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HIGH COURT OF CHHATTISGARH AT BILASPUR**WP No. 6216 of 2005**

S.P. Mishra, S/o. Ramdas Mishra, Excise Constable Force No. 912292591, C.S.A. Sumvy, C.I.S.F. B.S.P. R/o. Qtr. No.1, G-Street No.33, Sector-II, Zone-2, Khursipar, Bhilai, District Durg Chhattisgarh

---- Petitioner**Versus**

1. Union of India, Through: Inspector General, North Zone, C.I.S.F. Unit-Saket, New Delhi.
2. Deputy Inspector General, Central Industrial Security Force, Unit Bhilai Steel Plant, Bhilai, District Durg Chhattisgarh
3. Commandant, CISF, Unit Bhilai Steel Plant, Bhilai, District Durg, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Sudeep Verma, Advocate
For Respondents	:	Mr. Rajkumar Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****05/10/2018**

1. The challenge in the present writ petition is to the order Annexure A/1 the order of termination dated 16.07.2003. The challenge also is to the order Annexure A/11 dated 29.09.2003, whereby the appeal preferred by the petitioner against the termination stood rejected.
2. In addition, the order passed on 12.08.2004 i.e. the order on the revision petition is also under challenge, whereby the Revisional authority has affirmed the order of termination, as also the order passed in appeal.
3. The very facts which led to the filing of the present writ petition is that the petitioner in the instant case was working as a Constable under the CISF and posted at the Bhilai Steel Plant, Bhilai belonging to the SAIL. The allegation against the petitioner is that the petitioner remained

unauthorizedly absent from duty between 02.02.2003 to 07.02.2003 and thereafter from 07.02.2003 onwards. The petitioner had abruptly without any intimation, approval or sanction from the higher authorities left the camp without anybody's knowledge. The period between 02.02.2003 to 07.02.2003 has been treated as unauthorized absence from duty and from 07.02.2003 onwards, the petitioner has been declared a deserter from service.

4. The respondent authorities subsequently issued the petitioner with a charge sheet on 20.03.2003 and thereafter an inquiry officer was appointed and the inquiry officer on conducting the inquiry wherein the petitioner had also participated and granted full opportunity of hearing, submitted an inquiry report and based on the inquiry report Annexure P/1 dated 16.07.2003, the order of dismissal was passed, which has been subsequently affirmed in appeal vide Annexure A/11 dated 29.03.2003 and further in the revision on 12.08.2004.
5. The contention of the petitioner is that the act on the part of the petitioner of remaining absent from duty was not so serious an act, which entailed him the punishment of dismissal from service. He submits that the respondents could have inflicted with some other punishment, but should not have imposed the grave punishment of dismissal from service, as the same amounts to a capital punishment. It was further the contention of the petitioner that the higher authorities in the department should have taken into consideration the length of service of the petitioner and should have taken a sympathetic approach and should have interfered with the order of punishment of dismissal from service by imposition of any other major punishment other than dismissal/termination.

6. The counsel for the petitioner also relied upon a judgment of this Court passed in WP No. 533/2005 (Shankar v. Union of India & Others), wherein this Court in the case of an unauthorized absence for a short period had held that the order of dismissal from service is excessive and harsh and has interfered with the punishment and ordered for reinstatement of the person with 50% of back wages.
7. It was further the contention of the counsel for the petitioner that the authorities concerned did not take into consideration the fact that the petitioner had already applied for grant of leave for the period between 10.02.2003 to 24.02.2003 on account of some ceremony at the residence of the petitioner. He submits that since he had applied for the said leave in advance, the petitioner in between got disturbed when he was intimated of the fact that he has to go for a VHF training from 03.02.2003 onwards and the petitioner felt that the leave of the petitioner, so also the ceremony which has been proposed at the residence would get hampered. Taking these reasons, counsel for the petitioner sought for a sympathetic approach by this Court while deciding the writ petition.
8. The counsel for the Union of India on the other hand opposing the petition submits that the nature of allegation against the petitioner by itself is self explanatory and it speaks volumes so far as the conduct and the temperament of the petitioner is concerned and under such circumstances, it is evidently clear that the petitioner cannot be said to be a person fit to remain in the services of uniformed force, particularly the CISF. The counsel for the Union of India further submits that since the petitioner was a member of the Armed Discipline Force, he was required to maintain the minimum discipline of remaining on duty and

also remaining alert on duty always. He further submits that even otherwise the petitioner could not have left the camp without any instructions whatsoever or for remaining absent without any instructions or approval of the higher authorities. This act according to the counsel for the Union of India is by itself a self explanatory and which justifies the punishment order imposed upon him. As such there is no scope of interference so far as the impugned order of punishment is concerned, and prayed for rejection of the writ petition.

9. Having heard the contentions put forth on either side and on perusal of the record, what is admitted from the factual matrix of the case is that from 03.02.2003 onwards, the petitioner remained absent unauthorizedly from duty till 07.02.2003 and on 07.02.2003, the petitioner abruptly deserted the camp and left to some unknown destination without any intimation, sanction or approval of the higher authorities.
10. What is also pertinent to mention that from 03.02.2003 onwards for a period of 5 days, there was a training held for the VHF force and for which the petitioner's name was also included. It is also an admitted position that from 10.02.2003 onwards to 24.02.2003 the petitioner had applied for grant of leave, which was granted taking into consideration the ceremony which was proposed to be held at his residence. What is also to be taken note of is that the petitioner undisputedly is a member of a Uniformed Force, which otherwise is also considered to be as a disciplined force.
11. In addition, it is also relevant to take note of the nature of services rendered by the petitioner. The force to which he belongs is a sensitive

nature of work and where the personals working in the said posts are required to remain alert 24x7 and also have to maintain a great degree of discipline for the smooth functioning and also for the safety and security of the plant, where the petitioner was posted. The petitioner in the instant case was also assigned one such duty and he was also required to discharge his duties with full sincerity and to the satisfaction of the higher authorities. It appears that the petitioner had applied for some leave in the month of January from 10.02.2003 onwards till 24.02.2003.

12. If that be the case, the petitioner was supposed to remain on duty till 9th of February, 2003 with full alertness and sincerity. The petitioner ignoring the aforesaid aspect, remained firstly unauthorized absent from 03.02.2003 to 07.02.2003 and thereafter he deserted the camp itself from 07.02.2003. This conduct of the petitioner is definitely not appreciable nor can it said to be befitting a personal belonging to a Uniformed Discipline Force.
13. Moreover, the petitioner under no circumstances could have left the camp without any instruction or intimation to the higher authorities in the department. The conduct of the petitioner itself speaks volumes so far as his temperament is concerned. The personals working in the Discipline Force are required to keep a great standard of discipline while discharging their duties. The member of a Uniformed Force cannot be permitted to have a callous attitude.
14. Another aspect, which now requires consideration is the fact that the case of the petitioner is not that the inquiry proceedings is bad in law or for that matter that the inquiry proceedings are vitiated on any technical

ground or on account of violation of principles of natural justice. In the absence of any such grounds taken, what is to be presumed is that the entire inquiry proceedings was conducted purely in accordance with instructions and guidelines and also in compliance with the basic principles of natural justice. If under such circumstances, when an inquiry report is submitted and a disciplinary action has been taken, there is no room left for scrutiny of the decision making process on the part of the respondents. It is only the decision, which now has to be looked into considering the nature of misconduct committed by the petitioner.

15. As has been enumerated in the preceding paragraphs, it is undisputed that the petitioner firstly absented from duty unauthorizedly between 03.02.2003 to 07.02.2003 and thereafter he deserted the camp w.e.f. 07.02.2003.
16. From the pleadings of the petitioner itself it clearly reflects that the petitioner had applied for leave from 10.02.2003 to 24.02.2003. Now reading the articles of charges what reflects is that the authorities concerned had in fact assured the petitioner of sanctioning his leave w.e.f. 10.02.2003. Given the said situation, it was expected that the petitioner to remain in duty till 09.02.2003 and in between the petitioner could have also undergone the VHF training which was to be held between 03.02.2003 to 07.02.2003 and even thereafter the petitioner could have proceeded on leave from 10.02.2003 onwards. This act on the part of the petitioner in firstly disobeying the superior officers so far as not attending the VHF training, secondly remaining unauthorizedly absent without any cogent or justified reasons and to add further deserting the camp of the respondents itself w.e.f. 07.02.2003 would

reflect the attitude of the petitioner in firstly depicting his character of not interested in participating in the VHF training, which was to be held between 03.02.2003 to 07.02.2003, for which the petitioner very well knew that his name has also been included in the said camp. Secondly it also reflects the attitude of the petitioner that he is not keen in serving the respondents and also in participating in the training programme conducted by the respondents periodically. It also reflects that the temperament of the petitioner to the extent that for the petitioner, the official assignments did not have any priorities in as much as the orders of superior or the assignments which have been given to him while in service were not given any importance rather he in a most indisciplined manner neither participated in the training and at the same time also deserted the camp.

17. Taking all the facts and circumstances of the case and also taking note of the fact that the petitioner is a member of the Uniform Discipline Force, this Court is of the opinion that there is no room left for this Court to interfere with the findings arrived at by the Disciplinary authority and also which has been affirmed by the Appellate authority as well as by the Revisional authority. The scope of interference gets further reduced on account of the petitioner not assailing the procedural aspects, so far as the inquiry is concerned, which leaves this Court to only scrutinize the punishment and the gravity of the punishment which has been inflicted.
18. So far as the judgment which has been referred to by the petitioner in the case of "Shankar" (supra), this Court is of the opinion that the said judgment may not come to the rescue of the petitioner, as in the said case, the period of absence was for a specific period and the said

period was also too short a span, unlike the present case, therefore the said judgment is quite distinguishable from the facts of the present case.

19. Under the circumstances, the present writ petition being devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved