



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: July 12, 2023

+ W.P.(C) 3238/2017, CM APPL. 14056/2017

HARENDER SINGH

..... Petitioner

Through: Mr. Shivanshu Bhardwaj, Adv.

versus

GNCT OF DELHI AND 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, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

CM APPL. 14056/2017 (for exemption)

Exemption allowed, subject to just exception.

Application stands disposed of.

W.P.(C) 3238/2017

1. The challenge in this writ petition is to the order dated December 6, 2016 of the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in the Original Application being O.A. No. 3464 of 2016, whereby the Tribunal has dismissed the



OA.

2. The factual matrix of the present petition is that the petitioner, who was serving as a Constable in Delhi Police, posted in the Special Staff was transferred to Distt. Lines X- Ray vide office order dated October 20, 2006 and further on October 24, 2006, based on an oral order, the petitioner was transferred to P.S. Bawana.

3. It is the case of the petitioner that the two orders created confusion and tension for the petitioner, as in the absence of a written order, he could not report for duty at PS Bawana. Thus, he suffered from irregular blood pressure and fell sick. Thereafter, he availed treatment in Government Hospitals and sent the medical documents to his superior authorities. Furthermore, he was subjected to a second Medical Board at Aruna Asaf Ali Hospital, in which the medical authorities viewed that on the day of examination his blood pressure was under control and that he was fit to resume / join duties.

4. Thereafter, the respondents initiated a Departmental Enquiry ('D.E', for short) against the petitioner. The petitioner was dismissed from service after the Disciplinary Authority ('DA', for short) and the Appellate Authority ('AA', for short) held that the petitioner is unfit to be in the police force and has committed misconduct, indiscipline, disobedience and insubordination.

5. Thereafter, the petitioner approached the Tribunal in the above said O.A, which was dismissed. The petitioner filed a Review Application against the said order which was allowed and the OA was listed for rehearing. In the said Review Application, the Tribunal referring to the judgment in *Bhagwan Lal Arya v. Commissioner of*



Police, (2004) 4 SCC 560, came to the conclusion that, the issue of proportionality of the punishment imposed had not been gone into, especially, in view of the provisions of Rules 8(a) and 10 of the Delhi Police (Punishment & Appeal) Rules, 1980, and accordingly the O.A. was relisted at its original position for re-hearing on April 07, 2016. Thereafter the Tribunal dismissed the OA on December 6, 2016.

6. Mr. Shivanshu Bhardwaj, learned counsel for the petitioner, stated that the petitioner joined the force as a constable in the year 1990 and has more than 16 years of unblemished service, and that, his work was appreciated and he is a recipient of commendation certificates.

7. He stated, without making any reference to the Rule 16(iii) & (iv) of the Delhi Police (Punishment and Appeal) Rules, 1980, the Enquiry Officer ('EO', for short) framed the charges against the petitioner on April 8, 2008. He also stated that, in the report, there are no reasons or finding by the EO for arriving at the conclusion that the charges have been proved against the petitioner.

8. He stated that, the view taken by the DA that if the petitioner was confused due to the oral order, he could have cleared the confusion with his senior officers and should have obtained a prior permission for medical leave, is misplaced. He also stated that the report of ACP/S Puri was not cited in the DE and inquiry was in respect of misconduct of unauthorised absence and insubordination on the part of the petitioner. He also stated that the charge of insubordination was framed because of the impression gathered, that the petitioner has filed a complaint against the ACP/PG Cell to get



himself transferred back to the Special Staff.

9. He contended that, on a mere medical examination as directed by the authorities, it cannot be presumed that the petitioner was not ill. No record has been produced during the inquiry with regard to the petitioner reporting for duty at PS Bawana. Since no written order was passed, the petitioner could not have been marked as absent at the Bawana Police Station. He also stated that the charge as framed against the petitioner of being absent from November 16, 2006 is incorrect. The petitioner was present on duty as could be verified from DD No. 15 dated December 20, 2006, Distt. Lines / NW.

10. That apart, he stated that the oral order is in violation of Rule 3(iii) of CCS (Conduct) Rules and the order of transfer should be in writing or should have been confirmed in writing. He stated that, the petitioner cannot be treated as absent even at Police Lines because the authorities did not intend to keep him posted there.

11. He stated that the Tribunal agreed with the petitioner that, any order even when it was for temporary duty ought to have been given in writing and admittedly there was no written order transferring the petitioner to PS Bawana, hence, the petitioner could not have shown absent at the PS Bawana and no penalty could have been imposed upon him. In support of this submission, Mr. Bhardwaj has relied upon paragraph 11 of the order of the Tribunal dated November 20, 2014, which is reproduced herein below:

"11. As for the contention of written order being a must under the CCS (CCA) Rules, we agree with the applicant that any order even if it was a temporary duty ought to have been given in



writing....”

12. Furthermore, he stated that, in view of the judgment of the Supreme Court in the case of **Bhagwan Lal Arya (supra)**, the *ratio decidendi* is applicable to the petitioner to the extent, one occasion of absence due to bad health cannot become the basis of awarding punishment of dismissal or removal.

13. He contended that the order of the Tribunal is in total disregard to the judgment of the Supreme Court in **Bhagwan Lal Arya (supra)**, more specifically paragraph Nos.7 to 9, wherein the Tribunal has stated as under:-

“7. We have considered the judgment of Hon'ble Supreme Court in Bhagwan Lai Arya (supra), but we do not find the judgment to be of any assistance to the applicant. The facts of that case are quite different as the applicant in that case had fallen sick on parade ground during training and was absent thereafter for two months and 8 days. His absence was regularized on the basis of medical certificates by sanctioning leave without pay as no other leave was due to him. He was subsequently charge sheeted for unauthorized absence and his services were terminated. In this background, the Hon'ble Supreme Court held that the punishment of dismissal/removal from service can be awarded only for the acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility or complete unfitness for police service. Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become basis for awarding such a punishment.

8. In the present case the charge as mentioned earlier in this order is not 'one incident' of unauthorized absence. The charge involves misconduct,



insubordination and indiscipline which has been proved in a disciplinary enquiry and only thereafter the disciplinary authority passed order. The question of proportionality would have arisen had the penalty being imposed only on the basis of the charge of unauthorized absence. In the background of the facts of the present case, there is no ground for challenging the proportionality. It is settled law that it is the prerogative of the disciplinary authority to determine the quantum of punishment and it is not for the Courts to interfere in the same unless the quantum of punishment is such that it shocks the judicial conscious. In Shiv Karan Singh (supra), the petitioner was absent for a period of 254 days. After considering the facts of the case, the disciplinary authority, following the due procedure, imposed the penalty of dismissal on the petitioner. In the background of the facts of the case and law, Hon'ble High Court of Delhi modified the quantum of sentence by reducing it from dismissal to compulsory retirement. However, in our view the case of Shiv Karan Singh (supra) is not comparable with the present case as it was a case of simple unauthorized absence and there was no element of misconduct, indiscipline, disobedience and insubordination as proved against the present applicant. The disciplinary authority in his order dated 30.09.2009 has considered the misconduct of unauthorized absence and insubordination on the part of the applicant while imposing the penalty of dismissal. There cannot be two opinions about the importance of discipline in a uniformed force and there can be no more serious charge than insubordination in police. We are, therefore, of the view that the present case would not fall in the category of exception where the Court may resort to the extraordinary step of interfering in the quantum of punishment.

9. Taking into account the aforementioned discussions and for the reasons stated, the OA is found to be



without merit and is dismissed as such. No costs."

14. He stated that, in view of the said judgment, the penalty of dismissal / removal could not have been imposed for a single incident of absence by removing / terminating the petitioner, the respondents violated Rule 8(a) of Delhi Police (Punishment & Appeal) Rules, 1980.

15. He has also relied upon the judgment of the Supreme Court in ***Chairman cum Managing Director, Coal India Limited and Anr v. Mukul Kumar Choudhuri and Ors., Civil Appeal Nos. 5762-5763 of 2009 (Arising out of SLP (C) Nos. 776-777/2009)***, to contend that, the punishment of removal from service for misconduct of unauthorised absence for six months is open for interference under limited scope of judicial review, in view of the doctrine of proportionality.

16. He has also stated that the petitioner received appreciation and recommendations for his work, conduct and performance, which the respondents did not take into account. Therefore, the penalty imposed upon the petitioner by the DA is in violation of Rule 10 of the Delhi Police (Punishment and Appeal) Rules, 1980.

17. That apart, he stated that the medical record of the petitioner was not forged/fake. The medical report of the Aruna Asaf Ali Hospital did not hold that the petitioner was suffering from irregular blood pressure. As per the letter from the hospital authorities, the blood pressure of the petitioner was found in control on the day of examination. He has also taken the plea that, since the enquiry report of ACP/ S Puri has not been brought on record of DE file, the allegations contained in the charge do not stand proved against him.

18. Furthermore, he stated that, merely because the petitioner was



part of the investigation to an FIR and had to participate in the DE, the Tribunal could not have come to the conclusion that, he was not fit for performing duty or was not medically fit.

19. Mr. Bhardwaj has also relied on the judgments of the Supreme Court in the cases of *T.S.R. Subramanian and Ors. v. Union of India and Ors.*, (2013) 15 SCC 732; *Union of India & Anr. v. R.K. Sharma*, CA 4059/2015; *Krushnakant B. Parmar v. Union of India and Anr.*, (2012) 3 SCC 178 and this Court in *Shiv Karan Singh v. Govt. of NCT of Delhi & Ors.*, W.P. (C) 3952/2018.

20. He seeks the prayer(s) as made in the petition.

21. Mrs. Avnish Ahlawat, the learned Standing Counsel for the respondents submitted that, a DE was initiated against the petitioner vide office order No. 3409-28/HAP/NWD(P-1) dated April 02, 2007, on the allegations that the petitioner was transferred from Special Staff to Distt. Lines X-Ray vide office order No.16920-40/SIP (PC)/NW dated October 20, 2006. The petitioner had reported his arrival in Distt. Lines vide DD No. 50 dated October 23, 2006 and aggrieved by his transfer from Special Staff to Distt. Lines, the petitioner and his father filed a complaint with the Joint Commissioner, North CP/NR and against his senior officers, alleging that the petitioner was threatened to be killed in an encounter by the ACP/ PG Cell / NW, since he had refused to pay a sum, of Rs.50,000/- to the said ACP / PG cell.

22. She stated that, on the seriousness of the allegations leveled by the petitioner's father, an enquiry was conducted by ACP, S.Puri, which revealed that the allegations leveled by the petitioner's father



were false and concocted, and that they were made only with the view of getting the petitioner transferred back to Special Staff.

23. She stated that, on October 24, 2006, on verbal orders of the DCP/ NWD, the petitioner was directed to report for duty at P.S. Bawana from Distt. Lines / NW, but he failed to do so. Thereafter, the petitioner's brother informed the Duty Officer of P.S. Bawana that the petitioner had been admitted in an unknown hospital by his father and that the name of the hospital shall be informed to the authorities later. A report to this effect was sent to the Distt. Headquarters by the P.S. Bawana. She also stated that the petitioner did not seek prior permission from his superior officer to avail medical leave under the CCS (Leave) Rules, 1972.

24. Thereafter, the petitioner was directed by the respondent authority to undergo a second medical examination at Aruna Asaf Ali Hospital, Delhi vide office letter dated November 03, 2006. The petitioner underwent a second medical examination in the said hospital and Dr. R.P. Arya, the Deputy Medical Superintendent., vide a report dated November 10, 2006, informed the respondent authority that the patient / petitioner is fit to resume / join his duties. In view of the medical report by the Deputy Medical Superintendent, the petitioner was ordered to report for duty at P.S. Bawana or District Line/NWD.

25. She stated that the petitioner did not report for duty at P.S. Bawana or at Distt. Lines/NWD and continued to submit medical papers of BJRM Hospital, Jahangir Puri, Delhi through fax. She also stated that, since the petitioner had not obtained prior permission of the competent authority to avail medical leave and the fact that, he was



declared fit to resume duty on the report from second medical examination, he was marked absent from duty vide DD No. 47-B dated November 16, 2006, P.S. Bawana.

26. She stated that, an absentee notice dated November 20, 2006 was issued against the petitioner through the SHO, P.S. Bawana, with a direction to the petitioner to join duty, failing which strict departmental action would be initiated against him under the provisions of the Delhi Police Act, 1978. The said notice was duly served upon him against a proper receipt on December 03, 2006. She submitted that, instead of reporting for duty, the petitioner forwarded the medical papers of BJRM Hospital and Hindu Rao Hospital, which he had already sent to DCP/NW Distt. and Jt.C.P./N.R. through FAX.

27. She stated that the petitioner being a member of a disciplined force, was supposed to comply with the directions of his superior officers, and in case, he was actually ill, he should have obtained prior permission from the competent authority as required under prescribed norms/regulations on the subject. She also stated that the petitioner remained absent w.e.f. November 16, 2006 in contravention of Rule 19 of CCS (Leave) Rules, 1972 and the S.O. No. 111/88 of Delhi Police.

28. She stated that, in view of his willful and unauthorised absence from duty, a DE was initiated against the petitioner. The inquiry was entrusted to Inspector, E.O./NW Distt., to conduct the same on a day to day basis. She also stated that the summary of allegations, list of witnesses and list of documents relied upon were duly served upon the petitioner on May 23, 2007. After examining the statements of all the PWs, the charge was served upon the petitioner on August 15, 2008.



The petitioner did not call any witness in his defense but submitted his written statement of defense. The EO concluded the DE and submitted his findings that, all the allegations stood proved against the petitioner.

29. She stated that the petitioner had made a representation and the DA carefully went through the statements of PW.s, findings of the EO and other material brought on record. She also stated that the petitioner was also heard and the pleas were not found tenable. Accordingly, vide final order dated October 01, 2008, the DA imposed the punishment of dismissal from service upon the petitioner.

30. She stated that the summary of allegations, list of witnesses and list of documents relied upon were supplied to petitioner on May 23, 2007. The EO after examining the statements of all the PWs has prepared the charge which was served upon the petitioner on July 15, 2008.

31. The DA also held that the petitioner's absence w.e.f, November 16, 2006 till the date of the dismissal order, would also be treated as not spent on duty. The period when he allegedly availed medical rest, without prior permission of the competent authority in contravention of the relevant Rules and the Standing Order on the subject, was also to be treated as period not spent on duty. Thereafter, the petitioner appealed to the Appellate Authority (AA), ie. Joint Commissioner of Police/NR, Delhi. After due consideration of the appeal as well as other relevant records, the AA rejected the same vide order dated July 28, 2011.

32. She stated that while deciding the appeal, the AA has discussed the plea of the non-issuance of the transfer order at length



and has rejected the same on the ground that, as per the verbal order of the DCP, the petitioner had been transferred to P.S. Bawana and that, he was well aware of the same, and in view of this fact that, on October 24, 2006, petitioner's own brother had communicated the information to P.S. Bawana.

33. Furthermore, on the plea that the petitioner was absent and his presence vide DD No. 15 dated November 20, 2006 in Special Staff, North-West Distt, as FIR No. 988 dated December 23, 2006, was registered, on this information, the AA held that, this shows that, the petitioner was intentionally not performing duties at other places except Special Staff, where he was not posted. She also stated that the AA further has observed that, if he was actually sick, there was no question of developing information or joining Special Staff on their request, as the petitioner himself had taken the plea that without the fitness certificate it was not possible for him to resume his duties. In this view, it was well within the powers of the AA to come to the conclusion that, there was willful disobedience and insubordination on the part of the petitioner which could be deemed to be grave misconduct meriting the dismissal of his appeal.

34. She stated that the OA was dismissed by the Tribunal, as it was devoid of merits. Thereafter, the petitioner filed Review Application, wherein the Tribunal came to the conclusion that the petitioner had been able to adduce sufficient reason to warrant recall of the Order dated November 20, 2014 passed in the said O.A. She also stated that the Tribunal after considering the judgment in *Bhagwan Lal Arya (supra)*, came to the conclusion in view of the fact that the issue of



proportionality of the punishment imposed had not been gone into especially in view of the provisions of Rules 8(a) and 10 of the Delhi Police (Punishment & Appeal) Rules, 1980, the O.A. be relisted at its original position for re-hearing on April 07, 2016. Thereafter, the Tribunal dismissed the O.A. after taking due note of the observations made in the judgment.

35. She stated that, at this stage, the plea taken by the petitioner that there was no written order of posting, has no force and is misplaced. By raising the issue of written orders of transfer, what the petitioner is trying to do is to divert attention from his willful and unauthorised absence from duty and the factum of insubordination.

36. She stated that the acts of omission and commission by the petitioner have been amply established in the findings of the Enquiry Officer and subsequently affirmed by the DA and AA as well as the Tribunal. She also stated that absence from duty itself is misconduct in a disciplined force like the Police.

37. She relied upon the judgment in the *State of U.P. & others v. Ashok Kumar Singh & another*, (1996) 1 SCC 302, wherein, the Supreme Court of India held that the absence of the respondent from duty would amount to grave misconduct and there was no justification for the High Court to interfere with the punishment holding that the punishment is not commensurate with the gravity of the charge in Paragraph 8 of the said judgment, which reads as under:-

“8. We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind



that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that his absence from duty would not amount to such a grave charge'. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No. case for interference with the punishment is made out."

38. She has also relied upon the judgment in ***Maan Singh v. Union of India & others, (2003) 3 SCC 464***, wherein, the Supreme Court has categorically held that, habitual unauthorised absence on several occasions is a grave misconduct and the penalty imposed upon the appellant was justified.

39. She has also relied upon the judgment of the Supreme Court in the matter of ***State of Odisha v. Ganesh Chandra Sahoo, 2020 (2) SCC 588***, wherein it was held that in the absence of proper prescription or statement that the respondent was under the treatment of concerned doctor who gave the certificate, the High Court of Odisha should not have altered the discharge order which has been upheld by the Tribunal. The Supreme Court further held that mental illness is not a ground which falls under any exception of awarding lesser penalty in such circumstances. The Supreme Court upheld the punishment of discharge.



40. She concluded her submissions by stating that, in the present case the petitioner was an unauthorised absentee as he did not take prior approval from the competent authority or produce his doctor in enquiry proceedings to show that he was not fit for duty and therefore, he could not have joined duty. Rather, he did not produce any Defense Witness in the enquiry. The petitioner's absence from duty was clearly an act of defiance which is not acceptable from a member of a disciplined force. She also stated that the charge as mentioned is not one incident of unauthorised absence but it involves misconduct, insubordination and indiscipline and therefore, the doctrine of proportionality is not attracted in the present case and the punishment awarded to him is just, legal and valid and also commensurate with his misconduct.

41. Having heard the learned counsel for the parties and perused the record, the short issue which arises for consideration is whether the Tribunal is justified in rejecting the OA filed by the petitioner challenging the findings of the EO dated August 19, 2008, order of the DA dated October 1, 2008 and of the AA dated July 28, 2011. There is no dispute that the punishment of dismissal imposed on the petitioner was pursuant to a departmental enquiry initiated by the respondents on the ground that the petitioner was unauthorisedly absent from duties. The charge which has been framed against the petitioner can be seen from paragraph 2 of the order dated November 20, 2014, is the following:

"I, Insp. Chander Kant, the Enquiry Officer charge you Ct. Harender Singh No. 1459/NW that you were



transferred from Special Staff to Distt. Lines X-Ray vide this office order No.16920/40/SIP(PC)/NW dt. 20-10-2006. You reported your arrival in Distt. Lines vide DD No.50 dt. 23-10-2006. Aggrieved with your transfer from Spl. Staff to Distt. Lines, you got filed a complaint to Jt. CP/NR against your senior officers through your father alleging that his son (you) was threatened to be killed in an encounter by ACP/PG Cell. An enquiry into the matter; was got conducted through ACP/S.Puri which revealed that the allegations leveled by you are false and fabricated and as a tactics to get yourself transferred back to Spl. Staff. Further your departure was made from Distt. Lines/NW to PS Bawana Vide DD No.25 dated 24-10-2006 of Distt. Lines to perform duty at PS Bawana, as per verbal orders of DCP/NWD. You did not report for duty at PS Bawana. Instead one of your brother informed DO/PS Bawana telephonically that you (Ct. Harender) have been admitted in unknown hospital by your father Sh. O.P. Chaudhary and the name of the hospital would be initiated later on. This information was recorded vide DD N0.43-B dated 24-10-06 PS Bawana and a report to this effect was sent to Distt. Headquarters. Since, you had not obtained prior permission to avail the medical rest under CCS (Leave Rules), 1972, as such you were directed to undergo 2nd Medical examination at Aruna Asaf Ali Hospital, Rajpur Road, Delhi, vide DCP/NW Office Letter No. 17820-22/SIP(AC)/NWD dated 3-11-06. You were medically re-examined at the given hospital and a report was sent by Dr. R.P.Arya, Dy. Medical Supdt., Aruna Asaf Ali Hospital vide his Letter No.F.21/1/MED/04-05/AAAGH5231 dated 10-11-06 opining that you, the patient (Ct. Harender) may resume your duty. As such you were found fit to resume duty and supposed to report your arrival either at PS Bawana or at Distt. Lines/NWD. But you did not report for duty at either of the place and continued to submit medical papers of BJRM Hospital, Jahangir Puri, Delhi through FAX. Since, you had not obtained prior permission of the



Competent Authority to avail medical rest and the fact that you were declared fit to resume duty on second medical examination, you were marked absent vide –DD No. 47-B dated 16-11-2006, PS Bawana. An absentee notice vide DCP/NW office No. 18741-43/SIP(AC)/NWD dated 20-11-2006 was issued against you through SHO/Bawana with the direction to resume your duty at once failing which strict departmental action under the provisions of D.P. Act, 1978 will be taken/initiated, against you. A copy of the said notice was duly, served upon you against your proper receipt on 3-12-2006 but instead of joining your duty you recorded your comments on the copy of of absentee notice that medical papers of BJRM Hospital and Hindu Rao Hospital have been sent to DCP/NW Distt. and Jt. CP/NR through FAX. You being a member of disciplinary force were not supposed to comment upon the directions of senior officers and in case you were actually ill you should have obtained prior permission of the Competent Authority as required under prescribed norms/regulations on the subject. You instead of joining duty are still running absent from duty w.e.f. 16-11-2006 at your own volition and in utter violation of Rule-19 of CCS (Leave) Rules, 1972 and S.O. No. 111 /88 of Delhi Police.

The above act on the part of you Const. Harender Singh No.1459/NW amounts to grave misconduct, indiscipline, disobedience and insubordination in the discharge of your official duties, which renders you liable for departmental action under the provision of Delhi Police (P&A) Rules, 1980."

42. The charge in substance is that the petitioner who was working as a special staff was transferred to Distt. Lines vide order dated October 20, 2006. He reported his arrival in Distt. Lines on October 23, 2006. Being aggrieved with his transfer, he got a complaint filed with the Joint CP, Northern Range against some senior officers through his father alleging that he has been threatened to be killed in



an encounter by ACP / PG Cell. An inquiry in that matter was conducted which revealed that the allegations leveled by his father were false and fabricated and as a tactic to get himself transferred back to Special Cell.

43. Thereafter, he was also transferred to P.S. Bawana. His departure was made from Distt. Lines (North-West) to P.S. Bawana on October 24, 2006 to perform duties in the said police station as per the virtual orders of DCP / NWD. But he did not report to the said police station, instead his brother informed the Duty Officer at P.S. Bawana telephonically that the petitioner has been admitted in an unknown hospital by his father and the name of the hospital would be intimated later. This information was recorded on October 24, 2006 at P.S. Bawana and a report to this effect was sent to the District Headquarters.

44. As the petitioner did not obtain prior permission to avail medical rest / leave, he was directed to undergo another medical examination at Aruna Asaf Ali Hospital, Rajpur Road, Delhi. On re-examination, the concerned Deputy Medical Superintendent, on November 20, 2006 opined the respondent authority that the petitioner is fit to resume / join his duties. Despite being found fit to resume duties, the petitioner did not report at either places and continued to submit medical papers / report of BGRM Hospital, Jahangir Puri, Delhi through Fax.

45. It is noted that, a notice was served upon the petitioner, but instead of joining his duties, he recorded on the notice that the medical papers of BGRM Hospital and Hindu Rao Hospital have been sent to



the DCP through fax.

46. The EO submitted a report on August 19, 2008 proving the allegations against the petitioner. The DA passed an order of dismissal on October 1, 2008 and an appeal thereof was also rejected / dismissed.

47. The submissions of the learned counsel for the petitioner primarily are the following:

- i. The inquiry report does not reveal any reasons / finding, to prove the charges against the petitioner.
- ii. The petitioner had taken prior permission for medical leave.
- iii. Merely because medical examination has been directed, the authorities cannot direct the petitioner to resume his duties. Even otherwise it cannot be presumed that the petitioner was not ill.
- iv. The petitioner could not have been transferred to Bawana Police Station by an oral order.
- v. The charge framed against the petitioner of being absent from November 16, 2006 is without any basis as the same can be verified from DD No. 15 dated December 20, 2006 of District Lines.

48. The plea of the petitioner that, he has been transferred to P.S. Bawana without any written order, may be correct, but the fact remains, despite being privy to such an information, he did not join the at P.S. Bawana. Rather, he made his brother inform the P.S. Bawana that, his father has admitted the petitioner in a hospital without



disclosing any further details. This fact has been noted vide DD entry no. 43-B dated October 24, 2006.

49. In any case, the petitioner could not be absent at either of the places, i.e., P.S. Bawana or the Distt Lines / NWD, where he was transferred from the Special Staff. Instead of reporting to the District Lines / NWD / PS Bawana or to any higher officer, the petitioner remained unauthorisedly absent after October 20, 2006 till the date on which the DA had passed the order of dismissal i.e., September 19, 2008, which clearly reveal that, the petitioner was absent for almost 2 years from his duties without any reason. This fact is clear as DA records his absence from November 16, 2006 to the date of issue of its order, which is after almost two years.

50. In the given background, the order of dismissal of appeal by AA surely cannot be faulted. The Tribunal has rightly distinguished the judgment of the Supreme Court in the case of **Bhagwan Lal Arya (supra)**, on facts inasmuch as in the said case, the Supreme Court has set aside the punishment of dismissal / removal imposed on Bhagwan Lal Arya on the ground, he fell sick during training and was absent for two months and eight days.

51. It is not such a case herein, where the petitioner had fallen sick during the training and was absent for a relatively short period of 2 months and 8 days as was the case in **Bhagwan Lal Arya (supra)**. The very fact that the petitioner remained absent for two years makes the charge grave which rightly resulted in the punishment of dismissal of the petitioner from service.

52. The learned counsel for the petitioner has also relied upon the



judgment in the case of ***Chairman cum Managing Director, Coal India Limited and Anr. (supra)*** to contend that the scope of judicial review is open on a limited ground of proportionality. The said proposition cannot be disputed but in the facts of this case, the period of unauthorised absence for almost 2 years makes the charge grave, more so when the petitioner is employed in a Police Force as a Constable. In fact, no attempt has been made by the counsel for the petitioner to justify the unauthorised absence for a period of two years.

53. The learned counsel for the petitioner has also relied upon the judgment of the Supreme Court in the case of ***T.S.R. Subramanian and Ors. (supra)*** to contend that written orders are necessary for fixing responsibility and ensuring accountability in functioning civil servants and upholding institutional integrity. The Supreme Court was of the view that the civil servants cannot function on the basis of verbal or oral instructions, orders, suggestions, proposals, etc. and they must also be protected against wrongful and arbitrary pressure exerted by the administrative superiors, political executive, business and other vested interests. The said proposition cannot be disputed but it is noted that the petitioner was aware of the fact that, he has been transferred to P.S. Bawana as the petitioner's brother had informed the Duty Officer at P.S. Bawana of his absence on October 24, 2006. In that sense, the petitioner cannot take the plea of non-issuance of order of transfer. Even otherwise, the petitioner could not have remained absent from the place of his posting, that too for two years. The said judgment is clearly distinguishable on facts.

54. In the case of ***Krushnakant B. Parmar (supra)***, as relied upon



by the learned counsel for the petitioner, the issue was that the appellant therein was charged with willful absenteeism. The question before the Supreme Court was that, if the absence is due to compelling circumstances under which it is not possible to report or perform duty, such absence cannot be held to be willful and employee be deemed guilty of misconduct. In the said case, the appellant was prevented from attending the duty and was not allowed to sign the attendance register. Whereas, in the case in hand, the petitioner failed to join / report his duty even though a notice was served calling upon him to join the duty. Despite the notice, the petitioner remained absent from October 24, 2006 till the order of the DA, October 1, 2008. The said case is clearly distinguishable.

55. The learned counsel for the petitioner has also relied upon the judgment of the Supreme Court in the case of **R.K. Sharma (supra)**. In the said case, the respondent therein, applied for leave and the same was sanctioned by officers who were not competent to do so. The Court held that the respondent merely acted under the faith that the officer in question had the power to approve his request for leave and as such no misconduct can be attributed to the respondent for the period he availed the leave. It is to be noted that the said case was decided under Article 142 of the Constitution of India and is distinguishable on facts and in law.

56. In **Shiv Karan Singh (supra)**, the petitioner therein remained absent for a period of 254 days on medical grounds. The plea of the petitioner therein was that, the absence was not willful but on the ground of his illness and of his mother. The Court held that neither the



Disciplinary Authority nor the Inquiry Officer's case was that the medical reports submitted by the appellant were forged or fabricated. In the case in hand, even after the petitioner had submitted his medical report, a second Medical Board was ordered by the department in which the Deputy Superintendent of Aruna Asaf Ali Hospital had submitted that the petitioner is fit to join / perform his duties. Despite the opinion, the petitioner having not joined the duty, a DE was initiated against the petitioner for his absence from duty and was dismissed from the service.

57. It may be stated here that the Tribunal had earlier dismissed the OA. The Tribunal allowed the review application only on the ground urged by the petitioner that the punishment imposed against him is disproportionate to the misconduct, and reheard the OA. The Tribunal on re-hearing the petitioner on that aspect, has upheld the order of dismissal. We are of the view that the impugned order passed by the Tribunal cannot be faulted even on that ground.

58. Suffice to state, Mrs. Ahlawat is justified in relying upon the judgment of the Supreme Court in the case of ***State of U.P. & Ors.*** (*supra*) wherein it is held as under:

“We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that ‘his absence from duty would not



amount to such a grave charge”. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that “the punishment does not commensurate with the gravity of the charge” especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out.”

(emphasis supplied)

59. In the case of **Maan Singh (supra)** the Supreme Court has held as under:

“11. Relying on State of Punjab v. Ram Singh Ex-Constable [(1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435] one of the arguments advanced before us is that it is only in cases where the misconduct is of the gravest kind an order of dismissal shall be made. This case was decided in the context of Rule 16.2(1) of the Punjab Police Manual, 1934, Vol. II. The said Rule reads as follows:

“Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.”

After analysing the said provision, this Court in Ram Singh case [(1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435] held that Rule 16.2(1) consists of two parts, firstly, dismissal shall be awarded for the gravest acts of misconduct and secondly, cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service and the length of service of the offender and his claim for pension should be taken into account in an appropriate case. The second part is referable to a misconduct which, by itself, may not warrant an order of dismissal and may be a ground to take a lenient view of giving an opportunity to reform and even after giving such opportunities, if the delinquent officer is proved to be incorrigible and found



completely unfit to remain in service then in order to maintain discipline in the service appropriate punishments can be given. Therefore, when the charge against the appellants in each of these cases is habitual absence for long periods on several occasions unauthorisedly, the view taken by the disciplinary authority is justified.”

60. In the case of ***State of Odisha (supra)*** the supreme court has in paragraphs held as under:

17. In granting relief to the respondent in his writ petition, the High Court should have considered that the respondent was absent from duty for seven long years and he was aware of the discharge order passed against him on 30-12-1993. As regards the plea of mental illness which might have incapacitated the respondent from either reporting for duty or to participate in the disciplinary proceeding, the Court should have borne in mind the failure of the respondent to make himself available before the CDMO to cross-check his pleaded medical condition This was in defiance of the repeated communications addressed to the absentee employee by the Commandant of the Battalion. It is also of significance that neither the Tribunal nor the High Court found any infirmity with the disciplinary proceeding which led to the issuance of the discharge order against the delinquent on 30-12-1993.

18. In the above circumstances, when factual finding was recorded by the Tribunal on fairness of the disciplinary proceeding with due opportunity to the delinquent, the substitution of the penalty of discharge, was not warranted. This is more so as the High Court found support for their decision from Rajinder Kumar [Rajinder Kumar v. State of Haryana, (2016) 15 SCC 693 : (2015) 3 SCC (L&S) 143 : AIR 2015 SC 3780] where the constable concerned was unauthorisedly absent for 37 days whereas the respondent herein had failed to report back for duty for long 7 years, from 1991 to 1998.

19. If the respondent had actually suffered from cerebral malaria since 3-6-1991 and was subjected to frequent cyclic



attack of Maniac Depression Psychosis, as claimed, necessary proof of such suffering from the doctor/hospital concerned who were providing him the treatment, ought to have been produced. Moreover, he never allowed for cross-verification of his pleaded medical condition by presenting himself before the CDMO in 1991 or thereafter. Instead, the respondent only produced the 21-1-1998 certificate of the HoD, Psychiatry who may have had no role in the treatment of the respondent. It therefore appears to be a case of certificate of convenience on the purported symptoms and mental ailment of the respondent from 1991 to 1998, without support of any contemporaneous medical records. Most curiously, the doctor had issued the certificate on the basis of reference made by the local MLA but not on the basis of referral by doctor/hospital which might have been involved with the respondent's treatment during 1991 to 1998."

(emphasis supplied)

61. In view of our findings in the facts of this case, in the absence of cogent reasons for not joining the duties despite being declared fit by the Medical Board for over two years, we are of the view that the impugned action of the respondents and the order(s) of Tribunal are justified. The petition is devoid of merit and is dismissed. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J.

JULY 12, 2023/aky