

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11296 of 1999

=====

Salahuddin Khan, son of Shree Jamaluddin Khan, Resident of Mohalla-Agarwal
Tori, Vill.- Chainpur, P.O.-Chainpur, Police Station-Chainpur, District-Kaimur at
Bhabhua.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs,
Government of India, New Delhi.
2. The Director General, Central Reserve Police Force, C.G.O., New Delhi.
3. The Inspector General of Police, W/s, Central Reserve Police Force, C.G.O.,
Complex (Belapur), Mumbai.
4. The Deputy Inspector General of Police, C.R.P.F., Nagpur, (Maharashtra).
5. The Commandant, 79 Batalian, C.R.P.F., Amin Gaon, North Guahati, Assam.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Kali Prasanna Dubey, Adv.
Mr.Krishna Kant Tiwary, Adv.
For the Respondent/s : Mr. Anjani Sharan, Asst. S.G.
Mr. R.K. Sharma, CGC.

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-07-2018

Heard Mr. Kali Prasanna Dubey, learned counsel
appearing for the petitioner and Mr. Anjani Kumar Sharan, learned
Assistant Solicitor General assisted by Mr. R.K. Sharma, learned
Central Government Counsel.

It is feeling aggrieved by the order of dismissal dated
30.11.1998 passed by the Commandant, 79 Battalion, CRPF, Amin
Gaon, North Guwahati, Assam, impugned at Annexure-8, as
affirmed by the Appellate Authority by rejecting the appeal of the
petitioner on 07.04.1999 vide Annexure 10 and the Revisional
Authority by dismissing the revision vide order dated 24.11.1999 at



Annexure 12, that the petitioner is before this Court through the writ petition in question.

The writ petition filed on 19.11.1999 was admitted by a co-ordinate Bench of this Court vide order passed on 26.06.2001 and has come up for hearing before this Court. In between, it was dismissed for non-prosecution but has been restored.

The facts of the case lie in a very narrow compass. The petitioner was appointed as a Constable/Tailor in the Central Reserve Police Force (hereinafter referred to as the 'CRPF') in 1994. He went on sanctioned leave from 08.03.1997 to 21.04.1997 and reported for duty on 22.04.1997. Up to this stage, there is no complaint against the petitioner. As it transpires from the record, the petitioner absconded from duty on the very next date of reporting on 22.04.1997 i.e. on 23.04.1997 without intimation to any of the superior officer in the 'CRPF'. He reported back *suo motu* on 09.08.1997 and was assigned duty but again went missing on 10.08.1997, never to return until faced with the situation giving rise to the present proceeding. A proceeding was initiated on his continued absence, held ex-parte as according to respondents the petitioner did not choose to participate, leading to the order(s) in question. Hence this writ.

According to Mr. Dubey, learned counsel appearing for



the petitioner, the petitioner was suffering mentally and was continuously under the treatment of a doctor with effect from 30.04.1997 until he was declared fit on 15.12.1998 but in between the dismissal order was passed on 30.11.1998. An appeal was filed bringing to the notice to the Appellate Authority the treatment undergone by the petitioner which was not accepted. The appeal was rejected and the revision followed suit.

There is absolutely no contest on the facts accompanying the present contest. The issue which arises for consideration is that whereas according to Mr. Dubey, learned counsel appearing for the petitioner, there are sound reasons to explain the allegation of desertion and which, even though explained by the mother of the petitioner as well as the petitioner himself much prior to the passing of the dismissal order, yet neither the Disciplinary Authority believed the evidence brought on record to support the absence nor the superior authorities did choose to examine the veracity of the medical prescriptions.

According to Mr. Dubey, the absence of the petitioner is backed by medical prescriptions and cannot be termed deliberate for inviting the punishment of dismissal. He further submits that since the medical prescriptions had already been placed before the Disciplinary Authority, in case of doubt, the same could have been



examined by an Expert as laid down by the Supreme Court but this was not done rather it is by forming the own opinion, that the Disciplinary Authority has recorded the order of dismissal which has been affirmed by the Appellate Authority.

Mr. Dubey, learned counsel appearing for the petitioner has relied upon the judgment of the Supreme Court reported in **2014 (3) PLJR (SC) 451 (Chhel Singh Vs M.G.B. Gramin Bank)** particularly paragraph 15 to submit that unless an absence from duty is found to be willful or deliberate, it cannot be termed unauthorized and if it is supported by the medical prescriptions/ certificates then unless those certificates are found to be forged and fabricated or the opinion of the Expert has been taken thereon, the same cannot be rejected.

The arguments of Mr. Dubey, learned counsel appearing for petitioner has been contested by Mr. Sharan, learned Assistant Solicitor General to submit that the treatment is under a private doctor and is not in any hospital and thus has been rightly not accepted by the authorities. He further submits that except for a brief period, the prescription does not advise the bed rest to the petitioner nor does any of the prescriptions would confirm that he was admitted in a hospital and not fit to report in the Force or even to communicate the reasons. According to Mr. Sharan, coming



from a disciplined force the petitioner was under an obligation to seek permission prior to his departure rather the petitioner should not have left the force until permission was obtained from the superior authority. He submits that the earlier absence having been condoned by the Commandant for accepting his joining on 09.08.1997 the petitioner has perpetuated the illegality by again absconding from 10.08.1997 and even though the mother of the petitioner has sent letters reporting illness of the petitioner but that does not reduce the indisciplined conduct of the petitioner in not abiding by the Service Rules.

Mr. Sharan has relied upon the judgment of the Supreme Court reported in **(2016) 13 SCC 71 (Union of India Vs Diler Singh)** to submit that unauthorized absence in uniform service has to be given extreme treatment of dismissal.

Learned counsel has also relied upon the provisions of Rule 31 of the Central Reserve Police Force Rules (hereinafter referred to as 'the Rules') to submit that a proceeding resting on charge of desertion is founded on a finding of a court of inquiry held under the orders of a Commandant by a three member committee and in case the court of inquiry on recording evidence gives its finding, it shall be admissible as evidence in any proceeding initiated against an absentee. Learned counsel has



referred to the appellate order to submit that the Court of inquiry under Rule 31 of the 'Rules' was indeed held and the report was submitted on 21.11.1997, which by itself is conclusive evidence on the desertion of the petitioner.

Learned counsel has also relied upon two judgments of the Supreme Court reported in **(2005) 13 SCC 228 (Union of India Vs Ghulam Mohd. Bhat)** and the judgment rendered in the same volume at page **709 (Union of India vs. Datta Linga Toshawad)** to submit that the petitioner is not entitled for any indulgence in view of the desertion noted.

I have heard learned counsel for the parties and perused the records.

There is absolutely no dispute on facts. The petitioner also does not dispute that he left the Force headquarters without informing the superior not once but twice. The first time that he left the headquarters was on 23.04.1997 i.e. the day following after giving joining on expiry of his leave period on 22.04.1997. He returned on 09.08.1997 and again went missing from 10.08.1997. Thereafter, except for a few letters received from the mother of the petitioner, there was no communication in between the petitioner and the Disciplinary Authority, the Commandant, 79 Battalion until the filing of the appeal. The inquiry was held ex-parte as according



to the respondents, despite repeated reminders, the petitioner never showed up to participate in the proceeding nor represented against the inquiry report and as a result the dismissal order was passed ex-parte at Annexure-8 which is followed by the order(s) rejecting appeal and revision.

In the undisputed facts accompanying the petition, it is to be seen whether the defence set up by the petitioner relying upon the medical prescription at Annexure-1 which shows his treatment under Dr. Ashok Kumar 'Nag', Neuro Psychiatrist at Ranchi during the period 30.04.1997 until 05.08.1997 which advises the petitioner to take the treatment with rest for next three months ending in November, 1997 and which is followed by the other prescription enclosed with the rejoinder at Annexure-12 series which covers the other period ending on 10.05.1998 with the fitness certification being issued by the Medical Superintendent at Ranchi on 15.12.1998 at Annexure 9 would come to his aid because before the petitioner was certified on fitness, he has been removed on 30.11.1998.

Going by the frame of the dispute the petitioner certainly does not deserve any indulgence, however, two aspects of the matter advanced by Mr. Dubey, learned counsel appearing for the petitioner persuades this Court to a consideration of the grievance



raised and i.e. that:

- (a) in between the initial appointment of the petitioner in 1994 until the sequence of alleged desertion started happening in 1997 there are no complaints on record of the proceeding against the petitioner of dereliction of duty, and
- (b) the medical prescriptions submitted by the mother and the petitioner as an alibi for the absence, have not been tested on their veracity nor the opinion of the expert has been invited thereon.

There is a subtle distinction between an 'unauthorized absence' and 'a desertion'. 'Desertion' by its very expression means, 'absence without reason'. If such absence is accompanied with reasons which prima-facie does not satisfy the employer, it partakes the nature of 'unauthorized absence'. Both forms of absence are in the nature of misconduct but the consequential action faced by a delinquent in each of the two situations, are vastly different. The Supreme Court has been rather strict in the matter of 'desertion' cases especially relating to 'uniform services'. There is thus no contest on the principles laid down in the judgment relied upon by Mr. Sharan which in no uncertain terms disapproves any such act of a member of 'uniform services'. In fact had it been a case where the petitioner had no explanation to make for his



absence, the case in hand would have been an open and shut case warranting a dismissal but the issue which comes in between the petitioner and the view expressed in the judgments, is the medical prescriptions which have not been given a consideration either by the Disciplinary Authority or the Appellate Authority, nor the Revisional Authority has bothered to examine whether or not the prescriptions are genuine and whether the petitioner was bonafidely pursuing the medical treatment which disabled him to discharge the duty under the Force.

In this connection I am persuaded to refer to paragraph 15 of the judgment relied upon by Mr. Dubey rendered in the case of **Chhel Singh** (supra) which does provide an answer on the poser, while upholding a similar plea of a delinquent:

“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 certificate issued by the Doctors without any valid reason and on the ground of 24 days delay.”

The issue so canvassed by Mr. Dubey in the present case is squarely covered in the observations of the Supreme Court



inasmuch as even in the present case while the Disciplinary Authority has well noted the letter of the mother of the petitioner informing the illness of the petitioner as back on 27.07.1998 and again on 24.08.1998 informing him of the ailment suffered by the petitioner and his ongoing treatment, yet he has simply brushed it aside without examining its correctness. It is thus, not that the petitioner did not make any effort to inform the Force about the treatment being undergone by him rather despite the intimation given by the mother of the petitioner as also noted by the Disciplinary Authority at paragraph 7 of the dismissal order yet he has disbelieved the plea on two grounds, namely ;

- (a) The petitioner could have undergone the treatment within the Force hospital ; and
- (b) He could have contacted the Force in this connection.

It is simply because the treatment undergone by the petitioner was through a private doctor, that it did not persuade the Disciplinary Authority to await the report and before the treating doctor has declared the petitioner fit for duty on 15.12.1998 vide Annexure 9 that the dismissal order was passed on 30.11.1998 vide Annexure-8.

The judgments relied upon by Mr. Sharan referred to above are cases where the delinquent was absent from the Force for



a long period without any justifiable reason. The crucial point which is in distinction between the cases relied upon by Mr. Sharan and the present one is that while cases on desertion means absent without reason, there is a reason assigned by the petitioner for his absence which may be correct or may not be correct but then the Disciplinary Authority once having gathered information about the treatment of the petitioner, before drawing conclusion, should have gathered expert opinion on the reasons so assigned by the petitioner but in a hurried manner, the plea on treatment itself has been rejected because it was being done under a private doctor.

In my opinion, simply because a government servant undergoes treatment with a private doctor can be no reason for rejection of the plea for treatment until such time that the documents/prescriptions led in support of such treatment is held otherwise by an expert on the subject matter. Such has not been the exercise in the present case.

The authorities vested with disciplinary powers have to be rather cautious in imposing punishment especially in extreme cases of dismissal and while observing thus, I certainly do not intend to condone any indisciplined act of the petitioner, if, it is otherwise found to be in contravention of the Service Rules but such finding has to be recorded after examination of the papers led



in support by the petitioner which definitely indicate the medical treatment undergone by the petitioner for the entire period in question.

I have already reproduced the relevant extract of the judgment in the case of **Chhel Singh** (supra) to hold that the rejection of the medical prescriptions by the Disciplinary Authority is mechanical and is resting on no evidence of substantial character. The Supreme Court has come down heavily on cases of desertion by a delinquent leaving the Force headquarter without any justifiable reason but until such time that the Disciplinary Authority reaches a conclusion that the medical prescription relied upon by the petitioner are not reliable or are forged or would not provide a justifiable reason for his non-reporting, neither the absence can be termed desertion nor the orders can be upheld.

The enquiry report is ex-parte and since these materials never reached the Enquiry Officer, the report is without taking note of the defence set up by the petitioner. The unfortunate part is that despite the Commandant as a Disciplinary Authority having noted these prescriptions, instead of satisfying himself on its veracity he has simply proceeded mechanically to reject the same.

For the reasons so discussed, I am persuaded with the arguments of Mr. Dubey, learned counsel appearing for the



petitioner to quash the inquiry report dated 18.9.1998 at Annexure-4 together with the order of dismissal dated 30.11.1998 at Annexure-8, the appellate order dated 07.04.1999 at Annexure 10 and the revisional order dated 24.11.1999 at Annexure 12 and remit the matter at the stage of the Inquiry Officer for holding inquiry afresh into the matter for recording his opinion after allowing the petitioner the opportunity of leading evidence in support of his absence and for recording his opinion thereafter. The petitioner is thus reinstated on the post but his backwages would be governed by the final outcome of the proceedings. The discretion lies on the Disciplinary Authority either to keep the petitioner under suspension or to take work from him.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

SKPathak/Anjula

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16-08-2018
Transmission Date	NA

