

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3591 OF 2013

Sanjay Kumar,	}	
s/o. Sh. Sultan Singh,	}	
aged about 42 years,	}	
D. O. B.: 114.08.1971,	}	
R/o. Village & Post Office-	}	
Ahri Tehsil & District -	}	
Jhajjar, Haryana	}	Petitioner
versus		
1. Union of India,	}	
through its Secretary, Govt.	}	
of India, Ministry of Home	}	
Affairs, New Delhi	}	
	}	
2. Inspector General,	}	
Western Sector, Central	}	
Reserve Police Force,	}	
Navi Mumbai - 400 614	}	
	}	
3. Commandant	}	
97, Battalion, Central	}	
Reserve Police Station,	}	
Narsingarh, Agartala	}	
	}	
4. Director General of Police,	}	
Central Reserve Police Force,	}	
CGO Complex, Lodhi Road,	}	
New Delhi	}	Respondents

Mr. D. S. Kauntae for the petitioner.

Mr. Jasbir Saluja with Mr. A. R. Varma for
the Union of India.

CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

Reserved on 23rd November, 2017
Pronounced on 22nd December, 2017

JUDGMENT:- (Per S. C. Dharmadhikari, J.)

1. The petitioner has revived this writ petition on the strength of the order dated 27th March, 2015, which recalls an earlier order of 11th November, 2013. The order of the learned Single Judge dated 27th March, 2015 reads as under:-

“1 The Civil Application is taken out to recall the order dated 11 November 2013 passed in Writ Petition. The order dated 11 November 2013 reads as follows :-

“Learned Counsel for the Petitioner seeks leave to withdraw the Petition with liberty to challenge the order of the Director General, C.R.P.F., New Delhi.

2. The Petition is allowed to be withdrawn with liberty as prayed.

3. Registry to issue an authenticated copy of this order to the learned Counsel for the Petitioner.”

2 Petitioner has averred in the present Application that after withdrawing the aforesaid Petition, the Petitioner filed a fresh Petition before the Division Bench of the Delhi High Court and by an order dated 27 March 2014, the Delhi High Court had dismissed the Petition on the ground of Territorial jurisdiction. The Petitioner has, therefore, approached this Court again by way of the present Civil Application for revival of the Writ Petition No.3591 of 2013.

3 Learned Counsel for the Petitioner submitted that it was an inadvertent and unintentional bonafide mistake of the Petitioner in withdrawing the Writ Petition and in view of the order of the Division Bench of the Delhi High Court dismissing the Petition on the ground of Territorial jurisdiction, the order dated 11 November 2013 may be recalled.

4 Having heard the learned Counsel for the parties, in the interest of justice, I am inclined to allow the Civil Application. Hence, the Civil Application is allowed in terms of prayer clause (a).

5 Office to verify and place the Writ Petition before the appropriate Bench.”

2. After this order, the petition was restored to the file of this court and placed before a Division Bench. On 28th June, 2016, a Division Bench of this court passed the following order:-

“ Not on board. Taken on Board.

Leave to amend to place on record subsequent events/orders.

Amendment to be carried out within a period of two weeks.

Amended copy be served on the other side.

Additional affidavit if any, be filed in advance. Petitioner to file short Synopsis and written submissions by the next date. Stand over 27th July 2016 at 3 p.m.”

3. In terms of this order and the leave obtained, the petitioner amended the petition on 2nd February, 2017. On the amended petition, we have heard the advocate appearing for the petitioner and the respondents.

4. By this writ petition under Article 226 of the Constitution of India, the petitioner claims the following relief:-

“a) Hold and declare the entire Enquiry Proceedings as vitiated and on perusal of record proceeding of the case and after examining the legality, validity and the propriety, quash/set aside the first impugned order dt. 03.5.1999 (Ex. 'C') passed by the disciplinary authority, order dt. 03.11.1999 (Exhibit 'E') passed by the appellate authority and order dt. 12.8.2008 (Ex. 'L') and the order dt. 16.9.2008 (Annex – V) passed by the respondent No. 4 rejecting the final representation/appeal being wholly illegal, unconstitutional and unjustified on the face of record.

b) After quashing/setting aside all the aforesaid impugned orders, direct the respondents to take back and

reinstate back the petitioner in service with retrospective effects with all consequential benefits, salary and other monetary allowances admissible under the rules, including service seniority, promotion and all other service benefits accrue in favour of the petitioner flowing from the date of reinstatement with retrospective effects accordingly.

.....”

5. The petitioner was appointed as a Constable in the Central Reserve Police Force (“CRPF” for short) on 14th April, 1998 and was deployed at Narsingarh, Agartala. On 28th February, 1999, a departmental inquiry was held under Rule 27 of the CRPF Rules, 1955 against him by the disciplinary authority on the alleged act of misconduct. The misconduct was, not reporting in the unit/place of duty while returning from Guwahati hospital on 13th December, 1998 and allegedly deserting/leaving duty to reach his home town. All this was without any leave or proper authority from his superior officers. It is alleged that two charges were framed against the petitioner in the charge-sheet. On 29th March, 1999, the inquiry officer submitted his report to the disciplinary authority after holding that the charges are proved. The competent authority passed an order of removal from service on the alleged sole ground of the petitioner admitting his guilt. This order was passed on 31st May, 1999 and an appeal was filed by the petitioner on 19th August, 1999. The appellate authority rejected that appeal on 3rd November, 1999, after which, Civil Writ Petition (C) No. 3308 of 2000 was filed in the Delhi High

Court sometime in the year 2000. The petitioner was denied relief by that court also on the ground that it would be open for him to file a revision petition before the Inspector General of Police. That is how, obtaining liberty from the Delhi High Court, the petitioner filed a revision petition, which also has been dismissed.

6. Mr. Kauntae appearing for the petitioner has contended that the inquiry against the petitioner was concluded in utter breach of the principles of natural justice. The petitioner's counsel contended before us that he was not responsible for a belated challenge to the order of removal. The counsel submits that the order of removal has left the petitioner and his family in very pathetic condition. Mr. Kauntae has also relied upon the additional grounds incorporated in the petition by way of an amendment. These grounds read as under:-

“GROUND:- The new grounds are added as under:-

G. Because of the respondent No. 4 has failed to peruse the enquiry proceedings and list of documents by which the article of charge framed against the petitioner. It is also crystal clear from the record that petitioner was never furnished with the enquiry report. The Enquiry report only shows the documents were stated to have been inspected. The non supply of documents used by the Enquiry officer against the petitioner has vitiated the entire administrative action by the respondents. Hence the subsequent impugned order dt. 16.9.2008 passed by the respondent No. 4 is patently illegal on the face of

record and deserves to be quashed on this ground alone.

H. The entire Enquiry proceedings stands vitiated as plea of alleged 'guilt recorded by the Enquiry officer prior examining of any witness or documents. Hence recording plea of guilty by the Enquiry officer is deemed to be a 'confession' obtained by the Enquiry officer under the premise of leniency which is always inadmissible in law.

I. The finding of the Enquiry proceedings also stands vitiated as the same has been recorded on the basis of sole ground of "pleading guilty" of both the charges which cannot be a sole ground for the termination of services of the petitioner.

J. The impugned order dt. 16.9.2008 has been passed by the concerned authority respondent No. 4 purely in the mechanical manner and without examining the documents. The entire exercise of removal of the petitioner has been adopted by the respondents based on the alleged acceptance of plea of guilt which has not been corroborated by any witness at all. Hence the order of removal dt. 03.5.1999 and the order of the appellate authority dt. 03.11.1999 and the order of the revising authority dt. 12.8.2008 passed on record by the respondents only on 28.10.2013 are patently illegal on the face of record and may be quashed being wholly unjustified and unconstitutional in the eyes of law. Reliance is placed on "Chhel Singh vs. M. G. B. Gramin bank Pali and Ors. (AIR, 215 Supreme Court, 598) Krushnakant B. Parmar vs. Union of India and Ors. (2012) 3 Supreme Court Cases 178 and also Sudesh Kumar vs. State of Haryana and Ors. (2005) 11 SCC 525."

7. On the other hand, Mr. Saluja appearing for the respondents invited our attention to the record and particularly to the charge-sheet to submit that the allegations against the petitioner are extremely serious. He has admitted them as well. The petitioner

is a member of a disciplined force. He could not have abandoned it and thereafter tried to demonstrate that he has indeed reported for duty. After inviting our attention to the petition and the annexures thereto so also the affidavit in reply, it is urged that the petition be dismissed.

8. With the assistance of both advocates, we have perused the petition and the annexures thereto. We have also perused the affidavit in reply.

9. A departmental action was initiated against the petitioner for misconduct and we do not find that the charge was only pertaining to unauthorised absence from duty or unauthorised leave. The two charges Article I and Article II would indicate that, as far as the first charge is concerned, the petitioner disobeyed the department's orders and directions and after he completed his assignment, did not report for duty. He deserted that place and went to his home town without any leave or proper permission from the competent authority, which is an act prejudicial to the maintenance of discipline in the force. The second charge was far more serious. In that, the petitioner is alleged to have intentionally tampered with movement order issued to him and he falsified and altered the date of his departure on the movement order issued by the superior, which

action is a serious act of indiscipline. A departmental inquiry was ordered in accordance with the service rules and the power to hold it was never questioned. Secondly, the petitioner, as is apparent from the annexures to the petition, did not dispute that he had indeed been issued a movement order and after completing the assignment, he was expected to return and report for duty. However, after admitting this position, he has further not disputed that he did not report for duty and was absent without availing any leave. Even with regard to the second and far more serious charge, he did not raise any defence. In the inquiry report, it is recorded by the inquiry officer that after the charges were fully explained to him, he volunteered to admit them. Thus, the delinquent pleaded guilty of the charge and as enlisted in Article I and Article II. The inquiry officer specifically asked him as to whether his admission of the guilt can be recorded and the petitioner stated that he has no objection for such a recording. The petitioner has now turned around and questions the fairness of the inquiry. However, independent of his admission of the guilt, the inquiry officer carefully perused all the documents. He perused the wireless message, by which, the petitioner was despatched to Guwahati. The movement order, which was produced by the petitioner records the departure date as 31st December, 1998. The petitioner is supposed to have

manipulated this date and that is corroborated by prosecution witness Ghanshyam Upadhyaya. He also stated that without any intimation, the petitioner left for his residence. These statements were corroborated by other witnesses as well. The petitioner-delinquent, in the preliminary inquiry itself, has admitted the guilt. At the regular inquiry, the statements of the prosecution witnesses were recorded in the presence of the petitioner. Equally, the documents tendered by the prosecution also were marked and taken on record in his presence. The petitioner delinquent was repeatedly asked as to whether he admits the offence and he specifically answers in the affirmative. His only explanation was that he proceeded to home town without obtaining leave or informing his superiors because his wife aborted and after that she was not feeling well and that required the presence of the petitioner by her side. His daughter was also ill. It is in these circumstances, he had to rush home and for his family problems without taking leave or giving prior intimation. The act of forgery attributed to him was also not disputed and his explanation was that he did this because of a problem at home and he had to rush there. The inquiry officer analysed and appreciated all the materials on record. He recorded his independent satisfaction, particularly that the petitioner was relieved on 13th December, 1998. He reported on 31st January,

1999 and the movement order submitted by him shows he has been relieved on 31st December, 1998. As per the prosecution witnesses, he proceeded to his home town on medical rest on 12th December, 1998 but the petitioner left the prosecution witness Ran Singh and did not accompany him. Thus, the lame officer, who was supposed to be attended by the petitioner, himself stated that the petitioner did not attend him. The petitioner admitted that in the movement order, his departure from Bast-II was shown as 13th December, 1998 and he changed that date to 31st December, 1998 in his own handwriting and he did this to go to his home town as there was problem.

10. These findings in the inquiry officer's report were not found to be perverse or based on no evidence. There are no malafides attributed either to the inquiry officer during the course of the proceedings or in appeal for the inquiry officer's findings have been confirmed by the appellate authority and equally the revisional authority. It is in these circumstances, the punishment came to be imposed. The appellate order also makes reference to all the materials and finally, we have also perused the copy of the revisional order and which indicates that the departmental inquiry was conducted against the petitioner strictly as per the laid down procedure, rules and regulations. He

was given ample opportunity to defend his case. The copies of day today proceedings of the inquiry were given to the petitioner. He was provided with ample opportunities to cross examine the prosecution witnesses. The report of the inquiry officer was also provided to him. When the inquiry officer's report was forwarded to the disciplinary authority, once again, he was given an opportunity to represent against the proposed punishment. It is in these circumstances, though there was no provision for giving a personal hearing, yet, all the materials relied upon and forwarded by the petitioner were duly considered. The petitioner had neither requested to relieve nor informed the superiors about illness of his wife. Moreover, he failed to produce any medical record evidencing the illness of his wife. The petitioner was relieved from attending duty (he was to attend an ailing officer admitted in hospital and after discharge, bring that officer back to the barrack) on 13th December, 1998 with directions to report back to his unit, but he left for his home and remained absent from duty up to 31st December, 1998. Further, he altered the date of departure from BH 31st December, 1998 in the movement order intentionally to cover-up his illegal absence and thus, committed a grave misconduct amounting to criminal offence. In these circumstances, once the inquiry officer has proceeded as above, there was no material before the appellate and revisional

authority to accept any explanation of the petitioner tendered as an afterthought. The revisional order, copy of which has been placed before us by Mr. Saluja is also detailed and reasoned as the appellate order. It is in these circumstances that the petitioner may raise additional grounds by way of amendment and as reproduced above, but there is no merit in them. He cannot allege that the appellate and the revisional authorities have failed to peruse the inquiry proceedings, list of documents, including the documents by which the charge was framed and held to be proved.

11. The petitioner then alleges that he was never furnished copy of the inquiry report. He was never granted any opportunity to inspect them. It is in these circumstances, the order of the respondent no. 4 is now challenged. All this is an afterthought as Mr. Kauntae will now argue, but with respect, as a matter of convenience that the inquiry officer held the guilt to be proved only by relying on the admission of the petitioner and without examining any witness or documents. This argument has no merit because we have carefully perused the inquiry report, the findings of the appellate authority and the revisional authority which categorically hold that all the documents were marked in the presence of the petitioner. All the witnesses were examined

in his presence. The inquiry was concluded after repeatedly asking him as to why he wants the inquiry officer to record the admission of his guilt and the petitioner maintained throughout that it is voluntary. Thus, the inquiry is neither a formality or vitiated, as alleged in the grounds of the amended memo of the petition. We have already noted that the order is not passed only on relying on the plea of guilt, but on independent materials, including the evidence in the form of statements of the prosecution witnesses, which were not disputed and the contents of the documents. In these circumstances, we do not think that the order of removal is either illegal or arbitrary, unreasonable, unfair, leave alone malafide. We do not find any substance in the contentions of Mr. Kauntae.

12. The reliance of Mr. Kauntae on the judgment in the case of *Krushnakant B. Parmar vs. Union of India and Anr.*¹ is misplaced. In that case, the charge-sheet on the appellant was alleging absence from duty from 3rd October, 1995 and several dates thereafter in 1995 and from 10th December, 1995 to 2nd August, 1996. The Hon'ble Supreme Court found that the order of dismissal from service cannot be sustained for the inquiry officer failed to consider the relevant evidence produced by the appellant and misdirected himself in arriving at a finding of guilt against

¹ (2012) 3 SCC 178

the appellant. The same mistake was committed by the appellate authority. The Hon'ble Supreme Court discussed the factual materials in para 11 and found that the respondents before the Hon'ble Supreme Court conveniently did not make any reference to the request of the appellant to transfer him from Palanpur to any nearest place at Ahmedabad or Nadiad or Anand in Gujrat. That request was accepted and order of transfer was issued transferring him to Nadiad on 21st August, 1995 with immediate effect. The appellant was also relieved from duty at Palanpur and he joined at Nadiad. However, this order of transfer was cancelled on 4th September, 1995 and he was transferred at a distant place, which was challenged by him before the Central Administrative Tribunal. After cancellation of the order, the appellant sent a complaint that the Palanpur's superior officer was not allowing him to join duty. It is in these circumstances, the allegation of bias made by him was accepted by the Central Administrative Tribunal and the order of transfer was set aside. Then he joined duty on 11th December, 1995 and proceeded on leave. The absence that was highlighted, therefore, was for few days and did not amount to misconduct for that was within the period of his transfer. It is in these circumstances, the disciplinary inquiry was held to be vitiated and was interfered with. This judgment is distinguishable on facts. We do not find

that the petitioner before us was in any way ill-treated or the superiors acted with bias and prejudice against him.

13. Even the judgment in the case of *Chhel Singh vs. M. G. B. Gramin Bank Pali and Ors.*² is distinguishable on facts. There, the charges, though serious, were held not to be proved. The appellant there was seriously ill between the period of alleged absence from 11th December, 1989 to 24th October, 1990. He could join the duty for reasons beyond his control. He submitted the copies of the medical certificates issued by doctors. The medical reports were submitted after about 24 days. Thus, the absence from duty may be unauthorised, but was not willful and deliberate. The inquiry officer also did not arrive at such a conclusion. There was no forgery as far as the medical reports. In these circumstances, the punishment was found to be harsh and unsustainable. Even this judgment does not assist the petitioner.

14. As a result of the above discussion and finding that there is no merit in the argument of the petitioner's advocate of violation of the constitutional mandate enshrined in Articles 14 and 16 of the Constitution of India, we proceed to dismiss this petition. However, there would be no order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)