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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5690 of 2008**

- Paramatma Thakur S/o Shri Vishwanath Thakur Aged aboutu 40 years, , Ex.-Constable (Trade) No.52, P.T.S. (S.A.F.) Jagdalpur At Present R/o Patharaguda, Near Shiv Mandir Jagdalpur, Distt.-Bastar (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh, Through the Secretary, Home Department, DKS Bhawan, Raipur (CG)
2. The Director General of Polioce, Police Head Quarter, Raipur (CG)
3. The Deputy Inspector General Police, S.A.F. Bhilai, District Durg (CG)
4. The Inspector General Police, S.A.F. Headquarter Bhilai, District Durg (CG)
5. The Senani, Police Training School, Jagdalpur, District Bastar (CG)

---- Respondent

For Petitioner
For Respondent/State

Mr. Subhash Yadav, Advocate
Mr. Chitrendra Singh, Panel Lawyer

Hon'ble Mr. Justice Prashant Kumar Mishra**Order On Board****23/1/2020**

1. Heard.
2. The petitioner is aggrieved by the imposition of punishment of removal from service as a consequence of the charges found

proved against him in a Departmental Enquiry.

3. At the relevant time, the petitioner was posted as Constable (Trade-man)/*Nai* (Barber) No.52 at Police Training School, Jagdalpur. On 17.12.1995, the petitioner was found absent at the morning roll call. It was brought to the notice of the Commandant P.T.S., Jagdalpur that the petitioner has been arrested by Police Station, Jagdalpur in Crime no.558/95 for the offence under Section 20-B of the NDPS Act. On 19.12.1995, the petitioner was suspended vide Annexure P/1 and thereafter, a charge sheet was issued against him on 8.2.1996 vide Annexure P/2.
4. The charge sheet issued against the petitioner contained two imputations, **firstly**, remaining unauthorisedly absent from duty and thereby, committing negligence and indiscipline and **secondly**, despite warning remaining unauthorisedly absent from duty repeatedly. The charge sheet also mentioned that for his act of remaining unauthorisedly absent from duty, without seeking permission or notice, he has earlier been punished with P.D. and two admonitions yet his conduct has not improved.
5. The petitioner replied to the show cause notice by stating that he had gone to Village Borpadar for obtaining some medicine but was arrested by Jagdalpur Police on allegation of being involved in trafficking of *Ganja*. The Disciplinary Authority appointed an Enquiry Officer, who visited the jail where the petitioner was lodged, and after seeking permission from the

concerned Superintendent of Jail, the Departmental Enquiry was conducted in the jail premises giving full opportunity of hearing to the petitioner. In course of enquiry, the statements of SK Anwar and Chandraman Upadhyaya was recorded by the Presenting Officer on 27.3.1996.

6. The record of the enquiry proceedings placed before this Court would reveal that the petitioner did not cross-examine these two witnesses. In his own statement before the Enquiry Officer, the petitioner pleaded not guilty and explained the circumstances, in which, he was arrested by the Police. The Enquiry Officer submitted his report on 27.3.1996 itself, copy whereof was served on the petitioner along-with show cause notice dated 9.4.1996 and eventually, the Disciplinary Authority accepted the enquiry report finding the petitioner guilty for both the charges and directing his removal from service by order dated 25.4.1994, which has been affirmed by the Appellate and other higher authorities.
7. Mr. Subhash Yadav, learned counsel for the petitioner, would argue that the petitioner was not willfully or negligently absent from duties for the reason that he was arrested in a false case by the Jagdalpur Police, which was beyond his control. He would submit that had the petitioner not been arrested, he would have attended the duties. He would also submit that his earlier absence is not part of the charge sheet. In any case, imposition of punishment of removal from service for the reason of absence from duty due to arrest in criminal case , in

which, the petitioner was later on acquitted, is disproportionate and harsh.

8. Per contra, Mr. Chitrendra Singh, learned Panel Lawyer for the State would submit that both the charges have been found proved by the Enquiry Officer, therefore, the petitioner being a member of uniformed service, is not entitled for any leniency. He would submit that the petitioner was willfully and negligently absent from duties.
9. Learned counsel for the petitioner has referred to the decisions rendered by the Supreme Court in the matters of **Chhel Singh Vs. MGB Gramin Bank, Pali and others, (2014) 13 SCC 166** and **Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301**, to further argue that if the absence is due to arrest in criminal case, the said cannot be treated to be willful absence.
10. In the first case of **Chhel Singh** (supra), the absence was on medical ground, for which, the concerned employee later on submitted medical certificate of his illness. In the second case of **Raghubir Singh** (supra), the employee was absent because he was arrested pursuant to the FIR lodged against him by the employer himself. Thus, both the matters are distinguishable on facts, inasmuch as, in the case of the petitioner, who himself is a member of Police Force, was arrested due to his involvement in trafficking of *Ganja* of about 18 kg during a raid. Even if he was acquitted by the Special Judge vide Annexure P/4 on the ground

that the offence is not proved beyond reasonable doubt, the fact remains that there is no finding that a false case was planted against the petitioner.

11. In so far as the argument that the petitioner's arrest being not within his control, his absence from duty was not willful, it is to be seen that his act which led to his arrest was personal and willful for the petitioner. Even if the criminal case ended in acquittal, the fact remains that at the time of arrest, the petitioner was at Bordapadar, whereas, at that time, he should have been attending the duties. The petitioner had gone to village Bordapadar, a different place than his place of duty, without informing the employer, therefore, his unauthorised absence was willful. The charge sheet also states that previously also, the petitioner has been admonished twice and punished with PD for remaining unauthorisedly absent from duty.

12. Thus, the petitioner was habitual in remaining unauthorisedly absent from duties and this fact is a part of the charge sheet, therefore, the punishment of removal from service does not appear to be harsh or disproportionate to the nature of misconduct. The petitioner's absence was not his negligence simpliciter but it was connected with his arrest under the NDPS act. The petitioner being a member of uniformed service, he has to be more disciplined than any other government servant as held by the Supreme Court in the matters of **Union of India and others Vs. Datta Linga Toshawad, (2005) 13 SCC 709** and

Commissioner of Police, New Delhi and another and others
Vs. Mehar Singh, (2013) 7 SCC 685.

13. Therefore, no leniency is required to be shown and the order of removal from service, is not found to be disproportionate or harsh.

14. The petition is dismissed.

Sd/-

(Prashant Kumar Mishra)

Judge

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