

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 31st January , 2023

Pronounced on: 27th April , 2023

+

W.P.(C) 2619/2017

R.S. DAGAR

S/o Late Shri Charan Singh,
Ex. Inspector, CISF,
C-16, 1st Floor, Arjun Nagar,
New Delhi-110029

..... Petitioner

Through: Mr. S. N. Kaul, Advocate.

versus

1. **UNION OF INDIA**

Through its Secretary,
Govt. of India,
Ministry of Home Affairs,
North Block, New Delhi

2. **The DIRECTOR GENERAL**

Central Industrial Security Force,
Block No. 13, CGO Complex,
Lodhi Road, New Delhi

3. **THE INSPECTOR GENERAL**

Central Industrial Security Force,
West Zone Airport HQs.,
Kendriya Sadan, C-301
Sector 10, CBD Belapur,
New Mumbai

4. **THE DEPUTY INSPECTOR GENERAL**

Central Industrial Security Force,
Bhilai Steel Plant,
District Durg (Chhattisgarh)

5. **THE SENIOR COMMANDANT**

NDRF, Bn. Mundali (Orissa)

..... Respondents

Through: Ms. Barkha Babbar, Advocate.

S.I. Amit Kumar & S.I. Prahlad

Devenda, CISF.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The present petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioner seeking following reliefs:

“(i) To quash the Enquiry Report held against the petitioner based on the Memorandum of Charge dated 10.6.2009 being contrary to the relevant service rules and settled position of law;

(ii) To set aside impugned order dated 27.11.2009 removing the petitioner from service, order dated 25/26.4.2010 upholding the decision of the Disciplinary Authority and ordered for punishment of Compulsory Retirement and order dated 16.9.2011 passed by the Revisioning Authority having passed arbitrarily and against the relevant rules and under Article 311 of the Constitution of India;

(iii) To allow all the consequential benefits arising out of quashing the impugned orders as aforesaid;

(iv) To all cost of litigation.”

2. The facts in brief are that the petitioner was appointed in the Central Industrial Security Force (*hereinafter referred to as “CISF”*) as Sub-Inspector in the year 1988. Upon appointment, the petitioner was detailed for Basic Training Course in CISF, RTC, Barwaha (MP) which he completed successfully. Thereafter, the petitioner was promoted to the

Rank of Inspector (Exe.) along with his batchmates.

3. The petitioner while serving at CISF Unit, Bhilai Steel Plant, Bhilai, District Durg, Chhattisgarh was transferred to CISF Unit, NDRF Battalion, Mundali (Orissa) *vide* FHQrs, New Delhi SO No. 204/2008 dated 13.05.2008 and during the joining time period, the petitioner was at Delhi with his family when he met with an accident which resulted in an orthopaedic problem in his lower back (spine) due to which he could not proceed to join his new place of posting i.e., CISF Unit, NDRF Battalion, Mundali, (Orissa). In this regard, he gave the requisite information *vide* FAX dated 12.07.2008 to the DIG, CISF Unit, BSP Bhilai, his Disciplinary Authority.

4. Petitioner was instructed by respondent No. 4/The Deputy Inspector General that he should inform about his medical problem to respondent No. 5 as he stood relieved from CISF Unit, BSP, Bhilai. It is claimed that the said advice of the respondent No. 5 was unwarranted and contrary to the laid down policy followed by the Office of respondent No. 2. As per the policy, so long as the petitioner had not reported to his new Unit, he remained under the administrative and disciplinary control of respondent No. 4 which happened to be his relieving unit.

5. The petitioner has claimed that he thereafter, got involved in false civil and criminal cases filed against him and his family by his relatives, due to land and other family disputes, to the extent that his own uncle physically assaulted his mother, wife and children. Failing to get necessary assistance from the local police of Jhajjar, District Haryana who were hand in glove with the criminals, the petitioner had to approach National Human Rights Commission (NHRC), New Delhi for protection

against the atrocities of the police. NHRC took cognizance and after the fact-finding enquiry, issued Notice dated 01.05.2009 to Inspector General Police, Rohtak Range and Superintendent, Police, Jhajjar with the directions to hold an enquiry into the same, but no cogent action was taken by them.

6. Moreover, the petitioner, in addition to the orthopaedic problems, developed serious mental depression and other multiple problems. He remained under medical rest from 12.07.2008 onwards and was treated in various Multi-speciality Government Hospitals in Delhi.

7. On 14.11.2008, the petitioner sent a letter to the respondent No. 4 through registered post and also endorsed the same to respondent No. 5 giving complete history of his case along with the medical documents and the medical certificates.

8. It is asserted that no leave, particularly leave on the basis of Medical Certificates issued by the Government hospital, was sanctioned by the respondent No. 4 even though the petitioner had enough leaves in his credit at that time. The petitioner, being a Central Government employee, is covered under CCS (Leave Rules) 1972 which envisages that when the Leave Sanctioning Authority is not satisfied with respect to the genuineness of the Medical Certificate produced, the Sanctioning Authority can order the person to appear before a Designated Medical Board in order to verify the genuineness of the Medical Certificate produced.

9. If the respondent No. 4 felt a need to get the Medical Certificates based on expert medical opinion verified, the respondent No. 4 could have ordered the petitioner to appear before the Medical Board at the suitable

place where it deemed fit, as the petitioner was under their administrative control till his reporting to new posting, but no such direction was issued by the respondent No. 4. On the contrary, the respondent No. 4 sat over the request of the petitioner for grant of leave on the basis of Medical Certificates issued by the Government hospitals of Delhi where he was being treated for specialized nature of treatment.

10. Instead, Respondent No. 4, the Controlling Authority initiated the major penalty proceedings arbitrarily by issuing a charge-sheet. The petitioner was at no time, informed by the respondent No. 4 about the decision to initiate the major penalty proceedings nor was the charge-sheet ever served to the petitioner.

11. It is submitted that in the first week of December, 2009, the petitioner for the first time, came to know from one of his friend posted at Bhilai, about his removal from the service by respondent No. 4 on account of non-joining at his new posting and also for not complying with the amended posting order issued by respondent No. 2 for his posting to RTC, Bhilai for one year.

12. It is further submitted that the petitioner was provided the copy of the order sheet of the Departmental Enquiry by the respondent No. 4 for the first time, in response to his FAX dated 17.12.2009. Upon receiving the copy of the order sheets of the Departmental Enquiry, the petitioner came to know the Memorandum of Charge dated 10.06.2009 which contained following two charges:

- (i) *On transfer from CISF Unit, BSP Bhilai to NDRF Bn., Mundali by CISF Force HQs. vide Service Order dated 13.05.2008, the petitioner was issued with a Movement Order*

dated 08.07.2008 and after expiry of joining time, the petitioner was required to report to NDRF Bn., Mundali, but the petitioner failed to do so.

- (ii) *As per the directives issued by the Force HQs. dated 10.09.2008, the petitioner was posted to R.T.C. Bhilai for a period of one year and thereafter, he was required to be posted with NDRF, Bn., Mundali (Orissa) and necessary intimation to this effect was sent to him at his residential address (Haryana) with the direction to report to NDRF Bn., Mundali (Orissa), but the petitioner failed to do so.*

13. It is asserted that though the contents of the Memorandum of Charge were published in two Hindi Dailies dated 10.06.2009, namely, “Bharat Janani” and “Hari Bhumi” from Rohtak (Haryana) and two English and Hindi Dailies, namely, “Jansatta” and “Hitwad” from Raipur, Chhattisgarh, he had no knowledge about the aforementioned publications. The service of charge sheet by publications in newspapers, without any earlier efforts to personally serve the charge-sheet, has been claimed to be inappropriate.

14. As per the Order Sheets, the Investigating Officer fixed the date as 24.08.2009 for preliminary hearing at Bhilai, Chhattisgarh. Since the petitioner was already under medical treatment for severe orthopaedic problems at Delhi, he could not attend the Enquiry. As per the order sheets, the intimation of next dates of hearing on 05.09.2009 and 18.09.2009 was sent to the petitioner through letters which were returned undelivered to the Enquiry Officer with an endorsement that the family members of the petitioner refused to give his address. Further, the

statements of three prosecution witnesses were recorded on 29.09.2009 by the Enquiry Officer, but the same were not made immediately available to the petitioner.

15. The Order sheets further reflect that statements so recorded by the Enquiry Officer and the brief of the Presenting Officer were sent to the petitioner on 06.10.2009 and 09.10.2009, but the same was actually never sent to him. Therefore, the petitioner was not able to know what had been stated by all the witnesses i.e., PWs and the two Court Witnesses, which resulted in severe prejudice to him.

16. Further, it is submitted that it is a settled principle of law that *ex parte* proceeding is to be resorted to only in 'exceptional circumstances'. In other words, *ex parte* proceedings may be held only where non-cooperation of the charged official is totally unjustified. However, in the case of petitioner, the Disciplinary Authority was fully aware about the Medical Certificates sent by the petitioner regarding his treatment.

17. It is also a settled principle of law supported by catena of judgements of the Apex Court, that the basic principles for the prosecution to prove its case do not get whittled down where enquiry is held *ex parte*. In the present case, the Enquiry proceedings drawn by the Enquiry Officer were not only a farce and unreasonable, but also contrary to the statutory provisions.

18. Rule 36 (17) of CISF Rules provides that when the case for the Disciplinary Authority is closed, the enrolled member of the Force shall be required to state his defence orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the enrolled member of the Force shall be required to sign the record. But in the present case,

the order sheets make it abundantly clear that there was no compliance of Rule 36 (17) of CISF Rules; instead the Enquiry Officer jumped to the stage of advising the Presenting Officer to submit his written brief. Thus, no reasonable opportunity was granted to the petitioner to put forth his defence in the right perspective as against the prosecution's version. Therefore, the Enquiry was one sided and defence of petitioner was totally ignored which adversely prejudiced the petitioner.

19. The Disciplinary Authority, namely, DIG, CISF Unit, BSP Bhilai had blindly accepted the findings of the Enquiry Officer in holding that both the charges *vide* Memorandum of Charge dated 10.06.2009 stood conclusively proved and consequently, removed the petitioner from service *vide* Order dated 27.09.2009.

20. It is submitted that petitioner preferred a statutory Appeal against the impugned order of removal from service dated 27.11.2009, to I.G. CISF (West Sector) Mumbai, agitating various grounds to show that the Enquiry Report suffered from serious legal infirmities and were not sustainable. However, the Appellate Authority *vide* Order dated 26.04.2010 found no infirmity in the Enquiry Report. Yet, order of removal from service was modified to order of compulsory retirement, by respondent No. 3 though the Order dated 26.04.2010 is not supported by any cogent reasons.

21. Thereafter, the petitioner preferred a revision petition to the Director General, CISF New Delhi, but the same was rejected without considering the merits, on the ground of limitation.

22. The petitioner filed the Civil Suit bearing No. 290/2012 for Declaration before the District Court, Saket, New Delhi to challenge the

various Orders. The learned Senior Civil Judge *vide* Order dated 19.12.2016, held that the impugned orders passed by the statutory authorities have become final and binding and the same can only be challenged under Articles 226 and 227 of the Constitution of India. Hence, the present petition has been filed.

23. **The respondents in their Counter-affidavit** have submitted that the petitioner informed about his sickness on 12.07.2008 by Fax, and in response thereto *vide* Letter 12.07.2008, he was directed to report along with all medical documents to NDRF, Mundali, but he failed to respond or report to his new place of posting. It is further asserted that instead of informing CISF NDRF Mundali, the petitioner simply submitted applications on 13.02.2009 and 17.02.2009 to CISF Unit, BSP Bhilai. If the petitioner was so seriously ill, he could have intimated either to NDRF Mundali or to CISF Unit BSP, Bhilai during the initial stage of his illness, but he intimated the same to BSP, Bhilai Unit only on 13.02.2009 and 17.02.2009.

24. Thereafter, his posting was changed from BSP, Bhilai to RTC, Bhilai which was earlier to NDRF, Mundali and the same was communicated to him *vide* Letters dated 05.02.2009 and 18.02.2009, but the same were received back in CISF Unit BSP, Bhilai undelivered with the remarks "*kahin bahar naukri karta hai gharwale pata nahi dete hain, atah vapis*". Since, both the letters were returned to CISF Unit BSP, Bhilai as undelivered, the same were sent to his home address at Jhajjar through a Special Messenger on 01.04.2009, but the petitioner was not available at his home.

25. It is asserted that the Letter dated 13.02.2009 pertaining to the

treatment of the petitioner as an OPD patient was received in CISF Unit, BSP, Bhilai, but neither the correspondence/Letter dated 14.11.2008 pertaining to detailed report of his illness was received by CISF Unit BSP, Bhilai, nor did he submit any receipt or proof thereof. It is asserted that the Medical Certificates sent by the petitioner, were not as per the prescribed *pro forma* issued by the Competent Authority. The petitioner failed to submit the documents pertaining to his medical unfitness either to the relieving unit or reporting unit.

26. There were sufficient grounds to initiate the disciplinary proceedings under Rule-36 of the CISF Rules, 2001 as the directives and letters issued by the CISF Unit BSP, Bhilai from time to time, remained undelivered and also the petitioner neither reported to his new place of posting nor responded to the letters issued by CISF Unit BSP, Bhilai.

27. The Departmental Enquiry was conducted as per the procedure prescribed under the Rules and provisions. The petitioner was given ample opportunities to appear before the Departmental Enquiry to defend his case, but he failed to do so.

28. It is further asserted that all steps were taken to deliver the Memorandum of Charge to the petitioner at the address recorded in his service book, but ended in a fiasco. The petitioner's mother was available at his home address, but she refused to give his present address or inform about the hospital from which he was taking his treatment. Thus, the averment made by the petitioner that CISF Unit BSP, Bhilai Office had the knowledge about the petitioner's address at Delhi, is totally wrong. Left with no option, the Charge of Memorandum No. 313 dated 10.06.2009 was published in the local newspapers of Rohtak, Haryana and

Raipur, Chhattisgarh.

29. It is asserted that several requests were made by the Enquiry Officer to the petitioner through enquiry notices to appear in the Departmental Enquiry on 24.08.2009, 05.09.2009 and 18.09.2009, but the same were returned undelivered. Also, Head Constable/General Duty Ram Kishan, CISF Unit, NFL, Panipat was detailed to deliver the Enquiry notices at the petitioner's address as recorded in his service book, but the same bore no fruit. Consequently, *ex parte* Enquiry as per the procedure, was conducted where all prosecution witnesses were examined and their statements were recorded. The copies of the statements of the prosecution witnesses were sent to the petitioner's address. Ample opportunities were given to the petitioner to appear and defend his case, but he failed to do so.

30. It is further asserted that the Enquiry Officer had rightly come to the conclusion after due consideration of all aspects, including circumstantial evidences, and passed the Order awarding the penalty of '*Removal from Service*' which is commensurate with the gravity of the charge.

31. The petitioner preferred an Appeal against the Order awarding '*Removal from Service*' which after due consideration by the Appellate Authority, was modified to '*Compulsory Retirement from Service with normal benefits*' vide Orders dated 25.04.2010 and 26.04.2010.

32. It is, therefore, asserted that the present petition deserves to be dismissed.

33. **The petitioner in his Rejoinder** has re-affirmed his contentions as made in the present petition.

34. **The main grievance of petitioner** is that the *exparte* Departmental proceedings were conducted without making any sincere effort to effect

service on his known address as mentioned in the Service Book and he has not been given proper opportunity to explain the Charges. It is claimed that harsh punishment of compulsory retirement has been imposed without considering his genuine reasons for not being able to report for the duty.

35. It is argued that the petitioner never resided at his permanent address i.e., Jhajjar, Haryana during the aforesaid period as he was on medical rest in Delhi, and he had no information about the newspaper publications carried out either at Rohtak, Haryana or at Raipur, Chhattisgarh. The petitioner was unable to participate in the Departmental Enquiry since he was not served with the Enquiry notices at his Delhi address.

36. The respondent No. 4/Deputy Inspector General, who was the custodian of the service record of the petitioner, was fully aware that the petitioner was undergoing medical treatment in Delhi and his address of Delhi was available on his medical record. Hence, no disciplinary proceedings were warranted against him.

37. Learned counsel for the petitioner has placed reliance on the decision by the Apex Court in Union of India And Others vs. Dinanath Shantaram Karekar And Others (1998) 7 SCC 509, wherein it was observed that mere posting of the notice or service by publication through Newspapers would not amount to service. The service of Chargesheet to the delinquent with the endorsement of postal authority that the person was not found, and subsequent service by publication in Newspaper without making earlier efforts, cannot be held as valid service. Likewise, mere putting the letter in post would not be held to be sufficient to prove

service. Learned counsel for the petitioner has also placed reliance on the decision of the Apex Court rendered in Dr. Ramesh Chandra Tyagi vs. Union of India & Others JT 1996 (1) SC 530, wherein it was held that the Enquiry Officer had no right to proceed *ex parte*, unless it is conclusively established that the official had deliberately and knowingly not accepted the notice.

38. It is contended that the *ex parte* enquiry does not *ipso facto* make the charged officer/official guilty. The entire procedure for holding the enquiry is mandatorily required to be followed. Moreover, there is blatant violation of the Rule 36 (17) of CISF Rules, 2001, as well as the procedure as provided under Chapter 3.11 of the CISF Discipline and Appeal Manual, 2006. Had the Notice been served to the petitioner as per the rules, he would have had an opportunity to put his statement of defence and also produce his medical record in support thereof.

39. Further, reliance has been placed by the counsel for the petitioner on the decision of the Supreme Court in Ministry of Finance and Another vs. S.B. Ramesh AIR 1998 SC 853, wherein it was observed that even if the Enquiry Officer had proceeded *ex parte* against the applicant and recorded the evidence, he should have adjourned the matter for hearing for another date so as to enable the applicant to participate in the enquiry. The Enquiry authority should have given an opportunity to lead his defence under Sub-Rule 18 of Rule 14 of CCS (CCA) Rules. Any omission, in this regard, is a serious error committed by Enquiry authority.

40. It is argued on behalf of the petitioner that the Departmental Enquiry held against the petitioner suffers from serious infirmity and the same has prejudiced the case of the petitioner and is in total violation of

principle of natural justice. The procedure followed is in clear breach as has been held by the Supreme Court in Union of India & Anr. vs. B.V. Gopinath 2014 (1) SCC 351.

41. Learned counsel for the petitioner has also placed reliance on the decision of the Supreme Court in Krushnakant B. Parmar vs. Union of India & Anr. 2012 (3) SCC 178, to argue that 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. It was held in this case that if the unauthorized absence was found to be not wilful, then the conversion of punishment from removal from service to compulsory retirement was illegal and not sustainable.

42. The judgment of Krushnakant (supra) has been followed by the Central Administrative Tribunal (PB) New Delhi in Savitri Devi & Anr. vs. Union of India & Anr. O.A. No. 50/2013 dated 15.07.2019, wherein similar conclusions were made.

43. It is finally submitted on behalf of the petitioner that the Enquiry held against the petitioner is not sustainable in law, and the petitioner is entitled to reinstatement in service with all consequential benefits.

44. **The respondents in their Written Submissions** have submitted that there was intentional neglect by the petitioner to not inform about his illness on account of accident, to the Unit to which he had been transferred. Every effort was made by the respondents at every stage of the proceedings, to get in touch with the petitioner at the address as provided in his service book. Written reports of the Sarpanch/Police Authorities also prove that despite all the efforts made by the respondents,

the petitioner could not be contacted, and every time his mother who met the people trying to find the petitioner, but failed to disclose the address of the petitioner and details of the hospital where the petitioner was undergoing treatment in Delhi.

45. Due procedure has been followed at every stage and ample opportunities were given to the petitioner to defend himself in the proceedings, even after the finalization of the Enquiry report, the same was sent through representative along with a policeman from the local police station to Delhi address of the petitioner, where his wife was found and she also failed to disclose his whereabouts or give the name of the hospital where he was undergoing treatment.

46. It is only after considering the entire record and after holding a proper enquiry, the decision had been taken to remove the petitioner from service. In fact, in the appellate stage, the same punishment was converted to compulsory retirement with normal benefits from removal of service.

47. It is submitted that there is not merit in the present petition, and the same is liable to be dismissed.

48. **Submissions heard.**

49. It is an admitted case that *vide* HQrs, New Delhi S.O. No. 204/2008 dated 13.05.2008, the petitioner was transferred to CISF Unit NDRF Battalion, Mundali, Orissa and a Movement Order No. E-38023/25th/IZT-08/Estt.I/2008-3401 dated 08.07.2008 was issued to the petitioner with the direction to report to his new unit i.e., NDRF Battalion, Mundali, Orissa. The petitioner was relieved from Bhilai Steel Plant *vide* Order dated 08.07.2008.

50. It is also not in dispute that the petitioner failed to report to his initial place of posting at NDRF Mundali, Orissa. On receiving the FAX dated 12.07.2008 from the petitioner that he has met with an accident, the respondent no. 4, *vide* Office letter No. 3911 dated 12.07.2008 advised the petitioner to send a requisite information to his Unit i.e., Mandali, Orissa, despite which the petitioner failed to do so.

51. Thereafter, respondent No.4 decided to initiate an Enquiry against the petitioner, and the Charge Memo under Rule 3.6 of the CISF Rules, 2001 dated 10.06.2009 was issued to the petitioner. The petitioner did not participate in the enquiry and he was proceeded *ex parte* and was eventually removed from service on account of his prolonged absence without any intimation. In appeal, *vide* Order No. V-15012/WZ/L&R/10/2308 dated 25/26.04.2010 the punishment was modified to “*compulsory retirement from service with normal benefits*”.

52. The main ground on which the punishment has been challenged, is that *ex parte Disciplinary proceedings* are liable to be set aside as all the Notices were sent to his permanent address where his old and ailing mother, who is suffering from depression on account of demise of her younger son, has been residing alone, despite the correct address being available in-service record and in the knowledge of the respondents.

53. The record however reveals that every endeavour was made to serve the petitioner. Constable Om Prakash Arya, CISF Unit BSP Bhilai was detailed *vide* Movement Order No. 4560 dated 10.06.2009 to proceed to the native place of the petitioner i.e., Village and Post-Chhapar, District Jhajjar, Haryana for handing over the said Charge Memo but the same could not be served as the petitioner was not present at the said address.

Therefore, the Charge Memo dated 10.06.2009 vide Letter No. 332 dated 22.06.2009 was sent to the Deputy Commandant, CISF Unit NFL Panipat, Haryana. Aside from this, a copy of the Charge Memo was also sent to the Superintendent of Police, District Jhajjar, Haryana with a request to serve the same to the petitioner through the Police Station, but the same did not bear any fruit.

54. The Charge Memo was again attempted to be served to the petitioner at his native place vide CISF Unit BSP, Bhilai Letter No. 365 dated 08.07.2009, but the same was returned back with an endorsement that “*Kahin bahar naukri karta hai Ghar wale pata nahin dete hain atah vapis*”, as the mother of the petitioner, who was present at the petitioner’s Jhajjar, Haryana address, stated that she was not aware of the address of the hospital where the petitioner was undergoing medical treatment.

55. It is difficult to accept and believe that the mother would not be in contact with the petitioner during all this time and would not have informed him about the correspondence being received from his department. The only inference that can be drawn is that the petitioner intentionally failed to respond to the Notices. It would also be pertinent to mention that petitioner was from a disciplined force and was well aware of his responsibility to inform his department about his whereabouts.

56. Consequently, the publication of the Charge Memo was effected on 31.07.2009 in two Hindi Dailies, namely, “*Bharat Janani*” and “*Hari Bhumi*” published from Rohtak (Haryana) and two English and Hindi Dailies, namely, “*Jansatta*” and “*Hitwad*” from Raipur, Chhattisgarh. The petitioner failed to submit any representation in his defence within 10 days of the said publication of Charge of Memo, and also, he did not

appear in person before the disciplinary authority.

57. As many as four times, the Notices were sent to the petitioner through Constable, Local Police and finally through Local Police before proceeding *ex parte* against him. The consistent response of the mother of the petitioner who was found available at Jhajjar address, was that she was ignorant about Delhi address of the petitioner.

58. A similar situation persisted in regard to all other subsequent communications that were undertaken. The respondent No. 4 not only made an effort to serve the Charge of Memo, but also sent the copy of the statement of witnesses recorded during the departmental enquiry to his home address. The note of the Presenting Officer submitted during the Enquiry was also sent to the petitioner's both addresses at Jhajjar, Haryana and New Delhi. At every stage of enquiry, notices had been sent not only through ordinary registered posts, but even the personal service through the Deputy Commandant, CISF Unit NFL, Panipat, Haryana as well as Local Police and other State authorities was sent, but none of them could bear fruit.

59. The petitioner has placed on record various medical prescriptions of treatment at various hospitals in Delhi, but it is difficult to comprehend that even though he was in a position to visit different hospitals at different time, he did not have sufficient wherewithal to inform his department by sending a letter. The only inference that can be drawn from the conduct of the petitioner is that he was all throughout aware of the proceedings and the repeated notices being received at his Jhajjar address, but for the reasons best known to him, he chose to ignore the same. The petitioner further decided not to forward the medical papers to his

department. To say that the petitioner was unaware of the enquiry having been initiated against him and so he was unable to send his entire record is a frivolous defence taken by the petitioner considering that he is a part of a disciplined force. The petitioner was surely aware that if he had to be on leave, he was required to at least intimate the Department about his absence. The petitioner could not have possibly decided to go incommunicado for almost one and a half years between 08.07.2008 and 17.12.2009 during which he could have disclosed his whereabouts to his department.

60. The medical documents, on which heavy reliance has been placed at this stage, do not show that the petitioner was totally incapacitated or was not in a position to inform his department. Rather his treatment at various hospitals in Delhi clearly reflects that he had been visiting these hospitals as an OPD patient.

61. A plea was taken on behalf of the petitioner that his Delhi address was available in his service record, but no effort was made to serve him at that address. This contention is also fallacious as the Enquiry Report was sent on 09.11.2009 to the petitioner's Delhi address i.e., C-61, First Floor, Arjun Nagar, New Delhi through Special Messenger, namely, Constable Kamlesh Meena, who was to hand over the same to the petitioner, but he could not find the petitioner at the address, however, the petitioner's wife was found who refused to accept the same by saying that "*mere pati R S Dagar braye Karane checkup va lene davai aspatal gaye hain aur unika kai aspatal se elaz chal raha hai. Muje malum nahi ki vah kaun si aspatal me gaye hein aur kab tak vapas ayenge*". Thereafter, Constable Kamlesh Meena went to a local police station i.e., P.S. Safdarjung Enclave, New

Delhi and requested them to get the Enquiry Report served to the petitioner. Accordingly, a police Constable, namely, Rattan Singh, PS Safdurjung, New Delhi was detailed for handing over the Enquiry Report, but again the petitioner was not found at the address. His wife was found who informed the Constable Rattan Singh that *“her husband has gone to hospital to have medicines and that she does not know when he would be back”* and, therefore, she refused to accept the same.

62. This evasiveness of wife is not comprehensible and the only inference that can be drawn is that the petitioner intentionally failed to participate in the Enquiry despite due Service of the Notices.

63. The claim of the petitioner that, at no point of time he was informed at his Delhi address is not borne out from the record. The only inference from the recalcitrant attitude of the petitioner can be drawn is that he had been informed at every stage of the proceedings despite which the petitioner has intentionally not shown any inclination to report back for almost two years.

64. The enquiry followed by disciplinary action has been conducted in accordance with the procedures as defined under Rule 36 (17) of the CISF Rules, 2001 and also the procedure as provided under Chapter 3.11 of the CISF Discipline and Appeal Manual, 2006. At every stage, the petitioner had the opportunity to participate in the proceedings, but he utterly failed to do so. At all point of time, the petitioner was informed or given the opportunity to be heard and the principle of natural justice has been followed at every stage of the proceeding.

65. The action taken by the respondents cannot be faulted, especially when considering the petitioner’s subsequent representations and medical

records whereafter, the punishment awarded to the petitioner was altered to '*compulsory retirement with normal benefits*' from 'removal from service'.

66. The Three Judge Bench of the Apex Court in Post and Telegraph Board and Ors. vs. C.S.N. Murthy 1992 (2) SCC 317 held that whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts shall not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record.

67. Likewise, the Three Judge Bench of the Apex Court in Union of India and Ors. vs. Shri Dulal Dutt (1993) 2 SCC 179 while examining the order of compulsory retirement, held that it is not an order of punishment. It is a prerogative of the Government, but it should be based on material and has to be passed on the subjective satisfaction of the Government.

68. In Ram Murti Yadav vs. State of U.P. (2020) 1 SCC, the Apex Court held that the scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer, is extremely narrow and restricted. Only if it is found to be based on arbitrary or capricious grounds, vitiated by *mala fides*, overlooks relevant materials, could there be limited scope for interference. The court, in judicial review, cannot sit in judgement over the same as an appellate authority. Principles of natural justice have no application in a case of compulsory retirement.

69. Similar observations were made in Union of India and Others vs. Managobinda Samantaray 2022 SCC OnLine SC 284.

70. In Director General Central Industrial Security Force and Others vs. M. Selvam 2019 SCC OnLine Mad 35571, similar facts as in hand, were considered where the petitioner had been removed from the service which was subsequently modified to compulsory retirement on account of not reporting for duty. In response to the said dismissal, the defence taken by the petitioner was his complicated family problems, lodging of criminal complaint by his wife, injuries caused due to scuffle between in-laws because of which he could not report for duty. He contended that the order for removal from service was very harsh and the Appellate Authority, having found that the punishment was disproportionate, ought to have set aside the punishment and reinstated him in service instead of modifying it. The court made a reference to the judgement in Lucknow Kshetriya Gramin Bank vs. Rajendra Singh (2013) 12 SCC 372, where the Apex Court observed that though it may appear that the charge against the respondent is a simple one of unauthorized absence, but the same cannot be evaluated in the same manner as he was a member of uniformed services. The yardstick by which the delinquencies have to be tested in respect of the defence personnel and para-military force is different from that of the civilian employees. There is a line of decisions by the Supreme Court stating that quantum of punishment to be imposed on the employee should be left to the discretion of the employer and the Court exercising jurisdiction under Article 226 of the Constitution of India should refrain from interfering with the quantum of penalty unless there exists sufficient reason.

71. Ergo, in M. Sevlam (supra), it was observed that the conduct of the appellant in not reporting for duty after expiry of the leave period itself is a serious delinquency. The appellant herein evaded the service of Charge of Memo sent twice through call letters which were thereafter served upon appellant despite which no reply was sent to the Charge of Memo. No response was given to the notices of the Enquiry Officer resulting in conclusion of the *ex parte* enquiry and ultimately, in removal from service. In the factual situation, the appellate authority, despite finding the charges to be proven, exercised its jurisdiction to convert the removal from service into compulsory retirement with normal benefits. It was found that the modified punishment cannot be considered to be shockingly disproportionate, especially once the charge has been proved. Therefore, it was held that there was no ground for interference.

72. In the present petition as well, as detailed above, the punishment of compulsory retirement with normal benefits on account of long absence with no communications with the Department, cannot be considered to be disproportionate.

73. Accordingly, there is no ground for interference in the present petition, and the same is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

APRIL 27, 2023/S.Sharma

W.P.(C) 2619/2017

Page 23 of 23