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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17297-2023
Date of Decision: 24.04.2024

GAJENDRA SINGH ...Petitioner
Versus
UNION OF INDIA AND ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Saurabh Bajaj, Advocate
for the petitioner.

Mr. Ramesh Chand Sharma, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226 of Constitution of India is seeking setting aside of order dated 21.11.2022 (Annexure P-2) and order dated 27.01.2023 (Annexure P-3) whereby petitioner after being declared as deserter, has been terminated from service.
2. The petitioner joined ITBPF as constable on 19.02.2012. He remained absent from duty from 21.06.2019 to 08.11.2019. For the said act, he was punished by Competent Authority. He again remained absent from duty from 12.11.2020 to 27.04.2021. He was again subjected to punishment. Despite aforesaid punishments, he absented himself from duty on 22.08.2022. The respondent-Department sent multiple letters/communications to petitioner to join his duty, however, he did not join. Left with no other option, the respondent constituted a Judicial Enquiry Committee which conducted enquiry and found the petitioner guilty of

misconduct on account of absence from duty. He did not even join proceedings before Enquiry Committee. The respondent vide order dated 21.11.2022 declared him deserter and thereafter vide order dated 27.01.2023 dismissed from service.

3. Mr. Saurabh Bajaj, Advocate submits that petitioner has been terminated without granting proper opportunity of hearing. On account of Covid -19, he could not join his duty. During the said period, he was blessed with a female child and on account of Covid-19 restrictions he was not able to join.

4. I have heard the counsel for the petitioner and perused the record.

5. From the perusal of record, it comes out that petitioner joined respondent-Force on 19.02.2012. He remained absent from duty from 21.06.2019 to 08.11.2019 (151 days) and again from 12.11.2020 to 27.04.2021 (167 days). The petitioner apart from said period opted to remain absent w.e.f 22.08.2022. He was declared deserter vide order dated 21.11.2022 (Annexure P-2).

6. Record reveals that multiple communications were made to him, however, he did not opt to join duty. It is apt to mention here that there were no Covid-19 restrictions during August' 2022 or thereafter. The ground of absence on account of Covid-19 may be justified during 2020-2021, however, there was no justification to remain absent on the ground of Covid-19 in August' 2022. As a member of disciplined force, he was bound to join his duty. He was declared deserter in November' 2022 which indicates that

he did not come forward to join duty from August' to November' 2022. He did not join enquiry. This demonstrates total irresponsible behavior on part of the petitioner.

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. 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.”.

8. A Division Bench of this Court while dealing with similar issue in ***Balwinder Singh versus State of Punjab and others, (LPA-934-2023, decided on 21.02.2024)***, has held that act of remaining absent from duty for a man in uniform is a gravest act of misconduct. The relevant extracts of the judgment read as:

*“That a man in uniform has to maintain greater discipline and the act of remaining absent from duty is a gravest act of misconduct. Reliance can be placed upon the judgment in **State of Punjab & others Vs. Mohinder Singh, 2005 (12) SCC 182** wherein the Apex Court allowed the appeal by noticing that there was absence of 5 ½ months and it was reprehensible conduct by the Constable. The basic principle which has been time and again laid down is that remaining absent from duty after the sanctioned leave by a uniformed personnel is fatal. Keeping in view the fact that the appellant voluntarily kept away from his duties which were very much required by his department and the fact that the matter was duly*

enquired upon. Copy of the notice was sent to his foreign address through registered post to which he had not replied and also copy had been sent to his father which would be clear from the order of dismissal.”

9. As the petitioner despite being member of disciplined Armed Force was habitual absentee and did not mend his behavior, this Court does not find it appropriate to look into quantum of punishment awarded to him.
10. In the wake of above facts & findings, judgment of the Apex Court in **Madan Prasad (Supra)** and Division Bench Judgment of this Court in **Balwinder Singh (Supra)**, this Court is of the considered opinion that the present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

24.04.2024
himanshu

(JAGMOHAN BANSAL)
JUDGE

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