2026:PHHC:045982

213

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8001-2018(O&M)
DECIDED ON: 26.02.2026

MUKESH KUMAR

.....PETITIONER(S)

VERSUS

CRPF THROUGH THE DIRECTOR GENERAL, CRPF AND ORS.

...RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Dr. S.K. Redhu, Advocate for the petitioner(s)

Mr. Sandeep Bhatia, Advocate
Sr. Panel Counsel for the respondent-UOI.

***

SANDEEP MOUDGIL, J (ORAL)

Prayer

Civil Writ Petition under Articles 226/227 Of the Constitution of India for the issuance of a writ in the nature of Certiorari for quashing the order dated 30.11.2013 (Annexure P-1) whereby the departmental inquiry is being initiated against the petitioner and inquiry report dated 23.1.2014 (Annexure P-2), order dated 6.3.2014 (Annexure P-3) whereby the extreme punishment i.e. removal from service is being imposed upon the petitioner and order dated 22.7.2014 (Annexure P-5) whereby the statutory appeal of petitioner has been rejected and order dated 31.1.2015 (Annexure P-4) and order dated 28.6.2016 (Annexure P-6) whereby the revision of petitioner has been rejected.

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Facts

The petitioner was appointed as Constable (GD) in CRPF on 10.01.2006 and had rendered satisfactory service, including active participation in operations in COBRA Unit. The petitioner was granted 15 days' casual leave from 04.02.2013 to 22.02.2013, but he could not rejoin duty on the due date, allegedly due to compelling personal and medical circumstances. Subsequently, a charge-sheet dated 30.11.2013 was issued alleging unauthorized absence for 184 days (23.02.2013 to 25.08.2013) along with disobedience of orders. A departmental enquiry was conducted and vide order dated 23.01.2014, the charges were held proved. Thereafter, the disciplinary authority imposed the penalty of removal from service vide order dated 06.03.2014. The petitioner preferred a statutory appeal on 23.04.2014, which was rejected on 22.07.2014, followed by revision petitions rejected on 31.01.2015 and finally on 28.06.2016. Aggrieved, the present writ petition has been filed.

Contentions on behalf of the Petitioner

The counsel for the petitioner contends that the absence of the petitioner from 23.02.2013 to 25.08.2013 (184 days) was neither intentional nor willful but was occasioned by bonafide and unavoidable circumstances including illness of his mother and serious family disturbances causing mental stress, which were duly explained before the authorities during the departmental proceedings. It is submitted that during his service, he not only maintained a clean and satisfactory record but also actively participated in operations while posted in the COBRA Unit, thereby discharging his duties with courage and commitment in service of the country. He submits that although a charge-sheet dated 30.11.2013 was issued and a departmental enquiry was conducted culminating in the enquiry report dated 23.01.2014, the Enquiry Officer failed to appreciate the explanation

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furnished by the petitioner in its correct perspective and erroneously treated his qualified admission as an unconditional admission of guilt.

It is further submitted that the disciplinary authority, without properly considering the mitigating circumstances and past service record, imposed the extreme penalty of removal from service vide order dated 06.03.2014, which is arbitrary and harsh. It is also contended that the statutory appeal dated 23.04.2014 was rejected on 22.07.2014, and thereafter the revision petitions were also dismissed vide orders dated 31.01.2015 and 28.06.2016, without any independent application of mind or consideration of the plea that the punishment was grossly disproportionate to the alleged misconduct.

It is thus vehemently argued that the impugned orders are liable to be set aside as the authorities have failed to consider that the petitioner's absence was not deliberate, that no grave misconduct involving moral turpitude is alleged, and that the punishment of removal from service is shockingly disproportionate, thereby violating settled principles of law governing proportionality in disciplinary matters.

Contentions on behalf of the Respondents

The respondents, while opposing the present writ petition, contend that the petitioner, being a member of a disciplined force, was under a strict obligation to maintain absolute discipline and adhere to lawful orders. It is submitted that the petitioner remained unauthorizedly absent from duty for a prolonged period of 184 days w.e.f. 23.02.2013 to 25.08.2013 without obtaining prior sanction from the competent authority, which constitutes a grave act of misconduct under the provisions of the CRPF Act and Rules.

It is further contended that despite repeated communications and directions issued to the petitioner vide letters dated 25.02.2013, 15.03.2013 and

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01.04.2013 calling upon him to report back for duty, the petitioner failed to comply with such lawful orders, thereby exhibiting gross indiscipline and disregard for the chain of command. The respondents submit that such conduct is highly prejudicial to the maintenance of discipline in a paramilitary force like the CRPF, where strict adherence to duty is of paramount importance.

The respondents further submit that a regular departmental enquiry was conducted in accordance with the prescribed procedure under the CRPF Rules, 1955, wherein the petitioner was afforded full opportunity to defend himself. During the course of the enquiry, the petitioner admitted the charges levelled against him, and the Enquiry Officer, after due consideration of the material on record, returned a finding of guilt vide report dated 23.01.2014.

It is also contended that the petitioner is a habitual offender who had previously indulged in acts of unauthorized absence and had been awarded minor punishments earlier as well, thereby demonstrating a continued pattern of indiscipline. In view of the gravity of the misconduct and his past record, the disciplinary authority rightly imposed the penalty of removal from service vide order dated 06.03.2014, which cannot be said to be disproportionate in the facts and circumstances of the case.

The respondents further contend that the statutory appeal and revision petitions preferred by the petitioner were duly considered and rejected by the competent authorities vide orders dated 22.07.2014, 31.01.2015 and 28.06.2016, respectively, after proper application of mind. It is thus argued that there is no illegality, procedural irregularity or violation of principles of natural justice in the impugned orders warranting interference by this Hon’ble Court under Article 226 of the Constitution of India.

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Analysis

Having heard the parties and perused the record, this Court is of the considered view that the present writ petition deserves to be allowed.

At the outset, it is not in dispute that the petitioner had proceeded on sanctioned leave from 04.02.2013 to 22.02.2013 and thereafter remained absent w.e.f. 23.02.2013, which period has been treated by the respondents as unauthorized absence for 184 days up to 25.08.2013. However, the material on record indicates that the petitioner had eventually returned and sought to resume duty, which materially affects the nature of the alleged misconduct.

A careful perusal of the enquiry proceedings culminating in the report dated 23.01.2014 would show that the material evidence on record has not been properly appreciated by the disciplinary authority. This Court finds from Annexure P-12 (statement dated 11.01.2014) that one of the prosecution witnesses has clearly stated that the petitioner reported back to the Unit Headquarters on 26.08.2013 at 1700 hours on his own. The witness further goes on to state that since the petitioner had so reported voluntarily, the W.O.A. issued against him stood cancelled. The statement also records that although initially proceedings were initiated treating the petitioner as absent and even a Court of Inquiry was conducted, however, once he reported back, he was taken on record, processed further and even sent to another location, and the delay in reporting was merely regularized as leave without pay.

This Court is of the considered view that this piece of evidence goes to the root of the matter. Once the petitioner had reported back on his own and the W.O.A. stood cancelled, the very basis of alleging deliberate defiance or branding him as a deserter stands substantially diluted. The respondents themselves having accepted the petitioner back into the fold and having dealt with him

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administratively thereafter, cannot now be permitted to treat the same conduct as one warranting the extreme penalty of removal from service. The failure of the disciplinary authority to notice and give due weight to this crucial statement has vitiated the impugned action. The statement reads as under:

> *"Since no information was received from Mukesh Kumar vide Memo No WII213E91 010413 OC E91 requested The Chief Judicial dated Magistrate cum Commandant 91 Bn to issue WOA was issued against him He was neither reported over self nor was arrest made, so a COI was conducted and after that individual was declared as deserter from the force. On 26.08.13 Adjt91 Bn intimated that No 065111177 Ct Gd Mukesh Kumar has reported at Unit Hqr on 26.08.13 at 1700 hrs .since he has reported at unit hqr at his own, his own WOA was cancelled.Further vide Sig No D III 1l3Adjt91 intimated dated 11.09.13 that Ct Gd Mukesh Kumar is sent to E91 DocCTC We Mkd On 110913 AN but he reported his arrival only on 14.09.13 at 1830 Hrs so the extra journey time availed by the individual was regularized as LHP with No Leave Salary That is all I have to say in this regard.*"

Further, though the petitioner was declared a deserter vide order dated 07.07.2013, the record itself reflects that he had returned in September, 2013 with the intention to join duty and was thereafter given posting at Lucknow, which clearly shows that the respondents themselves did not treat the petitioner as one who had permanently abandoned service. Thus, the very foundation of branding the petitioner as a deserter stands eroded.

It is also evident that the petitioner had admitted the factum of absence during the enquiry, but such admission was not unconditional; rather, it was accompanied by an explanation of compelling circumstances including illness in the family and mental distress. The Enquiry Officer failed to consider these mitigating factors and proceeded mechanically, resulting in the imposition of the extreme penalty of removal from service vide order dated 06.03.2014, which was subsequently affirmed by the appellate and revisional authorities vide orders dated 22.07.2014, 31.01.2015 and 28.06.2016.

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This Court cannot lose sight of the fact that the petitioner had joined service on 10.01.2006 and had served the nation in a disciplined force like CRPF with dedication, including participation in active operations. The absence in question, though irregular, arose out of personal and family difficulties and cannot be equated with willful abandonment of duty or gross indiscipline of the highest order.

At this stage, it would be apposite to refer to the settled principle of law that punishment in disciplinary matters must be proportionate to the misconduct proved. The Supreme Court in '***Ranjit Thakur v. Union of India (1987) 4 SCC 611'*** has held that the doctrine of proportionality is part of judicial review and that a punishment which is so disproportionate as to shock the conscience of the Court cannot be sustained. Relevant extract of the same reads as under :

> *"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 vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience of the Court."*

In '***Bhagat Ram v. State of Himachal Pradesh, AIR 1983 Supreme Court 454'*** 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'.*

Applying the aforesaid principles to the present case, this Court is of the view that the punishment imposed upon the petitioner is shockingly disproportionate. The petitioner's long service, absence of any grave misconduct involving moral turpitude, his eventual return to duty, and the mitigating personal circumstances clearly warrant a more lenient view.

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While this Court is conscious that discipline in paramilitary forces is of paramount importance, it is equally true that discipline cannot be enforced by imposing punishment which is unduly harsh and disproportionate to the lapse committed, especially when the lapse is not shown to be willful or contumacious.

This Court is also inclined to observe, on equitable considerations, that the petitioner, having served the nation for several years with sincerity, ought not to be deprived of his livelihood for a lapse arising out of human and personal difficulties. The approach of the authorities, in the facts of the present case, appears to be overly rigid and lacking in compassion, which is not in consonance with the principles of fairness and justice.

Findings

In light of the foregoing discussion and the settled judicial precedents, this Court is of the considered view that the penalty of removal from service imposed upon the petitioner is disproportionate to the nature of the alleged misconduct. Accordingly, the order dated 30.11.2013 (Annexure P-1) initiating the departmental inquiry, the inquiry report dated 23.01.2014 (Annexure P-2), the order dated 06.03.2014 (Annexure P-3) imposing the penalty of removal from service, the order dated 22.07.2014 (Annexure P-5) rejecting the statutory appeal, as well as the orders dated 31.01.2015 (Annexure P-4) and 28.06.2016 (Annexure P-6) dismissing the revision petition, are hereby quashed and set aside.

The writ petition is, accordingly, allowed in the above terms.

(SANDEEP MOUDGIL)
JUDGE

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v.vishal

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

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