

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

216

CWP-4718-2020
RESERVED ON:15.09.2025
PRONOUNCED ON: 23.10.2025

PAWAN KUMAR

...PETITIONER

VERSUS

UNION OF INDIA AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Aryan Singh, Advocate,
for the petitioner

Mr. Saigeeta Srivastava, Sr. Panel counsel
for the respondent/Union of India

SANDEEP MOUDGIL, J

1. Prayer

The petitioner has approached this Court under Article 226 of the Constitution of India seeking quashing of the show-cause notice dated 10.08.2017(Annexure P-6), order dated 19.08.2017(Annexure P-7) whereby permanency of services of the petitioner has been cancelled and termination order dated 10.10.2017(Annexure P-9) passed by the respondents, whereby his services as Constable (General Duty) in the Indo-Tibetan Border Police Force (ITBP) were dispensed with during the course of training.

He further seeks issuance of directions to the respondent for re-instatement of petitioner in service with immediate effect and all consequential reliefs and to allow the petitioner to complete his basic training upon reinstatement.

2. Brief Facts

The petitioner was appointed as Constable General Duty (Recruit) in the Indo-Tibetan Border Police Force on 02.02.2012 and was assigned Force No. 120280999 under the 28th Battalion, Jatusana, Rewari. He was required to undergo a 27-week basic training at 44th Battalion, Belgaum, Karnataka. During training, he claims to have suffered a single seizure episode, for which he received treatment at KLE Hospital, Belgaum, and was certified fit to continue training with medication. Despite medical certification, the petitioner was relegated from basic training on 29.10.2012 due to prolonged absence on medical grounds. He continued treatment as an outpatient over the next few years and was eventually restored to SHAPE-I medical category in March 2017.

In 2017, the petitioner was again sent for basic training at BTC Bhanu, Panchkula. On 19.06.2017, he left the training center without prior permission, citing personal and family exigencies, and did not report back despite repeated official communications. On 10.08.2017, the petitioner was issued a show-cause notice for unsatisfactory progress in training. Subsequently, the confirmation of his service, made in 2015, was cancelled on 19.08.2017, and his service was terminated on 10.10.2017 under Rule 17(iii) and Rule 21 of the Indo-Tibetan Border Police Rules, 1994 (inshort ITBP Rules, 1994). Aggrieved, the petitioner has approached this Court seeking quashing of the show-cause notice and termination order, claiming that the relegation and termination were illegal, arbitrary, and in violation of his fundamental rights under Articles 14 and 21 of the Constitution.

**3. Contentions
On behalf of Petitioner**

Learned counsel for the petitioner has contended that the

termination of his service and cancellation of his confirmation were wholly

illegal, arbitrary, and in violation of the ITBP Rules, 1994. It is submitted that the initial relegation from basic training in 2012 was wrongful, as it was made despite the petitioner being medically fit and certified by competent doctors to continue training with medication.

The counsel argued that the petitioner was never afforded a proper opportunity to complete his basic training, and the subsequent proceedings, including the show-cause notice dated 10.08.2017 and termination order dated 10.10.2017, were issued in a manner de hors the rules and without adherence to due procedure. It is emphasized that personal hardships, including family exigencies, contributed to his temporary absence from the training center in 2017, and that the authorities failed to take such circumstances into consideration.

He further submitted while invoking Articles 14 and 21 of the Constitution, that his right to equality, fair treatment, and livelihood were violated. Consequently, praying for quashing of the impugned orders and reinstatement with continuity of service and all attendant benefits.

On behalf of Respondents

Learned Counsel for the respondents has contended that the termination of the petitioner's service was in accordance with the provisions of the ITBP Rules, 1994. It is submitted that the petitioner was initially relegated from basic training due to prolonged absence under SOP No. 09/2007, which allows for relegation when a trainee remains absent for a significant portion of training.

It is further submitted that after being restored to SHAPE-I medical category, the petitioner again absented himself from the Basic Training Centre at Bhanu without prior permission or leave, placing a self-written letter indicating his unwillingness to continue training. Multiple communications

were issued to the petitioner to report back, including involvement of the local police, but he failed to comply.

It is emphasized that the petitioner was given two fair chances to complete basic training as per ITBP Rules 1994, and the termination was carried out following due process, on the recommendation of the competent authority, to maintain discipline and prevent misuse of government resources. Further the appeals filed by the petitioner were dismissed as time-barred, and no violation of Article 14 or Article 21 of the Constitution can be made out, as the action was taken strictly in accordance with law and regulations.

Heard counsel for both parties.

4. Analysis

Having carefully examined the material placed on record, and submissions advanced by counsel for both parties this court is of the opinion that at the outset, it is pertinent to note that the petitioner was appointed as a Constable (General Duty) in the Indo-Tibetan Border Police Force (inshort as ITBP) and was required to undergo basic training. The initial relegation of the petitioner from basic training in 2012 was due to prolonged absence on medical grounds as the petitioner suffered an epilepsy attack. The petitioner did not challenge this relegation at the relevant time. Instead, he accepted the same and, upon restoration to SHAPE-I category in 2017, voluntarily reported to the Basic Training Centre again. The petitioner's current challenge to the 2012 relegation, raised after nearly four years, is clearly an afterthought as any dispute to the relegation seem to have already been waived off by the petitioner.

This court is sanguine of the settled principle of law that a party cannot sit on its rights and belatedly raise objections after having acquiesced

to earlier decisions and acted upon them and any kind of delay and acquiescence in a prior decision disentitle a party from challenging it later. The petitioner accepted the consequences of that decision and subsequently rejoined for a second round of basic training. Having voluntarily participated in the second round, after being relegated on medical grounds in the first basic training, the petitioner cannot now turn around and dispute the validity of the earlier relegation.

This court is of the considerate opinion that the doctrine of estoppel and waiver comes to play to prevent such contradictory conduct, as reiterated by the apex court in “***State of Punjab v. Davinder Pal Singh Bhullar, (2011) 14 SCC 770***” wherein it was held as:

“23. Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them.

*24. This Court in Municipal Corporation of **Greater Bombay v. Dr. Hakimwadi Tenants' Association & Ors., AIR 1988 Supreme Court 233** considered the issue of waiver/acquiescence by the non-parties to the proceedings and held:*

"In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case.....

There is no question of estoppel, waiver or abandonment. There is no specific plea of waiver, acquiescence or estoppel, much less a plea of abandonment of right. That apart, the question of waiver really does not arise in the case. Admittedly, the tenants were not parties to the earlier proceedings. There is, therefore, no question of waiver of rights, by Respondents 4-7 nor would this disentitle the tenants from maintaining the writ petition.”

Such delay in raising objections, coupled with inconsistent conduct, significantly undermines the credibility of the petitioner’s claim and does not

inspire confidence in his case. Therefore the first limb of the challenge to the order passed by the disciplinary authority fails and is accordingly rejected.

Coming to another question that falls for determination in the present writ petition before this court is that whether the punishment awarded to the petitioner is so grossly disproportionate as to constitute a perversity or irrationality of a kind that no prudent person would accept, warranting interference of this court under the jurisdiction invoked under Article 226 of the Constitution of India.

The counsel appearing for the petitioner has urged that the petitioner had sought to explain his unauthorized absence from the Basic Training Centre in June 2017 by citing personal and family exigencies, specifically the sudden deterioration in his father's health but to substantiate this claim he has failed to place on record a single medical certificate, hospital record, or affidavit from a treating doctor to corroborate the alleged medical emergency. This explanation advanced by counsel for the petitioner when tested on the anvil of legal scrutiny, fails entirely for want of proof. There was no evidence that there was any serious complication arising from the illness of his father resulting in any threat to his life or calling for hospitalization which could possibly justify his leaving the station and his unauthorised absence. The burden to justify unauthorised absence lies squarely on the shoulders of the employee, and in this case, the petitioner has failed to discharge that burden.

Moreover, employment in a disciplined and prestigious organisation such as the ITBP Force is a position of responsibility and trust but it must be earned and consistently maintained through integrity, discipline, and adherence to the prescribed code of conduct. By their very nature the forces are structured institutions where discipline is not merely a procedural requirement but the cornerstone of institutional credibility.

In the case at hand, the petitioner's conduct during his training which included unauthorized absence without sanctioned leave and a general pattern of non-seriousness and indiscipline demonstrates a clear deviation from the standards expected of a recruit. Such behaviour cannot be overlooked or condoned, especially during the training phase where foundational discipline is tested. It reflects not only a disregard for rules but also an inability or unwillingness to conform to the culture of military discipline that such a force demands. The authorities can and are indeed expected to ensure discipline by taking suitable measures to prevent recurrence of such instances where officers leave station on no more than a mere pretext.

Furthermore, once the petitioner joined the forces as a constable, he was subject to the ITBP Rules, 1994, **Rule 17(iii)** of the same empowers the competent authority to discharge a recruit during training if his conduct is found unsatisfactory or if he fails to meet the standards of training. The same has been reproduced as below:

“17. Termination of service.-

Authorities specified in the headings of columns 3 to 6 of the Table given below shall be competent to dismiss, remove, discharge, retire or release a member of the Force specified in the columns, on the grounds stated in the corresponding entries in column 2, in accordance with the procedure laid down in this chapter, Any power conferred by this rule or any provision of this chapter on any of the aforesaid authorities may also be exercise by any other authority superior to it. Provided that the provisions of this chapter shall not apply to the persons on deputation with the Force.

(i) Misconduct

(ii) Unsuitability

(iii) Unsatisfactory progress in training.

(iv) Furnishing False/Wrong information at the time of appointment.

(v) Physical unfitness

(vi) On own request”

These rules are designed not to be punitive but regulatory in nature, ensuring that only the most suitable and disciplined individuals are retained in service. The petitioner's continued disregard for the chain of command, failure to report after unauthorized absence, and inability to furnish any cogent justification for the same, gave the respondents ample legal ground to award

termination from services under these rules. The action taken by the disciplinary authority was neither arbitrary nor disproportionate. Rather, it was necessary to uphold the integrity of the force and avoid the misuse of public resources on an individual who has repeatedly demonstrated unsuitability for service.

Moreover, since the petitioner was unable to satisfy the disciplinary authority about the genuineness of the cause leading to his unauthorized absence, he could not ask for a lenient view being taken in the matter of punishment to be imposed upon him. The punishment imposed cannot be said to be so outrageously disproportionate as to shock the conscience of this court or constitute a perversity or irrationality of a kind that would call for interference. It is only in extreme cases which on their own face show perversity or irrationality that the court can, in exercise of its power of judicial review, interfere. The law on the subject is aptly set out by the Apex Court in the case of “**Union of India v. Major A. Hussain, reported in 1998(1) SCC 537**”, it was held as follows :

"23. Though court-martial proceedings are subject to judicial review by the High Court under Article 226 of the Constitution, the court-martial is not subject to the superintendence of the High Court under Article 227 of the Constitution. If a Court-martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any Court must stay its hands. Proceedings of a court-martial are not to be compared with the proceedings in a criminal Court under the Code of Criminal Procedure where adjournments have become a matter of routine though that is also against the provisions of law. It has been rightly said that court-martial remains to a significant degree, a specialised part of overall mechanism by which the military discipline is preserved. It is for the special need for the armed forces that a person subject to Army Act is tried by court-martial for an act which is an offence under the Act. Court-martial discharges judicial function and to a great extent is a court where provisions of Evidence Act are applicable. A court-martial has also the same responsibility as any court to protect the rights of the accused charged before it and to follow the procedural safeguards. if one looks at the provisions of law relating to court-martial in the Army Act, the

Army Rules, Defence Service Regulations and other Administrative Instructions of the Army, it is manifestly clear that the procedure prescribed is perhaps equally fair if not more than a criminal trial provides to the accused. When there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the court-martial unless it is shown that the accused has been prejudiced or a mandatory provision has been violated. One may usefully refer to Rule 149 quoted above. The High Court should not allow the challenge to the validity of conviction and sentence of the accused when evidence is sufficient, court-martial has jurisdiction over the subject-matter and has followed the prescribed procedure and is within its powers to award punishment."

In view of the above discussion, this court is of the opinion that the law cannot falter as compassion does not mean condonation of indiscipline, especially when it means entrusting responsibility to the hands of the undisciplined. The Constitution is not blind to human frailty, but nor can it be a shelter for conduct that corrodes institutional discipline. The punishment awarded by the disciplinary authority of termination of service, considering the conduct of the petitioner, is not irrational or perverse so as to justify the interference of this Court in the present civil writ petition.

4. Conclusion

In the considered opinion of this Court, this petition is devoid of merit and is hereby dismissed.

Pending application(s), if any shall be disposed off, accordingly.

23.10.2025
Meenu

(SANDEEP MOUDGIL)
JUDGE

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