

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 2035/2002

Ranjit Singh S/o Sh. Ramji Lal, R/o C/o Rajendra Pareek, Gram
Post Bassi, Distt. Jaipur

-----Petitioner

Versus

1. Union of India, through Director General, Railway Protection Force, Ministry of Railways
2. D.S.C., RPF, Jaipur, Western Railway, Jaipur

-----Respondents

For Petitioner(s)	:	None Present
For Respondent(s)	:	Ms. Namita Parihar

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

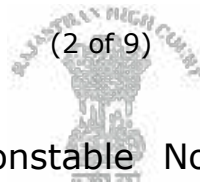
18/10/2023

1. The instant writ petition was filed way back on 28.05.2001, it means more than 22 years before, assailing the order dated 31.03.1993 whereby, he was removed from service from the post of Constable in Railway Protection Force (for short "RPF") as also order dated 27.10.1993 passed by the Deputy Chief Security Commissioner, dismissing the statutory appeal of petitioner on merits.

2. No one has appeared on behalf of petitioner. Since the matter is 22 years old, this Court, instead of adjourning the matter, deems it just and proper to consider and deal with the matter on merits after hearing counsel for respondents and as per material available on record.

3. Heard learned counsel for respondents and perused the record.

4. It appears from the record that during the posting of petitioner as Constable in Company No.59 Achnera in RPF, he was charge-sheeted on 03.11.1992 under Rule 153 of RPF Rules, 1987 and following charges were leveled against him:-



“Shri Ranjit Singh Constable No.04515/JE-1490 of AH Company No.59 is hereby charged for serious misconduct, remiss, negligent in discharge of his duty in that:-

1. He left his Headquarter i.e. Achnera without seeking any permission from his Controlling Officer during his rest day on 29.03.1992.
2. He is unauthorizedly absenting from duty since 30.03.1992 to till date”

5. It appears that petitioner was absent from duty hence, charge-sheet was served upon him at his home address through registered post and same was acknowledged by the petitioner on 06.11.1992. The Inquiry Officer was appointed to conduct the departmental inquiry. The Inquiry Officer completed the inquiry and submitted his report on 20.01.1993. Thereafter, a copy of Inquiry Report was sent at the home address of petitioner through registered post and same was acknowledged on 13.03.1993. That apart, the Inquiry Report was also sent through his IPF-AH and on finding absent from the place of his posting, the report was pasted in presence of two witnesses on 01.03.1993. The disciplinary authority, proceeded thereafter and in view of the inquiry report, found the petitioner guilty for charges levelled against him and accordingly, petitioner was punished with major penalty of “Removal from Service”, vide order dated 31.03.1993. Petitioner was found continuously absent from duty from 29.03.1992 upto 31.03.1993 when he was removed from service.

6. It appears that petitioner challenged the order dated 31.03.1993, by way of filing a statutory appeal and sought to explain reason of his absent from 19.05.1992 to 30.03.1993 on account of his sickness and submitted medical certificate of Vikas Clinic & Hospital at Jahangirpur, District Bulandsahr (U.P.). The appellate authority on consideration of the medical certificate, found some interpolation in the dates and observed that it is a pure mischief and forgery, perpetuated by the petitioner. In addition, the appellate authority also observed that petitioner tried



to hoodwink & mislead the appellate authority to believe that he communicated his helplessness to attend the inquiry by sending 7 postal letters, whereas the postal receipts were found to be mutilated and tampered with. The appellate authority clearly held that the petitioner unauthorizedly remained absent from duty from 29.03.1992 onwards and the inquiry has been correctly done ex-parte, because petitioner deliberately was not attending the inquiry despite the receipt of charge-sheet and notices. The appellate authority on merits affirmed the order of his removal from service and rejected the appeal vide order dated 27.10.1993.

7. Petitioner in the instant writ petition has impugned both orders dated 31.03.1993 and 27.10.1993, stating *inter alia* that petitioner had informed vide letter dated 28.03.1992 (Ann.1), for being absent on Headquarter on 29.03.1992 and thereafter due to illness and being hospitalized, petitioner could not join his duty and further, the petitioner also sent telegram on 08.02.1993 and 15.02.1993 intimating that he was bad ridden, therefore he is unable to send his defence before the Inquiry Officer. According to petitioner, the inquiry against the petitioner was ex-parte and no opportunity to defend the charges was provided to petitioner, therefore, inquiry stands violative to the principles of natural justice. The petitioner also submitted that the punishment of removal from service is disproportionate, to proven misconduct of absentism, hence, impugned orders be quashed and set aside and respondents be directed to reinstate the petitioner in service with all consequential benefits.

8. Learned counsel appearing for and on behalf of respondents submits that reply to writ petition was filed in the year 2003, but it appears that due to some defect in mentioning correct writ number, the reply could not be attached to the file and now the reply is not traceable in the Office. Therefore, in view of statement of counsel for respondent, the duplicate copy of the original reply has been placed on record by counsel for respondents, which is taken on record for consideration.

9. It has been contended in the reply that petitioner was previously removed from service for unauthorized absence in the

year 1990 but the appellate authority allowed the reinstatement of petitioner in service in the year 1991. It has also submitted that the petitioner has been awarded various punishments on four occasions during his service. It has been submitted that charges levelled against petitioner through charge-sheet dated 03.11.1992 have been found proved in the disciplinary inquiry; petitioner was given full and fair opportunity to take part in the disciplinary inquiry but he deliberately did not appear nor sent any intimation for his absent in the inquiry.

10. Learned counsel for respondents pointed out that on 29.03.1992, petitioner left his Headquarter without intimation/permission of his Controlling Officer and the application dated 28.03.1992(Ann.1) was not submitted by the petitioner to his Controlling Officer, the Inspector. Further the petitioner was required to report on duty from 30.03.1992 and if, petitioner was ill, he was required to inform within 24 hours to the Officer In-charge but no information in this regard was given by the petitioner. Thus, the petitioner left Headquarter without permission as also remained absent from duty unauthorizedly. The petitioner submitted letter dated 09.04.1992, first time before the IPF, Achnera telling his illness but no sickness certificate of his illness was enclosed. The petitioner wrongly projected that he was hospitalized in the railway hospital, Khurja Junction, whereas indeed letter dated 28.04.1992 sent by respondents to petitioner at Railway Hospital, Khurja Junction returned with the remark that no Constable in the name of petitioner is hospitalised at Railway Hospital, Khurja Junction. Thus, petitioner has rightly been punished for his misconduct and making a false endeavour to mislead the authorities. In such backdrop of facts, the punishment of Removal from Service, passed against the petitioner, cannot be treated to be disproportionate to the proven misconduct of petitioner and impugned orders warrant no interference by this Hon, ble Court in exercise of writ jurisdiction.

11. Heard. Considered.

12. The legal proposition of law in respect of interference with findings of the disciplinary authority and punishment order passed

after conducting disciplinary enquiry, within exercise of powers of judicial review by the writ Court under Article 226 of the Constitution of India, are well settled and after following the proposition of law as set out by the Hon'ble Supreme Court in celebrated judgment of **State of Haryana Vs. Rattan Singh [(1977) 2 SCC 491]**, recently the Supreme Court in case of **State of Karnataka Vs. Umesh [(2022) 6 SCC 563]** in para No.22 has held as under:-

"22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The Court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:

- (i) the rules of natural justice have been complied with;
- (ii) the finding of misconduct is based on some evidence;
- (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and
- (iv) whether the findings of the disciplinary authority suffers from perversity; and
- (v) the penalty is disproportionate to the proven misconduct."

13. The factum of leaving Headquarter by the petitioner on his rest day on 29.03.1992, without seeking any permission from his Controlling Officer, though has been tried to explain by the petitioner by submitting an application dated 28.03.1992 (Ann.1) to one Shiv Kumar Sharma, ASI but no such defence was submitted by the petitioner before the Inquiry Officer. The Inquiry Officer, as per the evidence came on record, has found the Charge No. 1 as proved against the petitioner. In the reply to writ petition, respondents have contended that the application dated 28.03.1992 (Ann.1) was not submitted by the petitioner to the competent authority, it means to the Inspector who was the Controlling Officer. The explanation sought to be furnished by the

petitioner to remain absent before the Inquiry Officer has not been found satisfactorily, since the theory of petitioner to fall sick and remain hospitalized at Railway Hospital, Khurja Junction was not verified. Neither sickness certificate was produced alongwith letter dated 09.04.1992, sent by the petitioner, nor the hospitalization of petitioner came to be verified as the letter of respondent sent on 28.04.1992 to petitioner at Hospital address, returned with the remark that no Constable in the name of petitioner is hospitalized at Railway Hospital, Khurja Junction. Thus, at the stage of writ petition, filing of application dated 28.03.1992 and sickness certificate dated 30.03.1992 (Ann. 1 & 2) do not improve the case of petitioner in respect of Charge No. 1 and no interference in findings of the disciplinary authority is warranted by this Court in exercise of writ jurisdiction.

14. As far as Charge No. 2 is concerned, the petitioner does not dispute the factum of not reporting on duty on 30.03.1992. According to petitioner, he first time gave intimation on 09.04.1992 that he came to see his relatives but suddenly, fall sick and after recovery, he would report back. The disciplinary authority in its order dated 31.03.1993 has considered this factual aspect and observed that the hospitalization of petitioner at Railway Hospital, Khurja Junction for taking treatment has not been verified and on the basis of evidence of witnesses appeared before the Inquiry Officer, the absent of petitioner was found without any just cause and unauthorised. It is undisputed fact that petitioner remained absent from duty from 30.03.1992 onwards. The petitioner tried to explain his absence, by submitting the medical certificates dated 30.03.1992 and 18.05.1992 respectively (Ann. 2 and 3), as also has also sought to submit that he promptly sent information to authorities by UPC as also by registered post about his sudden illness and his inability to present on duty. But it is noteworthy here that the similar explanation was given by the petitioner for his absentism before the Appellate Authority. The Appellate Authority has considered this factual aspect and after examining the communications letter as also medical certificates produced by the petitioner has categorically observed that

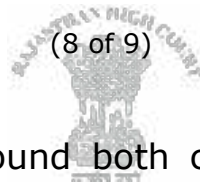
petitioner has made an effort to mislead the Appellate Authority. For reading reference, the portion of fact findings recorded by the Appellate Authority in the order dated 27.10.1993 reads as under:

“I have gone through the PMC submitted by him from 19.05.1992 to 30.03.1993 of Vikas Clinic and Hospital of Doctor Vinod Kumar, Teotia at Jahangirpur, District Bulandshar (UP). I minutely seen this PMC and find that he fraudulently erased the original date 30.12.1992 wherever he occurred on PMC and altered it to read as 30.03.1993. It is a pure mischief and forgery, perpetuated by him. I have seen postal receipts of registration of letters out of which, five had been deliberately mutilated to obliterate dates. I also find that name of the original addressee has also been tampered with and made to appear to have been sent to RPF. These all takes me to believe that he has tried to hoodwink and mislead in making the Appellate Authority to believe of his being very genuine and truthful in communicating his helplessness to attend the inquiry. I find that he deliberately did not attend the inquiry on his own and produced these falsified documents to prove him just and fair from the fact of falsification of certificates and postal receipts submitted by him, I do not hesitate to form an opinion of his abysmally very low of moral values.

From the facts it is proved that the unauthorisedly left his headquarter. He unauthorisedly absent from duty from 29.03.1992 till he was removed from service from 31.03.1993. The inquiry has been correctly done ex parte without any prejudice.

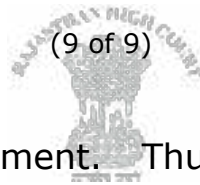
He has been rightly removed from service because such unscrupulous persons should not be allowed to continue in armed force as they may bring more disrepute and besmirch the image of the force. I therefore, reject his appeal.”

15. On appreciation of factual aspect as discussed hereinabove, it may not be said that petitioner was not given due opportunity to contest the charge-sheet. It is not a case where principles of natural justice have not been complied with, rather the petitioner was served with the charge-sheet and Inquiry Officer wrote several letters to petitioner, sent through registered post for giving him fair opportunity to take part in the departmental inquiry. The Inquiry Officer had no option except to proceed with the inquiry ex-parte and on the basis of evidence adduced before



him, the Inquiry Officer found both charges proved against the petitioner. The disciplinary authority, committed no perversity in passing the order dated 31.03.1993. It has not been disputed that inquiry report was served upon the petitioner. Further, from the fact findings recorded by the Appellate Authority, it stands established on record that the conduct of petitioner remained deceitful and unfair, as apart from proving his misconduct of leaving Headquarter without permission of the Controlling Officer as well as remaining absent from duty unauthorisedly, the conduct was not found fit to continue him in Armed Force. Petitioner has not make out a case for not following statutory rules of RPF Rules, 1987 in conducting the departmental inquiry, except claiming that inquiry was conducted ex parte. As has already been observed that the petitioner was given full and fair opportunity to participate in the inquiry, therefore, he cannot claim the inquiry to be vitiated due to being ex parte. The Appellate Authority has dealt with this aspect of the matter elaborately. The fact findings recorded in the impugned orders by the authorities does not seem to be perverse but based on appreciation of material evidence on record.

16. As far as the punishment inflicted upon the petitioner is concerned, the same may not be treated to be disproportionate to the proven misconduct of petitioner. Respondents in the reply has contended that prior to the punishment in question, petitioner was also removed from service in the year 1990 due to remaining unauthorisedly absent from duty but Appellate Authority allowed his reinstatement. That apart, it has also been contended that the petitioner has been punished on four occasions previously. No rejoinder to such contention of respondents has been filed. The conduct of petitioner has been found to be negligent and indiscipline, which is not acceptable in the armed force services. The Appellate Authority has clearly observed that if petitioner is allowed to continue in Armed Force, same may bring more disrepute and would besmirch the image of the Armed Force. The writ Court, certainly does not act as an Appellate Authority over decisions of the disciplinary authority, affirmed by the Appellate



Authority of the department. Thus, in overall facts and circumstances, no case of inflicting the disproportionate penalty upon the petitioner is made out.

17. As a final result, impugned orders warrant no interference on merits and thus, this Court, while exercising its powers of judicial review under Article 226 of the Constitution of India, is not inclined to interfere with impugned orders dated 31.03.1993 and 27.10.1993, as such the writ petition is hereby dismissed. No costs.

18. Stay application and other pending application(s), if any, stands disposed of.

(SUDESH BANSAL),J