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

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W.P.(C) 9973/2016

Date of decision: 9th August, 2017

CT/GD GHANSHYAM SWAMY Petitioner

Through Mr. N. L. Bareja, Advocate.

versus

UNION OF INDIA & ORS Respondent

Through Ms. Barkha Babbar, Advocate.

W.P.(C) 7591/2016

CT/GD ASHOK KUMAR Petitioner

Through Mr. N. L. Bareja, Advocate.

versus

UOI AND ORS Respondent

Through Mr. Vivekanand Mishra and Mr.
Nirvikar Verma, Advocates Mr. Vivek
Kumar Singh, Law Officer, CRPF.

W.P.(C) 7986/2016

CT/ GD JITENDRA SHUKLA Petitioner

Through Mr. N. L. Bareja, Advocate.

versus

UNION OF INDIA AND ORS Respondent

Through Mr. Virendra Pratap Singh, Mr.
Charak Pushpender, Mr. Mohit Bharadwaj,
Ms. Shubra Parashar, Advocates.

W.P.(C) 10656/2016

CT/GD BABU LAL Petitioner
Through Mr. N. L. Bareja, Advocate.
versus
UNION OF INDIA AND ORS Respondent
Through Ms. Anju Gupta and Mr. Roshan
Lal Goel, Advocates.

W.P.(C) 11426/2016

PRAVEEN KUMAR SHARMA Petitioner
Through Mr. N. L. Bareja, Advocate.
versus
UNION OF INDIA & ANR Respondent
Through Ms. Bharathi Raju, CGSC for
respondent Nos. 1 and 2.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL)

With the consent of the counsel of the parties, these writ petitions have been taken for hearing and final disposal.

2. Counter affidavits have been filed in W.P. (C) 9973/2016, ***CT/GD Ghanshyam Swamy***, W.P. (C) 7591/2016, ***CT/GD Ashok Kumar*** and W.P.(C) 7986, ***CT/GD Jitendra Shukla***. In W.P.(C) 10656/2016, ***CT/GD Babu Lal Vs. Union of India and Others*** counter affidavit filed in the court with consent is taken on the record. Counter affidavit has not been filed in W.P. (C) No. 11426/2016, ***Praveen Kumar Sharma Vs. Union of India & Anr.*** The notice in

this writ petition was issued vide order dated 2nd December, 2016. Two further opportunities to file counter affidavit were granted vide order dated 25th January, 2017 and 12th April, 2017. In the aforesaid circumstances, we close the respondents' right to file counter affidavit in W.P.(C) 11426/2016. We also notice that limited issue arises for consideration and the facts stated by the petitioner are not disputed.

3. As similar, if not identical legal issue arises for consideration, we are disposing of these writ petitions by a common order.

4. The petitioners herein had applied for appointment to the post of Sub-Inspector (General Duty) (SI/GD) in the Limited Departmental Competitive Examination (LDCE) for the years 2012, 2013 and 2014. They were permitted to appear in the written examination but later on treated as disqualified for the reasons indicated below.

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S. No.	Particulars	Rank/Name	Period of Absence	Penalty	Year of LDCE
1	W.P.(C) 7591/2016	CT/GD Ashok Kumar	03.10.2006 to 01.11.2006 (29 days)	Warning	2013
2	W.P.(C) 7986/2016	CT/GD Jitendra Kumar	09.08.2006(One Day)	Nil	2014
3	W.P.(C) 9973/2016	CT/GD Ghanshyam Swamy	06.10.2008 to 31.10.2008 (26 days)	15 days confinement to lines and 2hrs pack drill	2013
4	W.P.(C) 10656/2016	CT/GD Babu Lal	18.04.2007 to 20.05.2007	Nil	2012

			(15 days)		
5	W.P.(C) 11426/2016	HC/GD Praveen Kumar Sharma	16.06.2012 to 19.06.2012	4 days due to excess availing of journey times during posting	2013

”

5. The respondents have placed reliance upon Standing Order No. 1/2010 dated 5th June, 2010 applicable to the Central Reserve Police Forces , which reads as follows:-

“d) Clean Record - They should have minimum good ACRs of last four years and should have unblemished service records till the issue of offer of appointment.”

6. The petitioners do not dispute the requirement of Good ACR grading in the last four years as a prerequisite. To this extent, there is no lis between the parties and we need not examine this aspect further. The petitioners must satisfy and meet this mandate.

7. The issue in debate pertains to the stipulation that the candidates should have an unblemished service record till the issue of offer of appointment.

8. The contention of the respondents is that Jitendra Shukla, Babu Lal and Praveen Kumar Sharma, had remained absent for one day, fifteen days and four days, respectively and therefore, their service

record cannot be considered to be unblemished. Per contra, the petitioners have pleaded that the aforesaid periods of absence were regularized as Leave Half Pay With No Leave Salary (LHP-WNLS). No inquiry or even minor punishment was imposed. Similarly, in the case of Ashok Kumar a warning was issued, which is not a minor punishment. Ashok Kumar was absent for 29 days.

9. However, in the case of Ghanshyam Swamy, minor penalty of fifteen days' confinement to Lines and two hours of pack drill were ordered.

10. We shall be dealing with the case of Ghanshyam Swamy separately as the facts are different and the end result would also be different. Ghanshyam Swamy had remained absent for 26 days.

11. As far as the case of Jitendera Shukla is concerned, the stand of the respondents is that he had remained absent without authorization on 9th August, 2006. Jitendera Shukla had joined service as Constable, General Duty on 25th April, 2006. During his entire service tenure, except for the aforesaid period of absence of one day, he has complied with and has followed all the Rules. No other lapse or impropriety is alleged and pointed out.

12. Praveen Kumar Sharma on successful completion of training had reported to the 67th Battalion, CRPF which was then stationed in Assam. Subsequently, he got selected to the post of Head Constable, General Duty having successfully cleared the Limited Departmental Competitive Examination (LDCE) 2011-2012. Upon selection, he was

posted to the 9th Battalion, CRPF then located in Garhchiroli, Maharashtra. He tendered his technical resignation as constable and his name was struck off from the records of the 67th Battalion with effect from 13th June, 2012. The petitioner was required to undertake the journey from Assam to Garhchiroli, Maharashtra without any train reservation being made for him. Accordingly, he had to commute by buses and change trains at different places/locations. The period between 13th June, 2012 to 15th June, 2012 was regularized as journey period but the period between 16th June, 2012 to 19th June 2012 was regularized as Leave Half Pay With No Leave Salary (LHP-WNLS).

13. Babu Lal had joined service on 18th October, 2004. He had overstayed on leave for fifteen days during April and May, 2007 as he was unwell and under treatment at the Government Medical Hospital, Ringus. He had furnished documents pertaining to sickness including the certificate issued by the Government Hospital. The respondents without doubting the genuineness of the reason or the documents submitted, had regularized the aforesaid period of fifteen days as Pay Half Leave With No Leave Salary (LHP-WNLS).

14. Ashok Kumar had joined service as Constable, General Duty on 24th May, 2004. He was sanctioned fifteen days casual leave with effect from 3rd October, 2006. During this period, he fell sick and had vomited blood, and was admitted to a government hospital. He had intimated his unit about his admission to the hospital. He had also submitted necessary proof in the form of medical papers including certificate issued by the hospital, in original, to the Commandant 162nd

Battalion, CRPF. However, the period of leave and absence from 3rd October, 2006 to 1st November, 2006 was regularized as Leave Half Pay With No Leave Salary (LHP-WNLS).

15. Clause (d) of the Standing Order No 1/2010 quoted above which uses the expression “should have unblemished service record till the issue of offer of appointment” was considered and elucidated in decision dated 11th August, 2015 in W.P. (C) No. 7563/2015, ***Constable/GD Girish Kumar Vs. Union of India and Others.*** It has been held as under:-

“5. It is not in dispute that the petitioner was censured in 2008. Equally, it is not in dispute that his service records are thereafter not only clean, but he has been graded with ‘Very Good’ for the last four successive years thereafter till the recruitment process begun. In these circumstances, the CRPF’s stand that the infliction of censure bars the candidate from entitlement for being considered for appointment in LDCE quota, but on the other hand does not affect his entitlement for normal promotion is not only irrational, but illogical. It is not the CRPF’s case that the censure has any definitive consequence like in the case of a mere (Sic. More) serious penalty—even a minor penalty such as stoppage of increments with or without cumulative effect. Even in such instances, the effect of the penalty exists only for the duration in post. The only way, in the opinion of the Court, the meaning to be given to condition of having “unblemished service record” pertains directly to what occurs thereafter, i.e., till the issue of offer of appointment. In other words, if after selection, the candidate is found to have indulged in some misconduct or inflicted with the penalty, the question of his seeking appointment

would not then arise because then it cannot be said that he/she has unblemished record till appointment.”

In the said case, Girish Kumar had been inflicted with penalty of “censure” and was therefore denied appointment to the post of Sub-Inspector through LDCE, as he did not have an unblemished service record. The Division Bench rejected the stand and stance of the respondents observing that the penalty of censure does not have a definitive consequence, but perhaps, if the officer was inflicted with more serious penalty, consequences would have been different. In other words, the candidates who have indulged in some misconduct or inflicted with penalty would not be eligible for promotion, as they do not have an unblemished and clean record. In other cases, mere trivialities and pettifogging would not disqualify the candidate. The Division Bench in paragraph-7 of the same judgment referred to the grading of “very good”, which the officer had earned in different years and opined that the respondent – CRPF’s rationale to withhold and deny promotion to Girish Kumar was unsustainable.

16. Similarly, in decision dated 19th August, 2015 in W.P. (C)No. 1359/2013, *Mahaboob Khan Vs. Union of India and Others* and other connected matters, decided on 19th August, 2015, another Division Bench of this Court in somewhat similar circumstances held that candidature of otherwise eligible candidates should not be rejected on account of non-qualifying service which was treated as “*dies non*”. After referring to the rule position as also the Habitual Offender Policy dated 18th December, 1996, it was observed that an adverse entry in the service book, which would have the effect of

denying promotion, should not be recorded without first giving the government servant opportunity of being heard. Further, the Standing Order No. 1/2010 had required consideration of preceding four years' ACRs, and an unblemished service record thereafter till the offer of appointment, which the petitioners' therein had. The writ petitions were, therefore, allowed.

17. The respondents on the other hand have relied upon decision dated 17th September, 2015 in W.P. (C) No. 2181/2013, ***A.M. Pathan Vs. Union of India and Others*** and other connected matters wherein after referring to the Standing Order No. 1/2010, it was held as under:-

“5. The CRPF, on the other hand, contends that given the objectives of LDCE, condition (d) of the Eligibility Conditions, i.e. candidates possessing a clean and unblemished record, has to be construed strictly. It was emphasized here that the petitioners' eligibility for normal line promotion in accordance with seniority would remain unaffected. However, if they were to be promoted out of turn, as it were, to a post rather higher than the promotional post, more exacting standards are to be fulfilled. Here it is submitted that the petitioners in W.P.(C) 2181/2013 and W.P.(C)3244/2013, when imposed with the penalty of punishment drill (as the CRPF contends covers the expression “pack drill”) and the penalty of severe censure, there was no protest. It was submitted that the petitioners represented against the penalties only subsequently in the light of their rejection.

6. It is evident from the above discussion that there is not much controversy about the facts. The decision in Dhiraj Bhatt (supra) as we read it is confined to the question of justification of rejection of a candidate who holds himself out as an applicant for LDCE on the ground of his having overstayed from leave simpliciter. The Court felt that once such overstayal is dealt with administratively, the question of debarring or holding the

candidate ineligible merely on that ground would not be justified. In this regard, the Court observed as follows:

“19. It is an admitted position that the respondents have treated the absence of the petitioner as bonafide when they have adjusted it against the leave admissible to the petitioner. It is accepted that it was not wilful absence which would have invited the consequences set out in the rules. The same has not been treated as misconduct and therefore, no disciplinary action has been taken against the petitioner. No order has also been passed by the competent authority that this period is to be treated as break in service. The same cannot be so treated.

20. So far as participation and the result of the LDCE examination is concerned, we find that as per the scheme of the examination, the respondents have mandated checking of service records as stage one; written examination as stage two; physical measurement as stage three; physical efficiency test as stage four and the medical examination as stage five.

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23. The requirement as per the scheme of the examination is that the candidate should have completed four years of service including basic training. The stipulation is not that a candidate should have completed four years of continuous service immediately preceding the LDCE. This distinction has been completely overlooked in the matter inasmuch as the petitioner had joined the force as back as on 2nd February, 2006 and therefore, at the relevant time had more than six years of service.

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25. The order whereby the petitioner leave was converted from casual leave to earned leave and half day absence treated as leave half pay was not treated as a punishment by the respondents.

26. In view of the above discussion, the order dated 3rd May, 2010 to the extent that it cancels the petitioner's casual leave and directs that it be treated as earned leave is not sustainable and is completely set aside and quashed. The said period shall be treated as casual leave and appropriate corrections shall be effected in leave and service record of the petitioner within six weeks.

27. We also hold that the direction of the respondents to treat the 16th April, 2010 one day leave half pay without salary and allowances does not tantamount to punishment imposed upon the petitioner. The same was never so treated by the respondents and it cannot impede the petitioner appointment pursuant to the LDC Examination - 2012 in which the petitioner participated or may participate in future.”

7. In the present case, however, the matter did not end with an administrative order dealing with the period or periods of absence of the petitioners. Rather, the CRPF felt that something more needed to be done perhaps given the periods and nature of absence. Consequently, in each of these cases, a penalty prescribed under Rule 27 was imposed. We do not agree with the petitioner's counsel that pack drill is not contemplated in the Rules. Clearly, para 11 of the Schedule set out in Rule 27 of the Rules alludes to “punishment drill”. The further stipulation is that such penalty can be imposed for upto a month. Now a pack drill as this Court was made to understand is a mere direction that the employee would have to undertake the drill with some weights. That does not render the procedure or penalty any less a punishment in accordance with Section 11(3)(b) of the CRPF Act, 1949 (hereafter “the Act”). So far as censure is concerned, there cannot be any doubt that it is a minor penalty given the express stipulation in Section 11(3)(c) of the Act. In fact, the

provision itself contemplates severe censure. So far as the petitioner in W.P.(C) 6874/2013 is concerned, during the course of proceedings, CRPF produced the records. Apparently, the petitioner was imposed with “confinement in the quarter guard for a month with additional penalty of two hours’ punishment drill”. This was on account of his misconduct of deserting the armed escort for some part of the day. In the circumstances, we are of the opinion given this length of time, it would not be appropriate of the Court to examine the adequacy or severity imposed.”

18. The aforesaid quotation, an earlier decision of this Court in ***Dhiraj Bhat Vs. Union Of India and Others***, W.P. (C) No. 6738/2012 decided on 27th September, 2013 has been extensively quoted. In ***Dhiraj Bhat*** (supra), another Division Bench of this court had observed that regularization of absence, as Leave Half Pay (LHP) was not a punishment. The petitioner therein was not per se punished as per the definition of “punishment” in the service rules. This would not impede the petitioner therein from participating in the LDCE.

19. In the case of ***A.M. Pathan*** (supra), one of the petitioners had suffered penalty of ‘pack drill’ as specified in para-11 of the Schedule set out in Rule 27 of the Central Reserved Police Force Rules, 1955 and another petitioner was awarded penalty of confinement to lines for a month with punishment drill for two hours each day for the period of confinement. In a third case, the penalty of “severe censure” was awarded. It was observed, that severe censure, itself was a minor penalty expressly stipulated under Section 11(3) (c) of the CRPF Act, 1949. The Court felt that the candidates who clear the LDCE get accelerated promotion to the posts of Sub-Inspector and, therefore, the

respondents were justified in mandating that the candidates who are successful must adhere to the strict criteria and should be fit to occupy the post. Therefore the claim of the petitioners therein was rejected.

20. Noticeably, the judgment in the case of **Girish Kumar** (supra) and **A.M. Pathan** (supra) was passed by the same Bench. A reading of the aforesaid passages from the two decisions indicates that a strait jacket approach need not and should not, be adopted. Facts of each case have to be examined. In cases, where the punishment imposed was in terms and in accordance with the Rule 27 of the Central Reserved Police Force Rules, 1955, the stand and conclusion of the authorities that the candidate did not have an unblemished record, should be upheld. The Standing Order does not state that a candidate who has overstayed on leave and his absence stands regularized against pending leaves or half pay leave, would be disqualified. Administrative decisions to regularize absence are taken in accordance with rules and not with the intention and desire to cast stigma and sludge the service record. The period of absence even when justified has to be regularized and dealt with. Absence is therefore adjusted against Leave Half Pay With No Salary. The authorities also have to be conscious that their orders do reflect and still strict discipline and do not reflect and manifest mildness and tolerance. However, to deny and disqualify a candidate, the finding has to be that the service records of the candidate were not clean and were 'blemished'. This would require the authorities to take into consideration different aspects. Mere absence which has been regularized by half pay leave

or even warning may not be sufficient to declare the candidate as disqualified.

21. This brings us to the case of Ghanshyam Swamy who had overstayed on leave for 26 days from 6th October, 2008 to 31st October, 2008. As per the counter affidavit placed on record, Ghanshyam Swamy was granted/ sanctioned 12 days of Earned Leave from 24th September 2008 to 5th October 2008, but he did not return for duty thereafter for 26 days up to 31st October, 2008. Ghanshyam Swamy had submitted medical documents with regard to his purported illness. Examination of the said documents had revealed overwriting indicative that Ghanshyam Swamy had interpolated the medical documents. In these circumstances, Ghanshyam Swamy was given punishment of 15 days' confinement with two hours pack drill. During the period of confinement to the lines Ghanshyam Swamy was not to be entitled to pay or any allowances.

22. Keeping in view the aforesaid position and the findings recorded as well as the punishment imposed, we do not think Ghanshyam Swamy can be granted any relief. The respondents were right and justified in holding that Ghanshyam Swamy does not have an unblemished service record, which is a mandate and requirement as per the Standing Order No. 1/2010.

23. Recording the aforesaid, we allow the writ petitions filed by Ashok Kumar, Jitendra Shukla, Babu Lal and Praveen Kumar Sharma. The aforesaid petitioners would be considered for promotion to the post of Sub-Inspector in accordance with law. They would not be

treated as disqualified for want of clean or unblemished records for the “act of absence” noted above. The writ petition filed by Ghanshyam Swamy is dismissed. In the facts, there would be no order as to costs.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

AUGUST 09, 2017

MR

