



2024:DHC:9379-DB



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

Reserved on: 04.11.2024
Pronounced on: 04.12.2024

+ **W.P.(C) 12863/2019**

SANJAY KUMAR

.....Petitioner

Through: **Ms. Pallavi Awasthi and Mr. Ayush Jain, Advs.**

versus

DIRECTOR GENERAL, CISF & ORS.

.....Respondents

Through: **Mr. Vijay Joshi & Mr. Hemant Goyal, Advs. with Inspector Yashpal.**

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 an Assistant Sub-Inspector (ASI) / Executive in the Central Industrial Security Force (CISF), has approached this Court under Article 226 of the Constitution of India, seeking the following reliefs:

“(i) To set aside the final order dated 11.11.2014, order dated 17.02.2015 passed by the appellate authority and order dated 16.10.2017 passed by the revision authority and to grant him all consequential benefits and to pay due arrears along with interest.”



2. Before we deal with the rival submissions of the parties, it may be necessary to provide a brief factual background of the dispute. The petitioner joined the CISF as an ASI on 21.07.2012 and after completing his basic training at RTC Arakkonam, he was posted to the Aviation Security Group (ASG), Chennai from 18.07.2013 to 30.05.2017. Subsequent thereto, he was posted at ASG Bangalore, where he is currently serving.

3. While the petitioner was posted at ASG Chennai, he was granted fifteen days of casual leave from 25.04.2014 to 18.05.2014 and was required to report back to duty on 19.05.2014. However, the petitioner, while being on leave, sent an application through fax on 17.05.2014, requesting for an extension of his leave as he was under medical treatment. Along with his application, he submitted his medical outdoor ticket dated 14.05.2014, a medical prescription dated 17.05.2014, and his lab reports to support his request.

4. It is the case of the petitioner that as per the aforementioned medical ticket, his examination was undertaken at PHC Achina (Bhiwani) on 14.05.2014, wherein it was found that the petitioner was suffering from Acute Respiratory Infection (ARI) and since the repercussions of a disease like this were severe, the petitioner sought to have himself further examined at Agarwal Charitable (AC) Hospital, Charki, Dadri on 17.05.2014, that is, a day prior to when he was required to join his duties at ASG Chennai. The doctor, upon examining the petitioner, advised the petitioner to take rest and avoid exertion. Pursuant thereto, the petitioner cancelled his ticket back to



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Chennai and submitted the aforesaid application seeking an extension of leave in lieu of the prevailing circumstances.

5. The petitioner visited the AC hospital, Dadri for a medical review on 23.05.2014, wherein he was still found to be suffering from fever. Accordingly, the doctor prescribed certain medicines and further advised the petitioner to take a week's rest. In these circumstances, the petitioner submitted another application to the respondents, requesting for an extension of his sanctioned leave. He claimed that despite taking the prescribed medication and rest, there was no improvement in his condition. The petitioner, on 30.05.2014, visited the Urban RCH Hospital, Charkhi Dadri, where he was advised further ten days of bed rest as he was suffering from Renal Calyx.

6. The petitioner's condition continued to worsen, compelling him to revisit Urban RCH Hospital, Charkhi Dadri on 09.06.2014, whereupon, the doctor informed him that his immune system had weakened and sufficient bed rest was the best way for him to recover effectively. The petitioner was thereafter advised further bed rest by the doctors on 23.06.2014, 14.07.2014 and 21.07.2014. The petitioner, *vide* the application dated 19.07.2014, intimated the respondents regarding his ill health and informed them that he would rejoin his Unit as soon as he recuperates from his ailment.

7. The respondents, since the petitioner had not returned to his Unit, initiated a departmental inquiry against the petitioner on the Charges of his overstay of leave and disobeying the orders of the superior. A copy of the said departmental inquiry was supplied to the



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petitioner in terms of the letter dated 06.10.2014, wherein he was informed that Two Articles of Charge were issued against him. The Senior Commandant, CISF Unit ASG Chennai, *vide* the Order dated 11.11.2014, awarded the petitioner a penalty of reduction of pay by one stage from Rs. 9260/- + G.P. Rs. 2800/- to Rs. 8900/- + G.P. 2800/- in the pay band of Rs. 5200/- Rs. 20,200/- + G.P. Ra. 2800/- for a period of 2 years with immediate effect. It was further directed that the petitioner will not earn increment of pay during the aforesaid period of reduction and on expiry of this period; the reduction will have the effect of postponing his future increments of pay.

8. Aggrieved by the same, the petitioner preferred an appeal to the respondents on 21.12.2014, which came to be dismissed *vide* Order dated 17.02.2015, as being devoid of any merit. The petitioner had also submitted various applications requesting for a No-Objection Certificate in order to gain outside employment as an Assistant Commandant in the UPSC, however, they all came to be rejected on the ground that he was under the currency of punishment. Subsequently, on 03.06.2017, the petitioner filed a revision petition against the Order dated 17.02.2015 passed by the respondents in his appeal. This revision petition was, without going into the merits of the case, dismissed by the respondents on the ground of delay, thus, compelling the petitioner to invoke the writ jurisdiction of this Court by way of the present petition.

SUBMISSIONS ON BEHALF OF THE PARTIES

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9. Learned counsel for the petitioner, in support of the petition, submitted that the Orders dated 11.11.2014, 17.02.2015 and 16.10.2017 passed by the respondents are erroneous and arbitrary as they did not consider the circumstances of the petitioner's illness and that he had been specifically advised by the doctors to be on bed rest. In the dire circumstances of the illness of the petitioner, the respondents could not have ignored the pathological reports of the petitioner and have expected him to report back for duty to his battalion.

10. It is submitted that while being on leave, the petitioner constantly updated the respondents regarding the status of his health and therefore, his absence was not devoid of any valid reason, but due to his deteriorating health as also the medical advice given by the doctors treating him. To further the stand taken by him, the learned counsel for the petitioner placed reliance on the decision of the High Court of Gauhati in *Arunangsho Roy vs State of Tripura &Ors*, W.P(C) 551/1997, the decision of the High Court of Allahabad in *Virendra Kumar vs Union of India &Ors SCC OnLine All 1112*, and in *Union of India vs Giriraj Sharma* 1994 SUPP (3) SCC 755, where in similar circumstances, the petitions were allowed.

11. It is further submitted that the inquiry officer in its report, made an error by observing that no pathological tests had been conducted except on 17.05.2014, whereas the petitioner had gone through four pathological tests, for which the reports were produced before the departmental inquiry as well. The petitioner was found to be positive



in the Widal test on all occasions. Further, the objection taken regarding the veracity of the medical documents produced by the petitioner is misplaced, as the petitioner had been receiving treatment at a government hospital. Since there was no specialty hospital in the vicinity of the petitioner's home town, he was forced to get treated at a government hospital.

12. Rebutting the submissions made on behalf of the petitioner, learned counsel for the respondents contended that the petitioner had acted in gross violation of the rules set out by overstaying his leave for a period of 68 days, without obtaining any permission from the Competent Authority. Learned counsel further submitted that the petitioner had submitted multiple applications seeking an extension of his leave; however, they were all rejected by the respondents.

13. Learned counsel submitted that if the illness suffered by the petitioner was of a serious nature, he should have approached a multi-specialty hospital rather than a government hospital for his treatment. The petitioner could have also visited the specialized ASG Chennai hospitals for treatment. It is evident from the records submitted by the petitioner that the doctor at PHC Achina never specifically opined that the petitioner should consult another doctor at AC Hospital. Further, as per the certificate dated 17.05.2014 issued by the AC Hospital, the petitioner was declared Widal positive, however, he was not admitted in the hospital for even a single day. The learned counsel further submitted that this raises doubts regarding the veracity of the documents produced by the petitioner.



14. It is further contended that the petitioner, during the departmental inquiry, never submitted any valid proof of taking any medicines. The cash bill produced by the petitioner shows that the petitioner had only purchased four out of the twelve medicines prescribed to him. This further casts doubts regarding the authenticity of the documents produced by the petitioner. Further, the TLC value in the pathological report produced by the petitioner adds to this element of doubt. In these circumstances, he prayed that the writ petition be dismissed.

FINDINGS AND ANALYSIS

15. We have heard the learned counsel for the parties and carefully examined the records.

16. The petitioner was principally charged for unauthorized absence from duty after overstaying leave for 68 days with effect from 19.05.2014 to 25.07.2014 without the permission of the Competent Authority. A departmental inquiry was conducted against the petitioner under Rule 36 of CISF Rules, 2001.

17. The question of whether the petitioner had unauthorizedly overstayed the leave sanctioned to him and remained absent from duty, cannot be decided without determining whether his absence was wilful or on account of emergent circumstances. In case his absence was for the latter due to which it was not possible for him to report for duty, such absence cannot be held to be in disobedience to the service Rules. Relevantly any absence from duty without prior permission may amount to unauthorized absence, but it may not always be said to



be deliberate. There may be various compelling circumstances beyond the control of an employee, due to which he/she may remain absent from duty, but in such circumstances, the employee cannot be held to be willfully defaulting in performing his duties by remaining unauthorisedly absent. Therefore, in the departmental proceedings, if an allegation of unauthorized absence is leveled against an employee, the disciplinary authority is required to prove if the absence of the employee is deliberate or not, else such absence will not amount to misconduct. Undoubtedly, leave is not a matter of right for an employee and the same can be refused by the employer in view of the exigency of the services.

18. At this stage, it would be apposite to refer to the decision of the High Court of Judicature at Allahabad in the case of **Virendra Kumar** (supra), relevant extracts are reproduced hereinunder:

“10. A public servant cannot claim leave as of right. He has to apply for leave in accordance with the service rules to the authority competent to grant the leave. The leave may be sanctioned subject to fulfillment of the requisite formalities. Every leave has a commencement date and a termination date unless it is extended. An employee, who remains absent after the end of the leave, exposes himself to penal consequence. If the leave is not allowed by the competent authority, it amounts to unauthorised absence and is misconduct. But merely because a public servant has overstayed the leave the employer would not be entitled to punish unless the disciplinary proceedings are initiated against the employee in accordance with the service rules applicable to him. The principles of proportionality, in a case where an employee is punished, will get attracted, if



an unduly harsh punishment is given for such overstayal.

11. In Union of India v. Girraj Sharma, 1994 Supp (3) SCC 755 : (AIR 1994 SC 215) the services of employee were terminated on account of overstaying of period of leave by 12 days. The High Court directed reinstatement with all monetary and other service benefits. The Supreme Court found that the employee had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. The Supreme Court dismissed the appeal making it open to the department to visit the respondent-petitioner with a minor punishment.”

19. We may also refer to the decision in **Arunangsho Roy** (supra), wherein it was held by the Gauhati High Court as under:

“10. In the instant case the requirements as highlighted above have not been followed. Reasons for disbelieving the medical certificates submitted along with the applications are also not forthcoming. If the medical certificates submitted by the writ petitioner were not genuine and the leave applied for was with the sole intention frustrating the order of transfer, it was open to the disciplinary authority to proceed against him as per provisions of C.C.S. (CCA) Rules. The impugned order because of the lapses indicated above, cannot survive.”

20. In light of the above decisions, it emerges that the disciplinary authority is required to consider the unexpected circumstances explained by an employee compelling him to overstay his sanctioned leave. Also, the disciplinary authority should assign the reasons for disbelieving the medical certificate on the basis of which medical leave is sought by an employee. We find that in the present case, the



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petitioner has claimed that he availed of leave commencing from 25.04.2014 to 18.05.2014, and was required to report for duty on 19.05.2014. However, before he could report for duty, he fell sick and was diagnosed with ARI. Since the petitioner was not able to recover in time, he, on 17.05.2014, applied for an extension of leave. The petitioner further sent written request on 23.05.2014 and 19.07.2014 along with three medical certificates dated 23.06.2014, 14.07.2014 and 21.07.2014. The respondents unsatisfied with the aforesaid request of the petitioner initiated a preliminary inquiry dated 06.08.2014 against him after issuing a Show Cause Notice dated 05.08.2014. In the preliminary inquiry, the statement of two witnesses was recorded on behalf of the department and the statement of the petitioner was recorded as well. The preliminary inquiry resulted in the initiation of a departmental inquiry against the petitioner. The two witnesses that were examined on behalf of the department proved that the petitioner was sanctioned 15 days leave with effect from 26.04.2014 to 15.05.2014 on account of his wife's medical problem. The witnesses further established that the petitioner was supposed to report for duty on 19.05.2014, which he failed to do.

21. It is not disputed that the petitioner had forwarded an application dated 17.05.2014 to his Unit through fax, and requested that his leave be extended on medical grounds. Since the petitioner had not mentioned any specific dates for extension and was taking treatment as an out-patient, his request for sanction of leave was not accepted by the Competent Authority and he was directed to join his



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duty on 22.05.2014. However, the petitioner did not report to his Unit and instead, forwarded another request on 23.05.2014 for an extension of his leave, which was declined. He was once again directed to report for duty immediately, failing which disciplinary action would be taken against him. As the petitioner failed to return to duty, the department once again instructed him to report for duty *vide* an office letter dated 09.06.2014, but the petitioner yet again submitted an application on 05.07.2014, along with his medical documents, requesting for an extension of leave. Thereafter, the respondents *vide* their reply dated 14.07.2014, directed the petitioner to report for duty immediately and stated that he may continue his treatment at the empanelled hospital of the Chennai office. As the petitioner failed to adhere with the directions issued to him, a departmental inquiry was initiated.

22. The petitioner has placed on record a medical prescription issued by Dr. Devender Singh, BAMS, MB of AC Hospital, Charkhi Dadri, Haryana, advising him 5 days' bed rest and follow-up on 17.05.2014. He further relied upon two sets of medical documents, one being the medical certificates issued by Dr. S.C. Gupta, Medical Officer, Urban RCH Center, Dadri Bhiwani dated 30.05.2014, 09.06.2014, 23.06.2014, 14.07.2014, and 21.07.2014 *vide* which it was opined that the petitioner was suffering from GTI T Renal Calyx, the other being, his pathological reports dated 09.06.2014 and 23.06.2014, which show that he tested positive for Malaria and that his Widal test was found to be positive. His pathological report dated



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14.07.2014 shows that he tested negative for Malaria, however, his Widal test was found to be positive.

23. It is relevant to note that the inquiry officer, despite admitting that the pathological report of the petitioner exhibited a positive report, brushed aside the entire medical record of the petitioner on flimsy grounds by opining that the bed rest recommended by the doctor is not supported with any documentary evidence and the petitioner visited another hospital, i.e., the Urban RCH Centre, Charkhi, Dadri, without any reference or an unfit certificate from the previous hospital, more so, during the entire period of rest advised to him, he was not admitted to the hospital and he also did not consult any Specialist. It was also observed that he did not produce the medical bills for the purchase of the medicines. On the other hand, the petitioner has claimed that some of the medicines were made available to him from the hospital and he had produced the bills for the medicines that he had purchased from the market.

24. On the aforementioned ground, the medical report was disbelieved by the inquiry officer, without carefully scrutinizing the medical certificates, wherein all the details regarding the period of medical rest and the disease the petitioner was suffering from, has been mentioned. The inquiry officer did not make any effort to verify the authenticity of the medical certificates, in case the same were found to be fabricated by the petitioner.

25. In view of the above, the inquiry officer on incomplete appreciation of the evidence, held that the petitioner was



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unauthorizedly absent from duty, but failed to hold that the absence was wilful. The Appellate Authority failed to appreciate the same and wrongly upheld the petitioner's punishment/sentence.

26. It is true that the jurisdiction of this Court exercising judicial review in such a case, is limited, and although the Charges in departmental proceedings are not required to be proved like in a criminal trial, however, the inquiry officer cannot lose sight of the fact that he performs a quasi-judicial function and has to base his analysis on the preponderance of probability to prove the charges against the Charged Officer. In the present case, the Inquiry Officer has not carefully scrutinized the medical certificates and the prescription furnished by the petitioner but has outrightly disbelieved the same without assigning any cogent reason. We find that this action of the respondents has caused injustice to the petitioner.

27. As a result, the present petition is allowed. The Impugned Order passed in departmental inquiry dated 11.11.2014, by the Appellate Authority dated 17.02.2015, and by the Revisional Authority dated 16.10.2017, are set aside *vide* which penalty of reduction of pay by first stage, from Rs. 9260/- + G.P. Rs. 2800/- to Rs. 8900/- + G.P. 2800/- in the pay band of Rs. 5200/- Rs. 20,200/- + G.P. Ra. 2800/- for a period of 2 years was imposed on the petitioner.

28. Taking into consideration the fact that the departmental inquiry was concluded in the year 2014, though not taking into account the petitioner's medical record, which has not been properly scrutinized by the Inquiry Officer and it has been shown that his leave for 68 days



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has been regularized, we are not remitting the proceedings to the disciplinary authority for reassessing the medical record for any further action. Accordingly, we direct that the petitioner shall be entitled to arrears of the salary as well as consequential benefits, if any within a period of six weeks.

29. The writ petition is allowed in the above terms.

SHALINDER KAUR, J.

NAVIN CHAWLA, J.

DECEMBER 04, 2024/ab/f

Click here to check corrigendum, if any

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By: NEELAM

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