address furnished by him in official record) were also proved along with the fact that both the said notices were not responded to by the petitioner.

9. PW-1 Inspector/Exe A.K.Verma of CISF Unit IOC(GR) Baroda testified about sanction of 15 days leave on his recommendation vide leave certificate exhibited 1 by the Assistant Commandant (Plant) to the petitioner. He also stated that on failure of the petitioner to report for duty on the due date i.e. August 27, 1992, OSL report Ex.2 was sent to the Commandant

vide letter dated August 28, 1992. Copy of the call up notice dated August 31, 1992 sent by registered post as exhibit 3 and call up notice dated October 17 1992 exhibited 5 was returned with the remarks as “ADDRESSEE ALREADY LEFT FOR DUTY”. Inspector/Exe A.K.Verma had also recorded entry Ex.6 about arrival of the petitioner vide GD entry No.212 at 11:30 hours on November 03, 1992. He also placed on record copy of the joining report.

10. PW-2 ASI/C/K Rakesh Sood of CISF Unit IOC (GR) Baroda deposed about the call up notices and the petitioner reporting for duty on November 03, 1992 overstaying leave by 68 days and the case file being sent for disciplinary action.

11. PW-3 Constable D.Gogoi ‘B’ coy writer of CISF Unit IOC(GR) Baroda has also deposed about sanction of 15 days leave to the petitioner and his failure to report on duty on expiry of the period of leave and sending of call up notices to him.

12. After the department led the evidence, petitioner was also examined. In his statement he admitted overstaying of leave but justified on the ground that his wife came to his unit along with their child in sick condition with his father. Despite his request for providing a quarter for two months, his request was not acceded to. Rather leave was sanctioned to him to leave his family at the native place but because of serious nature of ailment of his wife and child, he was constrained to stay there to provide necessary care and medical treatment and that at the time of joining duty necessary medical documents were furnished and prior to that he had also sent communication highlighting his plight with a request for extension of leave by two months.

13. In his defence statement the petitioner had explained the reason behind sudden visit of his wife to the unit. He stated that when he questioned

his wife about her sudden visit, she informed that she received a letter that the petitioner had met with an accident and was admitted in a hospital and that is why had she come along with their child and his father. He sent back his father and tried to arrange accommodation for his family for two months but he was not accommodated. Rather he was sanctioned leave so that he could leave his family to his native place. While justifying his overstay by 68 days his version is that since there was none to look after his family he was providing necessary care & treatment and intimated the Commandant with request to extend his leave.

14. After considering the medical certificates produced by the petitioner justifying his absence from duty/overstaying leave by 68 days the Enquiry Officer was of the view that the nature of certificates furnished by him raised doubts about genuineness of the reason i.e. illness of his wife and child. The said certificates were opined to be managed by the petitioner to cover his delinquency. While dealing with the contention of the petitioner that he sent intimation for extension of leave to Commandant, the Enquiry Officer was of the view that without receiving any order for extension of leave, being a member of disciplined Force he was duty bound to adhere to rules and regulations. Further producing medical certificate for one long stretch i.e. August 25, 1992 to October 28, 1992 proved that he had manipulated and produced false certificate.

15. The Enquiry Officer also noted that two call up notices were sent at his home address by registered post despite that he failed to report for duty denying having received the call up notices which plea could not be accepted.

16. Since the factum of overstaying leave by 68 days is not in dispute, the Enquiry Officer and Disciplinary Authority were required to examine the

justification for overstaying the leave. Justification given is due to illness of his wife and son who was about four months old at the time when leave was sanctioned to him.

17. During the course of argument learned counsel for the petitioner has advanced three contentions:-

(i) The wife and child of the petitioner were seriously ill and they were not provided with any accommodation to stay and get the treatment at the place of posting of the petitioner.

(ii) The medical certificates produced by the petitioner from a Civil Doctor regarding treatment of his wife were not properly appreciated.

(iii) Penalty of dismissal awarded to the petitioner is disproportionate to the misconduct held to be proved against him.

18. Perusal of the record shows that when petitioner reported for duty after overstaying leave by 68 days, he produced a medical certificate which is to the following effect:-

*'BENIWAL CLINIC & LABORATORY
SALWAKAR, HARYANA*

Dated 25 August to 28 October 1992

MEDICAL CERTIFICATE

Certified that Smt.Sunita W/o Sh.Subhash Chander is continuously suffering from Abdominal pain due to operation technique. So that Sh.Subhash Chander cannot attend his duty. He was necessary at home.

*Sd/xxx
Sunita*

*Sd/xxx
Dr.Randhir Singh*

28.10.92

*B.A.M.S.
Regd. No.9605"*

19. There are two medical prescriptions exhibit D-3 and D-4 prepared at the Medical Department, Indian Oil Refinery, Gujarat both dated July 30, 1992. Exhibit D-3 is in respect of Smt.Sunita wife of the petitioner and the symptoms and advise recorded therein are as under:-

“LMP (10.6.1992)
Missed period
Breast feeding *X c 4/12*

Advice *Urine for pregnancy tests*

Sd/-
30.7.1992”

20. The above prescription shows that she was not suffering from any ailment. We do not know whether she had undergone UPT (Urine Pregnancy Tests) and whether it was positive or negative but the fact remains that she had complained of missing period and nothing else. The second prescription of the same date is in respect of Vikas Kumar, four months old son of the petitioner. On the said MLC the illness complained of was fever for one day and apart from prescribing Crocin, Phanargan and some other medicines which are not legible on exhibit D-4, he was advised sponging, fluids orally as well urine test. Thus, the nature of ailment from which the infant son of the petitioner was suffering could be due to long journey undertaken by the mother which might have caused fever with duration of one day.

21. Thus, it was not a case where the wife and infant child aged about four months of the petitioner could be said to be suffering from any serious ailment. The petitioner has also placed on record copy of his application dated August 24, 1992 for submission of medical bills and prescription with request for grant of extension of leave for two months mentioning therein

about his wife being seriously ill with no body to take care and medical advice for bed rest under proper supervision and care.

22. Apart from filing photocopies of a postal receipt addressed to Commandant, CISF, Baroda, Gujarat and a UPC, the petitioner filed medical certificates issued by Dr.Randhir Singh, BAMS which are dated August 25, 1992, August 30, 1992, September 06, 1992, September 11, 1992, September 19, 1992, September 27, 1992, October 05, 1992, October 12, 1992, October 19, 1992, October 23, 1992 and October 28, 1992. In the prescription apart from certain medicines even some injections TDS have been prescribed. Specimen of one such medical certificate is as under:

*'BENIWAL CLINIC & LABORATORY
V.SALWAN (KARNAL)*

*Dr.Randhir Singh
B.A.M.S.
Regd No.9605
Date: 25.8.92*

Ref No.....

Certified that Mrs.Sunita Devi W/o Sh.Subhash Chander is suffering from septic vaginitis and continuously bleeding from vagina. Her condition is very serious. So she is advised to take complete bed rest and go on upto five days.

Medicines-

- | | | |
|----|-------------------------|-------------|
| 1. | <i>Inj gentasporin-</i> | <i>TDS</i> |
| 2. | <i>Chromostate Inj-</i> | <i>B.D.</i> |
| 3. | <i>Tab Capline-</i> | <i>TDS</i> |
| 4. | <i>Becasale cap-</i> | <i>BD</i> |

*Sd/-xxxx (25.8.92)
Dr.Randhir Singh
B.A.M.S.
Regd No.9605'*

23. The diagnosis and the treatment prescribed on the medical certificate raises a serious question about competency and qualification of issuing

authority. Dr.Randhir Singh who has claimed himself to be qualified as BAMS Doctor is not only advising injection but also treating bleeding from vagina and the language used by him on the medical certificate can only be used by a quack. A BAMS doctor cannot be a Gynaecologist. The manner in which these certificates have been procured in wholesale with different dates by the petitioner, could only lead to the inference which has been drawn by the Enquiry Officer as well the Disciplinary Authority.

24. The question arises for proportionality of the sentence. In the additional counter affidavit filed by the respondent the previous punishment awarded to the petitioner haVE been enumerated as under:-

<u>Misconduct</u>	<u>Punishment awarded</u>	<u>Date</u>
Overstaying leave for 34 days from August 31, 1989 to October 03, 1989	Withholding of one increment for a period of one year with cumulative effect	January 10, 1990
Away Without Leave (AWL) for 65 days from March 01, 1990 to May 04, 1990	Reduction of pay by one stage for a period of one year	February 06, 1993
Overstaying leave for 46 days from October 14,1991 to November 28, 1991	Withholding of one increment for a period of one year from the date due next without cumulative effect	August 19, 1992
Overstaying leave for 77 days from April 10, 1992 to June 23, 1992	Withholding of one increment for one year with cumulative effect	September 24, 1992
AWL (Away Without Leave) from Unit lines from May 26, 1991 to August 23, 1991	Reduction of pay by one stage	February 26, 1993
Overstaying leave for 33 days from March 22, 1991 to April 23, 1991	Withholding of one increment for a period of one year without cumulative effect	March 24, 1993

Overstaying leave for 31 days from April 12, 1993 to May 12, 1993	Censure	June 21, 1993
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25. Now the question that requires attention is whether the penalty of dismissal imposed on the petitioner can be termed to be so disproportionate as to shock the conscience of the Court. In the case reported as AIR 1996 SC 736 State of U.P. & Others Vs .Ashok Kumar Singh & Anr. while dealing with the question of awarding penalty to a member of disciplined force for overstaying leave, it was observed as under:-

“We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court’s observation that ‘his absence from duty would not amount to such a grave charge’. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that ‘the punishment does not commensurate with the gravity of the charge’ especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out.”

26. The petitioner before us is a member of disciplined force. He had been visited with seven penalties for his propensity to overstay leave/away from leave which was almost a regular feature. From the service record of the petitioner, the only inference that can be drawn is that he is incorrigible. Under the circumstances, the penalty imposed cannot be called disproportionate to the gravity of the misconduct and noting that he had

manipulated medical certificate from a quack who was neither qualified to treat the wife of the petitioner nor could issue such certificate just to cover up the delinquency of the petitioner.

27. The respondent has exercised the power on the basis of facts which are not refuted by the petitioner. Learned counsel for the petitioner has not been able to show any patent illegality which has the effect of vitiating the action of the respondents. We are also unable to infer any procedural impropriety in the action of the respondents.

28. The writ petition being without any merit is dismissed without any order as to costs.

CM No.20572/2015

Dismissed as infructuous.

PRATIBHA RANI, J.

PRADEEP NANDRAJOG, J.

AUGUST 02, 2016

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