

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

% Reserved on: November 7, 2016
Decided on: April 03, 2017

+ WP (C) 9853/2015

TEK CHAND Petitioner

Through: Mr. L.R. Khatana, Mr. Sudhir Naagar and
Mr. Vijay, Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through: Ms. Jyoti Dutt Sharma and Mr. Sarfraz
Ahmed, Advocates with Mr. S.S. Sejwal,
(Law Officer)

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE V.KAMESWAR RAO

JUDGMENT

INDIRA BANERJEE, J

1. In this writ petition, the petitioner, a Constable of the Central Reserve Police Force (CRPF) has challenged an order dated 16.06.2014 of the Disciplinary Authority, whereby the petitioner was removed from service, the order dated 05.12.2014 of the Appellate Authority, whereby the appeal of the petitioner against the aforesaid order of removal was dismissed, and an order dated 22.04.2015 of the Revisional

Authority, whereby the Revisional application of the petitioner was dismissed.

2. The petitioner was appointed a constable in the CRPF on 10.06.2006. According to the petitioner he had got married in 2004, about two years before he joined service.
3. After completing his basic training, the petitioner was posted at:
 - (i) G.C. Gwalior from 18.2.2006 till 28.2.2008,
 - (ii) 65 battalion from 01.03.2008 till 20.7.2011,
 - (iii) 89 battalion from 21.7.2011 till 31.07.2011, and,
 - (iv) A-89, COY.
4. It is alleged that the matrimonial life of the petitioner was filled with discord. There were serious disputes and differences between the petitioner and his wife, for which the petitioner had to leave his wife at her parental home.
5. The petitioner claims that some time later, in 2008, the petitioner took leave of two months to fetch his wife from his parental home. However, on the complaint of his wife's family members, the petitioner was arrested for offences under Sections 498A/504/506 of the Indian Penal Code and kept in jail for 21 days.
6. It appears that while the petitioner was posted at A-89 COY, that is in Delhi and was on duty at Rohini Jail, the petitioner

applied for, and was granted earned leave of 35 days. The petitioner returned from leave on 09.11.2013.

7. However, on 16.11.2013, the petitioner again requested for leave of a further period of 25 days to attend a court case at Aligarh Court, which had been listed for hearing on 18.11.2013.
8. It appears that the Assistant Commandant of A-89, COY told the petitioner that since he had reported only on 09.11.2013, after long leave of 35 days, and there were pending leave applications of other CRPF personnel, he could not be granted leave of 25 days. Aligarh being 2-3 hours away from Delhi, the petitioner was informed that he could avail one day's leave to attend his Court case in Aligarh.
9. According to the respondents, the petitioner deserted his post without information on 16.11.2013 itself. The petitioner neither intimated the authority concerned, nor obtained its approval.
10. By a letter No.D-V-I/2013-A/89 dated 01.12.2013, the Company Commander, A-89 COY, directed the petitioner to report back to duty. The letter of 01.12.2013, was preceded by two other letters one dated 19.11.2013 and the other dated 27.11.2013.
11. The respondents also lodged an FIR against the petitioner at Samaipur, P.S. Badli, Delhi, on 17.11.2013, complaining that the petitioner had deserted his posting at Rohini Jail.

12. Since the petitioner did not report for duty, a Court of Enquiry was ordered by an office order No. LX 20/2013/89-EC-II dated 07.12.2013 and Shri Lalit Kishore, D.C. was appointed as Presenting Officer.
13. On the recommendation of the Court of Enquiry, a Departmental Enquiry was initiated against the petitioner to enquire into the charges of desertion/absence from the Camp at Rohini Jail.
14. In response to the memorandum of charges issued on 15.02.2014, the petitioner submitted an application wherein he admitted to have left the post without proper and due sanction of leave from the authorities and asked to be forgiven for the same.
15. The petitioner participated in the Departmental Enquiry. After evaluation of the proceedings and analysis of the statements of the petitioner and other prosecution witnesses, the petitioner was found guilty of committing a grave offence and an act of misconduct by leaving the Camp and remaining absent from duty without sanction and permission of the Competent Authority.
16. For disobedience of orders and carelessness in performance of duties, the petitioner was found to be unfit to be retained in service. Accordingly, the petitioner was removed from service

w.e.f. 16.06.2014 by an office Order No.P-Eight-3/14-89-Estt.-Two-89 Battalion dated 16.06.2014. The petitioner filed an appeal dated 11.08.2014 with the DIG, South Srinagar. The said appeal has apparently been dismissed by a reasoned order dated 05.12.2014.

17. A Revisional application filed by the petitioner before the Inspector General, Srinagar Sector has also been rejected by a reasoned Order No.R XIII.I/2015-ADM-3 dated 22.4.2015.
18. From the averments in the counter affidavit of the respondents, it appears that the petitioner had habitually been overstaying leave. The petitioner had been sanctioned 30 days leave till 27.04.2010, but he did not report for duty till 30.04.2010 and his absence of three days was regularised with a warning vide Office Order No.L-2-6/10/EC/2 dated 11.06.2010.
19. The petitioner was again granted 50 days' earned leave from 14.11.2011 to 02.01.2012, but he did not report for duty for 31 days from 03.01.2012 to 02.02.2012. The absence was regularised to leave on medical grounds vide Office Order No.L-2-1/12/89/EC dated 11.05.2012.
20. An earlier Court of Enquiry was held against the petitioner for suppressing the criminal case pending against him, for which he had been arrested. The petitioner was also placed under suspension after institution of a Court of Enquiry and the

petitioner was awarded punishment of stoppage of three increments.

21. Learned counsel appearing on behalf of the petitioner strenuously argued that the petitioner had to go to Aligarh to attend the criminal case pending against him which was scheduled for hearing on 18.11.2014. The petitioner needed to go on 16.11.2014 itself, to find a lawyer to defend him.
22. It, however, appears that even though the case was fixed for hearing on two dates, that is 18.11.2013 and 28.11.2013, he returned much later.
23. Desertion of the post is a serious misconduct. In the writ petition, it is contended that the petitioner applied for leave of 25 days as he had 25 days' leave left. It is, however, well settled that leave cannot be claimed as a matter of right. An application for leave has to be made in advance and leave can only be availed after leave is sanctioned by the Competent Authority, except, may be, in exigencies. The mere fact that leave is available does not entitle any employee to remain absent.
24. The petitioner had been granted leave of one day to attend his court case. Aligarh being 2-3 hours away, he could perhaps have left the previous evening to get to Court on time and in any case, there could be no justification for staying away till

December. From the writ petition, it appears that after 18.11.2013, the next date was fixed on 26.11.2013. However, there could be no reason to overstay leave till 26.11.2013. The petitioner could have returned on 18.11.2013, applied for leave again and then left. Similarly, if the verdict was given on 28.11.2013, the petitioner could have again gone back on 28.11.2013. Even after receipt of the letter dated 27.11.2013, the petitioner chose to report to his duty on 30.11.2013 in ***Kuldeep Singh Vs Union of India and Others*** reported in 143 (2007) DLT 327 DB, a Division Bench of this Court held that habitual absentism and unauthorised absence was a serious matter and punishment of removal was not disproportionate to the gravity of the misconduct.

25. As held by the Division Bench of this Court in ***Kuldeep Singh*** (supra), the power of judicial review of the quantum of punishment is extremely limited. It is only in cases, where the punishment awarded is ex facie highly disproportionate or unconscionable that the Court can interfere under Article 226 or 227 of the Constitution of India. It is for the Disciplinary Authority and the Appellate Authority to decide and determine the quantum of punishment, as held by the Supreme Court in ***Om Kumar and Others Vs. Union of India*** reported in (2001) 2 SCC 386, ***Etawah and others Vs. Hoti Lal*** reported in 2003 (3) SCC 605, ***Ranjit Thakur Vs. Union of India and others***

reported in 1987 SC 2386 and *Surender Kumar Vs. Commissioner of Police and others* reported in 123 (2005) DLT 185 (DB).

26. In *Pradeep Kumar Singh Vs. Union of India and Another*, reported in 186 (2012) DLT 627 (DB) the Division Bench of this Court held that where a member of the CRPF could not satisfactorily explain his act for abandoning service and remaining absent without leave on many occasions and when the petitioner was not able to show any procedural lapses in conducting enquiry and awarding of punishment by the Disciplinary Authority, there could be no such illegality in the order as would require interference of this Court in exercise of jurisdiction under Article 226 of the Constitution of India.
27. In this case, the Court of Enquiry and the consequential Disciplinary proceedings have been conducted in accordance with law. No case has been made out by the petitioner of any procedural lapses or of violation of principles of natural justice or of any procedural irregularities.
28. It is well settled that this Court in exercise of jurisdiction under Article 226/227 of the Constitution of India does not sit in appeal over findings in a Court of Enquiry and/or disciplinary proceedings and or the stringency of the punishment. It is only in a case of blatant disproportionality that the Court interferes.

Punishment of removal for leaving post without prior permission and without intimation and remaining absent for about 25 days, cannot be said to be so disproportionate to the gravity of the offence, as to warrant interference of this Court. Moreover, as observed above, as a Bench of coordinate strength, we are bound by the decision of the Division Bench of this Court in Kuldeep Singh (supra) and Pradeep Kumar Singh (supra).

29. The writ petition is, therefore, dismissed.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

April 03, 2017/ n