

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 13th August, 2020.**

+ **W.P.(C) 11112/2019 & CMs No.45752/2019 (for stay), 53724/2019
(for directions) & 16283/2020 (for directions)**

VIVEK KUMAR SINGH **Appellant**

Through: Ms. Charu Mathur, Adv.

Versus

UNION OF INDIA AND ORS. **Respondents**

Through: Mr. Ghanshyam Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a Sub Inspector (SI) (Executive) in respondents Central Industrial Security Force (CISF), has filed this petition impugning the orders dated 29th September, 2017, 25th November, 2017 and 9th July, 2018 of the Commandant, CISF (Disciplinary Authority), of the Departmental Appellate Authority and of the Departmental Revisionary Authority respectively, imposing and confirming the penalty of “withholding of one increment for a period of one year without cumulative effect” on the petitioner.

2. The petition came up first before this Court on 18th October, 2019, when notice thereof was ordered to be issued for 17th December, 2019. The petitioner filed CM No.53724/2019, stating that the respondents CISF had notified and called applications for recruitment to the post of Assistant Commandant (Executive) in CISF, through Limited Departmental Competitive Examination (LDCE); that as per Rule 3 of the Rules appended to the Notification of the LDCE, the candidates should have completed four years of service as on 1st January, 2020 in the rank of SI (General Duty) and to have clean record of service; however since minor penalty impugned in the petition had been imposed on the petitioner, the petitioner would not be able to submit LDCE-2020 form and seeking direction of this Court to allow the petitioner to appear in the upcoming LDCE-2020. Vide order dated 17th December, 2019 in this petition, the petitioner was permitted to sit in the LDCE-2020, without creating any equities in his favour and the result of the petitioner was ordered to be kept in a sealed cover and to be produced before the Court subject to further orders in the writ petition. Vide the same order pleadings were directed to be completed and the writ petition posted for hearing. The writ petition however could not be heard owing to the prevalent pandemic. The petitioner thereafter filed CM No.16283/2020, stating that consequent to the order dated 17th December, 2019, the petitioner appeared in the Union Public Service Commission (UPSC) conducted LDCE-2020 held on 1st March, 2020 and vide Press Note dated 13th July, 2020 had learnt that UPSC had declared the results of the written part of the LDCE-2020 and the said Press Note further stated that the candidates who had cleared the written examination are to now appear for Physical Standards / Physical Efficiency Tests and the Medical Standards

Tests; that however in accordance with the order dated 17th December, 2019, the result of the petitioner had been withheld. The petitioner vide CM No.16283/2020 sought direction to the respondents to declare the result of the petitioner of the written stage of LDCE-2020. The said application came up before us for virtual hearing, on 24th July, 2020 when while directing the respondents CISF to place before us the result of the written part of LDCE-2020 taken by the petitioner, finding that the pleadings in the writ petition had been completed, while posting the matter to 5th August, 2020, the counsels were also directed to come prepared for final arguments in the writ petition.

3. On 5th August, 2020, a sealed envelope containing the result of the written examination part of LDCE-2020 was placed before us and on opening the same it was found that the petitioner had failed / not cleared the said examination. We, during the hearing on 5th August, 2020 informed the petitioner of the same and proceeded to hear the final arguments in the writ petition and reserved orders.

4. It is the case of the petitioner in the petition, that (i) the petitioner joined the respondents CISF, as SI, on 3rd October, 2015; (ii) on 15th February, 2016, the petitioner got Overstay Leave (OSL) memo and was vide order dated 27th February, 2016 awarded punishment of three days pay fine; (iii) the appeal preferred by the petitioner against the order dated 27th February, 2016 was rejected; (iv) however on revision being preferred by the petitioner, vide order dated 1st October, 2016, the petitioner was exonerated from the fine, on the basis of his performance during the training period and so as not to demoralize the petitioner; (v) the petitioner was

sanctioned 25 days earned leave, from 9th March, 2017 to 9th April, 2017, for meeting parents, self-marriage settlement and to attend family *pooja*; (vi) during the stay of the petitioner at his native place in Balia, Uttar Pradesh, the petitioner developed severe back pain and was under treatment of doctors in Balia; (vii) on 7th April, 2017, i.e. prior to the expiry of his earned leave, the petitioner requested for extension of his leave, from 8th April, 2017 to 6th May, 2017, on medical grounds, for treatment of severe back pain; (viii) the respondents CISF, vide communication dated 11th April, 2017 allowed the application dated 7th April, 2017 of the petitioner and the petitioner was directed to report to the Unit on 7th May, 2017; (ix) the petitioner was under unbearable pain and was not getting any relief from the treatment given by the doctors in Balia; the family of the petitioner decided to move the petitioner to New Delhi, for better treatment; (x) with great difficulty, the petitioner moved from Balia to New Delhi, in a taxi; (xi) the petitioner, at Delhi, was taken to Safdarjung Hospital where the doctors, besides prescribing medicines and tests to be undertaken by the petitioner, asked the petitioner to take rest for seven days; (xii) the doctors at Safdarjung Hospital, after seeing the test report of the petitioner, on 6th May, 2017 referred the petitioner to Neurology Department; (xiii) the petitioner, vide application dated 6th May, 2017, requested the respondents CISF for extension of his leave, by five days; (xiv) the petitioner, vide communication dated 8th May, 2017, again informed the respondents CISF that he had been advised rest of two weeks; (xv) the petitioner, on 10th May, 2017 received the first call up notice from the respondents CISF, also informing the petitioner that his leave with effect from 7th May, 2017, was without permission of the competent authority and the petitioner was

directed to report back immediately and informed that else, suitable disciplinary action will be initiated; (xvi) on 16th May, 2017, second call up notice was served on the petitioner; (xvii) “in response to the call up notices”, the petitioner again apprised the respondents CISF of his plight, vide communication dated 18th May, 2017; (xviii) since the petitioner did not get any respite, the doctors on 22nd May, 2017 advised further rest of two weeks to the petitioner; (xix) “in the MRI report, the petitioner’s problem is clearly visible. Copy of doctor’s prescription and MRI is annexed as Annexure P-13”; (xx) vide communications dated 24th May, 2017 and 25th May, 2017, the petitioner apprised the respondents CISF of his ongoing treatment and also enclosed therewith MRI report and prescription; (xxi) on 5th June, 2017, the petitioner was further suggested rest for two weeks; (xxii) vide communication dated 15th June, 2017, the petitioner was informed that his salary was being withheld; (xxiii) vide prescription dated 19th June, 2017, the doctor again advised rest for two weeks; (xxiv) a surprise visit was conducted on the petitioner by an SI of the respondents CISF, who found that the petitioner was not in condition to move, without assistance and was in chronic pain; the petitioner also handed over to the visiting SI, documents of his ailment and vide communication dated 26th June, 2017 informed the respondents CISF of having so handed over the documents; (xxv) the petitioner, under cover of communication dated 26th June, 2017, again provided to the respondents CISF, the doctor’s prescription dated 8th May, 2017, 19th June, 2017 and 10th July, 2017; (xxvi) the respondents, vide communication dated 30th June, 2017 in response to the communication dated 26th June, 2017 of the petitioner, intimated to the petitioner that the medical papers handed over by the petitioner to the visiting SI were not

complete and did not have the details of treatment, and asked the petitioner to report to the Unit immediately and to take treatment in authorized hospital and cautioned the petitioner that stern disciplinary action will be initiated against him; (xxvii) on 1st August, 2017, the petitioner reported to his Unit and was immediately taken on duty, without taking any medical test; (xxviii) on 5th September, 2017, a memorandum was issued to the petitioner, proposing disciplinary action under Rule 37 of Central Industrial Security Force Rules, 2001; (xxix) in the said memorandum, the petitioner was termed as “habitual” offender of OSL, notwithstanding the fact that the petitioner had been exonerated of the previous charge; (xxx) on 15th September, 2017, the petitioner submitted his representation, objecting to the use of the word “habitual”, in the memorandum, and stating the aforesaid facts; (xxxi) vide order dated 29th September, 2017, the Disciplinary Authority found the representation and the supporting documents submitted by the petitioner to be not satisfactory and imposed penalty of withholding of one increment for a period of one year without cumulative effect, on the petitioner; (xxxii) on departmental appeal being preferred by the petitioner, the Appellate Authority, vide order dated 25th November, 2017 rejected the appeal; (xxxiii) the departmental revision preferred by the petitioner was also rejected vide order dated 9th July, 2018; (xxxiv) the minor penalty imposed on the petitioner is seriously detrimental to the career of the petitioner; and, (xxxv) the petitioner did not overstay for fun; he was genuinely ill and had continuously kept his superiors informed.

5. It is the contention of the counsel for the petitioner, that (a) the article of charge framed against the petitioner unfairly branded the petitioner a habitual OSL, notwithstanding the petitioner having been exonerated of the

earlier charge; (b) no preliminary enquired was done before using the word “habitual”, in the memorandum of charge; (c) the respondents CISF, by extending the leave of the petitioner from 8th April, 2017 to 6th May, 2017, accepted that the petitioner was under treatment in the District Hospital in Balia, Uttar Pradesh; and, (d) the grievance of the respondents CISF appears to be, that the petitioner took treatment at Government Hospital (Safdarjung Hospital) at Delhi instead of at a private panel hospital like Apollo or Columbia Asia in Mysore.

6. The respondents CISF in their counter affidavit have pleaded that in the entire petition, no ground for interference by this Court is made out, because (i) the petitioner, after his 25 days earned leave from 9th March, 2017 to 9th April, 2017, on his request, in continuation granted 29 days leave on medical ground, from 8th April, 2017 to 6th May, 2017; (ii) on completion of the said leave period, the petitioner was supposed to join his duty on 7th May, 2017 but failed to do so and remained “overstayed leave”, for 87 days, from 7th May, 2017 to 1st August, 2017, without any permission in any manner whatsoever; (iii) the petitioner failed to report, inspite of call notices; (iv) the order of the Revisionary Authority in the first OSL charge against the petitioner, though had found the petitioner to have overstayed his leave but considering the career of the petitioner, had exonerated the petitioner—this clearly shows that the petitioner is habitual of OSL; (v) while deciding the first charge, a lenient view was taken qua the petitioner but the petitioner did not improve himself and committed the same mistake by again overstaying for 87 days, unauthorisedly; (vi) that the petitioner, after availing of 29 days medical leave from 8th April, 2017 to 6th May, 2017 on the basis of the prescription of the District Hospital, Balia advising him

medical rest for four weeks, did not go back to the same hospital but without any reference from the said hospital, of being in need of treatment at Delhi, of his own volition, moved to Delhi; (vii) on the petitioner visiting Safdarjung Hospital, the doctor at Safdarjung Hospital, on examining the petitioner, did not advise any medical rest to the petitioner, which means that the petitioner's condition was not so bad which required bed/medical rest; (viii) after review of the entire medical papers and doctor's prescription produced by the petitioner, it was found that the petitioner had been seen by three doctors but he did not follow up the instructions issued by the doctor from District Hospital Balia or of the doctor from Safdarjung Hospital and on the contrary made a fresh registration at Safdarjung Hospital and met a third doctor; (ix) the petitioner was changing doctors as per his own volition and without any reference by the earlier doctors; (x) all this was done to create false documents, to justify the unauthorized absence of the petitioner; (xi) had the condition of the petitioner been bad, he would have been admitted to the hospital; (xii) a general enquiry was conducted at the residence of the father and brother of the petitioner at Delhi and where the petitioner was also staying, by an SI and though the enquiring SI also advised the petitioner to report back and assured that all assistance required will be provided by the respondents CISF but the petitioner did not bother to return to the Unit; (xiii) the petitioner's request for extension of leave was not accepted on the basis of records submitted by the petitioner; (xiv) the SI who had enquired from the residence of the petitioner also reported back that the petitioner can travel back to Mysore, where he was then posted; (xv) a perusal of the medical record submitted by the petitioner also shows that the petitioner had not been advised bed rest and had not been advised not to

travel; (xvi) the case of the petitioner was not found so serious as to require the petitioner to stay back at Delhi; the petitioner could have continued medical treatment, if any required, at panel hospital at Mysore and of which he was advised; (xvii) as per CISF Circular dated 4th February, 2013, a preliminary enquiry is to be ordered within 15 days of date of OSL; a preliminary enquiry was conducted and report dated 26th May, 2017 thereof presented; (xviii) though the petitioner was not present in preliminary enquiry but was given full opportunity to submit his reply and the petitioner has already availed of the departmental remedies of appeal and revision; (xix) the respondents CISF is an armed force of the Union of India and is deployed in the vital installations of the country, for protection and security thereof; the petitioner was posted at a sensitive plant of department of atomic energy; (xx) the petitioner, on return, was taken on duty and could have been taken on duty only after fit/unfit medical certificate; (xxi) as per Rule 19(4) of the CCS Leaves Rules, it is the duty of the Government Medical Officer to express an opinion, both as regards the facts of the illness and as regards the necessity and the amount of leave—the petitioner did not appear before Government Medical Officer referred to in Rule 19(3); and, (xxii) as per Rule 19(5) of the CCS Leaves Rules, the grant of Medical Certificate does not in itself confer upon the government servant any right to leave; the Medical Certificate has to be forwarded to the competent authority to grant leave and orders of that authority awaited—the petitioner did not bother to follow the instructions issued by the respondents CISF from time to time.

7. The counsel for the petitioner argued, that (a) the petitioner having been exonerated of the first charge of OSL, could not in the impugned order

proceedings been charged as a habitual OSL; (b) the plethora of medical records filed by the petitioner show that the petitioner was suffering from acute back pain and the disciplinary authorities have refused to believe the said documents; and, (c) the respondents CISF have not noticed that Safdarjung Hospital is a Government Hospital and the petitioner was under its treatment.

8. Per contra, the counsel for the respondents CISF contended, that (i) though the Revisionary Authority of CISF had exonerated the petitioner from the penalty then imposed on the petitioner, of deduction of three days salary, when he was first charged with OSL but the findings, of the petitioner having overstayed his leave, were not disturbed; therefore, the second charge against the petitioner, of being a habitual OSL, was justified; (ii) none of the medical records produced by the petitioner show any case, of the petitioner being unable to travel from Balia where he claimed to be, to Mysore; (iii) when the petitioner could travel from Balia to Delhi, he could have travelled from Balia to Mysore; (iv) the petitioner, inspite of repeatedly being asked, did not submit himself to examination by the Medical Officers on the panel of the respondents CISF; (v) the surprise visit to the residence at Delhi of the petitioner also did not show that the petitioner was unable to travel; (vi) the petitioner was never advised total bed rest and at best was advised, only rest, and was not suffering from any serious ailment; (vii) no procedural irregularities in the disciplinary proceedings against the petitioner, have been pleaded or argued by the counsel for the petitioner; and, (viii) no case for interference in writ jurisdiction is made out.

9. The counsel for the petitioner, in rejoinder has contended that while Delhi is at a distance of 900 KM only from Balia, Mysore, where the petitioner was then posted, is at a distance of 2300 KM from Balia; it was also argued that Mysore is at a distance of 2200 KM from Delhi and the petitioner was unable to move. On enquiry, it was informed that the petitioner travelled in a car from Balia to Delhi, along with his father and brother, who were then travelling from Balia to Delhi. On yet further enquiry, it was informed that the petitioner did not marry in the leave taken by him from 9th March, 2017 to 9th April, 2017 and has married recently only, on 16th February, 2020.

10. We have gone through the records and considered the contentions urged. It is not in dispute that the petitioner at the time of the first charge had overstayed his leave and was imposed the penalty of payment of fine equivalent to three days pay but the Disciplinary Revisionary Authority of the respondents CISF, though holding that the petitioner, while overstaying his sanctioned leave should have informed properly and should have sought a valid permission (leave) from the competent authority and had miserably failed in doing so and such conduct could not be overlooked in a force like CISF and deserved to be dealt with sternly, proceeded to hold, (i) that the performance of the petitioner in basic training was good; (ii) that the petitioner had a long career ahead; (iii) that so as not to demoralize the petitioner, the petitioner deserved a lenient view, to mend his ways and to learn his lessons; and, (iv) that the petitioner also in his Revision Petition had assured that he will never indulge in such misconduct or indiscipline at any time in future. The Revisionary Authority of the respondents CISF resultantly quashed not only the punishment awarded to the petitioner but

also set aside the order of the Disciplinary Authority and exonerated the petitioner from the first charge leveled against him, of OSL.

11. In the face of the aforesaid, we are unable to concur with the contention of the counsel for the petitioner, that the petitioner was wrongly called a habitual OSL in the second charge. The petitioner, while contending so, loses sight of his admission in the Revision Petition preferred against the first charge, of being guilty of OSL as well as his assurance, of in his entire future career, not doing so. Thus, though from the order of the Revisionary Authority, of setting aside the order of the Disciplinary Authority, it can be said that the first charge of OSL against the petitioner stood wiped out but the order of the Revisionary Authority has to be read in its entirety. Read in entirety, it is found to contain, (a) the need for maintenance of discipline in a force like CISF; (b) caution to the petitioner; and, (c) lenient view taken against the petitioner only for the reason of his good performance during training and so as to not demoralize him. The petitioner however seems to misconstrue the leniency shown to him and forgetting his assurance and notwithstanding the repeated communications of the respondents CISF asking him to join back and assuring him of all assistance, yet again indulged in the same misconduct.

12. It is not in dispute that the petitioner overstayed his leave by 87 days i.e. nearly for three months.

13. A perusal of the impugned order dated 9th July, 2018 of the Revisionary Authority shows the Revisionary Authority of the respondents CISF to have held (a) that though the petitioner on his request was granted medical leave of 29 days in extension of his earned leave, but the petitioner

on 29th April, 2017 i.e. during the period when he had been advised rest, moved to Delhi, on his own, without being referred by the doctor at District Hospital Balia; (b) that since medical rest advised by the doctor at Balia expired on 2nd May, 2017, the petitioner should have reported for duty on 7th May, 2017; (c) that the medical rest advised by the doctor at Safdarjung Hospital is also not for the complete period; there is a gap of 8 days i.e. from 3rd July, 2017 to 9th July, 2017 wherein the petitioner was not under treatment or medical rest; (d) that the petitioner was taking treatment as an outdoor patient; and, (e) that the personnel of CISF deployed at the vital installations of the country are expected to exhibit exemplary character and conduct and the petitioner had failed to do so.

14. We may mention that the counsel for the petitioner during the hearing has not controverted any of the aforesaid reasons set out in the impugned order of the Revisionary Authority of the respondents CISF.

15. We have also gone through the medical papers filed by the petitioner and find, (i) that the petitioner, when approached the Safdarjung Hospital on 29th April, 2017 as an outdoor patient, did not disclose that he was employed with CISF; (ii) that the OPD Card of 29th April, 2017 of the petitioner of Sardarjung Hospital records that the petitioner had complained of “morning stiffness in back” and was advised some tests and prescribed pain killers to treat his complaint of pain; (iii) that none of the other medical prescriptions identify the ailment from which the petitioner was suffering; and, (iv) the report of the MRI got done by the petitioner also prescribes clinical correlation but no document of such clinical correlation has been filed. We

therefore do not find anything, to disagree with the conclusions of the Revisionary Disciplinary Authority of the respondents CISF.

16. There is another interesting facet of the matter. Though the petitioner has pleaded that on reporting back on 1st August, 2017 he was immediately asked to join duty and to carry arm, but has not pleaded that on joining back, he suffered in any way owing to the ailment from which the petitioner claimed to be earlier suffering. The said ailment, once the petitioner joined back, appears to have disappeared in thin air and which alone falsifies the entire case, of justification of the petitioner overstaying his leave.

17. There is yet another aspect of the matter. Once sufficient remedies have been made available against the departmental action against the petitioner and once the authorities at all level who are also vested with the duty to enforce discipline in the force, have examined the matter, this Court would not enter into an arena of re-appreciation of material on record. Once the conclusions reached by the Disciplinary Authority of the respondents CISF are found to be based on the material on record and are not found erroneous, this Court would leave it to the Disciplinary Authority of a force like CISF, to meet out punishment to ensure discipline in the force.

18. No ground for interference is made out.

19. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

AUGUST 13, 2020

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