

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP NO. 3027 OF 2014
DECIDED ON : 13.03.2019**

Sukhwinder Singh

...Petitioner

versus

Union of India and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vivek Sharma, Advocate,
for the petitioner.

Mr. Praveen C. Goyal, Advocate with
Ms. Aarti Goyal, Advocate,
for the respondents.

ARUN MONGA, J. (ORAL)

1. The writ petition has been filed for issuance of a writ in the nature of certiorari to quash revisional order dated 13.07.2012 (Annexure P-6), whereby appellate order dated 18.03.2011 (Annexure P-4) and punishment order dated 20.08.2010 (Annexure P-3) have been upheld. Resultantly, maximum punishment of removal from service awarded to the petitioner, on an attributed delinquency of absence from duty without leave on two occasions i.e from 19.11.2009 to 22.11.2009 and from 24.11.2009 to 30.11.2009, has been sustained vide orders impugned therein.

2. Succinctly, factual background first. The petitioner had put in ten years of service as Constable in CISF, when he was

dismissed on the charge of remaining absent from duty without leave for the aforesaid period of 11 days. The second charge against the petitioner was that when he was posted at Steel Plant, Bhilai, he was guilty of misconduct as he had committed an act of indiscipline by conniving with one Neelam Pandey, daughter of CISF Constable M.P. Pandey, to flee from Mumbai and attend her wedding with his friend Manwinder Singh at Arya Samaj Mandir, Raipur on 27.11.2009.

4. The petitioner states that the delinquency attributed to him for remaining absent from duty without leave was owing to the fact that he was on medical leave, when during an inspection he was found to be not available.

5. I have gone through the rival pleadings along with the appended record and have heard contentions of learned counsels appearing for both the sides.

6. I am of the opinion that the impugned revisional order dated 13.07.2012 (Annexure P-6), as also the appellate order dated 18.03.2011 (Annexure P-4) and the order passed by the Punishing Authority dated 22.08.2010 (Annexure P-3) do not stand judicial scrutiny and are not tenable and are accordingly liable to be set-aside.

7. Learned counsel for the petitioner has drawn my attention to a Division Bench judgment of Delhi High Court in case "**Ex. Constable Ashok Kumar v. Union of India**", bearing W.P. (C) No. 7098 of 1999, decided on 24.05.2012, wherein, the

delinquency attributed to a Constable of CISF was unauthorized absence without leave for a period of 115 days. However, due to sufficient cause of absence, the dismissal order passed therein was set-aside vide the said judgment. The relevant part of the judgment is reproduced herein below:-

" 42. Considering the nature of the charge, the punishment awarded and the consequences of the case, the punishment of dismissal does not conform to the gravity of the alleged misconduct imputed against the petitioner. In Braj Kishor Singh vs. State of Jharkhand and Ors. 2005 (2) BLJR 1415, it was held that if after explanation, it appears that the charged officer had remained absent from duty due to any sufficient reason, he shall be granted leave admissible to him for that period and the punishment is to be inflicted only in the cases where it is proved that the delinquent has violated the rules at his own will. In the said case the petitioner, who was a constable and had over stayed leave for 38 days, had given sufficient cause for the same and had proved it on the record with proper medical documents, which however wasn't duly appreciated by the Disciplinary Authority. The Court had, therefore, held that the punishment of compulsory retirement was unconscionable, excessive and disproportionate to the charge imputed against the charged officer and consequently the Court had set aside the penalty of compulsory retirement and the charged officer was reinstated with part of back wages."

8. The learned counsel has also drawn my attention to a judgment of this Court titled as "**Sanjeev Sharma v. Union of**

India", bearing CWP No. 3573 of 2000, decided on 14.12.2018, wherein, due to sufficient cause, a delinquent constable of CISF was found absent from duty without leave for a period of 42 days and the dismissal order passed pursuant thereto, was set-aside relying upon the Division Bench, Delhi High Court judgment, *ibid*.

9. In view of judgments, *ibid*, I am of the view that petitioner ought not to have been awarded with extremely harsh punishment of removal from service, as he was on medical leave for the period w.e.f 19.11.2009 to 30.11.2009. When his health deteriorated, he went to his brother. As regards the other charge, of conniving with Neelam Pandey to run away to get married with friend of the petitioner is concerned, a perusal of the enquiry report, wherein statement of Neelam Pandey has been recorded, reflects that she got married at her own volition and she was adult on the date of her marriage. The said charge hence does not survive. Enquiry Report (Annexure P-2) relies on all the prosecution witnesses, without any cross-examination. Petitioner was neither informed nor involved with day to day enquiry and the same was conducted behind his back.

10. I am of the opinion that the punishing authority fell in grave error in awarding extremely harsh punishment of removal from service on the ground of absence from duty without leave for the above said period. The petitioner had sufficient reason to be absent while he was on medical leave. It was a case of him being not found in his barrack during medical leave, at the time

of inspection. The Enquiry Officer fell in grave error, both in law and in facts by holding the petitioner guilty qua the said alleged connivance. The petitioner could not have connived with Neelam Pandey to run away, as she was an adult at the relevant time and had married as per her will at her own volition and therefore, the said charge stood not proved against him.

11. In view of my aforesaid discussion and the reasoning contained therein and the judgments relied upon by learned counsel for the petitioner, the writ petition is allowed. The impugned orders dated 13.07.2012, 18.03.2011 and 20.08.2010 are set-aside. The respondents are directed to re-instate the petitioner with continuity of service and consequential benefits, with effect from the date when he was removed from service, within two months from the date of receipt of certified copy of this order. However, it is made clear that the petitioner shall be entitled to 25% of the pay only, due to him for the period he was out of service.

(ARUN MONGA)
JUDGE

MARCH 13, 2019
shalini

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No