



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

% Judgment reserved on: 04.09.2023

Judgment delivered on: 12.09.2023

W.P.(C) 2278/2007

VIKAS AHLAWAT

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the petitioners: Mr. Sumit Kumar, Advocate

For the Respondent: Mr. Anurag Ahluwalia, CGSC with Ms. Avshreya Pratap Singh
Rudy, GP with SI Prahlad and SI Amit Kumar, CISF

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner challenges his removal from service and seeks reinstatement with all consequential benefits.
2. Petitioner had joined Central Industrial Security Force (CISF) as Head Constable, under Sports Quota, in year 1988. He participated in various boxing championships after joining CISF and won many medals.
3. Petitioner, during the relevant period of 2000-2001, remained attached to 2nd Reserve Battalion, Saket, New Delhi for sports



practice, though he was on the strength of 3rd Reserve Battalion, Bhilai.

4. On 13.06.2001, petitioner sent a letter to respondents informing that he was on medical rest from 07.11.2000 to 12.06.2001. He stated therein that though he had recovered but was not able to join on account of his father's ailment. Mentioning about the fact that his request to post him in Delhi had not been acceded to, he sought further leave for one year supplementing that else his resignation may be accepted. It will be also pertinent to mention that he captioned his aforesaid letter dated 13.06.2001 as 'Resignation Letter.'

5. Respondents, after considering the above request, informed him on 28.07.2001 that he had not even reported for duty and that if he wanted extraordinary leave (EOL) for a period of one year, he may submit fresh application with justification. He was also advised that in case he wanted to resign from service, he may report to 3rd Reserve Battalion, Bhilai for completing the requisite codal formalities. He was also reminded that his wilful absence from duty might invite disciplinary action as per Rules.

6. Petitioner, eventually, reported for duty in Delhi on 03.12.2001. He was given Movement Order on 04.12.2001 with direction to report for duty at CISF, 3rd Reserve Battalion, Bhilai. Since petitioner did not join there and did not report for duties, charge-sheet was issued to him vide Memo dated 18.01.2002 with following Articles of charges:-



Article of Charge No. 1: That No. 881350292 HC/GD Vikas Ahlawat of CISF 3rd Res Bn Bhilai while attached with 2nd Reserve Battalion Saket availed medical rest as per advised of Medical Officer from 7-11-2000 to 12-6-2001. He was declared fit for duty by the Medical Officer w.e.f. 13-6-2001 but he failed to report for duty and remained absent till 2-12-2001 without any valid permission / authority which tantamounts to gross misconduct, indiscipline, dereliction of duty, violation of instructions and unbecoming of a member of a disciplined force.

Article of Charge No. 2: That No. 881350292 HC/GD Vikas Ahlawat of CISF 3rd Res Bn Bhilai was relieved from 2nd Res Bn Saket, New Delhi on 4-12-2001 (AN) and was directed to report to CISF 3rd Res Bn Bhilai but he failed to report and absented from his duty w.e.f. 5-12-2001 without any valid permission/ authority. This act on the part of No. 881350292 amounts to gross misconduct, indiscipline, dereliction of duty, violation of instructions and unbecoming of a member of a discipline force.

7. According to petitioner, he had repeatedly requested the authorities to grant him extraordinary leave (EOL) for one year or post him at Delhi as his father had been battling with a serious kidney problem and was under treatment in Army Hospital, Dhaula Kuan, Delhi Cantt. However, his such request was not acceded to by the respondents and rather he was served with a charge-sheet.

8. As per Inquiry Report dated 01.06.2002, both the aforesaid charges stood proved.

9. Final order was passed on 19.08.2002 whereby he was imposed penalty of 'removal from service.' Statutory appeal, filed by the petitioner, was dismissed on 30.03.2004.

10. It is contended by the petitioner that his father was suffering from serious kidney ailment which compelled him to apply for



extraordinary leave. According to him, since he had repeatedly appealed in this regard to the respondents and was able to satisfactorily explain the reason of his absence, there was no occasion to have initiated any enquiry against him. He, thus, maintained that his absence was neither unauthorized nor wilful. It is also argued that the alleged misconduct did not deserve such disproportionate punishment. He also contended that he was having unblemished service for about 13 years and respondents did not consider the same. His sporting talent was also not considered while initiating disciplinary action or removing him from service. He also claimed that he had all along been requesting the respondents for “paper posting” at Shakur Basti, Delhi so that he could look after his father but instead of posting him to Delhi, he was directed to report at Bhilai.

11. According to respondents, whereas, the absence of petitioner was wilful and unauthorized and the penalty of removal from service had been imposed after careful consideration of the evidence adduced during departmental inquiry. It is contended that though the petitioner had been declared fit for duty w.e.f. 13.06.2001, he failed to report for duty and absented himself till 02.12.2001, without any permission or intimation to the competent authority. He reported at 2nd Reserve Battalion, Saket, New Delhi on 03.12.2001 only. However, despite Movement Order, he did not bother to report for duty at 3rd Reserve Battalion, Bhilai and absented himself, again, from duty w.e.f. 05.12.2001. According to the respondents, such act of absence is not expected from a member of force. It is claimed that even though the



petitioner was a good sportsman and had previous clean record, it did not entitle him to remain absent from duty and to disobey the Movement Order.

12. In support of his contentions Sh. Anurag Ahluwalia, learned CGSC has also relied upon the decisions in *Rabindra Kumar Shaw V. Union of India, Ministry of Defence and Others* (2019) 16 SCC 93, *Union of India and Others Vs. E. No. 6492086A Sep/Ash Kulbeer Singh* (2019) 13 SCC 20, *Ex. Sepoy Madan Prasad Vs. Union of India & Ors.* (2023) SCC Online SC 887 and *General Manager (Operation-I)/Appellate Authority, UCO Bank & Ors. Vs. Krishna Kumar Bhardwaj* (2022) SCC OnLine SC 201.

13. We have given our anxious consideration to the rival contentions and carefully gone through the disciplinary proceedings, in particular, the inquiry report and have no hesitation in holding that the contentions raised by the petitioner do not hold any ground.

14. It is quite evident that petitioner himself is to be blamed for his miseries as he seems to have taken the things for granted. Such casual, unconcerned and lackluster approach is not expected from an official of Force who has already put in around 12 years of service.

15. As already noted, the first charge against him is very simple and specific. He availed medical rest from 07.11.2000 to 12.06.2001 and since as per his own case, he had been declared fit for resumption of duties, he should have resumed his duty on 13.06.2001. To our



astonishment, he seems to have sent the 'fitness certificate' to respondents through registered post only, instead of reporting and submitting the same personally. We have gone through the contents of his statutory appeal dated 31.08.2002 in which he admitted that he had been declared fit for duty by CMO, CGHS Dispensary, Kingsway Camp but could not resume duty on account of sickness of his father. He merely claimed that he had informed DIG(Sports) about his compelling circumstances. Even if it is assumed that he had shared his difficulty with DIG (Sports), such fact would not mean and indicate that he had been granted any kind of extension of leave. There is nothing to indicate that his such request was ever acceded to by the competent authority. It also seems that he never sent any record showing medical condition of his father to the respondents. More importantly, in the present writ petition also, he has not bothered to annex any document to demonstrate the same and to make out any case showing justification in seeking extraordinary leave for a period of one year.

16. When inquiry proceedings were initiated against the petitioner and charge-sheet was served upon him, he did not attend inquiry and rather sent application claiming that he was unable to attend the same at Bhilai due to ailment of his father and requested that inquiry may be conducted at CISF Unit OCS Shakur Basti, New Delhi. Respondents displayed enough of compassion and, therefore only, it was decided by DIG(NZ) that inquiry be conducted at Delhi. As per respondents, such inquiry was accordingly conducted at Delhi as per laid down



procedure and the petitioner had been granted ample opportunity to defend his case but he failed to submit any cogent evidence.

17. The endeavor of the petitioner was to continue to remain in Delhi somehow and not to go back to Bhilai at all. If at all, he was of the view that respondents were not accommodating him or ignoring his genuine family compulsion, he could have taken recourse to law by filing appropriate petition before court of law but for the reasons best known to him, he did not challenge his posting order. Right here, it also needs to be emphasized that the request of petitioner had rather been acceded to and, therefore, he had been posted to CISF Unit OCS, Shakurbasti, Delhi so that he could take care of his ailing father in a better manner. However, he was required to, first, report at CISF (HQs), 3rd Reserve Battalion, Bhilai so that he could be relieved from there to join such new posting at Shakur Basti, Delhi.

18. As noted already, petitioner should have resumed his duty on 13.06.2001. He, for his own fanciful reasons, assumed that his leave had been extended. He does not dispute that he had received reply dated 28.07.2001. Despite receiving the same, he did not make any attempt to report for duties. He did not even bother to meet anyone or move any formal application for grant of EOL by giving requisite justification. Thus, he took the respondents for granted, resulting in initiation of disciplinary action against him.

19. It is hard to believe his contention that he had been able to satisfactorily explain the reason of his absence. The manner in which



he had conducted himself clearly smacks of gross indiscipline. Manifestly, his absence was deliberate and unsanctioned. Mere fact that he had achieved 'podium finish' in various sporting events would not give him any excuse to either remain absent from duties or to disobey the Movement Order.

20. The inquiry has been conducted as per the prescribed procedure and during the course of arguments, petitioner could not bring forth any fact which may even remotely indicate that there was any infraction of the procedure or that any principle of natural justice was compromised. He was granted ample opportunity to defend himself. After careful analysis of the material placed during the inquiry, it was held that he did not re-join his duties on 13.06.2001 and remained absent thereafter without any information/permission. It was also concluded by the Enquiry Officer that the petitioner had been given Movement Order dated 04.12.2001 from Saket to Bhilai but despite that he did not join 3rd Reserve Battalion, Bhilai and again remained absent without any information or permission.

21. Based on such inquiry, order was passed on 19.08.2002 by the Senior Commandant after considering the entire case who observed that such indisciplined attitude and dereliction of duty could not be overlooked in a disciplined force and, therefore, the charged official deserved exemplary punishment and, therefore, he was constrained to impose penalty of 'removal from service' upon him.



22. In *Rabindra Kumar Shaw (supra)*, the delinquent official of Indian Army, who had already put in service of nine years, had willfully disobeyed the orders of superiors and remained absent from duty on the ground that he had suffered injury in his little finger of the right hand. He challenged his termination from service. Supreme Court, however, dismissed his appeal while observing that armed forces personnel were different from civil services and not being present at his detachment unit and disobeying the lawful command could not be ignored lightly and thus, penalty of termination could not be said to be incommensurate with the delinquency.

23. In *Union of India and Others Vs. E. No. 6492086A Sep/Ash Kulbeer Singh (supra)*, petitioner, who was a sepoy in Army Service Corps failed to report to his new unit. The period of his absence was for 302 days. In that case also, it was pleaded that such punishment was very harsh as the respondent had put in more than 12 years of service. Original application (OA) filed by him before the Armed Force Tribunal was partly allowed and punishment of dismissal was quashed with the direction that he would be deemed to be notionally in service till he was entitled to receive pension. Such order was challenged in Supreme Court by Union of India and the Supreme Court allowed the appeal holding that since delinquent official had put in 12 years of service, it was all the more a reason that he should have conducted himself as a responsible member of the armed forces and should not have absented from service without permission.



24. In *Ex. Sepoy Madan Prasad (supra)*, it has been observed that ‘discipline is the implicit hallmark of the Armed Forces and non-negotiable condition of service.’

25. In *General Manager (Operation-I)/Appellate Authority, UCO Bank & Ors. Vs. Krishna Kumar Bhardwaj (supra)*, it has been observed that scope of judicial review in the matters of disciplinary inquiry is very limited and the constitutional courts under Article 226 or 227 of Constitution would not assume the role of appellate authority where jurisdiction is circumscribed by limits of correcting of errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice.

26. We need not emphasize that the legal position is, no longer, *res integra*. It is well settled that the courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry, except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record or based on no evidence or inadmissible evidence or based on irrelevant or extraneous considerations. Of course, if the principles of natural justice have been violated or the statutory regulations have not been adhered to or there are *malafides* attributable to the Disciplinary Authority, then the courts can certainly interfere.

27. Disciplinary Authority and the Appellate Authority only are vested with the exclusive power to examine the adequacy of evidence and discretion to impose appropriate punishment keeping in mind the



gravity of the misconduct. While exercising powers of judicial review, the High Court or the Tribunal cannot, ordinarily, reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate that it would shock its conscience. Reference be made to *Union of India Vs. Subrata Nath 2022 SCC Online SC 1617*.

28. Applying the above legal position to the given facts, it becomes evident that neither the procedure nor the findings of the enquiry can be faulted with. The petitioner could not impeach the charges in any manner whatsoever and did not even produce any witness in defence. There is nothing which may persuade us to hold that his absence was justified, particularly keeping in mind the fact that his own request for posting in Delhi had already been acceded to. The outcome of inquiry, in the above factual matrix, was virtually a *fait accompli*. Even if the facts were to be re-appreciated, the conclusion would have, still, been the same.

29. There is also nothing to indicate that the punishment is shockingly disproportionate.

30. The continuous absence, in an apparently disdainful manner, cannot be countenanced by any armed force whose paramount objective, *inter alia*, is to provide protection and security to strategic establishments, including the Department of Space, Department of Atomic Energy, airports, power plants, historical monuments etc.



31. Resultantly, we find no substance in the present petition. Same stands dismissed.

32. No order as to costs.

MANOJ JAIN, J

SANJEEV SACHDEVA, J

September 12, 2023

dr

