

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2018

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.30036 of 2018

K.K.Prasad

... Petitioner

Vs

Union of India Rep.by

1.The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi - 110 001.

2.The Inspector General,
CISF South Sector Head Quarters,
Ch PT Campus,
Chennai - 600 009.

3.The Deputy Inspector General,
CISF South Zone Head Quarters,
'D' Block, 1st Floor,
Rajaji Bhawan, Besant Nagar,
Chennai - 600 090.

4.The Group Commandant,
CISF Group Head Quarters,
NISA Campus,
Hakimpet, Hyderabad - 78.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, to call for the records relating to the impugned final order No.V-15014/GHH/Maj(02)12/KKP_STPP(S)/Ad.4/12/1084, dated 11.07.2012, passed by the 4th respondent, impugned Rejection Order of Appeal No.V-11014(1)/03/Disc/KKP/SZ/2017/1201, dated 10.02.2017, passed by the 3rd respondent and the impugned order of rejection of Revision No.V-15016/CISF/SS/L&R/Rev/KKP/03/2018-183, dated 04.01.2018 passed by the 2nd respondent and to quash the same and to direct the respondents either to modify the punishment as compulsory

retirement or to grant Compassionate Allowance under Rule 41 of CCS (Pension) Rules with all consequential benefits.

For Petitioner : Ms.M.Bhargavi

For Respondents : Mr.Venkatasamy Babu
Central Government Standing
Counsel

ORDER

Mr.Venkatasamy Babu, learned Central Government Standing Counsel takes notice for the respondents. With the consent of both the parties, the writ petition is taken up for final disposal at the admission stage itself.

2. The prayer sought in this writ petition is to quash the orders dated 11.07.2012, 10.02.2017, 04.01.2018 passed by the respondents 4, 3 and 2 respectively and consequently, direct the respondents either to modify the punishment as compulsory retirement or to grant Compassionate Allowance under Rule 41 of CCS (Pension) Rules with all consequential benefits.

3. The brief facts of the case, lying in a narrow compass, are that the petitioner joined as a Constable in the Central Industrial Security Force (CISF) in the year 1984 and got promotion as Head Constable in the year 2005. While he was working at NTPC, Simhadri, he had availed 9 days leave, due to the critical health condition of his wife. Despite the treatment, his wife expired on 21.08.2011. Subsequently, his mother also passed away on 19.11.2011. In view of the sudden death of his wife and mother, the petitioner went into severe mental depression, due to which, he did not join duty at the appropriate time. Hence, he was removed from service vide order dated 11.07.2012 passed by the fourth respondent. After recovery and after having come to know about the said order, he preferred an appeal before the third respondent, who also dismissed the appeal, vide order dated 10.02.2017. Being aggrieved, the petitioner filed revision, which too was dismissed by the second respondent, vide order dated 04.01.2018. Assailing all the three orders, the petitioner has filed the instant writ petition.

4. The learned counsel for the petitioner has vehemently argued that the impugned order of removal has been passed without looking into the serious ailment with which the petitioner was suffering at the relevant time and that the respondents failed to consider the very vital fact that the petitioner's absence from duty was not deliberate or wilful, but, it was on account of ineluctable circumstances. The learned

counsel further submitted that in the facts and circumstances of the case, imposition of penalty of removal from service is not only excessive and disproportionate to the gravity of the charge, but is also shocking to the judicial conscience. Hence, the learned counsel sought appropriate direction to the respondents with regard to modification of the punishment inflicted on the petitioner.

5. In contrast, learned Central Government Standing Counsel contended that on account of unauthorized absence from duty, the petitioner was subjected to disciplinary proceedings and after due process of law, the order of removal from service was passed; the appeal and the Revision were decided with a speaking order and therefore, there is no illegality in the impugned orders passed by the respective respondents. The learned Central Government Standing Counsel further contended that the scope of interference by way of judicial review in the findings in departmental proceeding is very limited; the writ Court would not examine the evidence or the penalty imposed like an appellate Court; examination by the writ court would be confined to the well laid down principles of *Wednesbury's* reasonableness; due opportunity of hearing was granted to the petitioner and a fair procedure was followed, following which the charge against the petitioner stood proved; in the circumstances of the case, the penalty of removal from service imposed on the petitioner, cannot be said to be disproportionate to the gravity of the offence; therefore, no interference is called for.

6. This Court has given its anxious consideration to the facts and circumstances of the case and also examined the material on record.

7. Before going into the question involved herein as to whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a member of an Armed Force, it is but necessary to decide the question whether absence is wilful or because of compelling circumstances. This issue has been dealt with in detail by the Supreme Court in *Krushnakant B. Parmar v. Union of India and another* [(2012) 3 SCC 178], wherein, at paragraph Nos.17,18 and 19, it has been observed as under:-

"17. If the absence is the result of compelling circumstances under which it was not possible to report duty, such absence cannot be held to willful. Absence from duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different

eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct.

19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absence from duty but failed to hold that the absence was willful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty."

Thus, what is discernible from the aforesaid decision of the Supreme Court is that absence from duty, without any application or prior permission, may amount to unauthorized absence, but, if the absence is an outcome of compelling circumstances like mishap, serious ailment of his or in family, law and order problem, failure of transport etc., under which it was not possible to report or perform duty, then, such absence cannot be held to be wilful.

8. No doubt, the petitioner was a member of a disciplined force and being a member of a disciplined force, like the CISF, he was required to maintain absolute discipline. In the instant case, the disciplinary authority, after holding that the petitioner had committed gross misconduct, dereliction of duty and an act of indiscipline, concluded that he should be punished, based on which, penalty of removal from service was imposed. Though detailed reasonings may not be warranted, yet, it is necessary that there should be some material in the order of penalty to suggest application of mind by the disciplinary authority as to why the particular penalty was imposed.

9. On a perusal of the final order passed by the fourth respondent / disciplinary authority, it could be seen that the petitioner was issued a charge memorandum dated 01/02-02-2012, on the following charges:

Article of Charge-I

"No.844506647 HC(GD) K.K.Prasad of CISF Unit, STPP, Simhadri is charged with gross misconduct, carelessness, dereliction to duty, violation of lawful order and an act of indiscipline in that he overstayed from leave w.e.f 10/10/2011 without permission from the competent authority till date and in spite of issuing 04 call up notices to him with direction to report for duty, he did not report to this Unit for duty. The above act on the part of No.844506647 HC(GD) K.K.Prasad amounts to gross misconduct, carelessness, dereliction to duty, violation of lawful orders and an act of indiscipline which are unbecoming of a member of an Armed Force of the Union like CISF. Hence, the charge."

Article of Charge-II

"No.844506647 HC(GD) K.K.Prasad is charged with gross misconduct, dereliction to duty and an act of indiscipline in that while serving in CISF the said HC/GD K.K.Prasad of CISF Unit, STPP, Simhadri, was awarded with as many as 09 penalties for his delinquency time and again. In spite of 09 penalties awarded to him, he has not improved himself which shows his casual attitude towards his bonafide official duties, discipline which amounts to gross misconduct, carelessness, dereliction to duty and an act of indiscipline on the part of No.844506647 HC(GD) K.K.Prasad being a member of a disciplined Force like CISF. Hence, the charge".

The fourth respondent, after thoroughly going through the enquiry report, statement of the witnesses and exhibits adduced during the course of departmental enquiry as well as all other relevant records, held the charges proved against the petitioner and passed the order dated 11.07.2012, awarding the penalty of removal from service with immediate effect to the petitioner. While passing such an order, it was found that the petitioner had not joined duty and overstayed from leave, even after expiry of extension of leave; he did not respond to two call up notices dated 14/10/11 and dated 31/10/11, for joining duty, but, simply sent a fax message, without seeking extension of leave, but only to intimate that his wife had recently passed away, his mother was in serious condition and he would join duty as soon as possible; further, he did not heed any response to further call up notices issued by the Unit Commander dated 23/11/11 and 24/12/11 and has been overstaying leave with effect from 10/10/2011 till date, unauthorisedly; and such act on his part

amounts to gross misconduct, carelessness, negligence, dereliction of duty, violation of orders and an act of indiscipline, which are unbecoming of a member of an Armed Force of the Unit and accordingly, held the charge -I against him. It has also been found that the petitioner was earlier penalized as many as on 9 occasions for his acts of overstaying leave time and again; and in spite of all those penalties awarded by different disciplinary authorities, he did not show any improvement and again remained overstayed from leave unauthorisedly; and thus, he had become incorrigible of committing overstayed from leave, which depicted his casual attitude towards his bona fide official duties, discipline and the same amounts to gross misconduct, carelessness, dereliction of duty and an act of indiscipline; and accordingly, held the charge-II against him.

10. The third respondent Appellate Authority has dismissed the appeal preferred by the petitioner, on the reasonings that the petitioner never sent any medical papers pertaining to the treatments to justify his case and he did not even send any reply to the official communications of CISF Unit STPP Simhadri or the Enquiry Officer; he deliberately changed his dwelling place without informing the same to the department; he has been punished 9 times for overstaying from leave in his past service and even after being awarded with 9 punishments for the said misconduct, he continued to be incorrigible and violated his own assurances given at the time of award of each punishment. The said order has also been affirmed by the revisional authority i.e., the second respondent.

11. This Court is of the considered opinion that though the enquiry proceeded ex parte, the petitioner has been found guilty of the charges, based on the materials on record and his past conduct, which can be said to be wilful. Hence, this Court finds no reason to take a different view, with regard to the orders so passed by the respondent authorities.

12. That apart, this Court, in writ jurisdiction under [Article 226](#) of the Constitution of India, does not sit as a Court of Appeal over the departmental proceedings. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an Appellate Authority. In the matter of interference with the order of punishment, interference is warranted only if the findings in the departmental enquiry are perverse or the punishment is shockingly disproportionate. In my view, the instant case is not one, where the punishment of dismissal was shockingly disproportionate or where on the face of it, there

was perversity or irrationality, since the charges levelled against the petitioner were proved, based on evidence.

13. At this juncture, with regard to the scope of judicial review in the matter of departmental proceedings, an useful reference could be made to the judgment of the Apex Court in State of Andhra Pradesh and Others v. S.Sree Rama Rao [1963 AIR 1723 : 1964 SCR (3) 25]. Paragraph 7 of the said judgment is apposite and the same is profitably reproduced hereunder:

"There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Art. 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Art. 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: iris concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent Officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or; where the

conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Art. 226 of the Constitution."

14. As regards the plea of reduction of the punishment imposed on the petitioner made by the learned counsel for the petitioner, this Court is of the opinion that taking note of the fact that the petitioner, being a member of paramilitary force, i.e., CISF, failed to maintain good conduct and discipline and he has been found repeating the misconduct, time and again, for which, he was awarded nine penalties in past, the reduction of punishment will send a wrong signal to others that even such dereliction of duty and act of indiscipline will be viewed leniently by the employer. Hence, the impugned order of punishment dated 11.07.2012, appellate order dated 10.02.2017 and revisional order dated 04.01.2018 do not call for any interference by this Court.

15. As a logical sequitur to the discussions made in the foregoing paragraphs, the writ petition, being devoid of any merit, is dismissed. No costs.

ms/rk

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1.The Secretary,
Union of India,
Ministry of Home Affairs,
North Block,
New Delhi - 110 001.

2.The Inspector General,
CISF South Sector Head Quarters,
Ch PT Campus, Chennai - 600 009.

3.The Deputy Inspector General,
CISF South Zone Head Quarters,
'D' Block, 1st Floor,
Rajaji Bhawan, Besant Nagar,
Chennai - 600 090.

4.The Group Commandant,
CISF Group Head Quarters,
NISA Campus,
Hakimpet, Hyderabad - 78.

+1cc to Mr.Venkataswamy Babu, Advocate, S.R.No.78866

+1cc to Mr.M.Bhargavi, Advocate, S.R.No.78527

W.P.No.30036 of 2018

KJ(CO)
KAK(06/02/2019)



WEB COPY