



#

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 09.08.2023

Judgment delivered on: 17.08.2023

+ **W.P.(C) 9422/2023, CM APPL. 35997/2023**

SANDEEP KUMAR YADAV

..... Petitioner

Through: Ms. Josmy John, Mr. Setu Niket and
Ms. Esha Mazumdar, Advocates.

versus

GNCT OF DELHI & ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Ms. Tania Ahlawat,
Mr. Nitesh Kumar Singh, Ms. Palak
Rohmetra, Ms. Laavanya Kaushik and
Ms. Aliza Alam, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. The challenge in this petition is to an order dated May 10, 2023 passed by the Central Administrative Tribunal (hereinafter, referred to as the 'Tribunal') in O.A. No.259/2022, whereby the Tribunal dismissed the O.A. preferred by the petitioner seeking following reliefs:

*“A. Quash and set aside impugned orders dated 01/09/2021,
29/05/2020 and 19/05/2020;*



B. Direct the Respondents to treat the intervening period between 21/04/2020 and 14/10/2020 as period spent on duty, and award all consequential benefits thereto;

C. Direct the respondents to pay the deducted salary for the period between 21/04/2020 and 14/10/2020;

D. In the alternative to prayer B & C, direct the respondents to treat the period between 21/04/2020 and 14/10/2020 against accumulated earned leave for the year 2020 and pay the deducted salary for the period between 21/04/2020 and 14/10/2020; and

E. Award cost of the proceedings.”

2. In brief, a departmental inquiry was initiated against the petitioner under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980 vide office order dated November 11, 2020 for unauthorizedly absenting for a period of about 05 months 22 days, without any prior intimation/permission of the competent authority, in contravention of CCS (Leave) Rules, 1972 as well as SO No.111 issued by Delhi Police.

3. As per the case of the respondents, while the petitioner was posted at Police Station: Mandir Marg, New Delhi, he was detailed for duty from 08:00 PM on April 21, 2020. Also, due to spread of COVID-19, the police personnel had been directed to report for duty and not to leave the District Headquarters. However, petitioner neither reported for duty, nor forwarded any intimation about his whereabouts. In view of above, petitioner was marked absent vide DD No.45-B dated April 21, 2020, Police Station: Mandir Marg, New Delhi District. Petitioner, thereafter, resumed his duties as recorded vide DD No.64 dated October 14, 2020 after absenting for a period of 05 months and 22 days. Consequently, disciplinary proceedings



were initiated against the petitioner.

4. Petitioner claimed that he officially availed rest period for three days with due intimation to the respondents from April 18, 2020. Further, he visited his native place Alwar, Rajasthan but upon arrival therein, he was put under quarantine for a period of 28 days due to COVID-19, which was informed to the superiors telephonically as well as through WhatsApp. However, he was marked absent and served with a show-cause notice dated May 01, 2020 through WhatsApp and his leave period was considered as unauthorized.

5. The charge against the petitioner was held to be proved by the Inquiry Officer. In the written representation, in response to the findings of Inquiry Officer, petitioner also submitted that he remained under treatment of Dr. Devendra Dev, Govt. Hospital Trauma Centre, Behror, Rajasthan from May 17, 2020 and had submitted an application dated October 14, 2020 along with medical certificates for grant of commuted leave. Further, only at the time of resuming duties, he became aware that information regarding claiming medical rest *w.e.f.* May 17, 2020 had not been recorded in Daily Diary by Chitta Munshi as well as Duty Officer.

6. Disciplinary Authority/DCP, New Delhi District agreeing with the findings of the Inquiry Officer, awarded punishment of forfeiture of one year approved service entailing proportionate reduction in his pay vide order dated May 28, 2021. Further, the period of absence under inquiry was treated as 'Not spent on Duty' for all intents and purposes and was not



regularized in any manner.

7. An appeal preferred by the petitioner against the aforesaid order was dismissed vide order dated September 01, 2021 by the Appellate Authority i.e. Joint Commissioner of Police, New Delhi Range, New Delhi.

8. Petitioner, thereafter challenged the orders passed by the respondents vide O.A. No.259/2022.

The same was dismissed by the Tribunal for the reasons recorded in paragraph Nos. 6 to 14 and may be reproduced for reference:

“6. From perusal of the pleadings and arguments put forward by both the sides, it is evident that the entire case hinges on the issue of his absence - whether the absence of applicant was unauthorized or not. The undisputed facts are that the applicant was to report on duty on April 21, 2020 on completion of his three days rest period which he failed to do as he went to his native place Alwar availing the said rest period.

7. The question is whether as per rules he was entitled to avail such rest period within his Headquarters or also outside. The applicant has submitted that he made “proper departure to avail special duty rest” with due intimation. The question remains if he was accorded the flexibility to do so at a place which was not his Headquarters. It has been brought out by the learned counsel for the respondents and it is also mentioned in the impugned order at Annexure A-1 that in view of spread of COVID-19, there were strict directions to all the police personnel to report for duty at once and they were also directed not to leave their District Headquarters since adequate arrangements had been made for their accommodation in Delhi, but the applicant did not comply with the directions. During hearing also, no record has been placed to show if the applicant had sought any permission to leave the District Headquarters and if the same was granted.

8. It is common knowledge that a Government servant leaves his assigned Headquarters only after due permission from his competent authority and it is equally applicable in the case of a disciplined force



like Delhi Police, if not more. In fact in a crisis situation like COVID-19 pandemic, the responsibilities of a law enforcing agency like Delhi Police increase manifold and such irresponsible conduct is not expected from its personnel.

9. We have also gone through the article of charge against the applicant which reads as follows:

CHARGE

.....

Reading of the above shows that the charge against the applicant is also that the police personnel were directed not to leave their District Headquarters since adequate arrangements have been made for their accommodation in Delhi but he deviated from these orders clearly showing non-compliance of the directions of the authority.

10. Learned counsel for the applicant has drawn our attention to Para 8 of the judgment of the Hon'ble Supreme Court in **Brij Bihari Singh vs. Bihar State Financial Corporation and Ors.** 2016 (1) AJR 560 and it has been argued that the same has not been followed in the case. Para 8 of the said judgment reads as follows:

"8. It is well settled that a person who is required to answer a charge imposed should know not only the accusation but also the testimony by which the accusation is supported. The delinquent must be given fair chance to hear the evidence in support of the charge and to cross-examine the witnesses who prove the charge. The delinquent must also be given a chance to rebut the evidence led against him. A departure from this requirement violates the principles of natural justice. Furthermore, the materials brought on record pointing out the guilt are required to be proved. If the enquiry report is based on merely ipse dixit and also conjecture and surmises cannot be sustained in law."

11. We have gone through the inquiry report and we do not find anything to suggest that there has been any violation of the laid down procedure of the departmental proceeding.

12. We are also conscious of our limited jurisdiction of judicial review and the parameters laid down by the Hon'ble Supreme Court in Union



of *India and Others vs. P. Gunasekaran* ; 2015 (2) SCC 610 which reads as follows:

“Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an Appellate Authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. the finding of fact is based on no evidence.”*

13. In the facts and circumstances and in view of the parameters laid down by the Hon’ble Supreme Court, as above, there is nothing to show that there has been any contravention of any procedural rules or principles of natural justice in the instant case. Therefore, the OA is dismissed. No order as to costs.



14. In view of the dismissal of the OA, MA No.1482/2022 filed by the respondents for vacation of interim order dated 25.02.2022 is disposed of accordingly.”

9. Learned counsel for the petitioner assailed the order passed by the Tribunal on the ground that the Tribunal erroneously held that the petitioner had left the station without permission of the competent authority and did not lead any evidence to prove the charge. Further, during the outbreak of COVID-19, as a part of Delhi Police Protocol, the petitioner was entitled to avail a rest period of three days, which was availed with due intimation in terms of DD No. 19-B dated April 18, 2020. Intimation is stated to have been duly forwarded regarding quarantine for 28 days on arrival at his hometown at Alwar, Rajasthan telephonically. Petitioner is further claimed to have been wrongly marked absent vide DD No. 45-B dated April 21, 2020. The show-cause notice dated May 01, 2020 served upon the petitioner through WhatsApp is stated to have been duly replied on May 02, 2020 and it was informed that the petitioner was unable to report since he was placed under quarantine for 28 days. The ex-parte order dated May 19, 2020 treating the petitioner absent from April 21, 2020 till joining and the period as ‘not spent on duty’ is vehemently challenged.

It is further urged that due to ill health, petitioner was able to resume his duties only on October 14, 2020 and the leave of absence was requested to be treated as commuted leave. It is contended that petitioner was neither informed of being marked absent, nor served with any absentee notice and was not recommended for medical re-examination in terms of standing



orders. It is also submitted that the Disciplinary Authority erred by holding the petitioner guilty of leaving the station, though he was not charged for leaving the station without permission. Reliance was further placed upon order dated November 11, 2021 passed by the Tribunal in ***Sandeep Kumar vs. Commissioner of Police & Another, O.A. No.3679/2014*** and ***Krushnakant B. Parmar vs. Union of India & Anr, (2012) 3 SCC 178.***

10. On the other hand, the orders passed by the Disciplinary Authority and Appellate Authority, as upheld by the Tribunal was supported by learned counsel for the respondents. It was submitted that unauthorized absence of the petitioner was self-speaking, since the petitioner did not seek any permission to leave the station on April 18, 2020 and thereafter, unauthorizedly remained absent for a period of 05 months 22 days. It was urged that left with no option, the petitioner was issued a show-cause notice on May 01, 2020, but he still failed to report for duty and subsequently only on joining produced the medical certificates. It is vehemently urged that during the challenging times of COVID-19, while strict instructions were issued to all the police personnel to report for duty, the petitioner abandoned his duties, without intimation and permission, in contravention of the relevant rules and standing orders.

Further, the inquiry proceedings are contended to have been duly held in accordance with the rules, wherein the charge against the petitioner stood proved and the misconduct was correctly penalized. The findings of the Inquiry Officer are stated to have been correctly affirmed by the Disciplinary



Authority as well as Appellate Authority.

11. We have given considered thought to the contentions raised.

In order to appreciate the contentions of the parties, at the outset, the charge framed against the petitioner may be reproduced:-

“CHARGE

I, Inspr. Ajay Kumar Singh, Inspr. DSF/Chanakya Puri, New Delhi Enquiry Officer charge you Constable (Exe.) Sandeep Kumar Yadav, No.1132/ND (PIS No.29100519) that on 21.04.2020, you while posted at Mandir Marg, New Delhi Distt. Were detailed for duty from 8.00 p.m. Besides, due to the spread of “COVID-19”, it was strictly directed to all the police personnel to report for duty at once and further they were directed not to leave their District Headquarters since adequate arrangements have been made for their accommodation in Delhi. But you did not comply the directions and neither reported for duty nor sent any intimation to the department about your whereabouts. As such you were marked absent vide DD No.45-B, dated 21.04.2020, P.S. Mandir Marg, New Delhi Disst.

You Constable (Exe.) Sandeep Kumar Yadav, No.1132/ND resumed your duty vide DD No.64 dated 14.10.2020 after absenting yourself for a period of 05 month, 22 days, 21 hours and 59 minutes unauthorisedly without any intimation /prior permission of the competent authority, which is in contravention of CCS (Leave) Rules, 1972 as well as S.O. No.111 of Delhi Police.

The above act on the part of you Constable (Exe.) Sandeep Kumar Yadav, No.1132/ND amounts to gross misconduct, dereliction in the discharge of your official duties and unbecoming of a member of police force, which renders you liable for punishment under the provision of Delhi Police (Punishment and Appeal) Rules, 1980 read with section 21 of D.P. Act, 1978.”

12. It is well settled that the High Court in the cases of departmental inquiry with reference to the findings recorded therein does not act as an Appellate Court. The jurisdiction is limited and is to be exercised only in



case the domestic inquiry is vitiated for non-observance of principles of natural justice, denial of reasonable opportunity, findings based on no evidence and/or the punishment is totally disproportionate to the proved misconduct of an employee.

The issue in relation to jurisdiction of the case in the judicial review also fell for consideration before the Hon'ble Supreme Court in ***M.V. Bijlani vs. Union of India and Others, (2006) 5 SCC 88*** and the observations in para 25 in this regard are apt to be noticed:-

“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

Also, the observations in para 15 to 19 in ***Krushnakant B. Parmar vs. Union of India (supra)*** in this regard are relevant, as referred by the learned counsel for the petitioner and may be beneficially reproduced:-

“15. In the case of appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behaviour was unbecoming of a Government servant.



16. The question whether 'unauthorised absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be wilful.

18. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

19. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct."

13. In the light of aforesaid legal position, we are of the considered view that the absence from duty without any application or permission may not always amount to unauthorized absence, as the same may not be 'willful' and there may be different eventualities due to which an employee may abstain from duty including compelling circumstances beyond his control like illness, accident, hospitalization etc. However, at the same time, the employee is required to show the compelling circumstances to remain absent, in case the period of absence needs to be regularized/condoned. The unauthorized absence as a misconduct cannot be put up in a straightjacket formula and the facts and circumstances of each case need to be duly analysed before treating it as misconduct.



14. Thus, in the present case, it needs to be ascertained in case the petitioner proceeded on leave under compulsion and whether his absence on medical grounds supported with medical certificates stands duly justified. It also needs to be kept in perspective that the present case arises under special circumstances due to onset of COVID-19 pandemic during the initial phase in the year 2020.

15. The contention of the petitioner is that he had left for his hometown on April 18, 2020 since he had been provided special COVID-19 rest for the period April 18, 2020 to April 20, 2020 (3 days) and on reaching the hometown, he was quarantined for a period of 28 days on April 19, 2020, resulting in a situation that he could not report for duty. It was claimed by him that he had informed the same to the Duty Officer and Chitta Munshi while proceeding, though PW3 stated that he was informed of the same on April 19, 2020.

It is important to keep the aforesaid factual position in perspective since the COVID-19 rest granted to the petitioner from April 18, 2020 to April 20, 2020 was authorized. The evidence that the instructions 'not to leave the station' were to the notice of petitioner, has not categorically been proved on record. The officials living in nearby/NCR areas generally leave for hometown during authorized leave/period of rest. It may also be noticed that due to prevalence of COVID-19, extraordinary curbs had to be placed along with complete lockdown in several parts of the country resulting in quarantine measures and restricted movement in several areas to prevent



spread of the disease. In the aforesaid background, the unexpected placing of petitioner in quarantine for a period of 28 days after he proceeded for his hometown at Alwar, Rajasthan during valid period of rest for three days, was beyond his control due to which he could not report for duty on April 21, 2020. The same was duly intimated as admitted by PW3 HC Sarvan in the inquiry proceedings on April 19, 2020. Reply to the show-cause notice dated May 01, 2020 was also forwarded by the petitioner on WhatsApp and the same also stands admitted in the inquiry proceedings by PW3. In the facts and circumstances, adverse inference cannot be drawn against the petitioner for initial non-reporting for duty on April 21, 2020, since he was placed in quarantine *w.e.f.* April 19, 2020 for a period of four weeks at his hometown at Alwar. The show-cause notice, as such, should have been logically discharged as the absence was beyond the control of the petitioner due to extraordinary situation and compelling circumstances prevalent due to COVID-19 pandemic.

16. The petitioner, for the subsequent period of absence, has claimed that he was advised medical rest *w.e.f.* May 17, 2020 by Dr. Devendra Dev, Senior Medical Officer, Trauma Centre, Behror, Rajasthan, which was duly informed to the Duty Officer as well as Chitta Munshi. However, only at the time of resuming the duties, he became aware that the information had not been recorded in the Daily Diary by the Duty Officer as well as by the Chitta Munshi. The petitioner has further relied on the medical prescriptions from May 17, 2020 to October 13, 2020 in this regard.



17. The stand of the petitioner in the inquiry proceedings in this regard did not find favour with the Inquiry Officer as well as Disciplinary Authority.

We are of the considered view that there is always a possibility that a person may have unexpected medical problems but from the departmental perspective he is expected to convey the period for which he has been advised medical rest and is likely to remain absent. It is not the case of the petitioner that he had been prescribed a long medical rest for about five months in one go, on account of 'LBP' (Lower Back Pain). The medical prescriptions have been obtained by the petitioner from time to time and, as such, he was expected to convey the extension of medical rest, as advised, and seek leave from the department. However, the petitioner chose to remain unauthorizedly absent without any further communication in this regard, at his own sweet will. There was no occasion for the department to seek any medical re-examination of the petitioner as they were completely unaware and ignorant of the reasons for the absence of the petitioner, after initial quarantine for four weeks. The finding of the Disciplinary Authority for the unauthorized absence of the petitioner, only for the period as discussed above, is legally sustainable.

18. In the facts and circumstances, since it has been held that the initial period *w.e.f.* April 19, 2020 for a period of four weeks, for which the petitioner was in quarantine, cannot be treated as unauthorized, the penalty needs to be considered afresh.



In *Coal India Ltd. and Anr. vs. Mukul Kumar Choudhuri and Ors.*, (2009) 15 SCC 620, Hon'ble Apex Court analysed the doctrine of proportionality of penalty and in para 19 to 21 held that one of the tests while dealing with question of quantum of punishment is whether any reasonable employer would have imposed such punishment in like circumstances taking into consideration measure, magnitude and degree of misconduct and all other circumstances after excluding irrelevant matters, before imposing punishment. Observations in para 19 to 21 in this regard may be beneficially reproduced:-

"19. The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

21. In a case like the present one where the misconduct of the delinquent was unauthorised absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal



cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations.”

The court after considering the factual matrix in the aforesaid case interfered with the punishment on the ground of proportionality.

19. In the present case, the doctrine of proportionality, in the context of imposition of punishment is attracted, since a fear psychosis on mass scale was generated due to COVID-19 pandemic, without any standard regimen of treatment and also wide scale restrictions on movement were imposed with compulsory quarantine measures. The petitioner could not initially attend the office *w.e.f.* April 21, 2020 after being granted official special rest from April 18, 2020 to April 20, 2020, since he was placed in compulsory quarantine *w.e.f.* April 19, 2020 for a period of four weeks on reaching his hometown at Alwar, Rajasthan. Also, the absence of the petitioner on medical grounds requires a considerate view, since the medical prescriptions have not been challenged. The penalty of forfeiture of one year approved service by the Disciplinary Authority in the facts and circumstances is disproportionate, since it is not a case of repeated absenteeism by the petitioner. In view of above, the penalty imposed upon the petitioner by the Disciplinary Authority and upheld by the Appellate Authority as well as the order passed by the Tribunal, is liable to be set aside.

The facts and circumstances in ***Harender Singh vs. GNCT of Delhi and Ors., W.P.(C) 3238/2017***, relied by the learned counsel for the



respondents are distinguishable, since the petitioner in the said case failed to join/report for duty even though a notice was served calling upon him to join the duties and despite the same remained absent for the period October 24, 2006 to October 01, 2008 i.e. for a period of about little less than two years. Further, there were no special circumstances of COVID-19 pandemic as adverted to in the present case.

20. For the foregoing reasons, the matter is remanded back to the Disciplinary Authority to pass fresh orders with regard to the punishment imposed on the petitioner, keeping in perspective that the petitioner initially remained under quarantine due to COVID-19 pandemic and, thereafter, the absence was on medical grounds, duly supported by prescriptions. The Disciplinary Authority is expected to take a reasonable and sympathetic view, in the facts and circumstances of the present case. The petition is accordingly disposed of. In the facts and circumstances, no order as to costs. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

August 17, 2023/R/sd