

**Court No. - 18**

**Case :-** WRIT - A No. - 7135 of 2011

**Petitioner :-** Narain S/O Late Hardeo

**Respondent :-** Union Of India Through Secy. Railway Board New Delhi And Ors.

**Counsel for Petitioner :-** Abdul Moin, Abhinav N. Trivedi, Subodh Kumar Verma

**Counsel for Respondent :-** Jyotsana Pal, Akansha Dubey, Pratul Kumar Srivastava, Raj Kumar Singh, Ratnesh Kumar Rawat

**Hon'ble Manish Kumar, J.**

1. The present writ petition has been preferred for quashing of the impugned punishment order of removal dated 15.11.1996 passed by respondent no. 4/Divisional Security Commissioner, Railway Protection Force, Lucknow, the impugned appellate order dated 14.10.2023 passed by respondent no. 3/Deputy Chief Security Commissioner, Railway Protection Force, Lucknow and the impugned revisional order dated 17.01.2004 passed by respondent no. 2/Chief Security Commissioner, Railway Protection Force, Lucknow.

2. Learned counsel for the petitioner has submitted that petitioner was initially appointed on the post of Constable in Railway Protection Force. After some time, the petitioner was diagnosed with 'Schizophrenia' and due to his mental illness, the petitioner had absented from duties on 19.06.1993 and getting the treatment at Gorakhpur from a Private Doctor and before he could be given certificate by the Doctor to be mentally fit to join the official duties. The charge-sheet dated 23.01.1996 was issued against the petitioner, which was for the first time received by the petitioner on 29.02.1996 and asked for fifteen days' time to submit his reply. But due to deterioration in the medical health of the petitioner, he could not submit his reply and also not participated in the enquiry before the Enquiry Officer. The son of the petitioner had appeared before the Enquiry Officer and informed about the illness of the petitioner with a request for adjourning the enquiry. The wife of the petitioner had also sent a Telegram on 08.03.1996 regarding the mental illness of the petitioner.

3. It is further submitted that the Enquiry Officer proceeded with the enquiry despite the request made on behalf of the petitioner and submitted the enquiry report and in pursuance thereof, the order of removal has been passed against the petitioner.

4. It is further submitted that there is no finding in the enquiry report whether the absence of the petitioner was

willful or in compelling circumstances. If it is wilful, then the punishment could be given to the delinquent employee but if the absence is in compelling circumstances, then giving a punishment of removal is harsh and disproportionate. In support of his submission, learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of **Krushnakant B. Parmar vs. Union of India and Anr. [(2012) 3 SCC 178]**.

5. It is further submitted that the petitioner has attained the age of superannuation in the year 2022. The appellate authority and the revisional authority have not applied his mind and passed the order in a most arbitrary manner.

6. On the other hand, learned Standing Counsel has submitted that in the enquiry, several dates were fixed either on the request of petitioner or the request made on his behalf by his son or his wife but the petitioner had never appeared before the Enquiry Officer. It is further submitted that the time was granted to the son and wife of the petitioner to submit the medical documents to show that the absence is due to illness and not otherwise. Even those documents were never provided either by the petitioner or his son and his wife so after giving about more than eight dates, the enquiry report was submitted and found that the petitioner is willfully absenting from his official duties.

7. After hearing learned counsel for the parties and going through the record of the case, it is found that the petitioner who was appointed on the post of Constable in Railway Protection Force were absenting from his official duties since 19.06.1993. The department after waiting for about more than two and half years had issued a charge-sheet dated 23.01.1996. During this period of absence from duties till the issuance of charge-sheet, it is revealed from the record that the petitioner had never made any representation for medical leave or informed the authorities either by the petitioner or his wife or son about his mental illness to the department. The letters were also by the department on 09.08.1995 and 25.08.1995 through the Special Messenger to the petitioner for joining on his post, which fact is very fairly admitted by the learned counsel for the petitioner that these letters were sent by the department but the petitioner had neither joined nor made any representation for grant of leave or informing about his mental illness.

8. After the issuance of the charge-sheet which was received by the petitioner on 29.02.1996, a request was made by the petitioner that fifteen days' time may be granted for filing the reply but petitioner had neither filed any reply nor thereafter participated in the enquiry despite at least eight dates were fixed and informed to the petitioner, which was received by either by the son of the

petitioner or wife of the petitioner. Once the son of the petitioner had appeared before the Enquiry Officer to inform that his father is suffering from mental disease and he is under treatment at Gorakhpur, so the Enquiry Officer had granted him time by fixing date to provide the medical documents of the petitioner. On date next date fixed, neither the son of the petitioner had appeared nor any medical documents pertaining to the treatment of the petitioner was provided to the Enquiry Officer. The wife of the petitioner once sent the Telegram for postponing the date of enquiry and on her telegram the date was fixed and informed, thereafter no one had appeared before the Enquiry Officer.

9. The Enquiry Officer after conducting a detailed enquiry recorded the statements of the witnesses of the department came to the conclusion that the absence of the petitioner is wilful. The judgment in the case of **Krushnakant B. Parmar (supra)** relied by learned counsel for the petitioner is not applicable on the facts of the present case as in that case, the Enquiry Officer had not given any finding that whether the absence was wilful or in compelling circumstances, whereas in the present case, the Enquiry Officer had given a finding that the charge of wilful absence is proved against the petitioner as per the discussions made above in the enquiry.

10. In the facts and circumstances of the case discussed hereinabove, no interference is called for in the present case hence, the present writ petition is dismissed.

**Order Date :- 15.2.2024**

Nitesh