

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

209

CM-4706-CWP-2026 in/and

CWP-5895-2010

DATE OF DECISION: 08.05.2026

ITWARI

... Petitioner

Versus

UNION OF INDIA AND OTHERS

... Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Vikas Singh, Senior Advocate with
Ms. Anamika Sheoran, Advocate for the petitioner.

Mr. Piyush Khanna, Advocate for respondent No.1.

HARSIMRAN SINGH SETHI, J. (ORAL)**CM-4706-CWP-2026**

The present application has been filed for hearing the main writ petition which is pending in this Court for the last more than 15 years.

Notice of the application be given to counsel opposite.

Mr. Piyush Khanna, Advocate accepts notice on behalf of respondent No.1 and raises no objection.

In view of the above, the application is allowed and on the joint request, the main case is taken up for consideration.

Main case

1. In the present petition, the challenge is to the orders passed by the authorities dated 28.07.2000 (Annexure P-5) by which, the petitioner was



dismissed from service on account of unauthorized absence and to the order dated 27.10.2003 (Annexure P-9) passed in appeal preferred against order dated 28.07.2000 (Annexure P-5) which was dismissed, as well as to the order dated 03.12.2004 (Annexure P-11) rejecting the revision petition. Further, challenge is to the order dated 26.11.2008 (Annexure P-12) passed by the Central Administrative Tribunal Chandigarh Bench (for short – ‘the Tribunal’) by which the order passed by authority concerned, dismissing petitioner from service, has been upheld.

2. It may be noticed that in the present case, the petitioner was charge-sheeted on 26.06.1998 by the department as he remained absent from his duty without any authorization for a period of more than four and a half month. After chargesheeting the petitioner, disciplinary proceedings were initiated wherein the allegations alleged of unauthorized absence were proved and the competent authority passed an order on 28.07.2000 dismissing the petitioner from service.

3. The appeal preferred against said dismissal order as well as the revision petition filed against order of appeal was also dismissed which led to the filing of the original application by the petitioner before the Tribunal which also stood dismissed on 26.11.2008, leading to the filing of the present petition.

4. Learned Senior counsel for the petitioner argues that though, petitioner remained absent from duty but the same was due to the fact that wife of the petitioner was ill which factor has not been taken into consideration while holding the petitioner guilty of the allegations alleged against him so as to impose the punishment of dismissal from service. Learned Senior counsel for the petitioner further submits that even if it is assumed that the allegations alleged against petitioner are duly proved, but the punishment of dismissal imposed upon the petitioner is not proportionate to the charges alleged and proved and therefore, the punishment of dismissal is liable to be set aside and the said aspect has not



been appreciated by the Tribunal in the correct perspective.

5. Learned counsel appearing on behalf of the respondent No.1 on the other submits that once it is not disputed that there was an unauthorized absence from duty by the petitioner for a period of more than four and a half month and keeping in view said factum, the punishment of dismissal imposed upon petitioner is perfectly valid and legal. Learned counsel further submits that qua the argument raised that the punishment imposed is not proportionate to the allegations alleged and proved, it may be noticed that there were some other similar defaults on previous occasion at the hands of the petitioner where also he remained unauthorizedly absent from duty for a long period. Hence, the impugned order passed by the authorities imposing the punishment of dismissal upon petitioner and order passed by Tribunal upholding the same, in the facts and circumstances of the present case was perfectly valid and therefore, the same has rightly been upheld by the Tribunal, hence the present petition may kindly be dismissed.

6. We have heard learned counsel for the parties and have gone through the record with their able assistance.

7. It is a conceded fact that the petitioner remained unauthorizedly absent from service for a period of more than four a half months, that being so, taking action on such unauthorized absence from duty for within the jurisdiction of the respondents. The process for imposing the punishment by initiating disciplinary proceedings was followed and action has been taken after the charge was proved in the inquiry. The only argument raised to challenge such action taken is that the wife of the petitioner was suffering from depression which led to unauthorized absence from duty. It may be noticed that in case there was any valid ground not to be present for performing duties, the petitioner should have taken due leave for absence from the department, and after getting the same approved, he should have



taken care of his wife. Further, no cogent evidence have been brought on record to show as to whether the wife was actually unwell or not. Even the certificate depicting the same is not from a Government hospital but rather from a private hospital and surprisingly even, the date of illness and the rest period is identical qua the absence period of the petitioner which creates a doubt. Further in any circumstances, in order to avail the leave, the same has to be sanctioned by the competent authority.

8. Further, the action of dismissal from service taken against petitioner has been taken by the department after following due process of law hence, the Court will have a limited jurisdiction to entertain any such plea at the hands of the petitioner to challenge the action taken upon unauthorized absence from duty when such unauthorized absence is a conceded fact.

9. The argument raised by the learned counsel for the petitioner is that the punishment imposed is not commensurate to the charges alleged and proved. It may be noticed that the said issue has also been dealt with by the Supreme Court of India in ***Civil Appeal No.219 of 2023 titled as ‘ Union of India and others Vs. Constable Sunil Kumar’*** wherein it has already been held that even where the punishment imposed is disproportionate to the allegations alleged and proved, the Court will not interfere unless and until the punishment is shockingly disproportionate to the charges alleged and proved. The relevant paragraphs of the judgment are reproduced hereunder:-

“6.2 Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In the case of Surinder Kumar (supra) while considering the power of judicial



review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in the case of [Union of India Vs. R.K. Sharma](#); (2001) 9 SCC 592 that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under [Article 226](#) or 227 or under [Article 32](#) of the Constitution.

6.3 Applying the law [laid down by](#) this Court in the aforesaid decision(s) to the facts of the case on hand, it cannot be said that the punishment of dismissal can be said to be strikingly disproportionate warranting the interference of the High Court in exercise of powers under [Article 226](#) of the Constitution of India. In the facts and circumstances of the case and on the charges and misconduct of indiscipline and insubordination proved, the CRPF being a disciplined force, the order of penalty of dismissal was justified and it cannot be said to be disproportionate and/or strikingly disproportionate to the gravity of the wrong. Under the circumstances also, the Division Bench of the High Court has committed a very serious error in interfering with the order of penalty of dismissal imposed and ordering reinstatement of the respondent.”

10. It is a settled principle of law that unauthorized absence from duty is a major misconduct and in the present case, said misconduct at hands of petitioner continued for a period of more than four and a half month not only this, the conduct of the petitioner was such that on a previous occasions also, he has remained absent from duty without any valid justification and such unauthorized absence did not result into dismissal, rather opportunity was given to the petitioner to mend his ways, but still the conduct of the petitioner remained the same. Hence, keeping in view the totality of the circumstances, upon a major misconduct of



absence from duty, the punishment of dismissal cannot be treated as shockingly disproportionate to the charges alleged and proved so as to warrant any interference by this Court.

- 11. No other arguments raised.
- 12. Keeping in view the above, no ground is made for any interference by this Court.
- 13. The present petition stands dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

08.05.2026
sapna adhikari

(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No