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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 3.07.2019

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W.P.(C.) No. 6136/2019

DURGESH S. KOTHEKAR

..... Petitioner

Through: Ms. Kajal Bhatia, Adv. with Mr. A.
Karthik, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Kamal Kant Jha, Adv. with Mr.
Siddharth Jha and Ms. Bakshi Vinit,
Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J. (ORAL)

1. The present writ petition under Article 226 of the Constitution of India is filed by the petitioner, inter alia, with the following prayers:

“a) Issue an appropriate writ, order or direction in the nature of certiorari under Article 226 of the Constitution of India calling for records of Order of Removal dated 31.05.2012 and set aside and quash the same;

b) Issue an appropriate writ, order or direction in the nature of mandamus under Article 226 of the Constitution of India directing the Respondents to re-instate the Petitioner on account of disproportionate punishment with all consequential benefits.”

2. In the year 2006, the petitioner joined service as a Constable in Central Industrial Security Force. On 09.09.2011, the petitioner was relieved on regular transfer from CISF Unit, IOCL (BGR) Bongaigaon, Assam, to CISF Unit DSP Durgapur with eligible joining time of 10 days. He did not join at Durgapur on the ground that his domestic affairs were disturbed. Respondents sent 1st call up notice on 05.10.2011 and 2nd call up notice on 18.11.2011 to petitioner's home address. Ms. Priya Kothekar, petitioner's wife lodged a report against the petitioner alleging physically and verbal harassment and also made dowry allegations on 3.12.2011. Thereafter, on 06.12.2011, respondents sent 3rd call up notice to petitioner's home address.

3. On 01.01.2012, vide charge memorandum No. V-15014/IOCL/Disc/Maj-01/2012/04, petitioner was charge sheeted under Rule 36 of CISF Rules 2001 and the charges leveled against the petitioner were as follows :

“ **Article of Charge-I :**

On account of failure to report on 20.09.2011, petitioner was charged with gross misconduct, indiscipline and unbecoming of member of a disciplined force like CISF.

Article of Charge-II:

On account of failure to report on duty on 07.09.2011 in 'C' shift from 2100 hours to 0500 hours at Sub Officer's Hostel Duty Post, and on 08.09.2011 in "B" shift from 1300 hours to 2100 hours at Dog Kennel Duty Post, which amounted to gross misconduct, indiscipline and unbecoming of a disciplined force like CISF.

Article of Charge III :

Petitioner was declared as an habitual offender as he has been awarded the following 1 major and 3 minor punishments :

- a) 25.07.2008- For OS of 6 days, w.e.f. 15.06.2008, to 20.06.2008, petitioner was awarded penalty of "pay fine equivalent to 2 days pay" by Deputy Commandant, CISF Unit, Bongaigaon;

- b) 28.04.2010 – For OSL of 38 days, w.e.f. 25.02.2010 to 03.04.2010, petitioner was awarded penalty of “pay fine equivalent to 7 days pay” by Deputy Commandant, CISF Unit, Bongaigaon;
- c) 18.09.2010 - For OSL of 31 days, w.e.f. 18.06.2010 to 18.07.2010, petitioner was awarded penalty of “pay fine equivalent to 7 days pay” by Asstt. Commandant, CISF Unit, Bongaigaon;
- d) 08.09.2011 - For OSL for 130 days, w.e.f. 03.02.2011 to 12.06.2011, petitioner was awarded penalty of “reduction of Pay by three stages” by Commandant, CISF Unit, Bongaigaon.”

4. On 14-01-2012 the Charge Memorandum encapsulating the charges framed was sent to the petitioner, and on 17.02.2012, the petitioner acknowledged the receipt of the charge memorandum dated 01.01.2012. On 27.02.2012, a departmental enquiry was initiated against the petitioner. Consequently, on 19.04.2012, the enquiry officer conducted the enquiry and recorded the statements of all PWs and CW in presence of Presenting officer. On finalization of departmental enquiry, the Presiding Officer submitted his written brief to the Enquiry Officer and sent a copy to the petitioner, thereby directing him to submit his representation within 5 days. On 23.04.2012, petitioner received a copy of the written brief and further on 04.05.2012 -after consideration of statements of all the PWs/CW and material evidence on record, the enquiry officer held the articles of charge as proved and submitted it to the Disciplinary Authority. On 05.05.2012, the disciplinary authority sent a copy of enquiry report alongwith findings to the petitioner and the petitioner acknowledged receipt of the letter dated 05.05.2012 on 09.05.12 against which the petitioner submitted his representation on 19.05.2012.

5. On 31.05.2012, the disciplinary authority awarded the punishment of “Removal From Service” to the petitioner on the ground of the over stay of

leave period. Aggrieved by the order dated 31.05.2012, the petitioner preferred an appeal to the DIG (NEZS) Kolkata on 13.07.2012 and the appellate authority vide its order dated 19.09.2012 dismissed the appeal.

6. The petitioner filed a Writ Petition in the High Court of Bombay, Nagpur Bench, Nagpur, against the order of DIG (NEZS) Kolkata dated 19.09.2012 dismissing his appeal against removal from service, and vide order dated 21.11.2014, the High Court of Bombay, Nagpur Bench, allowed the petitioner to withdraw the Writ Petition with a liberty to file revision application under S. 9 of CISF Act, 1968 which was filed by the petitioner on 06.06.2016, and the same was rejected by the revisioning authority.

7. On 17.07.2018, the petitioner made a representation to the Director General, CISF, HQs, New Delhi for review of the orders dated 31.05.2012, 19.09.2012 and 27.07.2016 passed against him and the Director General, CISF, HQs, New Delhi dismissed the same by stating that the petitioner had already exhausted departmental remedies by way of appeal and revision, therefore no intervention was warranted. Hence the petitioner preferred the present writ petition.

8. We have heard the submissions of the Ld. counsels and given our due consideration to the matter.

9. It is submitted by the Ld. counsel for the petitioner that the petitioner has been going through severe mental stress due to the criminal cases/divorce proceedings filed by his wife against him and, therefore, he was not in a stable state to join the service. He further urged that punishment of removal from the service is disproportionate to the charges for which he has been held guilty.

10. On the other hand, the counsel for the respondents has submitted that

this is a case of unauthorized period of over stay leave of 255 days and the punishment of removal awarded to the petitioner is commensurate with his misconduct, since there have been several earlier instances of unauthorized absence as noticed in the charge memorandum. He further urged that the petitioner has failed to appear in the inquiry despite several opportunities. He further urged that the petition is liable to be dismissed on account of delay and laches.

11. The petitioner in the instant case has over stayed on unauthorized leave from joining time by 255 days from 20-09-2011 to 31-05-2012. The same was liable to be treated as “DIES NON” in terms of Rule 25 of CCS (Leave) Rules read with FR 17(1) with break in service as a consequence of which inquiry was conducted and he was removed from the service vide order dated 31-05-2012. The petitioner’s appeal against the said order has also been dismissed on 19-09-2012.

12. The charge memorandum was sent to the petitioner at his address through special messenger, but the petitioner declined to acknowledge the same. Therefore, the charge memorandum was sent through registered AD post dated 14-01-12, which was acknowledged on 17-02-12. As the petitioner failed to submit any representation, therefore, a full-fledged departmental enquiry was ordered to be conducted.

13. The enquiry officer issued notice dated 01-03-12 to the petitioner for holding the preliminary hearing on 22-03-2012 which was sent to the residential address of the petitioner through post. The petitioner acknowledged the same but he did not attend the enquiry. Second notice dated 22-03-2012, fixing the date of enquiry on 01-04-2012 was sent to the native place of the petitioner, but he did not respond to the enquiry notice. Therefore, the third notice was sent by the enquiry officer vide enquiry notice dated

01-04-2012, through registered post AD, but he again did not appear before the enquiry officer despite having knowledge of the same.

14. Finding no other alternative, the enquiry officer was constrained to hold the enquiry exparte and conducted the same as per the procedure laid down under provision of CISF Act and Rules. On finalization of departmental inquiry, the presenting officer submitted his written brief to the enquiry officer on 19-04-2012 and a copy of the same was sent to the petitioner, who acknowledged the same on 23-04-2012. The petitioner was directed to submit his representation within 5 days but he failed to do so. After consideration of the statement of all the PWs/CW and material evidence available on record, the enquiry officer returned his finding holding the articles of charge as proved, and submitted the same to the disciplinary authority on 04-05-2012. The disciplinary authority after careful examination of the enquiry report, sent the same through special messenger to the petitioner to submit his written representation, if any within 15 days. The same was acknowledged by the petitioner on 09-05-2012 and he submitted his representation against the enquiry report on 19-05-2012. After considering the entire material and the representation of the petitioner, vide official order dated 31-05-2012, he was awarded punishment of removal from the service and the same was sent under registered/AD post to the petitioner.

15. The petitioner preferred appeal against the said order which was dismissed on 19-09-2012. Aggrieved, the petitioner filed a Writ Petition No.1273/2014 before the High Court of Judicator at Bombay, Nagpur Bench, Nagpur and subsequently withdrew the same to exhaust the available departmental remedies. Thereafter, the petitioner filed a revision petition on 06-06-2016, after a lapse of more than one and a half year from the date of

disposal of the writ petition. It is not understood, as to for what reason the petitioner waited for about one and a half year for filing the revision petition.

16. The ground taken by the petitioner before the revisional authority for delay in filing the revision after withdrawal of his Writ Petition was that he has not been keeping well, but the medical certificates/prescriptions produced by him before the revisional authority did not reveal that he was in such a bad medical condition that he could not have approached the revisional authority within reasonable time. The revision petition was therefore, dismissed as time barred on 27-07-2016.

17. After the dismissal of the revision petition on 27-07-2016, the petitioner sat quietly and one fine morning he appears to have got up from his deep slumber and filed the present writ petition on 25-05-2019 after a period of more than two and a half years. The Court cannot come to the rescue of a person who sleeps over his rights and approaches the Court as per his convenience. The entire record shows the negligent and incorrigible conduct of the petitioner.

18. We have also considered the medical documents placed on record by the petitioner and none of the document shows that he was in such a bad medical condition which prevented him from approaching the Court in time. The petitioner is, therefore, guilty of delay and laches.

19. Lastly, we may observe that in judicial review, we are not called upon to act as an appellate forum and the findings returned in the enquiry against the petitioner, which have been accepted by the Disciplinary Authority and the Appellate Authority cannot be said to be unreasonable, without any basis, or not borne out from the record. The punishment inflicted upon the petitioner also cannot be said to be disproportionate to his

misconduct. The petition is, therefore, dismissed.

RAJNISH BHATNAGAR, J.

VIPIN SANGHI, J.

JULY 03, 2019

sumant

