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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No.3072 of 2011

Mangal Singh Markam, Ex. Constable No. 137, aged about 44 years, S/o Shri Guhar Singh, R/o C/o Smt. Hemlata Markam Qr. No. PWD/98, PS Bhilai Bhatti, Sector 3, Bhilai, Post Bhilai, Distt. Durg (CG).

---Petitioner(s)

Versus

1. State of Chhattisgarh through Secretary, Home Department, Mantralaya, DKS Bhawan, Raipur, Post & District Raipur (CG).
2. Director General of Police, Police Headquarter, Chhattisgarh, Civil Line, Raipur, Post & District Raipur (CG).
3. Inspector General of Police, Durg Circle, 32 Bungalows, Bhilai, Post Bhilai, District Durg (CG).
4. Superintendent of Police, Durg, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Uttam Pandey, Advocate.
For State	:	Shri Jitendra Pali, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12.03.2020

1. Aggrieved by the order of dismissal from service vide order Annexure P/1 dated 23.06.2009 and the departmental appeal and the mercy appeal, both of which stood rejected vide orders Annexure P/2 and P/3, dated 31.12.2009 and 05.03.2011 respectively, the present writ petition has been filed.
2. The brief facts of the case is that, the petitioner was appointed as a Constable on 27.08.1991. The petitioner continued to work on the said post till 28.05.2011. Thereafter, the petitioner abruptly went on leave with effect from 28.11.2005 and continued to remain unauthorisedly absent from duty for a considerable period of time. For this act of misconduct of remaining unauthorisedly absent from duty, the petitioner was served with a charge sheet on 30.10.2008. The petitioner did not give any reply to the

said charge sheet. Subsequently, a departmental enquiry was conducted and enquiry officer was also appointed.

3. During the course of enquiry, in spite of specific notice to the petitioner, he did not care to attend the enquiry nor was he represented by any person before the enquiry officer and the enquiry officer was left with no other option but to proceed ex parte against the petitioner and submitted his enquiry report before the disciplinary authority. The Superintendent of Police who vide Annexure P/1, the impugned order, dated 23.06.2009 imposed the punishment of dismissal from service. The departmental appeal preferred by the petitioner also stood rejected vide order dated 31.12.09 and later on, the mercy appeal preferred by the petitioner also stood rejected vide order dated 05.03.2011 leading to the filing of the present writ petition.
4. Some of the grounds of challenge to the impugned orders are that the punishment of dismissal from service and the upholding of the same by the appellate authorities is highly disproportionate, excessive and harsh. According to the petitioner, there was a genuine bonafide ground for the petitioner to remain absent from duty and for which the petitioner had submitted his application for leave supported with medical certificates regularly and which has not been properly appreciated by the Disciplinary Authority. According to the petitioner, he was seriously ill for a very long period of time which forced him to remain absent from duty which cannot be said to be unjustified or unauthorised as he had intimated the office authorities in respect of his absence and had requested for leave. According to the petitioner, the concerned authorities should have considered imposing any other punishment but that of dismissal from

service, thereby protecting his service by imposing with some other major penalty.

5. The further ground of challenge by the petitioner is that the impugned order has been passed in violation of the basic principles of natural justice. According to the petitioner he has not received the notice in respect of the departmental enquiry that was conducted. According to him unless the notice is properly served on the delinquent in respect of the enquiry proceedings, it cannot be said that there has been proper service of notice in respect of the departmental enquiry. This according to the petitioner again amounts to non-granting of proper opportunity of hearing. Thus, the departmental enquiry deserves to be vitiated on the ground of the same being in contravention to the principles of natural justice.
6. The State counsel on the contrary opposing the petition submitted that since the petitioner belongs to the uniformed force, there is a great element of discipline expected of the petitioner which he had not maintained and therefore the action cannot be said to be bad. The further contention of the state is that the plain perusal of the charge sheet is sufficient to indicate that the petitioner was unauthorisedly absent from duty for a considerable long period of time. That, further there was also no intimation given by the petitioner while he was absent nor had he cared to take proper sanction/permission for the period of absence. The State counsel further submitted that from the reading of the enquiry report it appears that all efforts were made for serving the petitioner with the notice but he deliberately avoided the same and did not appear before the enquiry officer in spite of proper service of notice. Since he was properly served with the notice and considering the period of unauthorised absence, that too by a person belonging to the uniformed force, the

enquiry officer was justified in proceeding ex parte with the departmental enquiry and submit the enquiry report based upon which the disciplinary authority had passed the order of punishment which has been affirmed by the two higher authorities in an appeal and also in a mercy appeal highlighting the misconduct on the part of the petitioner who was working in the police department which is a uniformed force. Thus, the counsel for the State prayed for the rejection of the writ petition as there was no merits on the submissions put forth by the petitioner.

7. Having heard the contentions put forth on either side and also on perusal of records, what is apparently undisputed is the fact that the petitioner was appointed as a Constable way back on 27.08.1991. The petitioner continued to work on the said post when abruptly on 28.11.2005 the petitioner went on leave on medical grounds and thereafter remained absent without proper sanction and permission of leave for a considerable long period of time. The petitioner was also issued with various notices and memos asking him to report for duty but the petitioner did not respond to any of these notices and memos. For the initial period of absence the petitioner submitted certain medical certificates however subsequently the petitioner neither did apply for extension of leave nor did he submit any proof of his being seriously ill which restrained him from reporting for duty. A fact which cannot be brushed aside is that the wife of the petitioner also was working in the same department and all the notices in addition of it being sent at his residential address was also being routed through his wife, yet there was no proper response from the side of the petitioner regarding his absence.
8. Further, from the records it also reveals that the respondents had made all efforts in giving proper notice to the respondents to appear before the

enquiry officer. The department had also taken all necessary steps to ensure that the petitioner reports for duty and for which he has been issued with regular memos asking to report for duty. In addition there is also sufficient material to show that the petitioner was asked to appear before the medical board for ascertaining his medical condition on account of which he was not reporting for duty. The medical documents which the petitioner has enclosed along with the writ petition also does not show any strong proof or sufficient material with which it could be established that he was not in a health condition with which he could not discharge his normal duties. The documents also do not show the petitioner suffering from any serious ailment or by which he was totally bedridden or was confined to the bed or was in such a state that he could not report for duty. The petitioner also did not care to respond to the disciplinary authority or the enquiry officer at any point of time justifying his absence from duty. The ground of medical ailment for remaining absent from duty all the more creates greater element of doubt for the reason that the petitioner's wife was also working in the same department at the same location who could have taken steps to show the bonafides and genuineness of the petitioner's illness. What also needs to be considered is that, the petitioner undoubtedly is a police personnel. As is well settled that great amount of discipline is expected from a uniformed force particularly the police personals whose services are required by the State for the proper and smooth maintenance of the law and order situation in that particular locality/district.

9. What is necessary to be seen at this juncture is whether the medical certificates which were enclosed along with the writ petition has sufficient good cause for the petitioner to remain absent. This court on due

consideration of records and the Medical certificate finds that the nature of ailments referred to by the doctors in the said certificate are none which can be termed to be serious in nature which could have restrained the petitioner from discharging his normal duties or by which he could not have gone for duties. In the absence of any strong medical opinion from any of the Doctors in the medical certificate and also coupled with the fact that the petitioner in spite of being requested by the department for appearing before the medical board to ascertain the genuineness of the ground on which he was remaining absent, this court is forced to draw an inference that the petitioner has not been able to justify the period of absence by cogent proof. The petitioner also has neither given a satisfactory reply to the charge sheet nor did he participate in the enquiry in spite of proper notice and knowledge of the departmental enquiry being conducted against him.

10. Given the said facts this court has no no hesitation in reaching to the conclusion that there was no denial of a fair opportunity of defence to the petitioner while the enquiry was being conducted and this court also is of the firm view that the petitioner had deliberately avoided in the disciplinary proceedings initiated against him and therefore he cannot cry foul of at a later stage.

11. As regards violation of the principles of natural justice, in 2012 (3) SCC 178 in the case of Krushnakant B. Parmar Vs. Union of India, in paragraph 17 and 18 it has been held as under; –

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

eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, 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 is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.”

- 12.** In yet another case in the case of State of Punjab Vs. PL Singla 2008 (8) SCC 469, the Hon’ble Supreme Court in paragraph 11 and 14 have dealt with the issue of unauthorised absence. For ready reference the relevant portion is quoted here in under : –

“11. Unauthorized absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second is to treat the unauthorized absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.

14.Where the employee who is unauthorizedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence.....”

- 13.** Coming to the next issue as to proportionality of the punishment, in the case of Chairman cum Managing Director, Coal India Limited versus

Mukul Kumar Chaudhuri and Others, 2009 (15) SCC 620 in paragraph 19 and 20, the Supreme Court have laid down the principles and ratio which need to be borne in mind while dealing with the proportionality of punishment. For ready reference the two paragraphs are quoted here in below-

“19. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.”

- 14.** As has been discussed in the preceding paragraph the medical certificates and the medical bills enclosed along with the writ petition would show that the only ailment referred to in these documents are that of fever and infective hepatitis. The documents do not show any bearing of the fact that the petitioner was confined to bed or he was not in a position to report for or discharge his normal duties. Another aspect which is glaringly visible is the fact that the petitioner has been absent since 28.11.2005 even till the date the charge sheet was issued on 30-10-08 that is for a period of about 3 years. This undoubtedly is an enormously long period of absence. A person working on the post of Constable in the police department

remaining absent for a considerable long period of time of more than three years and with no satisfactory explanation cannot be termed to be a minor misconduct on his part. It is also not an act which has to be leniently viewed particularly taking into consideration the fact that the petitioner belongs to the uniformed force where the element of discipline and the conduct of a police personnel is always expected to be kept at a high order.

- 15.** Another issue which needs consideration is the scope of judicial review under article 226 of the Constitution while entertaining a writ petition particularly dealing with matters regarding departmental enquiries and the subsequent disciplinary action. It has been time and again laid down by the Supreme Court that the High Court in exercise of its powers of judicial review would not substitute the findings recorded by the authority nor will the court go into the sufficiency of the evidence adduced during the departmental enquiry. In such matters the courts does not exercise the power of the Appellate Court or Appellate Authority. The power and jurisdiction of the High Court in such matters is confined to whether the domestic enquiry is vitiated because of non-observation of the principles of natural justice, whether the delinquent was denied a reasonable opportunity of defence, whether the findings given by the enquiry officer is either based on no evidence or is totally perverse and whether the punishment awarded by the disciplinary authority is in any manner disproportionate to the proved misconduct of the delinquent.
- 16.** Considering the relevant materials on record and the submissions of the parties tested on the ground of judicial review, neither the conducting of the enquiry proceedings can be said to be in violation of principle of natural justice or the laid down procedure nor the findings arrived at during

the course of inquiry is based on no evidence. Appreciation of evidence and the findings of fact in a disciplinary inquiry is not within the scope of judicial review unless the findings are wholly perverse or inference drawn is not based upon any material evidence.

17. Therefore, considering all these no ground has been made out on behalf of the petitioner for interference to the impugned orders Accordingly, the writ petition is dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder