

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 22/02/2021****Judgment Delivered on : 26/02/2021****Writ Appeal No. 119 of 2019***{Arising out of Order dated 05.10.2018 passed in Writ Petition No. 6216 of 2005 by the learned Single Judge}*

S.P. Mishra S/o Ramdas Mishra, aged about 47 years Excise Constable Force No. 912292591, CSA Sumvy, CISF BSP, R/o Qtr No. 1G, Street No.33, Sector-11, Zone-2, Khursipar, Bhilai, District Durg Chhattisgarh.

---- Appellant**Versus**

1. Union of India, through Inspector General, North Zone, CISF Unit, Saket, New Delhi.
2. Deputy Inspector General, Central Industrial Security Force, Unit Bhilai Steel Plant, Bhilai, District Durg Chhattisgarh.
3. Commandant, Central Industrial Security Force, Unit Bhilai Steel Plant, Bhilai, District Durg Chhattisgarh.

---- Respondents

For Appellant	: Ms. Sharmila Singhai, Advocate.
For Respondents	: Shri Ramakant Mishra, Assistant Solicitor General

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V Judgment**Per P.R. Ramachandra Menon, Chief Justice**

1. Dismissal of the writ petition declining to interfere with the punishment of dismissal awarded to the Appellant – a member of the Central Industrial Security Force (for short 'the CISF'), forms the subject matter of challenge in this appeal.
2. The case of the Appellant is that he joined service as a member of the CISF (Constable) on 17.06.1991 and while serving at the Bhilai Steel Plant Unit, Bhilai, put in an application for leave from 10.02.2003 to 24.02.2003 in connection with some function arranged in the family. In the meanwhile, the

Appellant was directed to attend the five days' VHF course on 02.02.2003, in response to which an oral request was stated as made on 03.02.2003 to the higher officials not to send him for the VHF course as he was intending to go on leave. This was followed by a representation dated 06.02.2003 (Annexure A/2) submitted to the Inspector General of the CISF. However, the Appellant was served with a charge-sheet dated 20.03.2003 (Annexure A/3) in connection with the disciplinary proceedings intended to be pursued against him. After appointing an Enquiry Officer on 09.04.2003 (Annexure A/4), intimation regarding the enquiry was given to the Appellant on 30.04.2003 (Annexure A/6). On completion of the enquiry, final report was submitted by the Enquiry Officer on 31.05.2003 (Annexure A/9) virtually finding the Appellant guilty of the misconduct levelled against him.

3. On forwarding a copy of the enquiry report by the Respondent concerned, reply was submitted by the Appellant on 24.06.2003 (Annexure A/10). But without any regard to the said reply, Annexure A/1 final order dated 16.07.2003 was passed by the 3rd Respondent/Disciplinary Authority whereby the penalty of dismissal from service was ordered. This was sought to be challenged by filing an appeal before the 2nd Respondent, who rejected the same as per order dated 29.09.2003 (Annexure A/11). Though the Appellant took up the matter by filing a revision petition on 04.12.2003 before the 1st Respondent, it did not yield any positive result and the revision petition was dismissed on 12.08.2004 (Annexure A/12).
4. The Appellant/Writ Petitioner moved this Court on 11.05.2005 by filing writ petition challenging the order passed by the Disciplinary Authority (Annexure A/1) as well as the Appellate Authority (Annexure A/11), mainly contending, *inter alia*, that the relevant aspects were not considered properly and further that no effective opportunity of hearing was given. Later, the order passed by the Revisional Authority rejecting the revision

petition vide order dated 12.08.2004 (Annexure P/12) was also sought to be challenged by causing necessary amendments to the writ petition vide the application dated 29.07.2018, which was allowed by the learned Single Judge on 27.09.2019.

5. The prayers sought for in the writ petition were vehemently opposed from the part of the Respondents. The contention on behalf of the Appellant/Writ Petitioner was that the temporary absence from duty from 02.02.2003 to 07.02.2003 was not so serious an act which warranted the capital punishment of dismissal from service. Reliance was also sought to be placed on the verdict passed by a learned Single Judge of this Court in ***Shankar v. Union of India & Others*** {Writ Petition No. 533/2005, decided on 01.11.2017} where the dismissal ordered in connection with the proven misconduct of unauthorised absence for a short period was interdicted holding that the same was excessive and harsh; thus ordering reinstatement with 50% of the back-wages.
6. It was pointed out from the part of the Respondents that the Appellant was unauthorisedly absent from duty from 02.02.2003 to 07.02.2003 and thereafter from 07.02.2003 onward as well. In fact, the Appellant/Writ Petitioner had left the Camp without any intimation, approval or sanction of the higher authorities and without anybody's knowledge, and hence, the period after 07.02.2003 was treated as deserted. The domestic enquiry was conducted strictly in adherence to the relevant rules and in compliance with all the known principles of natural justice. No ground has been made out to hold any infringement of the rules or violation of the principles of natural justice. It was also pointed out that the Appellant was a member of the uniformed force, particularly CISF where utmost discipline has to be maintained.

7. After hearing both the sides, the learned Single Judge observed that the Appellant/Writ Petitioner was undisputedly a member of a uniformed force, where the nature of duty / service was also very important. It was noted that the force to which the Writ Petitioner belonged to was having a sensitive nature of work where the personnel working in the post are required to remain alert '24X7' and had to maintain a great degree of discipline for the smooth functioning and also for the safety and security of the Plant, where the Writ Petitioner was posted. Since the Writ Petitioner had applied for leave only for the period from 10.02.2003 till 24.02.2003, he was supposed to remain on duty till 09.02.2003 with full alertness and sincerity. It was without any regard to this, that he initially remained absent unauthorisedly from 03.02.2003 to 07.02.2003 and thereafter deserted the force, leaving the Camp from 07.02.2003; which conduct was definitely not befitting a person belonging to a uniformed disciplined force. The learned Single Judge further observed that the Writ Petitioner, under no circumstance could have left the Camp without any permission or intimation to the higher authority and the said conduct itself was speaking volumes, so far as the temperament of the Writ Petitioner was concerned. The learned Single Judge noted that there was no case that the enquiry proceedings were bad in law or that it was vitiated on any technical ground or involving violation of principles of natural justice. With regard to the gravity of the punishment awarded for the proven misconduct, the learned Single Judge observed that the decision sought to be relied on **Shankar** (supra) was not applicable. The said aspect was considered in detail in paragraphs 16 and 17 which are reproduced below:

"16. From the pleadings of the petitioner itself it clearly reflects that the petitioner had applied for leave from 10.02.2003 to 24.02.2003. Now reading the articles of charges what reflects is that the authorities concerned had in fact assured the petitioner of sanctioning his leave w.e.f. 10.02.2003. Given the said situation, it was expected that the petitioner to remain in duty till

09.02.2003 and in between the petitioner could have also undergone the VHF training which was to be held between 03.02.2003 to 07.02.2003 and even thereafter the petitioner could have proceeded on leave from 10.02.2003 onwards. This act on the part of the petitioner in firstly disobeying the superior officers so far as not attending the VHF training, secondly remaining unauthorizedly absent without any cogent or justified reasons and to add further deserting the camp of the respondents itself w.e.f. 07.02.2003 would reflect the attitude of the petitioner in firstly depicting his character of not interested in participating in the VHF training, which was to be held between 03.02.2003 to 07.02.2003, for which the petitioner very well knew that his name has also been included in the said camp. Secondly it also reflects the attitude of the petitioner that he is not keen in serving the respondents and also in participating in the training programme conducted by the respondents periodically. It also reflects that the temperament of the petitioner to the extent that for the petitioner, the official assignments did not have any priorities in as much as the orders of superior or the assignments which have been given to him while in service were not given any importance rather he in a most indisciplined manner neither participated in the training and at the same time also deserted the camp.

17. Taking all the facts and circumstances of the case and also taking note of the fact that the petitioner is a member of the Uniform Discipline Force, this Court is of the opinion that there is no room left for this Court to interfere with the findings arrived at by the Disciplinary authority and also which has been affirmed by the Appellate authority as well as by the Revisional authority. The scope of interference gets further reduced on account of the petitioner not assailing the procedural aspects, so far as the inquiry is concerned, which leaves this Court to only scrutinize the punishment and the gravity of the punishment which has been inflicted."

8. The matter was argued exhaustively by Ms. Sharmila Singhai, the learned counsel appearing on behalf of the Appellant. We heard Shri Ramakant Mishra, the learned Assistant Solicitor General representing the Respondents as well.
9. Ms. Singhai, the learned counsel for the Appellant submits that the Appellant was having an unblemished track record and that the leave for the period from 10.02.2003 to 24.02.2003 was applied well in advance. In the said circumstances, the punishment of dismissal from service for the

unauthorised absence for a few days is disproportionate in all respects, which has not been properly appreciated by the learned Single Judge, and hence the challenge. The learned counsel also sought to place reliance on the verdicts passed by the Apex Court in ***Administrator, Union Territory of Dadra and Nagar Haveli v. Gulabhia M. Lad*** {(2010) 5 SCC 775, paragraph 14}, ***Krushnakant B. Parmar v. Union of India & Others*** {(2012) 3 SCC 178, paragraphs 15 to 24} and ***Chhel Singh v. MGB Gramin Bank, Pali & Others*** {(2014) 13 SCC 166}.

10. Shri Ramakant Mishra, the learned Assistant Solicitor General submits that the Appellant is trying to oversimplify the misconduct levelled against him. The nature of duties attached to the post and the conduct displayed by the Appellant to abstain from the training, the unauthorised absence and leaving the Camp without getting sanction from the higher authorities and without even any intimation to anybody, followed by subsequent desertion is quite unbecoming of a member of the disciplined force. The learned counsel submits that the verdicts passed by the Apex Court, sought to be relied on from the part of the Appellant are not applicable to promote the case of the Appellant further in any manner, more so since the post held by the Appellant was a sensitive one. The enquiry was conducted strictly in accordance with the relevant provisions of law and the punishment awarded is proportionate to the proven misconduct; submits the learned counsel.
11. There is no dispute to the fact that the leave applied for was only from 10.02.2003 to 24.02.2003. It is also conceded that the name of the Petitioner was there in the list of the officials identified for the VHF training which was to commence from 03.02.2003 to 07.02.2003 i.e. for five days. As rightly observed by the learned Single Judge, nothing prevented the Appellant from attending the training from 03.02.2003 to 07.02.2003 and thereafter to proceed on leave from 10.02.2003. This made the learned

Single Judge to observe in paragraph 16 that the Appellant/Writ Petitioner firstly disobeyed the superior officers so far as he has not attended the VHF training and secondly, he remained unauthorisedly absent from duty without any cogent or justifiable reasons and further that he deserted the Camp *w.e.f* 07.02.2003 without getting any sanction or intimating anybody or the higher officials in this regard.

12. There cannot be any dispute to the fact that a member of the CISF has to maintain utmost discipline in the service and any compromise in this regard will be detrimental to the organisational interest. It is the admitted case that the Appellant/Petitioner did not report for duty from 03.02.2003 till 10.02.2003 and that the leave was sanctioned as sought for from 10.02.2003 till 24.02.2003. There is no case for the Appellant/Writ Petitioner that he was prevented from attending the duty after the leave period *i.e.* after 24.02.2003. It is also not disputed by the Appellant that he had left the Camp without getting the clearance/permission/sanction from the higher authorities and there is no case that he had informed the position to any of them in this regard. This virtually clearly amounted to desertion and it was while so, that he was served with the charge-sheet dated 20.03.2003 in connection with the domestic enquiry. The Appellant participated in the enquiry and no challenge was raised with regard to the procedure or as to violation of any rights. This being the position, the enquiry has been conducted in accordance with law where the guilt is established and the only question is with regard to the 'quantum of punishment'.
13. It has been made clear by the Apex Court on many an occasion that the quantum of punishment to be imposed would depend upon the nature of the proven misconduct. Various factors are relevant in this regard. The duty to be performed by a Lower Division Clerk or a Peon is very much different

from the nature of duty to be performed by a member of disciplined force, particularly the CISF. The disappearance of the Appellant/Writ Petitioner who was put on duty in the Bhilai Steel Plant on a fine morning *i.e.* 03.02.2003 onwards without intimation to anybody and leaving the Camp without obtaining sanction of the higher authorities and continuing so even much after the expiry of the leave, is of course a serious misconduct. It was in the said circumstance that the matter was considered and appropriate punishment was awarded by the Disciplinary Authority, which came to be affirmed by the Appellate Authority as well as the Revisional Authority. This has been upheld by the learned Single Judge, for the reasons specifically mentioned in the judgment. We do not find any reason to disagree.

14. Coming to the rulings sought to be relied on from the part of the Appellant, ***Krushnakant B. Parmar*** (supra), the punishment of dismissal for unauthorisedly absence from duty during three consecutive periods (36 days, 32 days and 234 days) was declined to be interdicted by the Central Administrative Tribunal, which was affirmed by the Gujarat High Court. The further challenge raised in this regard came to be considered by the Apex Court where it was held that the Disciplinary Authority failed to prove that the absence from duty was wilful, as no such finding was given by the Enquiry Officer or the Appellate Authority. The specific case/defence raised by the employee that he was prevented from attending the duty by the higher official preventing him to sign the attendance register and the evidence adduced in support thereof were also referred to, which however came to be ignored on the basis of irrelevant facts and surmises made by the Enquiry Officer while finding the employee guilty. The refusal of the complaint against whom the employee had alleged bias to appear before the Enquiry Officer despite service of summons and the fact that two other witnesses had given no statement against the employee, were held as aspects wrongly ignored by the Enquiry Officer while holding the charges

proved on the basis of surmises and conjectures. It was in the said circumstance, that the punishment of dismissal was interdicted ordering reinstatement with 50% back-wages. It is also to be noted that the employee in the said cases was a "Security Assistant" working in the Establishment who was not a member of any uniformed force as in the instant case and hence, the nature of duty differed very much.

15. Coming to ***Chhel Singh*** (supra), the order of termination of the delinquent employee who working as a Clerk-cum-Cashier, was for unauthorised absence, which however was due to genuine 'medical reasons' which was not properly appreciated. The Apex Court observed that there were no allegations of wilful or deliberate absence nor was there any finding that the medical certificates were false or fabricated. It was in the said circumstance, that the verdict passed by the Division Bench of the High Court of Rajasthan was set aside, restoring the verdict passed by the learned Single Judge and quashing the order of removal directing reinstatement in service with all consequential benefits. The said decision does not come to the rescue of the Appellant in any manner in view of the crystal clear difference in the facts situation.

16. With regard to ***Gulabhia M. Lad*** (supra), reliance is sought to be placed on paragraph 14 which is to the following effect:

"14. The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal. The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works.

Ordinarily the Court or a Tribunal would not substitute its opinion on reappraisal of facts."

Despite our best efforts, we could not persuade ourselves to draw any support from the said verdict to the case of the Appellant. In fact, it is a case where the Apex Court held that various factors are relevant to decide the quantum of punishment such as the gravity of the proven misconduct, the past conduct, nature of duties, position in the organisation, previous penalties, the kind of discipline required to be maintained in the organisation etc. are very relevant. It has also been reiterated that the Court or Tribunal cannot interfere with the discretion exercised by the competent authority in imposition of the punishment unless the same suffers from illegality or procedural irregularity of material nature or that the punishment is shockingly disproportionate. The Apex Court also made it clear that the quantum of punishment may differ even in a case where joint enquiry is conducted against several persons and imposition of severe punishment (removal from service) on an employee holding any higher level of post with higher nature of duties may be justified, when compared with a lesser punishment to the co-delinquent, keeping in view of their extent of involvement and the responsibilities.

17. The aforesaid decision virtually supports the stand of the Respondents and the reasoning given by the learned Single Judge to the effect that the nature of the post and the duties to be performed by the delinquent employee are quite relevant. In the instant case, admittedly the Appellant was a member of a disciplined force i.e CISF posted in the Bhilai Steel Plant. Though the initial unauthorised absence was for a few days, the more greivous misconduct is refusal to attend the VHF course from 03.02.2003 to 07.02.2003 and then leaving the Camp without getting sanction from the higher authorities, even without giving any intimation to anybody. The leave sanctioned was only from 10.02.2003 to 24.02.2003. There is no case for

the Appellant that he had reported for duty after expiry of the leave. No such pleading has ever been raised either in the writ petition or the present appeal. The Appellant was later served with a charge-sheet dated 20.03.2003 pointing out the different misconducts including desertion. It was considering all the seriousness of the said misconducts with reference to the nature of the post and duties, that the punishment of dismissal was ordered by the Disciplinary Authority which came to be upheld by the Appellate Authority and affirmed by the Revisional Authority, in turn leading to the interference declined by the learned Single Judge. We do not find any tenable ground to interfere with the finding and reasoning given by the learned Single Judge.

18. The appeal fails. It is dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE