

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-5839-2012 (O&M)
Date of Decision: 07.02.2024

Rakesh Kumar

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Karan Singla, Advocate for
Mr. Kulwant Singh, Advocate for the petitioner
Mr. Gaurav Pathak, Senior Panel Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 07.08.2010 (Annexure P-7), order dated 09.11.2009 (Annexure P-6) and order dated 09.05.2009 (Annexure P-5) whereby he has been dismissed from service on account of desertion.
2. The petitioner on 26.02.2003 joined Central Reserve Police Force ('CRPF') as Constable. The petitioner during 2004 to 2007 was subjected to multiple punishments. The detail of punishments awarded to petitioner, as noticed in reply of the respondent, during 2004 to 2007 is reproduced as below:

“a) During 2004, the petitioner over stayed from leave without sanction/prior permission from the competent/leave sanction authority for 43 days w.e.f. 17/09/04 to 29/10/04, later it was regularized into EOL with punishment of 07 days confinement to line w.e.f 11/11/04.

b) During 2005, the petitioner over stayed from leave for 61 days w.e.f. 01/04/05 to 31/05/05 for which DE was ordered and awarded punishment of “Removal from Service” subsequently, he was reinstated into Service by IGP S/S CRPF after considering revision petition preferred by the petitioner.

c) During 2006, the petitioner again over stayed from leave for 51 days w.e.f. 22/06/06 to 11/08/06 and later regularized as LHP with no leave salary.

d) During 2007, he again overstayed from leave for 135 days w.e.f. 01/03/07 to 13/07/07 and the period regularized into LHP with no leave salary.

e) He was habitual of consuming illicit liquor. He quarreled with colleagues as well as section commander for which he was awarded 21 days confinement to lines w.e.f 05/09/07.”

3. The petitioner on 19.11.2008 went to his home without obtaining permission from the competent authority. The petitioner was declared deserter. The respondent, from time to time, sent notice to the petitioner but he did not join. On the asking of respondent, the petitioner was arrested by local police and handed over to CRPF Gurugram on 27.12.2008. The

petitioner was served charge sheet and thereafter, respondent after conducting regular inquiry held the petitioner guilty of desertion. The petitioner by order dated 09.05.2009 (Annexure P-5) came to be dismissed from service. The petitioner unsuccessfully preferred appeal as well as revision before higher authorities. The petitioner is assailing order of dismissal as well as appellate and revisionary order.

4. Mr. Karan Singla, learned counsel for the petitioner submits that the petitioner is having three daughters and old age parents. The punishment awarded by the respondent is harsh and disproportionate to the alleged offence. The Court may take lenient view and order to reinstate him.

5. *Per contra*, learned counsel for the respondents submits that petitioner was part of Armed Forces. Discipline is most important and paramount consideration for retaining any member in the Armed Forces. The petitioner was habitual of overstaying and consuming liquor. The petitioner on the earlier occasion was also dismissed, however, revisionary authority taking lenient view reinstated him. The petitioner did not mend his behavior which compelled the authorities to pass the impugned order.

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

7. 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. On one occasion, he was even dismissed from service. 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.”

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

9. 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.

10. Pending application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

07.02.2024
Mohit Kumar

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