

***IN THE HIGH COURT OF BOMBAY AT GOA***  
***WRIT PETITION NO. 838 OF 2016***

Shailesh Arjun Malik

... Petitioner

*Versus*

The Superintendent of Police (Training)  
Panaji And 7 Ors.,

... Respondents

Ms. Fiona Audrey Cardozo and Ms. P. Kaur, Advocates for the  
Petitioner.

Ms. Amira Razaq, Government Advocate for Respondent no. 1.

Ms. Purna Bhandari, Additional Government Advocate for  
Respondent nos. 7 and 8.

***Coram : N. M. Jamdar,***  
***Prithviraj K. Chavan, JJ.***

***Date : 4 April 2018.***

***P. C.***

The Petitioner, who was working as a Constable in the Police force in Goa has been dismissed from service on ground of unauthorised absence from service and by this petition he is challenging the orders passed by the Disciplinary Authority and the Appellate Authority.

2. The Petitioner was appointed as Police Constable in the Police force on 8 May 2001. The Petitioner unauthorisedly remained absent from 16 March 2006. He was declared as a Deserter and was dismissed from service on 24 October 2007 pursuant to an action initiated against him for desertion as per Rule 22 of the Goa Police Subordinate Services (Discipline and Appeal) Rules, 1975. The Petitioner made a representation to the Respondent Authorities seeking leniency and to be reinstated in service. The Respondent Authorities, after taking a lenient view, imposed penalty of reduction in pay and reinstated the Petitioner in service by order dated 17 January 2007. The conduct of the Petitioner did not improve and the Petitioner repeatedly remained absent. The Petitioner again remained absent unauthorisedly w.e.f. 30 July 2009 for more than 21 days and was declared a deserter. A disciplinary inquiry was initiated against the Petitioner of which notice was given to the Petitioner. The Petitioner submitted his say. The Petitioner submitted a written representation on 9 November 2010 that he is admitting to the charges. The inquiry thereafter was concluded. The Petitioner was found guilty, and by order dated 2 December 2011, the Petitioner was dismissed from service by the Superintendent of Police in exercise of powers vested under him under the Goa Police Subordinate Service (Discipline and Appeal) Rules, 1975. The Petitioner filed appeal before the Inspector

General of Police, which was dismissed on 16 April 2012. The Petitioner has challenged the order of dismissal and the rejection of the appeal, by this petition.

3. Ms. Fiona A. Cardozo, the learned Counsel appearing for the Petitioner submitted that the disciplinary proceedings were held in violation of principles of natural justice as the Petitioner was not given notice of the subsequent dates of the inquiry as can be seen from the Roznama. It was contended that the Petitioner was not allowed to cross-examine the witness examined by the Department. Learned Counsel submitted that Rule 20 of the Goa Police Subordinate Service (Discipline and Appeals) Rules, 1975 provide notices to be given and since notices were not given, there has been breach of principles of natural justice. It was contended that Rule 6(13) speaks of cross-examination which opportunity is not given to the Petitioner. It was also contended that as per Rule 6(19), if written submission responding to the charges is given, then as per Rule 6(4) full fledged inquiry has to be conducted and in the present case, the same has been abandoned midway and conclusion of guilt is recorded against the Petitioner. Learned Counsel for the Petitioner states that the inquiry is held in violation of Rule 6 of Goa Police Subordinate Service (Discipline and Appeals) Rules, 1975 which lays down the procedure

for imposition of major penalty. It was also stated that there has been infraction of Rule 7 of the Goa Police Subordinate Service (Discipline and Appeals) Rules, 1975. Learned Counsel submitted that so called letter dated 9 November 2010 wherein the Petitioner stated to have admitted to the charges was forcibly taken from the Petitioner who did not know English and was not aware of its contents and the Petitioner has made representation in that regard and the said letter does not find reference in the proceedings therein. Learned Counsel submitted that as far as absence of 21 days is concerned, the Petitioner sought to make application for leave but he was not permitted. Learned Counsel relied on the decision of the Apex Court in *Krushnakant B. Parmar v. Union of India & Anr.*,<sup>1</sup> in which case that the earlier charges cannot be considered and as regards the procedure has been laid down while dealing with charges regarding unauthorised absence.

4. Ms. Amira Razaq, the learned Government Advocate for the Respondent submitted that when notice was issued to the Petitioner and the charges were framed, it was intimated that inquiry will be held in respect of the charges which are not admitted and since the Petitioner admitted to the charges on 9 November 2010, there was no question of further adjudication. It was submitted that the

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<sup>1</sup> 2012(2)Supreme 254

Petitioner was given notice which he has acknowledged in his representation dated 9 March 2012. Learned Government Advocate submitted that the Petitioner is in habit of remaining absent and thereafter tendering apology. It was contended that since inquiry proceedings have been conducted as per the Rules, no interference is warranted.

5. The Petitioner seeks to invoke writ jurisdiction of this Court. We cannot ignore that the Petitioner was working in the Police force as a Constable, and the resultant need of maintaining strict discipline. A disciplinary inquiry was duly instituted against the Petitioner. The same has been concluded and the order of dismissal has been recorded. Remedy of appeal has been availed of. Therefore, in writ jurisdiction, we have to see if there is any gross error in these proceedings or violation of principles of natural justice, causing prejudice. In the representation dated 9 March 2012, the Petitioner has referred to the receipt of summons and receipt of call letter. The roznama indicates that the Petitioner appeared on 7 July 2010 and thereafter the inquiry was adjourned to 19 July 2010. Adequate notices were given to the Petitioner. If the letter dated 9 November 2010 admitting to the charges is accepted, then the fact that for some earlier dates formal notice may not have been given to the Petitioner

loses its significance.

6. As regards letter dated 9 November 2010 is concerned, the argument of the Petitioner that the Petitioner did not know English and he did not know the contents, is wholly incorrect. The Petitioner has himself signed the letter in English. It is inconceivable that after forced into signing the letter as alleged, on 9 November 2010, the Petitioner would make a representation for the first time seven months thereafter on 20 June 2011. The representation which runs into 3 pages, is in English. Therefore, the contention that the Petitioner was not aware what he was signing is entirely incorrect.

7. The learned Government Advocate is right in contending that the Petitioner is in habit of remaining absent unauthorisedly and thereafter seeking pardon by accepting the misconduct. This time, the authorities did not shown any leniency, and rightly so to maintain discipline in the Police force. We do not find that there is any error committed by the authorities in conducting the inquiry. There is no merit in the contention that the Petitioner was prevented from giving an application for leave. Why and in which manner he was prevented is also not explained. If he was prevented from submitting his leave application, he could have submitted the same by Registered Post.

8. We therefore, find that the imposition of penalty is entirely justified. No interference in writ jurisdiction is warranted. The Writ Petition is, accordingly, dismissed.

***Prithviraj K. Chavan , J.***

***N.M. Jamdar, J.***