

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-14650-2018
Date of Decision: 18.03.2024

Ankit Kumar ...Petitioner

Versus

Union of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Gursharan Singh, Advocate for the petitioner
Ms. Anita Balyan, Senior Panel Counsel
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 03.04.2017 (Annexure P-9) whereby he was dismissed from service and order dated 30.06.2016 (Annexure P-5) whereby his appeal has been dismissed on the ground of delay.

2. The petitioner joined I.T.B.P. as Constable (G.D) on 25.09.2013. He w.e.f. 25.11.2014 proceeded on 30 days earned leave but he did not report back after the expiry of said period. He over-stayed for 16 days and his over-stay was regularized as extraordinary leave vide office order dated 09.04.2015. He again absented himself w.e.f. 22.08.2015. The respondent issued a letter of apprehension to District Magistrate and Superintendent of Police, Aligarh. A Court of Inquiry was constituted and he vide order dated

02.11.2015 was declared deserter. He, after remaining absent from duty for

129 days, reported back on 28.12.2015. He again w.e.f. 07.02.2016 opted to remain absent from duty. The respondent again sent information to District Magistrate and Superintendent of Police. He was directed to be apprehended and handed over to the unit. A Court of Inquiry was again constituted and he was declared deserter. A show cause notice dated 01.06.2016 came to be issued to him calling upon to show cause as to why punishment should not be awarded to him. He did not report, consequently, the respondent vide order dated 30.06.2016 removed him from service.

The petitioner feeling aggrieved from order of dismissal preferred CWP No.1228 of 2017 before Allahabad High Court which came to be dismissed vide order dated 12.01.2017 on the ground of alternative remedy. He in the month of February' 2017 preferred an appeal before Appellate Authority which vide order dated 03.04.2017 dismissed on the ground of delay. He again approached Allahabad High Court by way of CWP No.34956 of 2017 which came to be dismissed vide order dated 08.08.2017 on the ground of maintainability. The petitioner was granted liberty to approach the Competent Court. This is how the matter has come up before this Court.

3. Mr. Gursharan Singh, Advocate submits that appellate authority has mechanically dismissed appeal of the petitioner. He remained absent on account of illness of his father. The respondents may be asked to take a lenient view because it is a question of livelihood of the entire family.

4. Ms. Anita Balyan, Advocate submits that conduct of the petitioner was not condonable. He repeatedly opted to remain absent from duty. He, at this stage, has cooked a story of illness of his father. He never

brought this fact before the authorities and in any case, he had no right to remain absent on the ground of illness of his father. He was part of Armed Forces where discipline is of paramount consideration.

5. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

6. The petitioner was concededly a part of disciplined force and he was bound to strictly follow the rules and regulations. Armed Forces cannot retain any undisciplined member. It is not case of the petitioner that he, for the first time, committed alleged offence and was subjected to harsh punishment. Had the alleged offence been his first offence, this Court could consider principle of proportionality and ask the respondents to reconsider quantum of punishment, however, as noted above, the petitioner is a habitual offender and he has been punished more than once. The case of the petitioner is squarely covered by judgment of Apex Court in *Ex Sepoy Madan Prasad v. Union of India and others, (2023) 9 SCC 100*. The relevant extracts of the judgment read as:

“11. It is apparent from the above table that the appellant was a habitual offender. There were four red ink entries and one black ink entry against him before the present incident cited at Serial No. (f) above. Such gross indiscipline on the part of the appellant who was a member of the Armed Forces could not be countenanced. He remained out of line far too often for seeking condonation of his absence of leave, this time, for a prolonged period of 108 days which if accepted, would have sent a wrong signal to others in service. One must be mindful of the fact that discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service.

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18. For the aforesaid reasons, we do not find any infirmity in the impugned judgment [Madan Prasad v. Union of India, 2015 SCC OnLine AFT 887] passed by the AFT. The appellant had been taking too many liberties during his service and despite several punishments awarded to him earlier, ranging from imposition of fine to rigorous imprisonment, he did not mend his ways. This was his sixth infraction for the very same offence. Therefore, he did not deserve any leniency by infliction of a punishment lesser than that which has been awarded to him.

19. Accordingly, the present appeal is dismissed as meritless, while upholding the impugned judgment [Madan Prasad v. Union of India, 2015 SCC OnLine AFT 887] . The parties are left to bear their own costs.”

7. As the petitioner despite being member of disciplined Armed Force was habitual offender and did not mend his behaviour, this Court does not find it appropriate to look into quantum of punishment awarded to him.

8. In the wake of above facts & findings and judgment of the Apex Court in **Madan Prasad (Supra)**, this Court is of the considered opinion that the present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

18.03.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No