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

% Judgment delivered on: 31st July, 2023

+ W.P.(C) 5447/2018

KRISHAN KUMAR

..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Ankur Chhibber, Advocate.

For the Respondent: Mr. Ravi Prakash, CGSC for UOI
with Mr. Varun Aggarwal,
Mr. Farman Ali, Mr. Aman Rewaria,
Mr. Yasharth Shukla, Ms. Asha
Khandewal, Advocates and Ms. Usha
Jamnal and Mr. R.N. Pareek, CRPF.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns orders dated 08.10.2016, 21.02.2017 and 19.06.2017 whereby the petitioner has been removed from service after conduct of an inquiry and the statutory appeal and statutory revision filed by the petitioner have been dismissed respectively.
2. Petitioner was enrolled in the Central Reserve Police Force as Constable GD. Petitioner had some difficulties in his matrimonial life



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and accordingly, applied for leave for 2 months for sorting out the matrimonial issues. Petitioner proceeded on leave on 17.12.2014 and was to report back on 15.02.2015.

3. Petitioner failed to report back and on 02.03.2015 gave an application for extension of leave which was rejected on 15.03.2015. Petitioner even thereafter failed to report for duty and was declared a deserter and his arrest warrants were issued. Petitioner reported back to the unit on 28.04.2015 whereafter his warrants were cancelled. Petitioner was put on suspension on 29.04.2015 awaiting disciplinary proceedings and subsequently, by the impugned order dated 08.10.2016, petitioner has been removed from service.

4. It may be noticed that at the time of sanction of leave, petitioner was posted in Srinagar, Jammu & Kashmir and the residence of the petitioner is in Najafgarh, New Delhi.

5. Learned counsel for the petitioner submits that petitioner was facing matrimonial discord and had to approach the Court for grant of anticipatory bail and that he was suffering from illness and as such could not report back.

6. The Disciplinary Authority, i.e., the Commandant of 73 Bn., CRPF had noticed the report submitted by the Inquiry Officer. It may be pertinent to extract the rationale given by the Commanding Officer for imposing the punishment of removal from service. The Commanding Officer in order dated 08.10.2016, impugned herein, has recorded as under:-



“In these 435 days, the accused personnel only contacted his company commander in the beginning and when the Company Commander did not extend his leave and instructed him to report back to his duty immediately, then the accused personnel did not contact any channel or any medium in any way. The accused says that he was ill for 435 days but the document he has presented has been written with the same ink. While changing the pen's ink on paper for long treatment is a normal process and the style of writing is not changed. During this time, neither accused was admitted to the Hospital nor advised for bed rest by the hospital, etc. nor did he advised not to travel. This type of documents has not been revealed. All documents are from a private hospital which is not a CGHS approved hospital. If the intention of the person was to report on duty, then he would have received the treatment in the available CH of CRPF or Deptt. Hospital in his city. He could report in the hospital or his treatment or get advice from hospital about his problem. But the personnel did not do this. It is completely clear that the accused knowingly remained absent from his duty. In addition, the accused had given in his statement dated 7.7.2016 during the departmental inquiry that he had submitted all the medical documents and he has no other documents with him - But after coming back from the leave of the personnel, the accused submitted his medical documents from March 2015 to January 2016 along with his representation dated 12.9.2016, all of which belong to the same private hospital. Personnel on 6.9.2016 to 13.9.2016, a total 6 days casual leave along with 12.9.16, 5.9.2016 and 4.9.2016 and 11.9.2016 being Sundays went on court hearing case of 12.9.16 as the reason for being present. There is no OPD number on any consultation papers, medicine receipts and test report of private hospital. While it is all in the same hospital, there is no stamp or signature of the hospital in test/ receipts. On the advice of Anand Hospital from 1.3.15 to 6.3.15 on 2.3.15, only 1 injection has been written, whereas the receipt of the medication as per the receipt No.00000965 dated 2.3.15, 5



types of 8 injections have been taken, in addition 4 tablets 1 capsule has been taken. Similarly, physician has written injection, tablet and capsule on 11.3.15 and 12.4.15, has been prescribed injection, tablet and capsule on prescription but its receipt/purchase receipt is not available. On 5.7.15, 16.8.15, 15.11.15, 21.12.15 and 25.1.16 advised on prescription for taking various tablets, capsules and injections, but there is no receipt/purchase receipt in connection with this. If the accused was actually genuine then he would have presented this document before/during the investigation. So it is absurd to be absent from duty. Now he has presented the documents related to treatment of one year in hospital in a single writing, written in the same style, which is fully seen and read, is suspicious. The accused was engaged in managing the dispute and court case between his wife. If the condition of the accused was stable or was not stable or the condition was serious, then he is not fit to appear before the court to take bail on the case registered against him by his wife”

7. The Commanding Officer has in detail considered the issue of medical illness raised by petitioner and come to a conclusion that the medical documents submitted by petitioner do not inspire confidence.
8. The illness allegedly suffered by petitioner was not so grave so as to prevent him from reporting for duty or even communicating with the Commanding Officer and conveying to the authorities about his medical condition. For 435 days, petitioner remained absent without reporting for duty, as held by the Commanding Office, without sufficient ground.
9. The Commanding Officer has also noticed that petitioner was fit enough to approach the Court of law for obtaining bail in the case filed by his wife. If he was fit enough to approach a Court of law, he



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was certainly fit enough to report back to the duty or even communicate with the concerned Commanding Officer.

10. Further, we have noticed herein above that petitioner was posted at Srinagar, Jammu & Kashmir and his residence is at Najafgarh, Delhi. Petitioner allegedly took treatment from a private hospital in Najafgarh, Delhi. The Group Centre of CRPF is at Jharodha Kalan, Najafgarh where there is also a Composite Hospital of CRPF, which is very close to where the petitioner resides, i.e., within Najafgarh. If petitioner was unwell, prudence would have demanded that he would have reported to the Composite Hospital or at least at the unit at Jarodhan Kalan, Najafgarh instead of taking treatment from a private hospital which also has not inspired confidence of the competent authority.

11. The Supreme Court in judgment dated 28.07.2023 in Civil Appeal No.246/2017 titled *Ex. Sepoy Madan Prasad vs. Union Of India* has held that discipline is the implicit hallmark of armed forces and a non-negotiable condition of service.

12. As noticed herein above, in the present case, the competent authority as well as the Appellate and the Revisional Authority have found that the overstay by the petitioner was not justified and he had no reasonable ground to overstay the leave and there is no explanation rendered by him that inspired confidence with regard to his unauthorized absence. It was only when arrest warrants were issued for arrest of the petitioner that he reported back to the unit after an



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absence of 435 days.

13. The judgment cited by learned counsel for the petitioner in *Krushnakant B. Parmar. vs. Union of India & Anr.*: 2012 3 SCC 178 is not applicable to the facts of the present case. In the said case, the petitioner therein had led evidence in support of his claim that he was prevented to sign the attendance register and perform duties and even though said factor was noticed by the Inquiry Officer, the Inquiry Officer, on presumption and surmises, held the charges proved. The judgment in *Krushnakant B. Parmar. vs. Union of India & Anr.* is clearly distinguishable and not applicable to the facts of the present case.

14. In view of the above, we find no ground to interfere with the order of punishment of removal from service in the case of the petitioner as also the orders of the Appellate and the Revisional Authority rejecting the appeal and the revision respectively of the petitioner.

15. We find no merit in the petition. Petition is, consequently, dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

JULY 31, 2023/st