

(2024) 03 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1988 Of 2004

Ashwani Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 27, 31
Central Civil Services (Leave) Rules, 1972 — Rule 25
Central Reserve Police Force Act, 1949 — Section 9(f)

Citation : (2024) 03 J&K CK 0033

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Surinder Kour, Ramandeep Kour, Vishal Sharma, Sumant Sudan, Eishan Dadchichi, Anishwar Chatterji Koul

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1. The petitioner challenged order bearing No. Estt/59932/DE/7th Bn/02(E)/8264-69-70, dated 01.04.2004 issued by respondent No. 5 by virtue of which punishment of reduction of rank from Nk/GD to L/Nk/GD for two years from the date of issue of the said order, has been passed against him. The petitioner has also challenged memorandum dated 30.06.2004, whereby his appeal against the aforesaid order has been rejected.

2. Briefly stated, the case of the petitioner is that he was appointed as constable with Sashastra Seema Bal(SSB) on 03.01.1989. In the year, 1997, he was promoted as Lance Naik, whereafter, he was promoted as Naik in April, 2002. According to the petitioner, he had applied for 10 days leave in August, 2002, which was sanctioned in his favour vide order dated 03.08.2002. The leave was granted to the petitioner with effect from 04.08.2002 to 15.08.2002. It has been submitted by the petitioner that during the leave period, he fell ill and was admitted to Sub District Hospital, Akhnoor on 12.08.2002. On 16.08.2002, he

applied for extension of leave on medical ground, which was duly received by the respondents on 19.08.2002. According to the petitioner, he had duly intimated the relevant authorities about his illness.

3. It has been submitted that from Sub District Hospital, Akhnoor, he was referred to Government Medical College, Hospital, Jammu on 11.09.2002, where he remained under treatment with effect from 11.09.2002 to 23.11.2002. It is the further case of the petitioner that he was referred to Chest Diseases Hospital, Jammu on 23.11.2002, where he remained under treatment up to 12.03.2003. The petitioner is stated to have intimated the respondents from time to time about his illness. Ultimately, the petitioner joined his duty on 12.03.2003. The respondents are stated to have served a charge sheet upon the petitioner vide memorandum dated 09.01.2003 alleging therein that the petitioner has absented himself from duty without any intimation. It has also been alleged in the charge sheet that despite having been directed to join his duty, the petitioner disobeyed the said directions and as such, he has committed acts of gross disobedience/negligence thereby exposing him to charge in terms of Section 9(f) of the Central Reserve Police Force(CRPF), Act.

4. According to the petitioner, an enquiry was conducted by the respondents in his absence without following the procedure laid down in Rule 27 of the CRPF Rules. It has been submitted that despite the petitioner having produced entire medical record before the respondents, which goes on to show that he was under treatment during all this period, the Enquiry Officer without appreciating the position of law and without taking into account the material produced by the petitioner, submitted a report against the petitioner, thereby finding him guilty of the charge. It has also been contended that the respondents ignored the circumstances in which the petitioner was unable to join the duties and declared him as a deserter. On the basis of the findings of the enquiry report, the impugned punishment in reduction of rank from Nk/GD to L/Nk/GD for a period of two years has been imposed upon the petitioner in terms of order dated 01.04.2004. It has been submitted that the petitioner had filed an appeal before the appellate authority on 30.04.2004 but his appeal was also rejected in terms of communication dated 07.08.2004.

5. The respondents have contested the writ petition by filing a reply thereto. In their reply, the respondents have admitted that the petitioner was granted 10 days earned leave w.e.f. 05.08.2002 to 14.08.2002. According to the respondents, the petitioner was required to resume duty on 15.08.2002 in the evening roll call but he did not turn up, as a result of which, he was marked absent in the Daily Diary. It has been admitted by the respondents that the petitioner had informed Assistant Commandant,

"D" Coy at Srinagar vide his letter dated 16.08.2002 that due to his serious illness, he could not join duties on 15.08.2002 and that he is admitted in Sub District Hospital, Akhnoor with effect from 12.08.2002. The respondents have further admitted that the petitioner had applied for extension of leave till the

completion of his treatment and had even submitted a photocopy of OPD ticket dated 12.08.2002.

6. It has been submitted by the respondents that the petitioner had not supported his application for extension of leave on medical grounds with a medical certificate in Form-4 as required under the provisions laid down in Central Civil Services (CCS) (Leave) Rules, 1972, as a result of which, the petitioner was served with notices dated 26.08.2002, 29.08.2002 and 09.10.2002 asking him to resume his duties. He was also directed to report at 7th Bn. SSB, Jammu for further treatment at Unit M. I. Room under the supervision of CMO vide Memo No. 14127 dated 21.10.2002 but he did not respond to all these communications.

7. According to the respondents, even though the medical record produced by the petitioner in support of his absence from duty disclosed that he had remained under treatment in Sub District Hospital, Akhnoor, Government Medical College Hospital, Jammu and Chest Diseases Hospital, Jammu, yet he had not followed the procedure laid down in CCS (Leave) Rules, 1972 for extension of leave on medical grounds. It has been submitted that the period of unauthorized absence of the petitioner has been regularized after his resumption of duty. It has been contended by the respondents that wilful absence from duty after expiry of the leave period rendered the petitioner liable for disciplinary action as per Rule 25 of CCS(Leave) Rules, 1972.

8. It has been contended by the respondents that a departmental enquiry was ordered vide Memorandum dated 09.01.2003 and the Enquiry Officer conducted the enquiry against the petitioner strictly in accordance with the procedure prescribed under Rule 27 of the CRPF Rules, 1955. It has been submitted that the petitioner has also participated in the departmental enquiry and a copy of the enquiry report was also sent to the petitioner vide communication dated 19.01.2004. It has been contended that the contention of the petitioner that no enquiry was held and that he did not participate in the enquiry is without any substance. It has been further submitted that in terms of Rule 31 of CRPF Rules, 1955, the petitioner has been declared as a deserter as he did not return to resume his duty at his own free will. It has been submitted that illness of the petitioner has been viewed seriously by the respondents that is why he was imposed a punishment of reduction of rank only for a period of two years.

9. I have heard learned counsel for the parties and perused the record of the case including the record of the enquiry.

10. First of all, it has to be borne in mind that at the relevant time the service conditions of personnel of Sashastra Seem Bal were governed by the provisions of the CRPF Act and the Rules framed thereunder. Therefore, we will have to approach this case in light of the aforesaid Act and the Rules.

11. From the pleadings of the parties, it emerges that it is not in dispute that the petitioner had left his place of posting on 04.08.2002 under a valid and duly

sanctioned leave, which was to expire on 15.08.2002. It is also not in dispute that the petitioner did not resume his duties after the leave period but he did so only on 12.03.2003. According to the petitioner, he was taken ill, while he was on leave, as a result of which, he had to undergo treatment in different hospitals at Jammu. The case of the respondents on the other hand is that the petitioner did not apply for leave in the manner prescribed under CCS (Leave) Rules, 1972 nor did he annex the medical certificate in prescribed performa. It has also been contended by the respondents that the petitioner was served with a number of notices asking him to resume duty and to report for further treatment at Unit M. I. Room, 7th Bn. SSB, Jammu, but he did not respond to these notices. While the petitioner contends that no enquiry was conducted by the respondents and he did not participate in any enquiry, the respondents have submitted that enquiry in accordance with Rule 27 of the CRPF Rules was conducted and a charge sheet was served upon the petitioner, who also participated in the enquiry proceedings. To support their contentions, the respondents have produced the record relating to the enquiry.

12. The record produced by the respondents reveals that respondent No. 5 framed the following Articles of charge against the petitioner:

"ARTICLE-I

That No. 8959932 Nk/GD Ashwani Kumar of "D"Coy 7th Bn. SSB Jammu had proceeded on sanctioned 10 days Earned Leave w.e.f. 05.08.2002 to 14.08.2002 with permission to avail prefix on

04.08.2002 and suffix on 15.08.2002. He was due back to resume his duty on 15.08.2002 in the evening Roll Call. He instead of joining duty absented himself wilfully without any intimation and is absenting till date. He was marked absent vide D Coy Daily Diary No. 04 dated 15.08.2002. Thus he had committed an offence of gross negligence/remissness in the discharge of his duties in his capacity as a member of the disciplined Force under Section 9(f) of CRPF Act, 1949 and Rules 1955.

ARTICLE-II

That the said No. 8959932 Nk/GD Ashwani Kumar of "D"Coy on expiry of sanctioned Earned leave was due back to resume his duty in the evening Roll Call on 15.08.2002 at "D"Coy Hqrs. IS duty at Srinagar. But he failed to resume his duties and wilfully absented with w.e.f. 16.07.2002 without any intimation. Three duty resuming notices through this office/D Coy Regd./AD Memo No. PF/59932/GCJ/02(J)/-11597-99 dated 26.08.2022, D Coy Regd. Memo No. D-8/SSB/02/-1285-87 dated. 29.08.2002 and this office Regd/Memo No. PF/59932/7thBn/02(J)/-13762-65 dated 09.10.2002 were sent him at his Home Address. But he did not paid any heed to the directions of this office in violation of SSB Code and Conduct and has not resumed duties till date. Thus, he had committed an act of gross disobedience/neglect of duty/remissness and misconduct in the discharge of his duties as a member of the disciplined Force under

Section 9(f) of CRPF Act, 1949 and Rules-1955.”

13. In respect of these charges, enquiry has been conducted by the Enquiry Officer-Sh. C. C. Pathak, Assistant Commandant. The record of the enquiry reveals that the charge was read out to the petitioner and copy of the same was also furnished to him. It is also revealed that after the petitioner pleaded not guilty to the charges, the respondent-department has led its evidence. The documents relied upon by the parties have been given exhibit marks during the course of the enquiry and the petitioner has also been called upon to make his defence. The petitioner, during the course of enquiry, has produced the original medical record before the Enquiry Officer, to support of his contention that he was prevented from joining his duties on account of ailment. The defence of the petitioner has been duly noted by the Enquiry Officer in his report.

14. The Enquiry Officer after referring to the documents and the oral evidence produced by the respondents as also the statement of the petitioner and the documents produced by him, recorded the following assessment of evidence (findings) on Article of Charge-I:

“Analysis and assessment of Evidence (Findings)

After careful examination of documents, statements of PWs and Documents, statements of charged official following facts have emerged.

(i) No. 8959932 NK/GD Ashwani Kumar of “D”Coy 7th Bn SSB Jammu was sanctioned 10 days Earned Leave w.e.f. 05.08.2002 to 14.08.2002 with permission to avail prefix on

04.08.2002 and suffix on 15.08.2002. (statements of PW1, PW2, PW3 Exhibits S1, D7).

(ii) No. 8959932 NK/GD Ashwani Kumar preceded on (10+2) days sanctioned E/L on 03.08.2002(AN). (statements of PW1, PW2, PW3 Exhibits-S1, D7).

(iii) No. 8959932 NK/GD Ashwani Kumar was due back to resume his duty on 15.08.2002 in the evening Roll Call at

“D”Coy Har Hotel Embassy Srinagar.(statements of PW1, PW2 PW 3 Exhibit-D10).

(iv) No. 8959932 NK/GD Ashwani Kumar did not resume his duty after expiry of leave on 15.08.2002 in the evening Roll Call. (statements of PW1, PW3, Exhibits-S2).

(v) No. 8959932 NK/GD Ashwani Kumar over stayed from leave w.e.f. 16.08.2002 to 12.03.2007. (statements of PW1, PW3 Exhibit D7).

(vi) Application for extension of leave on medical ground sent by No. 8959932 NK/GD Ashwani Kumar on dated

16.08.2002 was not received in the “D” Coy Officer.

(Statement of PW3).

(vii) No. 8959932 NK/GD Ashwani Kumar send an application dated 07.10.2002 along with OPD Slip to Coy Commander

"D" Coy under which he stated that he is unable to join duty due to serious illness and requested for giving him pay and allowance of August, September, 2002. (Statement of PW3 Exhibits-D7, D9).

(viii) No. 8959932 NK/GD Ashwani Kumar send application dated 31.12.2002 to the Coy Commander "D" Coy stating that he is under treatment and will join duty after getting fitness from Doctor. (statement of PW3 Exhibit D7).

(ix) No. 8959932 NK/GD Ashwani Kumar joined duty at 7th Bn SSB Hqrs. Jammu on 13.03.2003 (FN). (statement of PW1, PW3 Exhibit D7)"

On the basis of aforesaid analysis, the Enquiry Officer recorded his findings regarding charge-I by concluding that the said charge is partly proved against the petitioner.

15. Regarding Article of Charge-II, the Enquiry Officer after referring to the evidence/material produced by the parties made the following assessment:

"After careful examination of statements and documents by PWs and charged official following facts have emerged-

(i) No. 8959932 NK/GD Ashwani Kumar overstated from leave w.e.f. 16.08.2002 to 12.03.2003 (State of PW1 and PW3)

(ii) During his over stayed period No. 8959932NK/GD Ashwani Kumar was issued Notices to resume duty from 7th Bn SSB Hqrs Jammu and "D" Coy vide memo No.- PF/599321GCJ/62(J)/-11597-99 dated 26.08.2003, No.PF/59932/7th Bn/02(J)/-113762-65 dated 09.10.2002 and No. D-8/SSB/02/-1285-87 dated 29.08.2002 respectively. (Statements of PW1, PW3 Exhibits-S3, S4, S6 and D7).

(iii) No. 8959932 NK/GD Ashwani Kumar did not responded any of the notices to resume duly, issued to him. He received all these notices.(Statements of PW1, PW3, Exhibit-D7).

(iv) After conducting court of inquiry No. 8959932 NK/GD Ashwani Kumar was declared Deserter w.e.f. 16.08.2002 under Rule 31(c) of CRPF Act 1949 and Rules 1955. Vide Office order No.PF/59932/7th Bn/02(J)/-15697-700 dated 21.11.02. (Statements of PW1, PW3 and Exhibit-S7)."

On the basis of aforesaid analysis/assessment, the Enquiry Officer concluded that Charge-II stands proved against the petitioner.

16. From the aforesaid material on record, it does appear that the Enquiry Officer has adhered to the procedure prescribed under Section 27 of the CRPF Rules while conducting the enquiry, but the question arises for consideration is as to whether the conclusions drawn by him on the basis of the material on record are

based on correct appreciation of material on record or the same are perverse in nature. It has also to be determined as to whether there is any scope for this Court to interfere in the conclusions arrived at by the Enquiry Officer.

17. So far as the scope of interference in the findings of an Enquiry Officer is concerned, this Court, while exercising its writ jurisdiction, has a very limited power to do so. The extent, to which a writ court would exercise its power of judicial review in respect of disciplinary proceedings, has been a subject matter of discussion and debate before the superior courts of this Country in a number of cases. In this context, it would be apt to refer to the judgment of the Supreme Court in the case of *M. B. Bijlani v Union of India*, 2006 5 SCC 88, wherein the Supreme Court has held as under:

"It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

18. Similarly in *Allahabad Bank and others vs Krishna Narayan Tiwari*, 2017 2 SCC 308, the Supreme Court has, while discussing this aspect of the matter observed as under: -

"7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and the Appellate Authority. The respondent's case that

the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defense has not been effectively rebutted by the appellant. More importantly the Disciplinary Authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority. All told the Enquiry Officer, the Disciplinary Authority and the Appellate Authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the Disciplinary Authority and the Appellate Authority.”

19. From the foregoing analysis of law on the subject, it is clear that while scope of judicial review in the case of disciplinary proceedings is very limited in nature but the conclusion arrived at by the Enquiry Officer in disciplinary proceedings has to be based on some cogent material. It would be open to the writ court to examine whether the findings of the Enquiry Officer are based on some material and whether the Enquiry Officer has taken into account the relevant material while arriving at his conclusion. The Court can also interfere, if the Enquiry Officer has taken into account irrelevant material or has ignored the relevant material. It is also open to the court to interfere in the findings of the Enquiry Officer if the same are perverse.

20. In light of aforesaid position of law, let us now advert to the facts of the present case. The Enquiry Officer in his report has taken note of the documents produced by the petitioner during the enquiry proceedings which indicate that he was under treatment in Sub District Hospital, Akhnoor, Government Medical College Hospital, Jammu and Chest Diseases Hospital, Jammu right from 12.08.2002 to 12.03.2003. He has also taken note of the fact that the petitioner had sent an application dated 07.10.2002 along with medical record to the Company Commander stating therein that he is unable to join his duties because of serious ailment. The Enquiry Officer has also taken note of the fact that another application dated 31.12.2002 was addressed by the petitioner to the Company Commander stating therein that he is still under treatment and that he will join duties after regaining fitness.

21. The record of the enquiry shows that the petitioner has produced before the respondents, original medical record which shows that he was undergoing treatment before Sub District Hospital, Akhnoor, Government Medical College, Hospital Jammu and Chest Disease Hopsital, Jammu. The petitioner has also produced before the Enquiry Officer medical certificate in Form-4 issued by the Registrar, Government Medical College, Hospital, Jammu which certifies that the petitioner was suffering from Lymphoma Over Chest (Operated), meaning thereby that he was having a soft tissue tumor in his chest. In these circumstances there was enough material before the Enquiry Officer to show that the petitioner was suffering from a serious ailment which prevented him from

attending his duties. The Enquiry Officer has ignored this material and reached a conclusion that both the charges stand proved against him.

22. Charge-I framed against the petitioner is that he wilfully absented himself from duties whereas Charge-II framed against the petitioner is that he has disobeyed the directions of his superiors asking him to resume his duties. The question whether absence from duty is wilful in nature cannot be decided without deciding the question whether there was any compelling reasons for the employee for remaining absent from duty. In case an employee is able to show that it was because of compelling circumstances he could not report for duty, such absence can never be wilful.

23. In the instant case, the petitioner was sanctioned leave while leaving from his place of duty and it was during the leave period that he was taken seriously ill, which fact was duly brought to the notice of the respondents by him. Because of serious illness of the petitioner from 12.08.2002 to 12.03.2003, he could not resume his duties. Due to serious ailment of the petitioner, his absence from duty was beyond his control. He never intended to contravene any of the provision of the service rules or any of the directions of the superiors. The petitioner submitted the copies of the medical certificates issued by the doctors and the medical record in support of his claim and he also submitted fitness certificate at the time of resuming his duties. There is no allegation of the respondents that these documents are fictitious or forged. In the absence of such evidence and findings, it was not open to the Enquiry Officer to disbelieve the medical certificates and the record issued by the doctors without any valid reason.

24. Thus, the absence of the petitioner from duty was not wilful but the same was due to compelling reasons. Having regard to the nature of ailment from which the petitioner was suffering, neither his absence from duty can be termed as wilful nor it can be stated that he had deserted the Force. The Enquiry Officer has arrived at the conclusion that the absence of the petitioner was wilful, without considering the relevant material. The said conclusion, therefore, suffers from perversity and as such, the same is liable to be set aside. The impugned order being based upon the conclusion recorded in the report of the Enquiry Officer is also not sustainable in law.

25. For all what has been discussed hereinabove, the writ petition is allowed and the impugned orders passed by the respondents are set aside. The petitioner is held entitled to all the consequential benefits as may have accrued to him but for the impugned order(s).