

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition No.533 of 2005

Shankar, S/o Shri Sukaji, Aged about 50 years, Ex. Barbar, Force No. 842330174, Central Industrial Security Force, Bhilai Unit, Bhilai, District Durg, Presently residing at House No. 57/1, Maitri Nagar, Risali, Bhilai, District Durg (C.G.)

---- Petitioner

Versus

1. Union of India, Through the Secretary, Ministry of Home, North Block, New Delhi.
2. The Deputy Inspector General, Central Industrial Security Force, Bhilai Steel Plant – Unit, Bhilai – 490 001, District Durg (C.G.)
3. The Commandant, Central Industrial Security Force, Bhilai Steel Plant – Unit, Bhilai – 490 001, District Durg (C.G.)
4. The Assistant Commandant/J.A.O., Central Industrial Security Force, Bhilai Steel Plant – Unit, Bhilai – 490 001, District Durg (C.G.)
5. The Registrar, Central Administrative Tribunal, Jabalpur Bench, South Civil Lines, Jabalpur (M.P.)
6. The Inspector General (North Sector), Central Industrial Security Force, CISF Campus, Saket Post, Malviya Nagar, New Delhi – 110 017.

---- Respondents

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For Petitioner: Mr. B.P. Rao, Advocate.

For Respondents No.1 to 4 and 6: -

Mr. Rajesh Kumar Kesharwani, Central  
Government Standing Counsel.

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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

01/11/2017

1. The petitioner calls in question the order dated 10-6-2003 inflicting penalty of removal from service and also seeks to challenge the dismissal of appeal dated 5-8-2003 by the appellate authority as

also the order dated 6-2-2007 whereby the review application has been dismissed by the reviewing authority.

2. Mr. B.P. Rao, learned counsel appearing for the petitioner, submits that in a regular departmental enquiry conducted by the respondents, the petitioner has been removed from service on the charge that he remained absent from duty from 29-10-2002 to 21-11-2002 ignoring the fact that he was already granted leave for 15 days from 6-11-2002 to 21-11-2002 duly sanctioned, but on account of certain urgent work and call from his native place, he left the headquarter on 29-10-2002 and finding guilty of misconduct, he has been directed to be removed from service. He further submits that penalty of dismissal from service for unauthorised absence of 24 days, particularly when he was already granted leave for 15 days and he was allowed to leave headquarter on 2-11-2002, is harsh, excessive and disproportionate to misconduct, therefore, the order of dismissal as approved by the appellate authority and the reviewing authority are liable to be set aside.
3. Mr. Rajesh Kumar Kesharwani, learned Central Government Standing Counsel, submits that the petitioner was a member of Central Industrial Security Force (CISF) and in the service of a disciplined force, he ought not to have left the headquarter prior to 29-10-2002, as he was allowed to proceed on leave from 2-11-2002, such an absence is unauthorised and strict penalty is required to be inflicted which has been done, therefore, the penalty inflicted is in accordance with law and no interference is called for.
4. I have heard learned counsel for the parties and considered the

rival submissions made herein-above and also perused the impugned orders.

5. It is not in dispute that the petitioner was granted leave duly sanctioned from 6-11-2002 to 21-11-2002 and he was allowed to proceed on leave on 2-11-2002, but he proceeded on leave from 29-10-2002 without any due information to the competent authority leading to initiation of departmental enquiry and inflicting of penalty of removal from service, as he remained unauthorisedly absent from 29-10-2002 reported for duty on 22-11-2002.
6. Law in this regard is well settled. The question is whether the punishment of removal from service inflicted upon the petitioner for remaining unauthorised absence for 24 days is justified or not.
7. In above connection, reference may be made to a decision of the Supreme Court in the matter of **Krushnakant B. Parmar v. Union of India & Anr.**<sup>1</sup> in which Their Lordships of the Supreme have held that in a departmental enquiry, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct. Their Lordships further held that absence from duty without any application or prior permission may amount to unauthorized absence, but it would not be willful. Paragraphs 17 and 18 of the report read as follows: -

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be willful.

18. Absence from duty without any application or

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<sup>1</sup> 2012 AIR SCW 1633

prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.”

8. Similarly, in the matter of **Chhel Singh v. M.G.B. Gramin Bank**

**Pali, and Ors.**<sup>2</sup>, the Supreme Court has held that in order to hold a person guilty for unauthorized absence from duty, the unauthorized absence from duty must be willful and deliberate. In paragraph 15 of the report, Their Lordships of the Supreme Court observed as under: -

“15. ... There was no allegation that the appellant’s unauthorized absence from duty was willful and deliberate. The Inquiry Officer has also not held that appellant’s absence from duty was willful and deliberate. It is neither case of the Disciplinary Authority nor the Inquiry Officer that the medical reports submitted by the appellant were forged or fabricated or obtained for any consideration though he was not ill during the said period. In absence of such evidence and finding, it was not open to the Inquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the doctors without any valid reason and on the ground of 24 days delay.”

9. In the matter of **Ahmedabad Municipal Transport Service v.**

**Dashrathbhai Balubhai Brahmakshatriya**<sup>3</sup>, the Gujarat High Court has held that notwithstanding the past record of similar misconduct, once the Tribunal came to the conclusion that there was justifiable cause for the unauthorized absence for which charge-sheet was served and penalty was imposed, the post record of unauthorized absence would lose its significance.

10. If the facts of the present case are examined in view of the law laid

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2 2014 AIR SCW 6539

3 1996 II L.L.J. 544

down, it would appear that the petitioner remained unauthorisedly absent from 29-10-2002 to 1-11-2002, as he was allowed to proceed on leave on 2-11-2002 which is apparent from the order of removal dated 10-6-2003. Even there is no finding and charge framed that absence of the petitioner was willful. The petitioner explained that his house was collapsed and his nephew died and therefore he immediately rushed on 29-10-2002. In absence of charge having been framed that unauthorised absence of the petitioner is willful and deliberate and no finding having been recorded that absence of the petitioner for 24 days was willful and deliberate, particularly in light of the explanation offered by the petitioner, the penalty of removal from service inflicted upon the petitioner for unauthorised absence of 24 days cannot be said to be commensurate with the guilt / misconduct alleged to have been committed by the petitioner. Moreover, the period of 24 days has already been declared as *dies non*. Thus, removal of the petitioner from service for unauthorised absence of 24 days is in teeth of the decisions rendered by the Supreme Court in **Krushnakant B. Parmar** (supra) and **Chhel Singh** (supra), as the Supreme Court in **Chhel Singh** (supra) for absence of 10 and ½ months held that since there is no allegation that the workman's unauthorized absence from duty was willful and deliberate, Their Lordships were pleased to direct reinstatement by interfering with the order passed by the High Court.

11. As a fallout and consequence of aforesaid discussion, the order of the disciplinary authority upheld by the appellate authority and the

reviewing authority cannot be maintained and they are hereby set aside. This Court could have directed for reinstatement of the petitioner, however, it is informed that the petitioner had already attained the age of superannuation. Therefore, the petitioner will be entitled for consequential service benefits and back-wages to the extent of 50%.

12. The writ petition is allowed to the extent sketched herein-above.

No order as to cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge

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