

2025:PHHC:119467



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CWP-26765-2018
DECIDED ON:26.08.2025

SUNIL MOHITE

...PETITIONER

VERSUS

UNION OF INDIA AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Manish Prabhakar, Advocate
for the petitioner

Ms. Alisha Arora, Advocate
for the respondents.

SANDEEP MOUDGIL, J

1. Prayer

This civil writ petition under Article 226/227 of Constitution of India is filed for issuance of the Writ in the nature of *Certiorari* for quashing the order dated 19.06.2014 vide No. P- VIII 8/2014 – EC- II whereby the order for removal from service is passed against the petitioner by respondent no. 5, for quashing of order dated 26.08.2014 passed by Respondent no. 4 whereby his appeal was dismissed, order dated 18.12.2014 passed by respondent no. 3 whereby his revision petition is dismissed and lastly order dated 01.05.2015 passed by respondent no. 2 whereby mercy petition was dismissed against the punishment of removal from service.

2. Brief Facts

The petitioner was enrolled in the Central Reserve Police Force on 13.02.1999 and served the nation with utmost devotion and was also issued a

Commendation Certificate (Annexure P-5) in 2001. In 2014, the petitioner while posted in Jalandhar was detailed for Guard Duty and on 02.02.2014, he was assigned duty from 5pm to 7pm and thereafter was supposed to report on duty at 11pm for another 2 hours, but it is alleged that he did not report for duty at 11pm and was later found sleeping in his barracks. Upon being woken by the Guard Commander and asked to join duty, he allegedly refused. A charge-sheet was issued on 03.03.2014 under Section 11(1) of the Central Reserve Police Force Act, 1949 (for brevity CRPF Act), leading to a departmental enquiry. The Enquiry Officer held the charges proved, and the Disciplinary Authority, vide order dated 19.06.2014, ordered his removal from service. His appeal vide order dated 26.08.2014, revision vide order dated 18.12.2014, and mercy petition vide letter dated 01.05.2015 were successively dismissed. A legal notice served in 2017 requesting re-instatement also failed as rejected vide letter dated 06.09.2017. Aggrieved by the above, the petitioner approached the High Court under Article 226/227 of the Constitution, challenging the orders (Annexure P-1 to P-4) and seeking reinstatement.

3. **Contentions**

On behalf of Petitioner

Learned counsel for the petitioner has submitted that the impugned removal order is wholly disproportionate to the alleged lapse. It is averred that at best, the charge falls within Section 11 of the CRPF Act, which contemplates only minor penalties, yet the petitioner has been dismissed from service, which amounts to a major punishment reserved for grave offences under Sections 9 and 10 of the CRPF Act. It is further submitted that the petitioner was not absent from the station but he was in the barrack and had already performed his first guard duty that evening, owing to mental stress

caused by the serious illness of his mother, he inadvertently overslept which cannot be equated with wilful disobedience or desertion. The enquiry was biased as witnesses were all subordinates of the department, and even they did not support the allegation of intoxication. The same incident has been artificially split into two charges in attempt to cause undue prejudice and consequential loss to the petitioner.

On behalf of Respondents

Learned Counsel for the respondents contend that the petitioner was detailed for Magazine Guard Duty, which is a highly sensitive and responsible post involving custody of arms, ammunition, and explosives, and any lapse in such duty cannot be treated lightly. It is asserted that the petitioner wilfully absented himself from duty between 11 PM and 1 AM on the intervening night of 02.02.2014 and, even when directed by the Guard Commander to join, he refused to comply. Such conduct squarely amounts to grave misconduct and insubordination falls within the ambit of Section 11(1) the CRPF Act, 1949, which prescribes punishment for disobedience of lawful command, authorizing disciplinary action for neglect of duty and other acts of indiscipline. It is also urged that in matters concerning disciplined forces, strict standards of discipline are required, and even a minor lapse in sensitive duty cannot be condoned.

The respondents further submit that full compliance with Article 311(2) of the Constitution and the principles of natural justice was ensured as the petitioner was served with a detailed charge-sheet, afforded an opportunity to be heard and cross-examine departmental witnesses, but he failed to establish any defence. The disciplinary authority, appellate authority, revisional authority, and even the competent authority deciding the mercy petition have concurrently held the charges proved after following due

procedure and principles of natural justice, and such concurrent findings of fact cannot be interfered with, in the limited writ jurisdiction under Articles 226/227 of the Constitution.

The respondents further contend that the past record of misconduct of the petitioner and was legitimately taken into account while determining the quantum of punishment. However, the petitioner's commendation in the past does not absolve him from present acts of insubordination and dereliction of duty of great responsibility. Therefore, the punishment of removal from service was a necessary measure to maintain discipline and integrity in the force. Thus, the present writ petition lacks merit and deserves dismissal.

4. Analysis

Heard counsels for both parties at length.

Discipline is the backbone of any armed or paramilitary force and a lapse in the performance of sensitive duties like Magazine Guard Duty cannot be brushed aside. Yet, the law has never understood discipline to be synonymous with harshness. Service law, like all facets of constitutional governance, must draw sustenance from the rule of law and from the principle that punishment must fit not merely the offence but also the offender.

The material placed on record discloses that the present petitioner, a constable of long standing, failed to report for duty and, when roused allegedly, did not immediately respond to his superior's command. Though the omission is blameworthy but to visit him with the civil death of removal from service, a sentence that extinguishes livelihood, erases a career of nearly fifteen years, and disregards a past of acknowledged bravery, is in our opinion, a punishment too disproportionate and non befitting the act of misconduct of the petitioner.

This court believes that the power to punish is coupled with a duty to proportion. The petitioner was charged under Section 11(1) of the CRPF Act, 1949 which places the misconduct attributed to him in the category of minor misconduct, amenable to censure or other lesser penalties as listed in the statutory provision. Worse still, the authorities split a single episode into two separate charges i.e. one of absence from duty and another of disobedience of orders although both arose from the same factual transaction. This amounts to an impermissible duplication of charges, which unfairly magnifies the misconduct. Guidance may be derived from the supreme court judgement of “*Ranjit Thakur v. Union of India (1987) 4 SCC 611*” wherein it was held as follows:

9. Re: contention (d): Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be A vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court- Martial, if the decision of the Court even as to sentence is an outrageous defiance of B logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service, [1984] 3 Weekly Law Reports 1174 (HL) Lord Diplock said:

"... Judicial Review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would

call 'illegality'. the second irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community In BhagatRam v. State of Himachal Pradesh, A.I.R. 1983 SC 454 this Court held:"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

The point to note, and emphasise is that all powers have legal limits. In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review

This Court cannot overlook the fact that judiciary has repeatedly held that punishment must be commensurate with the gravity of misconduct, and dismissal for a single act of sleeping on or neglecting duty is excessive and violates principles of fairness and proportionality. In the present case, though it is true that the petitioner had earlier been penalised on certain occasions, those penalties had already been suffered and could not be resurrected to aggravate the present punishment, and no material placed on record suggests that the petitioner was given opportunity to rebut the same. Thus, as made clear by the Supreme Court in “**State of Mysore v. K. Manche Gowda, AIR 1964 SC 506**” wherein it was held as follows :

7. Under Article 311(2) of the Constitution. as interpreted by this Court, a Government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is

to be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of the grounds on which it is proposed to take such action : see the decision of this Court in the State of Assam v. Bimal Kumar Pandit, Civil Appeal No. 832 of 1962 Decided on 12-2-1963. If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment: he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a Government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the Government servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him.

Therefore, his earlier lapses cannot justify imposing excessive penalty for a single act of misconduct, particularly when his record also shows commendation for gallant service.

Justice in the constitutional sense cannot blind to context. The petitioner was, at the relevant time, under the strain of his mother's grave illness, a fact supported by medical records. He was not absent from station, nor was the Magazine Station left unguarded, no allegation of intoxication has been established against the petitioner. Against this factual backdrop, the punishment of dismissal imposed upon the petitioner is shockingly disproportionate to the proved misconduct.

This Court is thus persuaded to hold that while the misconduct stands proved, the quantum of penalty is excessive, unreasonable, and unsustainable in law. The impugned orders of dismissal, appeal, revision and

mercy rejection cannot, therefore, survive judicial scrutiny and are hereby quashed.

5. Conclusion

Accordingly, the present writ petition is **allowed**.

26.08.2025
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(SANDEEP MOUDGIL)
JUDGE

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