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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3227/2017**

SUDHIR KUMAR BEHERA Petitioner

Through: Mr.P.Sureshan, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr.Kirtiman Singh, CGSC.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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05.12.2018

1. The challenge in the present petition is to the impugned order dated 10th May, 2016 passed by the Disciplinary Authority (DA), the order dated 12th August, 2016 passed by the Appellate Authority and the order dated 25th January, 2017 passed by the Revisional Authority, affirming the removal of the Petitioner from the service of CISF with immediate effect with the rider that it shall not be a disqualification for future service under the Government. The proved charge against the Petitioner was overstay of leave by 80 days.

2. The Petitioner was appointed as a Constable (GD) in the year 2007 in the CISF. In the year 2015, he was working at CISF Unit, IGI Airport, New Delhi. According to the Respondents/CISF the Indira Gandhi International Airport Delhi where the Petitioner was working comes under the hypersensitive category. As per directions of Govt. of India, CISF has to

provide officers and personnel for certain posts in SPG, NSG and other CAPFs in view of the broader security requirements of the country.

3. The Petitioner was granted earned leave for 15 days from 19th October 2015 to 2nd November 2015 and he was required to join duty on 3rd November 2015. However, he failed to do so. The case of the Respondents, which has not been denied by the Petitioner, is that he reported for duty on 22nd January 2016 after overstaying leave for 80 days with effect from 3rd November, 2015 to 21st January 2016 of his own volition without any permission from the competent authority.

4. According to the Petitioner, he fell ill with malaria and was completely bedridden. According to him, he managed to send through his relative a fax message to his department on 4th November, 2015 to that effect. It is the case of the Respondents that no such fax message was received by them.

5. It is then stated that on 31st December, 2015, the Petitioner's father suffered paralysis and was bedridden. As a result of this and his own illness, the Petitioner lost his mental equilibrium and was unable to respond properly and intimate his department about the same. According to him, he was not even aware of the whereabouts of his phone for the duration of his illness.

6. The Petitioner reported for duty on 22nd January, 2016, after obtaining a fitness certificate from a Doctor. Two days prior thereto on 20th January, 2016, a show cause notice (SCN) had been issued to the Petitioner. Article 1 of the charge stated that the Petitioner was granted 15 days earned leave

from 19th October, 2015 to 2nd November, 2015. Since he failed to report for duty on 3rd November, 2015 as stipulated, and ultimately reported for duty only on 21st January 2016, he was stated to have overstayed from leave without permission from the competent authority and this amounted to “gross indiscipline and neglect of duty”.

7. By the inquiry report dated 28th March, 2016, the EO held the charges to be proved. Thereafter, on 10th May, 2016, the Disciplinary Authority, accepted the report of the EO and offered the Petitioner chance to file his written statement by 23rd March, 2016 against the report of the EO. The Disciplinary Authority (DA) gave the Petitioner one copy of the inquiry report on 31st March 2016 and he was asked to submit his defence within a period of 15 days. The Petitioner submitted his defence on 15th April, 2016.

8. The DA in the impugned order dated 10th April 2016 discussed the report of the EO thoroughly and awarded the Petitioner the afore-mentioned punishment in terms of Schedule-1 and Rule-34 (ii) of Rule 32 of the CISF Rules, 2001. It was stated that the regularization of overstay from leave of the Petitioner for 80 days from 3rd November, 2015 to 21st January, 2016 shall be made separately. On 12th August, 2016, the Appellate Authority rejected the Petitioner’s appeal. The Revisional Authority on 25th January, 2017 confirmed the abovementioned punishment imposed upon the Petitioner by dismissing his revision petition.

9. At the hearing on 29th October, 2018, learned counsel for the Petitioner produced an order dated 20th July, 2016 passed in WP(C) 1290/2016, whereby according to him the punishment of removal from services in a

similar case of overstay of leave had been substituted by reduction in pay by a number of stages. It was submitted that that was a case of overstay of 114 days whereas in the present case, it the overstay period was 80 days. The Court also pointed out the order passed by it on that day in WP(C) 11665/2018 which was another instance of the punishment of removal from service was reduced to stoppage of increments.

10. Today, learned counsel for the Respondents has sought to distinguish these cases on facts. It is pointed out that there was a serious issue in the present case involving overstay of leave by the Petitioner. It is submitted that the Petitioner was at the relevant time posted at the IGI Airport, New Delhi which was a 'hyper sensitive' category of installation. Any act of indiscipline of a member of the CISF posted at such places was required to be dealt with sternly.

11. Indeed, the Court finds that no parallel can be drawn with the other cases cited by the learned counsel for the Petitioner, which turn on their peculiar facts and had other mitigating circumstances affecting the ultimate decision taken therein. In the present case, the Petitioner decided to not intimate the Respondents about being unable to report for duty on the expiry of the stipulated leave period. There is nothing to show that the Petitioner's fax message was in fact received by the Respondents. It has also been noted that the Unit tried to contact the Petitioner and ordered him to return but there was no response to these messages.

12. Be that as it may, considering that CISF is a disciplined armed force, a period of 80 days of overstay by the Petitioner is indeed unconscionable and

inexcusable particularly when it is without any prior intimation to the commanding officer. The Court is also not satisfied that the medical ground put forth by the Petitioner offers a valid justification for 80 days of overstay of leave.

13. Apart from the DA, the Appellate and Revisional Authorities have passed detailed orders. The procedure adopted by the DA has not been shown to suffer from any legal infirmity. Given the nature of the misconduct, the punishment of removal from service with the rider that it shall not be a disqualification for future service under the Government cannot be said to be disproportionate to the misconduct for which the Petitioner was held liable.

14. There is no merit in this petition. It is accordingly dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 05, 2018
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