



2024:DHC:9373-DB



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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***Reserved on: 23.10.2024***  
***Pronounced on: 04.12.2024***

+ W.P.(C) 11551/2021

SATYAVIR SINGH

..... Petitioner

Through: Mr. Sarfaraz Khan, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ranvir Singh, CGSPC  
(through VC)

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

### **J U D G M E N T**

#### **SHALINDER KAUR, J**

1. The petitioner, who is presently serving as an Assistant Commandant (AC) in the Central Reserve Police Force (CRPF), has approached this Court assailing the Order dated 24.05.2021, passed by the Deputy Inspector General (DIG), CRPF/respondent no. 2 and praying for a direction to the respondents to declare the petitioner as having resigned in accordance with the Order dated 21.03.2017 and for release of payment of the legitimate dues, including gratuity, provident fund etc.

2. The factual background is that the petitioner joined the CRPF as a direct appointee on 03.03.2003 through the Directly Appointed Sub Inspectors Course (DASO) and was subsequently promoted to the post



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of AC. The controversy in the present matter arose, when the petitioner applied for 40 days of Earned Leave on 30.01.2015, which was duly sanctioned by the respondents with effect from 02.02.2015 to 13.03.2015.

3. It is the claim of the petitioner that he suffered from back pain and informed the respondents about the same *vide* a letter dated 09.03.2015, thereby requesting an additional four weeks of leave as he was advised by the doctor to take complete rest. He also provided the respondents with a medical certificate. Thereafter, the petitioner wrote another letter on 31.03.2015, notifying the respondents of his inability to resume duties and requested for further four weeks' time to recuperate and rejoin his duty. The respondents, in reply to his requests dated 09.03.2015 and 31.03.2015, directed the petitioner to report to the nearest CRPF hospital for treatment. Subsequently, the petitioner sent another letter dated 27.04.2015, informing the respondents of his continued inability to join his duties due to the ongoing back pain.

4. The respondents *vide* a letter dated 30.04.2015, reiterated their stand and directed the petitioner to receive treatment at the nearest CRPF hospital. It is the claim of the petitioner that there was no CRPF hospital in the vicinity of his residence in Mathura, with the nearest one located in Rampur, Uttar Pradesh, nearly 300 kilometres away. On 22.05.2015, the petitioner again requested the respondents to extend his rejoining date, as his back pain had not improved.



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5. Thereafter, an Office Order dated 28.05.2015 was issued by the respondents, whereby a preliminary inquiry was initiated against the petitioner and, Shri R.C. Mishra, Deputy Commandant, was detailed to conduct the same regarding the petitioner overstaying his leave from 14.03.2015 till 28.05.2015. Simultaneously, the respondents sent one more letter to the petitioner on 28.05.2015, instructing him to report to the nearest CRPF hospital.

6. A Show Cause Notice of the preliminary inquiry, dated 11.10.2015, was issued to the petitioner, whereby an explanation for his unauthorized absence was sought for by the respondents. The petitioner replied to the same on 20.10.2015, requesting the respondents' permission to rejoin his duties once he becomes fit. Furthermore, he stated that he shall also produce the medical records to support his claim of back pain.

7. The petitioner, thereafter, wrote another letter dated 03.11.2015, informing the respondents of his persistent back pain and requested that he be allowed to re-join his duty after four weeks.

8. The petitioner claimed that once he realized that he will be unable to resume his duties in the near future, he sent a letter dated 14.11.2015 to the respondents, resigning from service due to personal difficulties. In view of the said letter, the respondents directed him to tender a proper resignation. Pursuant thereto, the petitioner submitted a formal resignation, addressed to the Hon'ble President of India, along with a prescribed undertaking, on 04.11.2016.



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9. Thereafter, the petitioner was informed that the respondent no. 2 had approved the processing of petitioner's resignation, stating that initiating departmental proceedings against the petitioner would not be an economical use of the public exchequer, and that the said proceedings would only prolong the matter further. However, in spite of the Order dated 21.03.2017, the petitioner was issued a Memorandum/Charge Sheet. The respondent no. 4 directed the Commandant of the 16<sup>th</sup> Battalion, CRPF, Rajasthan, to serve upon the petitioner the aforesaid Memorandum/Charge Sheet dated 24.05.2018, through a special representative/messenger.

10. Upon receipt thereof, the petitioner requested for a Hindi-translated version of the Memorandum/Charge Sheet which was provided to him. Subsequent thereto, the petitioner submitted a reply to the same, and requested for withdrawal of the inquiry proceedings and acceptance of his resignation.

11. The respondent no. 2 passed orders appointing an Inquiry Officer and a Presenting Officer in relation to the Memorandum/Charge Sheet. The departmental proceedings were scheduled to commence on 12.10.2018 to investigate the alleged misconduct of the petitioner for wilfully and unauthorisedly absenting himself from duty from 14.03.2015 onwards. The petitioner replied to the respondents reiterating his previous stand before the Inquiry Officer. Thereafter, the Inquiry Report was filed by the Inquiry Officer, thereby reporting that the Charges levelled against the



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petitioner in terms of Memorandum stood proved. The Report was forwarded to the petitioner and served upon him on 07.01.2020.

12. Aggrieved by the Memorandum/Charge Sheet dated 24.05.2018, the petitioner preferred a writ petition bearing no. W.P.(C) 1160/2020 before this Court. However, the same was later withdrawn on 22.09.2021, in view of the subsequent development of passing of the dismissal Order dated 24.05.2021 by the respondents against the petitioner. However, liberty was granted to the petitioner to raise all the pleas from the said petition in the appropriate proceedings. In view thereof, the petitioner filed the present petition.

### **Submissions of the Parties**

13. In support of the petition, Mr. Sarfaraz Khan, learned counsel for the petitioner, submitted that the Memorandum/Charge Sheet dated 24.05.2018 is in contravention of established principle of law, inasmuch as the respondents had no occasion to issue the impugned Memorandum in view of the admitted position that the respondent no. 2 herein *vide* its approval dated 08.07.2016, recommended the case of the petitioner while noting that the disciplinary proceedings would not be advisable and instead resignation of the petitioner should be accepted.

14. Learned counsel placed reliance on the Order dated 21.03.2017 to contend that the petitioner's case was sent for approval of the Competent Authority for the acceptance of the petitioner's resignation, along with favourable notings by the respondent no. 2. Moreover, the Inquiry Report dated 10.08.2019 was served on the petitioner on



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07.01.2020. The respondents have even recorded *ex-parte* evidence against him and thus, the petitioner had no remedy except to approach this Court by way of the present petition.

15. He submitted that the respondents have ignored the dictum of the Hon'ble Supreme Court, that resignation is a right of an employee. When the petitioner himself resigned from the services of the respondents, they had no choice but to accept the same, especially when there is no contemplation of any disciplinary proceedings against the petitioner. The respondents, he submitted, were legally bound to permit the petitioner to tender his unconditional resignation at any stage, and keeping in view the circumstances of the petitioner's case, they ought to have accepted the same.

16. He further submitted that the resignation was never rejected by the respondents and to the contrary, the respondents initiated the departmental proceedings against him without considering the fact that petitioner was sanctioned 40 days of leave w.e.f. 02.02.2015 to 13.03.2015. Moreover, the respondents concluded the proceedings in haste, causing serious prejudice to legal rights of the petitioner.

17. While referring to the counter affidavit, the learned counsel submitted that the respondents have taken a stand that the approval of the resignation was not granted, however, no proof in respect to grant or denial of approval has been placed on record before this Court. Moreover, the action of the respondents has been arbitrary, as evidenced by the fact that the petitioner was not suspended from service deliberately, so that subsistence allowance would not have to



be paid to the petitioner, on this point alone, the entire inquiry proceedings and dismissal order is illegal and *void ab initio*. The penalty of dismissal from service is highly disproportionate and the respondents ought to have taken a lenient view in the matter. Furthermore, the Inquiry Officer kept issuing notices to the petitioner, however, the petitioner's contention with respect to his resignation being pending before the Competent Authority was not considered.

18. To conclude his arguments, he submitted that the petitioner repeatedly requested for an extension of leaves as he was seriously ill and, on 14.11.2015, finally tendered his resignation. However, the respondents deliberately did not consider his service requests for extension of leaves. The petitioner has served for 12 years and is, therefore, entitled to his legitimate dues, including gratuity, provident fund, and other benefits. Thus, the Impugned Order is liable to be set aside.

19. *Per contra*, Mr. Ranvir Singh, learned counsel for the respondents submitted that the petitioner was sanctioned 40 days of Earned Leave, upon expiry of which, he was required to report for duty on 14.03.2015. However, he failed to do so. Thereafter, a preliminary inquiry was ordered by the Commandant, 74<sup>th</sup> Bn, CRPF, wherein it was established that the petitioner did not report for duty on the due date and overstayed his leave without permission of the Competent Authority, even after being declared fit for duty on 14.11.2015 by the Medical Officer of District Hospital, Mathura (UP).



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20. He submitted that the petitioner, instead of joining duty, submitted an application dated 14.11.2015 to the Commandant, 74<sup>th</sup> Bn, CRPF, seeking resignation from service due to domestic problems. Thereafter, the SDG, J&K zone, submitted a preliminary Inquiry Report *vide* letter dated 06.06.2016, with a recommendation to process the resignation of the petitioner instead of initiating departmental proceedings. Accordingly, the proposal was sent to the Ministry of Home Affairs (MHA) *vide* Personnel Directorate's UO dated 21.03.2017, seeking approval of the Competent Authority for the acceptance of the resignation of the petitioner.

21. It is submitted that the MHA referred the matter to the Department of Personnel and Training (in short, 'DoPT'), which returned the proposal, inviting instructions relating to the action warranted against a Government servant for unauthorized absence from duty. The learned counsel urged that *vide* a note dated 28.12.2017, the respondents decided to halt their earlier move to accept his resignation in *absentia* and as per approval of the Disciplinary Authority, disciplinary proceedings were initiated against the petitioner under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short 'CCS (CCA) Rules, 1965') *vide* Presidential Memorandum No. D.IX-22/2016 CRC dated 24.05.2018.

22. He contended that based on the statements of the Prosecution Witnesses (PWs) and the documentary evidence adduced during the preliminary inquiry; the Inquiry Officer (IO) held that Articles I & II



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of the Charge against the petitioner were proved. Subsequently, the IO's report was accepted by the Disciplinary Authority and served upon the petitioner by a letter dated 26.12.2019, with directions to him to submit his representation within 15 days of receipt thereof. It is contended that the petitioner did not make any representation against the IO's report. *Vide* the Presidential Order dated 24.05.2021, the Disciplinary Authority, after reviewing the entire record and considering the advice of the UPSC, approved the imposition of the penalty of "*dismissal from service, which shall ordinarily be a disqualification for future employment under the Government*" upon the petitioner. In these circumstances, the learned counsel sought dismissal of the writ petition.

#### **FINDINGS AND ANALYSIS**

23. Having heard the learned counsels for the parties and perused the record, we find that the parties are *ad-idem* that the petitioner was sanctioned 40 days of Earned Leave with effect from 02.02.2015 to 13.03.2015, with permission to avail 01.02.2015 as leave, being a Sunday, *vide* 74<sup>th</sup> Bn, CRPF's Office Order no. L-II-1/2015-ST-74 dated 30.01.2015. It is not disputed that the petitioner was to report for duty on 14.03.2015, after expiry of the sanctioned leave. The claim of the petitioner is that the petitioner suffered from back pain, regarding which he informed the respondents and requested for an extension of leave for four weeks, as he was advised to take complete rest by the doctor. The petitioner further requested for an extension of leave on medical grounds *vide* letters dated 09.03.2015, 31.03.2015,



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27.04.2015, 22.05.2015 and 03.11.2015. Pertinently, the respondents replied to all the aforesaid letters of the petitioner, directing him to get his treatment from the nearest CRPF hospital.

24. It is relevant to note that a Show Cause Notice dated 11.10.2015 was issued for holding a preliminary inquiry against the petitioner, requiring him to render an explanation for his absence from the service. The petitioner replied to the notice *vide* written communication dated 20.10.2015, requesting that he be permitted to re-join his duties when he becomes fit and stating that he shall also furnish his medical records in respect of his back problem. However, it is evident that the petitioner had not furnished any medical record of his illness except for a medical certificate, which he had furnished with his first application, seeking an extension of leave for a period of four weeks. In these circumstances, the respondents initiated a preliminary inquiry, on the conclusion of which, the Inquiry Report was submitted by the Inquiry Officer to the Commandant, 74<sup>th</sup> Bn, CRPF. The Inquiry Officer in the preliminary inquiry had *prima facie* found that the petitioner did not report for duty on the due date and overstayed his sanctioned leave w.e.f. 14.03.2015, without the permission of the Competent Authority.

25. It is further relevant to note that on 14.11.2015, the petitioner submitted, from his home address, his resignation letter citing domestic problems. The respondents *vide* letter dated 06.06.2016, submitted the preliminary Inquiry Report with a recommendation to process the resignation of the petitioner instead of initiating



departmental proceedings for his unauthorised overstay while on leave. The proposal was sent to the MHA for acceptance of the resignation of the petitioner, which in turn referred the matter to the DoPT. However, vide ID No. 14028/1/2016-Estt.(L) dated 14.12.2017, the DoPT returned the proposal, instructing the respondents to take warranted action against the petitioner for unauthorised absence from duty. Thereupon, the DIG vide a note dated 28.12.2017, considered the instructions and decided to stall the earlier proposal to accept the petitioner's resignation *in absentia* and instead, directed that departmental proceedings be initiated against him for the misconduct of unauthorised overstay from leave.

26. The departmental proceedings were initiated on 18.09.2018, on the following charges levelled against the petitioner :

“ARTICLE-I

*That Shri Satyavir Singh, Asstt. Commandant (IRLA No. 9025) of 74 Bn, CRPF has committed a serious act of misconduct in that he is unauthorisedly overstaying from leave w.e.f. 14/03/2015 after expiry of 40 days E.L. sanctioned to him w.e.f. 02/02/2015 to 13/03/2015 with permission to avail prefix on 0 1 j 02 j 20 15 being Sunday. Thus he has failed to maintain devotion to duty and acted ill a manner unbecoming of a Government servant and has thereby violated the provisions contained ill Rule 3 (1) (ii) & (iii) of CCS (Conduct) Rules, 1964.*

ARTICLE-II

*That during the aforesaid period and while posted in the aforesaid office, Shri Satyavir Singh, Asstt. Commandant (IRLA No. 9025) of 74 Bn, CRPF has committed a serious act of misconduct in that he has failed to comply with*



*the lawful orders/directions issued by his controlling authority i.e. commandant 74 Bn, CPPF vide letters No. L.II.-1/2015-ST/74 dated 11/04/2015, 30/04/2015 and 28/05/2015 directing him therein to report to nearby CRPF hospital for treatment as well as for duty forthwith, and has continued to overstay from leave without sanction of the competent authority. Thus, the said Officer has failed to maintain devotion to duty and has acted in a manner unbecoming of a Govt. servant and has thereby violated the provisions contained in Rule 3 (1) (ii) & (iii) of CCS (Conduct) Rules, 1964."*

27. It is to be noted that the Inquiry Officer gave reasonable opportunities to the petitioner to participate in the Departmental Inquiry proceedings, but he failed to appear before the Inquiry Officer. Consequently, the inquiry was conducted *ex-parte*, in accordance with Rule 14(2) of the CCS (CCA) Rules, 1965.

28. We find that the Inquiry Officer examined the statement of three witnesses, however, the petitioner did not produce any evidence in his defence. The Inquiry Officer had also considered the written statement of defence submitted by the petitioner but found no new facts/material evidence produced by the petitioner in his defence. The Inquiry Report was forwarded to the petitioner calling upon him to submit his representation/reply within 15 days of the receipt of the copy of the Inquiry Report, however, the petitioner did not furnish the same.

29. It is also the plea of the respondents that the Disciplinary Authority, as per the procedure laid down in the CCS (CCA) Rules, 1965, consulted the UPSC to decide the quantum of penalty to be



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imposed on the petitioner and the UPSC, *vide* the letter dated 31.12.2020, advised that the ends of justice would be met in this case if the penalty of “*dismissal from service, which shall ordinarily be a disqualification for future employment under the Government*” is imposed the petitioner.

30. It is relevant to note that in spite of the Disciplinary Authority serving the advice of the UPSC to the petitioner, *vide* the letter dated 03.03.2021, which was received by the petitioner on 13.03.2021, the petitioner did not submit any reply within 15 days and accordingly, the aforesaid punishment was awarded to him.

31. The position of law is well settled that in exercise of jurisdiction under Article 226 of the Constitution of India, this Court does not sit in appeal over the findings in a disciplinary proceedings or the stringency of the punishment. It is only in a case of blatant disproportionately that the Court interferes.

32. In the present case, the petitioner has failed to point out any procedural lapse in the preliminary inquiry and in the consequential disciplinary proceedings conducted against him. To the contrary, the petitioner did not participate in the aforesaid proceedings, although he was afforded an opportunity time and again to participate in the proceedings and to present his defence. The petitioner also did not produce the relevant medical documents on which he was seeking the extension of his leave. Moreso, he did not produce any evidence to the effect that he was undergoing treatment.



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33. The petitioner failed to adhere to the direction of his Controlling Authority *vide* the written communications, asking him to report to the nearest CRPF hospital for treatment. The Disciplinary Authority found that the excuse furnished by the petitioner, that he could not report to a CRPF hospital, in Rampur (U.P.), being almost 300 kms away from the place of his residence in Mathura, to be a fabricated excuse. The Disciplinary Authority did not accept the said excuse of the petitioner as the Unit hospital of the 16<sup>th</sup> Bn was deployed in Mathura itself.

34. Most importantly, the petitioner failed to report for duty even after 14.11.2015, when he was declared medically fit by the Medical Officer of District Hospital, Mathura. On the other hand, he submitted his resignation on 14.11.2015, which was not on medical grounds, but rather on account of his domestic problems.

35. In light of the aforesaid, we do not find any substance in the submission of the petitioner that the respondents could not have initiated disciplinary proceedings against him, pending his resignation as his right to resign from the service could not have been legally denied to him by the respondents.

36. In order to appreciate the aforesaid plea of the petitioner, it is apposite to refer to the Office Memorandum no. 28034/4/94-Estt.(A) dated 31.05.1994, which reads as under:-

*“Subject – Acceptance of resignation – Procedure in respect of.*

*The undersigned is directed to say that questions have been raised from time to time regarding the requirement of obtaining vigilance clearance in respect of an official, before acceptance of resignation submitted by him from*



Government service. The matter has been carefully examined and the position is clarified in the following paragraphs:

2(i) Under existing instructions it is provided that where a Government servant who is under suspension submits his resignation, the competent authority should examine, with reference to the merit of the disciplinary case pending against the Government servant, whether it would be in the public interest to accept the resignation. Normally, as officers are placed under suspension only in cases of grave delinquency, it would not be correct to accept the resignation from an officer under suspension. Exceptions to this rule would be where the alleged offences do not involve moral turpitude or where the quantum of evidence against the accused officer is not strong enough to justify the assumption that if the departmental proceedings were continued, the officer would be removed or dismissed from service, or where the departmental proceedings are likely to be so protracted that it would be cheaper to the public exchequer to accept the resignation.

(ii) Existing instructions on the subject of acceptance of resignation of officials against whom inquiry/ investigation is pending (whether he had been placed under suspension or not) provide that where such an official submits his resignation, such resignation should not normally be accepted. Where, however, acceptance is considered necessary, in the public interest, the competent authority shall examine the case with reference to the fulfillment of conditions mentioned at para 2(i) above.

3. In recent times, cases have come to notice where resignation of officials not falling in the two category mentioned in the preceding paragraph, have been accepted without insisting on vigilance clearance and subsequently it came to light that the said official while in service had been involved in serious irregularities. In view of this, it has now been decided that in all cases of acceptance of resignation, the competent authority, shall insist, as a mandatory measure, on prior vigilance clearance, before taking a decision on the request for resignation. When an authority refers a case for vigilance clearance, the authority competent to accord vigilance clearance should ensure expeditious consideration of the



request.

4. *In all cases where acceptance of resignation is considered necessary, the resignation may be accepted with the prior approval of the Head of Department in respect of Group 'C' and 'D' posts and that of the Minister-in-charge in respect of holders of Group 'A' and 'S' posts. In so far as officers of Group 'A', 'B', 'C' and 'D' cadres of the Indian Audit and Accounts Department are concerned, the resignation may be accepted by the Heads of Department as designated by the Comptroller and Auditor General of India. Concurrence of the Central Vigilance Commission should be obtained before submission of the case to the Minister-in-charge/Comptroller and Auditor General, if the Central Vigilance Commission had advised initiation of departmental action against the Government servant concerned or such action has been initiated on the advice of the Central Vigilance Commission.*

5. *In so far as persons serving in the Indian Audit and Accounts Department are concerned, these instructions issue after consultation with the Comptroller and Auditor General of India”*

**(Emphasis Supplied)**

37. From a perusal of the above OM, what emerges is that in cases where a Government servant, whether under suspension or not, tenders his/her resignation during the pendency of an inquiry or investigation, such resignation shall generally not be accepted. However, if the acceptance of the resignation is deemed necessary in the public interest, the Competent Authority shall, as per the rules and procedures laid down, examine the case and take a decision. This acceptance, the authority must ensure, must be justified on the facts of the case and must serve the public interest.

38. The petitioner, being an AC in the CRPF, should have strictly adhered to the established rules and regulations, as he has been entrusted with upholding the highest standards of Discipline, being the



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backbone of any Force and therefore, every member, especially those in senior positions and ranks are expected to exemplify these values. Taking leave without the approval of the authorities undermines this important principle and creates a disruptive precedent. Such actions, particularly from senior officers, reflect poorly on the overall integrity and operational efficiency of the force. It is vital that the senior members not only abide by the rules but also set a standard for others to follow, reinforcing the importance of accountability and communication at all levels.

39. The present writ petition does not warrant any interference by this Court in the limited exercise of its powers of judicial review.

40. In view of the above, the writ petition is dismissed, alongwith pending applications, if any.

**SHALINDER KAUR, J.**

**NAVIN CHAWLA, J.**

**DECEMBER 04, 2024**  
**SU/B**