

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

CWP No. 8085 – 2019 (O&M)
Date of Decision : 17.11.2020

Yadvinder Singh	Versus	Petitioner
Union of India and others		Respondents

CORAM : Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Salil Sabhlok, Advocate for the petitioner.

Ms. Tanvi Jain, Standing counsel for Union of India.
(proceedings conducted through video conferencing)

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Gurvinder Singh Gill, J.

1. The petitioner (now represented by his legal representatives) seeks quashing of memorandum of charges, inquiry report (Annexure P-3) as well as impugned order dated 31.03.2017 (Annexure P-10), whereby a penalty of withholding of pension to the extent of 100% and also withholding of amount of gratuity to the extent of 100% of the petitioner, has been imposed.
2. The petitioner was initially selected as an Assistant Commandant in Central Reserve Police Force (CRPF) in the year 1986 and was promoted as a Commandant in the year 2006. In the year 2009, a recruitment process was undertaken by CRPF under the overall supervision of IG, CRPF, Bihar Sector, Patna, wherein the petitioner was also detailed for recruitment duty. However, one FIR came to be registered on allegations of corrupt practices

in the said recruitment and on the basis of which the petitioner was detained for inquiry on 5.5.2009. Vide order dated 21.05.2009 (Annexure P-1), the petitioner was placed under suspension w.e.f. 5.05.2009 i.e. with effect from the date of his detention. The petitioner was later released on bail on 7.7.2009.

3. The petitioner was served with memorandum of charges dated 30.10.2012 (Annexure P-2) mainly pertaining to allegations of unauthorized absence on three different occasions i.e. for a period of 14 days, 318 days and 253 days, to which the petitioner submitted his reply. An enquiry was initiated and upon conclusion of the same the petitioner was served with a copy of enquiry report (Annexure P-3) vide letter dated 9.7.2015. The petitioner submitted a representation (Annexure P-4) against the inquiry report in August 2015.
4. The petitioner superannuated on 31.3.2016 but was somehow not paid any retiral dues. Since the petitioner had already retired before any penalty could be imposed upon the petitioner, respondent No. 2 sought advice from Union Public Service Commission(UPSC) as regards the quantum of proposed penalty. The UPSC gave its advice vide letter dated 23.08.2016 which was conveyed to petitioner by respondent No. 2 Directorate General, CRPF vide letter dated 22.12.2016 (Annexure P-8). The UPSC advised withholding of pension to the extent of 100% and also withholding of amount of gratuity to the extent of 100%. A copy of the said advice was furnished to the petitioner seeking his reply who submitted his reply dated 5.1.2017 (Annexure P-9). Considering the said reply, Respondent No. 2 imposed the penalty of withholding of pension to the extent of 100% and also withholding of amount of gratuity to the extent of 100% of the

petitioner vide order dated 31.3.2017 (Annexure P-10) which has been challenged by way of filing the instant petition.

5. The learned counsel for the petitioner while assailing the enquiry report and also the order Annexure P-10 withholding the pension and gratuity of petitioner has mainly put forth the following submissions :

- (i) that the petitioner was prevented from immediately joining duties consequent upon his release on bail due to the fact that the 'declared headquarters' for reporting was fixed far away from his place of residence and that even his prolonged absence on subsequent occasions was due to circumstances beyond his control inasmuch as there was serious threat to life of his son at the hands of in-laws of his son who had solemnised an inter-religion marriage with a Muslim girl. It has been submitted that the threat was so imminent that his son was in fact constrained to approach this Court so as to seek protection of his life. It has further been submitted that since the petitioner's son was also falsely involved in a criminal case by his in-laws, the petitioner had to pursue his cases in various Courts on behalf of his son who was on the run, threatened by his in-laws;
- (ii) that the inquiry report (Annexure P-3) is rather ambiguous inasmuch as there is no specific finding that it is a case of wilful absence. It has also been submitted that the defence put forth by the petitioner has not been considered by the enquiry officer and as such, the said inquiry report cannot be acted upon and cannot be made a basis for inflicting any kind of punishment upon the petitioner;
- (iii) that the penalty of withholding of pension and gratuity to the extent of 100% as imposed in the present case, in any case, is not commensurate with the alleged misconduct as there is nothing on record to show that it is a case of wilful absence.

6. On the other hand the learned counsel representing respondents has submitted that the inquiry report wherein all the material issues have been duly considered, does not suffer from any infirmity and that the charges

which stood duly established demanded that services of petitioner be terminated and in fact it was so proposed but since the petitioner evaded the service of such order passed immediately before date of his superannuation, the respondent No. 2 sought opinion of UPSC in this regard and that it was consequent upon advice of UPSC that a penalty of withholding of pension and gratuity to the extent of 100% was imposed. The learned counsel has submitted that there is no infirmity in the impugned order and that the writ petition deserves to be dismissed.

7. In order to consider the aforesaid contentions put forth by the learned counsel, it will be apposite to bear in mind the alleged misconduct i.e the specific periods of absence, in respect of which the enquiry was held against the petitioner. The aforesaid misconduct, as set out in Article of Charges framed against the petitioner, may be briefly stated as follows:

- (i) the petitioner, after his release on bail on 07.07.2009 failed to report at his declared headquarters immediately and reported after 14 days i.e. on 22.7.2009.
- (ii) the petitioner was permitted to leave headquarters for 15 days on 3.8.2009 up to 7.8.2009. However, he did not report back after the aforesaid leave and absented himself from his declared headquarters for a period of 318 days from 18.8.2009 to 1.7.2010.
- (iii) the petitioner was permitted to leave headquarters for 10 days w.e.f. 2.12.2010 to 11.12.2010 with a further extension up to 8.1.2011 but the petitioner did not report back and again absented for 253 days i.e from 9.1.2011 upto 18.9.2011

8. As regards Article-I of charges, it was vide order dated 21.5.2009 (Annexure P-1) that the petitioner was suspended with effect from 5.5.2009 and it was directed that the declared headquarters of the petitioner would be

the office of DIGP, CRPF, Bangalore. The said order was duly served

upon him while he was confined in Beur Jail, Patna on 23.5.2009. However the petitioner did not report at his declared headquarters immediately after his release from jail on 7.7.2009 and it was after 14 days that he reported there. The stand of the petitioner is that while he was arrested from his hometown Yamuna Nagar(Haryana) but was kept detained in a jail at Patna and his declared headquarters was fixed as Bangalore which both are about 2000 kms away from his hometown Yamuna Nagar. It is further the case of petitioner that in the suspension order it was not specifically directed that he has to report at Bangalore immediately and that after his release from jail in Patna he went to his hometown to collect his belongings and thereafter reported at his declared headquarters which took about 14 days and which is not an inordinate delay.

9. The aforesaid contentions were duly noticed and considered by the Inquiry Officer. The relevant extract from the inquiry report in respect of the said charges reads as follows

“In case he found any difficulty in arranging the money or was required to collect his personal belongings from his hometown he should have approached his declared HQr i.e. the office of the DIG Range Bangalore or Controlling Authority IGP, Southern Sector and should have explained his problem either in writing or orally over phone to resolve the problem. In place of following the prescribed procedure he just informed the Range HQr Bangalore and went to his hometown at his own and reported at his declared headquarter on 22.7.2009. Further when he was asked during the mandatory questioning whether he approached DIG Patna for a voucher or financial assistance etc. he categorically stated that he did not approach them for any help or assistance. Further the charged officer stated that his bail was arranged neither by relative nor by any family member rather by a fellow in the Beur jail. Therefore it is difficult to

understand that he can manage his bail from the jail without his relative or family member but could not manage money for buying the items for his day-to-day use”.

10. It is, thus, apparent that petitioner had never asked for any financial assistance from the controlling authority or had sought any extension of time for reporting and had simply intimated the headquarters at Bangalore that he was leaving for his hometown. A perusal of the suspension order would further negate the stand of the petitioner that he was not specifically asked to report at Bangalore inasmuch as it is clearly mentioned therein that the declared Headquarters of petitioner during suspension would be office of DIGP, CRPF, Bangalore and that he is not to leave the declared headquarters(Bangalore) without taking permission from the competent authority. Such like condition makes it implicit that he has to report at the declared headquarters. Thus, the explanation put forth on behalf of the petitioner for justifying the delay in reporting at his declared headquarters has rightly been declined by the inquiry officer.
11. Article-II of charges against the petitioner pertains to his unauthorised absence for a period of 318 days w.e.f. 18.8.2009 to 1.7.2010. Although the petitioner had been granted leave for 2 weeks i.e. w.e.f. 3.8.2009 to 17.8.2009 but he had failed to report at his declared headquarter after availing the aforesaid leave. Though the petitioner was informed several times by the office of the DIG, Range Bangalore, to report back and in fact a special representative was also sent at his hometown but to no avail.
12. The petitioner, however, took a stand that he was medically unwell and had a slip disc and also produced some medical certificates to justify his absence. However, the first such medical certificate is in the shape of an

outdoor ticket of CRPF Hospital, New Delhi, dated 15.9.2009 for back-ache. Thereafter he was advised 7 days bed rest on 21.10.2009 and for another 2 days on 28.10.2010. The petitioner had also visited General Hospital at Yamuna Nagar on 22.9.2009, 30.9.2009 and also in December 2009 and had visited some private hospitals also. However, it needs to be noticed that while his leave was only up to 17.8.2009, he visited hospital for the first time on 15.9.2009 and has, thus, been unable to explain as to why he did not report back on 18.8.2009. In any case being a responsible officer he was expected to have informed the authorities concerned immediately in case he really had some serious medical issues but he did not choose to do so and it was on 16.2.2010 that some application was sent by petitioner mentioning therein that he has slip disc problem and some family issues and that he may be permitted to stay at his hometown without specifying the period for which he wanted to stay at his hometown. Thus, the petitioner had been unable to show any such prolonged, systematic treatment at any one such hospital or any such long admission in any hospital which could have prevented him from joining back after availing leave.

13. The other stand taken by the petitioner is that on 16.11.2009 his son solemnized an inter-religion marriage with a Muslim girl and on account of which there was a threat of honour killing from the side of members of family of the girl due to which he was moving place to place to save his son. It has also been submitted that in fact a Criminal Miscellaneous petition i.e. CRM 32736 of 2009 had also been filed by his son and daughter-in-law. However, it again needs to be noticed that while the petitioner was supposed to report back at his headquarters on 18.8.2009

whereas the alleged threat perception could have only occurred after the marriage of his son i.e. after 16.11.2009.

14. Further, the petitioner apparently did not have any threat perception as it was only his son and daughter-in-law who had approached this Court seeking protection and it is not the case that even the petitioner was constrained to seek any such protection. It is also borne out that the aforesaid petition was disposed off on the very first day of hearing by issuing some direction to local police to examine the threat perception. The Inquiry Officer, in his report has recorded that during the proceedings of inquiry, when the petitioner was asked as to whether any police protection was given to him he is stated to have replied that he will ask for same when required which would mean that the alleged threat was not there.
15. Still further, on one hand the petitioner has taken a stand that he was bedridden on account of slip disc and had been advised bed-rest but on the other hand he has taken the stand that he was moving from place to place on account of the alleged threat perception. It is not even the case that the petitioner had ever filed any FIR or approached the police pertaining to the alleged threats. Though, it is borne out that petitioner's son had filed a petition in Allahabad High Court seeking quashing of the FIR registered against him for offence under section 363 IPC and that a Habeas Corpus petition had also been filed by father of petitioner's daughter-in-law but the petitioner has not been able to show either that he was a party to the said petitions or that he himself had been pursuing the said petitions. In any case, even if the alleged threat and some litigation on account of the petitioner's son having solemnised an inter-religion marriage is taken into account, still the same would not justify a long absence of 318 days of the

petitioner. The inquiry officer has, thus, correctly held that Article II of charges stands duly proved.

16. Article-III of charges pertains to the absence of 253 days w.e.f 9.1.2011 to 18.9.2011. The petitioner in order to explain his absence has again taken the plea of inter-religion marriage of his son which had resulted in threat perception and some litigation but the petitioner despite having been asked specifically to give details of the hearings which he may have attended or the copies of summons, if issued for his presence by any Court, or any direction issued by Court qua him., was unable to produce any such document to substantiate his defence. As such the absence of 253 days in the year 2011 on account of the alleged threat perception arising out of inter-religion marriage of petitioner's son in the year 2009 is again virtually unexplained.

17. A perusal of the enquiry report shows that the Inquiry Officer has meticulously referred to the respective stand of the presenting officer and of the petitioner and has duly referred to defence of the petitioner and has painstakingly thrashed the evidence while discussing the same in respect of each of the charges and has returned its finding on the basis of the evidence produced before him and it was upon such analysis that all the Articles of charges were found to be duly established. The learned counsel for the petitioner could not show any infirmity in the inquiry report so as to justify any interference in the findings recorded therein.

18. Though, during the course of arguments it was argued that the inquiry officer had not specified that the absence was wilful and that in the absence of any such specific finding the absence cannot be termed to be a misconduct on part of the petitioner, but I am afraid this Court cannot

subscribe to the aforesaid view in the given set of facts and circumstances wherein two of the periods of absence are as long as 318 and 253 days and wherein the explanation put forth for justifying the absence has not been found worth acceptance. When the petitioner has miserably failed to show that the absence was on account of such circumstances which were beyond his control and which prevented him to report back at his declared headquarters it is implied that the periods of absence of 14, 318 and 253 days was wilful. Consequently, the aforesaid contention cannot be accepted.

19. As regards the contention of the learned counsel to the effect that the penalty imposed is not commensurate with the misconduct of absence, it will not be out of place to mention that after the inquiry report was conveyed to the petitioner and his reply was received, UPSC was consulted which had advised dismissal of petitioner from service vide its letter dated 19.1.2016(Annexure R-5). However, before the said advice could be conveyed to the petitioner, he superannuated on 31.3.2016. Thereafter, fresh advice was sought from UPSC in view of the fact that the petitioner already stood retired and the UPSC vide letter dated 23.8.2016(Annexure R-8) advised withholding of pension and gratuity to the extent of 100%. Keeping in view the fact that the petitioner was a member of a disciplined force, the repeated unauthorised absence on three occasions for a total of 585 days (including two long periods of 318 and 253 days) cannot be termed anything short of misconduct of a gravest nature. In these circumstances, the imposition of penalty of withholding of pension and gratuity to the extent of 100% cannot be said to be incommensurate with the misconduct in the present case.

20. Consequently, no infirmity can be found in the impugned order so as to justify any interference. The petition, as such is dismissed.

17.11.2020
(*kamal*)

(GURVINDER SINGH GILL)
JUDGE

Whether reasoned / speaking? **Yes / No**

Whether reportable? **Yes / No**