

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6697 of 2007

William Lakra S/o Shri Immanual Lakra, aged about 45 years, Ex - Constable No. 635, 31-B/N - Vahini Special Armed (S.A.F.) Force, District - Raigarh (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh through- Police Department (DGP) DKS Bhawan,Raipur (CG).
2. The Inspector General Of Police District - Raipur (C.G.)
3. The Inspector General Of Police, Head Office South Area, Bhilai, District - Durg (C.G.)
4. Senani, 6-B/N, Vahini, C.G. State Armed Force, Office - Raigarh (C.G.)

---- Respondents

For Petitioner	:	Shri D.N. Prajapati, Advocate
For Respondent	:	Shri S. Majid Ali, Dy. Govt. Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

10/01/2018

1. This petition is directed against the action of the respondents in dismissing the petitioner from service in a departmental enquiry as also dismissal of appeal and mercy appeal.
2. The factual matrix of the case as unfolded from the records is that during the period the petitioner was posted as Constable in Special Armed Forces at Raigarh, he remained unauthorizedly absent from his duty from 9.4.1996 without any information and permission. When the whereabouts of the petitioner were not known, notices were issued to the petitioner for appearing

in the duty. Those notices were sent to his home address which failed to evoke any response. Finally, a charge sheet was issued to the petitioner on 23.5.1996. A reply to charge sheet was filed by the petitioner in which the petitioner expressed various difficulties and inability and said that he be compulsorily retired from service. The Enquiry Officer sent notices to the petitioner time and again. Finally, when the petitioner did not appear in the departmental enquiry before the Enquiry Officer, the Enquiry Officer proceeded to examine prosecution witnesses and closed the case of the prosecution. The Enquiry Officer prepared a report, submitted before the Departmental Authority, who finally passed the order of penalty on 29.8.1996. Aggrieved by the said order, the petitioner preferred an appeal which was also dismissed on 7.7.1997. A Mercy appeal was also filed by the petitioner which also was dismissed on 28.6.2003. The petitioner, thereafter, sent representation in the year 2006 and 2007 and finally approached this Court by filing this petition.

3. Assailing the departmental enquiry proceedings, order of penalty and orders passed in appeal and mercy appeal, learned counsel for the petitioner argues that the petitioner was not served with the charge sheet. The documents demanded by the petitioner were not supplied. The Enquiry Officer proceeded ex-parte and without affording proper opportunity of hearing, enquiry was concluded. The enquiry report was not supplied. According to the petitioner, even the penalty order and appellate order was also not supplied to him. Further submission is that the penalty is otherwise shockingly disproportionate to the gravity of misconduct. Learned counsel for the petitioner would submit that even if it is accepted that the petitioner remained unauthorizedly absent from duty for about 4 months without any notice and without any permission, any other penalty, lesser in decree, could be awarded but the respondent authority have chosen to impose the extreme penalty of dismissal from service. The petitioner served the Police Department for about 17 years and in these circumstances, the petitioner, at the most, ought to be visited with a minor penalty only. It is lastly submitted that the petitioner was sick and the medical certificate issued by the Govt. doctor would show that he

was declared fit to resume duties w.e.f. 30th August 1996.

4. On the other hand, learned counsel for the State referring to reply and relying upon the material placed in the departmental enquiry records, placed for perusal of the Court, would submit that the petitioner was a habitual absconder. The petitioner remained absent from Govt. duty for long period which is reflected from the allegation of charge sheet. Earlier also, he was dismissed from service on the ground of unauthorized absence but on appeal, he was reinstated in service with a view to provide him an opportunity to mend his ways but the petitioner proved to be an incorrigible employee, not fit to be retained in Police Department, because again, the petitioner remained absent from duty for several months without notice much less without any permission. Therefore, the respondents were left with no other option but to impose major penalty of dismissal from service. Learned counsel for the State submits that in reply to the charge sheet, the petitioner could not dispute that he remained unauthorizedly absent from duty without any permission much less any sanction for leave. The petitioner did not even disclose in his reply that he was under any treatment and for that reason, unable to attend his duties, nor application for medical leave was submitted before the authority. Various attempts were made to serve notice to the petitioner. Notice dated 12.8.1998 was also issued to the petitioner at the home address. The petitioner having full notice and knowledge of the enquiry, voluntarily did not participate in the departmental enquiry. In these circumstances, the Enquiry Officer was fully justified in proceeding ex-parte, recording the evidence of prosecution witnesses and submitting report. On the aspect of proportionality of punishment, learned counsel for the State would argue that the petitioner was a habitual absconder and unauthorized absentee. In the past also, similar incident had happened and in fact for remaining unauthorizedly absent for about 151 days, he was earlier dismissed from service, though later on, reinstated by the order of the appellate authority giving the petitioner one more opportunity to improve upon his work, which did not happen. Therefore, in this background, it being a case of service in a disciplined force, imposition of penalty of dismissal cannot be said to be shockingly disproportionate and in

view of settled legal position, interference with the quantum of punishment may not be made.

5. I have considered the rival submissions made by learned counsel for the parties and perused the records.
6. At the outset, this Court after having perused the original records of the departmental enquiry, cannot resist from observing that the averments made in the petition are blissfully vague and many material facts have not been disclosed in the petition.
7. Though learned counsel for the petitioner argues that the charge sheet was not served on the petitioner, I find that there is no such categoric averment in the petition. Moreover, after having gone through the order, the records of departmental enquiry it is crystal clear that the charge sheet was not only served on the petitioner but he had submitted his reply also. Therefore, this argument has to be rejected at the threshold.
8. The petitioner has clearly averred in para-5.4 of his petition that the petitioner was given a notice 10.8.1996 (Annexure P-2) to appear in the departmental enquiry. There is no further averment as to what happened thereafter. The records of the departmental enquiry stated that the Enquiry Officer had actually issued a notice dated 12.8.1996 to the petitioner on his home address. It is this notice which the petitioner refers as notice dated 10.8.1996. In the said notice, initially the petitioner was required to remain present before the Enquiry Officer on 18.8.1996 but the petitioner did not appear before the Enquiry Officer. In the order sheet dated 22.8.1996, it has been clearly recorded that as the petitioner failed to appear, permission to proceed ex-parte was obtained from the authority and departmental enquiry proceeded ex-parte against the petitioner.
9. It is interesting to note that the contents, text and tenor of the reply to the charge sheet given by the petitioner shows that the petitioner was not in a position to dispute the allegation of fact made against him that he was unauthorizedly absent from duty from 9.4.1996 for which he had neither taken

any permission much less informed the authority. The reply of the petitioner only expresses his inability to continue with the work and the petitioner requested the authority to compulsorily retire him from service. The reply of the petitioner itself does not dispute the allegation made against him in the charge sheet that he remained unauthorizedly absent from duty. Moreover, the prosecution examined as many as four witnesses who have proved by abundance of oral and documentary evidence that the petitioner, during his posting, suddenly went absconding without any notice, information much less permission and remained absent unauthorizedly. It is on the said evidence available on record, the enquiry officer prepared a report on 23.8.1996 which was submitted before the disciplinary authority culminating in issuance of order of penalty.

10. Learned counsel for the petitioner has emphasized upon the submission that the enquiry report was not supplied to him. But this submission made before the Court is not supported by any factual foundation laid in the writ petition. The challenge in the writ petition are required to be made out by specific averments of fact and specific ground. Mere submissions without any factual backing, does not merit acceptance. In the petition, it has nowhere been stated that the petitioner was not supplied any of enquiry report. Therefore, this ground is also not made out.

11. In the petition, a specific ground has been taken by the petitioner that the petitioner was sick and for that reason unable to resume his duties. For this purpose, the petitioner has relied upon the certificate issued by medical practitioners including Government Doctor. Two certificates, one recommended leave and another relating to fitness to return to duty has been placed on record. The recommendation on the ground of illness is made on 10.4.1996 whereas medical certificate of fitness to return to duty was issued on 30th August 1996.

If the petitioner was sick and unable to attend the duties, on account of his sickness, then nothing prevented the petitioner from duly applying for grant of medical leave. The petitioner in his reply (which is in the record of

departmental enquiry) has not raised any such ground that because of his illness, he was unable to attend the duties. The recommended leave certificate dated 10.4.1996 only talks of malarial fever. It would, therefore, appear that the at the time when the petitioner submitted his reply, nothing prevented him from attending departmental enquiry proceedings. In any case, the petitioner have not raised any such ground in his reply. Raising this ground in the writ petition does not merit acceptance. Curiously enough, none of orders passed in the appeal and mercy appeal show that any such ground was raised by the petitioner. Memo of appeal and mercy appeal are also not on record.

12. Learned counsel for the petitioner lastly emphasized on the aspect of disproportionately of punishment. He would submit that even if it is accepted that the petitioner remained unauthorizedly absent, imposition of penalty of dismissal from service is grossly disproportionate. In the circumstances, interest of administration would have been met by imposing any other penalty, minor in nature on the petitioner.

Submission of learned counsel for the petitioner and respondent in this regard were given anxious consideration by this Court. The scope of interference by the writ Court in the matter of quantum of punishment is very-very limited. Its needs no authority for settled proposition of law that the writ Court would not ordinarily interfere with the quantum of punishment unless the same is shockingly disproportionate or otherwise in violation of any statutory provision. Apparently, the petitioner has not come out with any ground that the imposition of punishment was contrary to provision of governing service Rules to say that even in respect of such kind of misconduct, penalty of dismissal of service could not be imposed. The discretion of the departmental authority to impose penalty on a given set of allegation of misconduct cannot be put in any straitjacket formula. It will depend upon host of circumstances, the nature of duty and function attached to the post of delinquent employee, other attending circumstances, service records etc.

13. The charge sheet issued to the petitioner as also the order of punishment reveals that the petitioner was a habitual absentee. He remained absent

unauthorizedly between period from 1.1.1993 to 14.4.1993 (for 104 days), from 5.10.1993 to 6.3.1994 (for 115 days) and then from 2.10.1995 to 16.12.1995 (for 76 days). The disciplinary authority has also mentioned in the order of punishment that earlier, for long unauthorized absence, a departmental enquiry was initiated and the petitioner was removed from service, but later on, he was again reinstated by the appellate authority. This only shows that the petitioner was given opportunity to improve upon his work. The petitioner belonged to disciplined force like police and if with this background of remaining absent coupled with the proof of the fact that the petitioner again remained unauthorized absent from 9.4.1996, a penalty of dismissal of service is imposed, in the considered opinion of this Court, it does not shock the conscience of the Court so as to warrant interference by treating penalty as shockingly disproportionate.

14. Learned counsel for the petitioner also argues that the petitioner is entitled to compensation allowance as provided under clause 279 of the Police Regulations.

15. Neither any such ground was raised in this petition nor any such relief sought. Therefore, in the absence of any such ground taken and relief sought, no relief can be granted in this regard. If the petitioner has any such ground available to him, it is open for him to take recourse to remedy as may be available to him under the law.

16. In the result, I do not find any ground to interfere with the order of penalty. The petition is liable to be dismissed and is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge