

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-4967-2021 (O&M)
Date of Decision:16.03.2021**

Manoj Kumar

... Petitioner

Versus

Union of India & others

... Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. V.K. Sheoran, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Matter has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Challenge in the instant petition is to the order dated 28.03.2019 (Annexure P-2) passed by the Commandant 96 Bn. CRPF and whereby a major punishment of removal from service was imposed upon the petitioner who was serving as a Constable/General Duty.

Further challenge is to the orders appended and placed on record at Annexures P-4, P-6, P-8 and P-10, whereby the appellate and revisional authorities have affirmed the action of removal from service and even two mercy petitions preferred by the petitioner stand declined.

Briefly, it may be taken note that departmental proceedings were initiated against the petitioner vide Memo dated 17.10.2018 on the following charge:

“That CT/GD, Manoj Kumar, 96 Bn., CRPF No.05580262

while working on the post of Constable/General Duty and in capacity of being a member of the force has done the misconduct under Section 11(1) of the CRPF Act, 1949 for disobedience of orders/neglect of his duty/laxity in discharge of his duty/other misconduct under which the personnel is absent from his duty from 08.06.2018 (F.N.) till now on his own and without permission of any competent officer, which is against the good conduct/behaviour of a member of a disciplined force.”

It is such article of charge that stands duly proved and upon culmination of departmental proceedings, the impugned order of removal from service has been passed.

Counsel would argue that the petitioner had joined service in the year 2005 and as such, was having 14 years of service to his credit and for which due weightage has not been given while taking a decision to remove him from service. Further submitted that the impugned orders cannot sustain as they suffer from a non-application of mind as the health ailment that the petitioner was suffering from was also not kept in mind. Action is stated to be arbitrary and in violation of the principles of natural justice. It is urged that due opportunity was not afforded to the petitioner and an ex-parte inquiry has been held. Yet another submission raised is that the major penalty of removal from service is not commensurate to the charge of being absent from duty and as such a lesser punishment ought to have been imposed. In support of such contention, reliance has been placed upon judgment of the Apex Court in **Union of India Vs. Giri Raj Sharma, AIR (1994) SC 215.**

Counsel has been heard at length and pleadings on record have been perused.

In the facts of the present case, petitioner while serving on the post of Constable remained continuously absent from duty since 08.06.2018. Perusal of the impugned order dated 28.03.2019 (Annexure P-2) would reflect that repeated notices and opportunities were granted to the petitioner. In the first instance, the petitioner having been transferred from Pinjore to Jammu in May, 2018 and having availed 10 days joining time and yet having not reported at the place of posting was issued letter dated 28.07.2018 through a registered post at his home address to report for duty immediately. Petitioner did not join his duty and rather continued being absent. On 17.11.2018, another communication was sent through registered post at his home address giving 15 days time to report back as also informing him about the proposed inquiry to be initiated against him for absence from duty. No response was forthcoming. Vide order dated 18.12.2018, initiation of departmental proceedings took place as per articles of charge reproduced herein above. Presenting Officer was appointed vide office order dated 14.01.2019 and a copy of which was also sent to the home address of the petitioner through registered post. The Inquiry Officer while initiating proceedings issued letter dated 22.12.2018 calling upon the petitioner to submit objections, if any, as regards his appointment as also to furnish any reply or document in his defence. Petitioner neither presented himself before the Inquiry Officer nor provided any reply. Thereafter, on 07.01.2019, a decision was taken to hold an ex-parte departmental inquiry. The Inquiry Officer furnished a report returning findings against the petitioner. A copy of the departmental inquiry along with a covering letter dated 09.09.2019 was again sent to the petitioner at his home address

through registered post and thereby giving him 15 days time to submit objections, if any, to the inquiry report. At this stage also, the petitioner did not file any objections.

What clearly emerges is that petitioner has been afforded repeated opportunities to associate with the inquiry proceedings. Number of notices vide registered post were sent to his home address. The issuance of such notices through registered post and affording of opportunities to the petitioner and as has been observed in the impugned order of removal from service has not been denied by the petitioner in the instant petition. It is against such factual backdrop that the order of removal from service dated 28.03.2019 (Annexure P-2) was passed by treating the petitioner to be absent from duty for a total period of 270 days without due authorization and for such period to be treated as “dies non” for all intents and purposes.

The submission advanced by counsel as regards the impugned order having been passed in violation of principles of natural justice is without merit and factually incorrect. In **B.C. Chaturvedi Vs. Union of India, 1996 (1) SCT 617**, the Apex Court authoritatively laid down that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review would be exercised to ensure that the delinquent receives fair treatment but not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court.

The impugned order of removal from service in the present case has been passed after conclusion of the departmental proceedings. Counsel has not been able to point out any procedural illegality or infirmity in such

proceedings. The service of a number of notices upon the petitioner calling upon him to resume duties in the first instance and thereafter to participate in the departmental inquiry proceedings is not denied.

The case projected on behalf of the petitioner by counsel during the course of hearing that he was suffering from a health ailment and which was the reason for his having absented from duty, does not inspire confidence. Certain documents stand appended at Annexure P-11 (colly) which are in the nature of certain prescription slips from the doctor concerned. However, in the grounds of appeal dated 25.05.2019 (Annexure P-3) as also the grounds of revision (undated) at Annexure P-5, there is no reference to any medical ailment. It would be safe for this Court to conclude that such submission is only an afterthought.

It would also be apposite to take note that apart from 270 days of absence from 08.06.2018 to 28.03.2019 which has led to passing of the impugned order of removal from service, the petitioner even prior thereto, has been awarded repeated punishments for over staying the leave period and having remained absent from duty. The details of such punishments stand delineated in the order dated 31.12.2019 (Annexure P-6) by the revisional authority and read as follows:

“Punishments:

- 1) 13 days LHP WNLS wef 22/03/08 to 03/04/08.*
- 2) 32 days OSL period wef 20/07/09 to 20/08/09 is regularized into EOL.*
- 3) 69 days OSL period wef 15/03/10 to 22/05/10 is regularized into LHPWNLS.*
- 4) 56 days OSL period wef 23/05/10 to 17/07/10 is regularized into EOL.*

- 5) *Deserter fm service wef 03/08/11 (Fn) vide O/O No.I-X-37/2011-170-EC-II dtd 21/02/12.*
- 6) *270 days OSL period wef 03/08/11 to 28/04/12 is regularized into "Dies Non".*
- 7) *Deserter fm service wef 01/05/14 (fn) vide fo no.361/2014-178 dtd 06/09/14.*
- 8) *161 days OSL period wef 01/05/14 to 08/10/14 is regularized into EOL.*
- 9) *03 days OSL period wef 27/01/17 to 28/01/17 w.p.t. Avail 26/01/17 is regularized into LHPWNLS.*
- 10) *22 days OSL period wef 10/02/17 to 03/03/17 is regularized into LHPWNLS.*
- 11) *24 days OSL period wef 30/01/18 to 22/02/18 is regularized into LHPWNLS.*
- 12) *Deserter fm service wef 08/06/18 (Fn) vide fo no.607/2018-96 dtd 27/10/18.*
- 13) *270 days OSL period 08/06/18 to to 28/03/19 is regularized into "Dies Non" for all purposes.*
- 14) *07 days CTL wef 13/03/18 to 19/03/18 vide fo no.74/2018-523 dtd 17/03/18. **TOTAL- 927 days in entire service.***
- 15) *Stoppage of two increments with cumulative effect vide O/O no.P-VII-11/2010-EC-2/177 dtd 15/02/10."*

Counsel representing the petitioner does not dispute the imposition of such punishments.

In the considered view of this Court, wilful absence from duty over a prolonged period of time and that too, by a member of the disciplined force is a grave misconduct. In the present case, it is not one stray incident of absence from duty. The facts would demonstrate that the petitioner is a habitual absentee. The action of the respondent/authorities in having imposed upon the petitioner the major penalty of removal from service as

such is well founded.

Even as regards quantum of punishment, the principles governing interference in the same are well settled. It has been held in a catena of judgments rendered by the Apex Court that the High Court while exercising powers of judicial review cannot substitute its own opinion of penalty and impose some other penalty. It is only if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court, then it would be appropriate to mould the relief either by directing the disciplinary/appellate authority to reconsider the punishment imposed or to shorten the litigation and in exceptional and rare cases, to pass an order imposing appropriate punishment in the light of cogent reasons being assigned.

Petitioner herein was a member of a disciplined force. In pursuance to a regular departmental inquiry conducted after following due procedure and in consonance with the rules of natural justice, he had been held guilty of wilful absence from duty over a prolonged period of time. On a number of previous occasions, the petitioner has also remained absent. This Court would have no hesitation in holding the petitioner to be a habitual absentee.

Under such circumstances, there would be no scope for interference and to take a different view even as regards quantum of punishment imposed by the punishing authority and affirmed by the appellate and revisional authority. The reliance placed by counsel upon the judgment in **Giri Raj Sharma's case (supra)** is wholly misplaced. In the facts of that case, the delinquent was a member of the Central Reserve

Police Force and who had over stayed leave and for which he had sufficient reasons to explain. It is under such peculiar circumstances, it had been observed that the delinquent had no intention to wilfully disobey the order of the superior authorities and as such the action of dismissal from service was too harsh. In the present case, petitioner is a habitual absentee and no explanation whatsoever has been forthcoming from him to justify his prolonged period of absence from duty inspite of repeated opportunities having been afforded. The judgment in **Giri Raj Sharma's case (supra)** would have no applicability to the facts of the present case.

For the reasons recorded above, there is no merit in the instant writ petition and the same is dismissed.

Dismissed.

16.03.2021*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |