

(2012) 07 DEL CK 0530

In the Delhi High Court

Case No : Writ Petition (C) No. 3628 of 2012 and CM No. 7616 of 2012

H.S. Rana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Citation : (2012) 07 DEL CK 0530

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Mukesh Kumar Verma, for the Appellant; Ravinder Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

CM No. 7616/2012

1. For the reasons stated, the delay in re-filing the petition is condoned. The application is allowed.

W.P. (C) No. 3628/2012

2. This writ petition assails the order dated 17th February, 2007 passed by the office of the Commandant, CISF Unit, BCCL, Dhanbad accepting the report of the inquiry officer who conducted the disciplinary proceedings against the petitioner. By the order dated 17th February, 2007, the disciplinary authority accepted the recommendations of the inquiry officer and has imposed the penalty of compulsory retirement upon the petitioner. The petitioner's appeal to the office of Deputy Inspector General, CISF has been rejected by the order dated 22nd May, 2007. The facts giving rise to the instant petition are to be found in the orders issued to the petitioner which are undisputed.

3. The petitioner was a Constable posted at the CISF Unit, BCCL, Dhanbad. He was permitted/sanctioned outdoor pass permission/night out pass from 1600 hours on 26th April, 2006 to 1500 hours on 27th April, 2006 at his request to go

to Allahabad. The petitioner failed to report back for duty and overstayed his leave unauthorizedly. An entry to this effect was made in the general diary on 26th April, 2006. Three call-up letters bearing no. ID-12013/CIDF/RIL/ISD/06-162 dated 28th April, 2006; no. 192 dated 13th May, 2006 and no. 212 dated 26th May, 2006 were issued by the Company Commander, RIL Dalmianagar, Rohtas to the petitioner, directing him to report back for duty forthwith failing which a disciplinary action would be initiated against him. A letter No. E-24017/CISF/BCCL/06-3074 dated 15th June, 2006 was also issued to the petitioner on his home address with the same direction.

4. All these call-up letters were of no avail. The petitioner on his own accord reported back for duty only on 24th July, 2006 at 0945 hours. These call-up letters were exhibited as PW1/P Exh. 01 to Exh. 10 during the course of the disciplinary proceedings. The petitioner, therefore, it appears overstayed his out pass permission with effect from 27th April, 2006 to 23rd July, 2006 unauthorizedly.

5. The petitioner claims that he had fallen ill in Allahabad and was taken to Mathura, his home town. No material in support thereof is forthcoming on record. There is also no evidence that the petitioner had travelled from Allahabad to Mathura.

6. As the respondents contemplated disciplinary proceedings against the petitioner, a charge memorandum was served upon him on 29th July, 2006 after he reported for duty on 24th July, 2006 charging him with the following:-

Article-I

That, No. 761530042 Const. H.S. Rana Area No. 10 of CISF Unit BCCL Dhanbad while deployed on I.S. duty at RIL Rohtas was given out pass permission from 1600 hrs on 26.04.06 to 1500 hrs. on 27.05.06 by Coy. Commander CISF RIL Dalmianagar, Rohtas (Bihar). On completion of out pass permission he was supposed to report to Coy. Commander CISF RIL Dalmianagar, Rohtas (Bihar) by 1501 hrs. on 27.04.06 for further duty. But he failed to do so and overstaying from out pass permission unauthorizedly from 27.04.06 to till date. The above act on the part of No. 761530042 Const. H.S. Rana amounts to gross misconduct, indiscipline act, disobedience of lawful orders and dereliction of duty. Hence the charge.

Article-II

As per service records of No. 761530042 Const. H.S. Rana Area No. 10 of BCCI Dhanbad, he has been awarded with 11 punishment earlier during his service career for various indiscipline acts. Even then he failed to correct himself and remained incorrigible.

7. On the petitioner's request, a charge memorandum in Hindi was furnished to him on 18th August, 2006 but he failed to submit his written statement of defence. In this background, a departmental inquiry was ordered against him

under the provisions of Rule 36 of the CISF Rules, 2001 by the order dated 23rd September, 2006. The petitioner submitted his written statement of defence only on 8th October, 2006. The inquiry officer was required to be changed on account of administrative reasons by an order passed on 20th November, 2006.

8. The inquiry officer issued notice to the petitioner fixing the inquiry on 25th November, 2006 but the petitioner failed to attend the inquiry on the scheduled date as he was again overstaying his leave w.e.f. 24th November, 2006. The inquiry officer finally conducted preliminary hearing of the case on 3rd December, 2006 and sent a questionnaire to the petitioner in writing on 4th December, 2006 through registered post with the direction to him to submit reply by 15th December, 2006 failing which ex-parte inquiry would be conducted. The petitioner again neither submitted his reply to the questionnaire nor reported for inquiry on 15th December, 2006. To enable the petitioner to appear, the inquiry was fixed now on 5th January, 2007 but again the petitioner neither reported for inquiry nor intimated anything about his inability to attend the inquiry. On 5th January, 2007, the inquiry officer received a message from the Area Incharge that the petitioner had reported back from overstaying leave. In this background, the inquiry officer adjourned the inquiry and posted it from 9th January, 2007 to 11th January, 2007.

9. The inquiry was conducted on these dates and statements of prosecution witnesses were recorded in the presence of the petitioner. The petitioner was granted opportunity to cross-examine the prosecution witnesses which he availed. The inquiry officer examined the petitioner. The opportunity to lead evidence was also granted to him. The petitioner was given the written brief submitted by the presenting officer to which the petitioner also submitted his own brief.

10. So far as the unauthorized absence is concerned, the petitioner claims to have fallen ill at Allahabad. It has been noted in the inquiry report that again instead of returning back to his Unit in Rohtas which was closer, the petitioner proceeded to his home town despite knowledge that he was given only a limited out pass permission. The petitioner miserably failed to support his contentions with any evidence. The respondents on the other hand led evidence to prove the allegations levelled against the petitioner. The call letters to the petitioner were not heeded by him. The documentary evidence in support of the second charge could not be challenged by the petitioner. After a consideration of the entire material placed on record in the inquiry, the inquiry officer was of the view that the charges which were framed against the petitioner had been proved. A copy of the inquiry report was duly furnished to the petitioner by the disciplinary authority under the cover of the letter dated 15th/16th January, 2007. The petitioner submitted his written representation dated 30th January, 2007. The petitioner had stated that the inquiry officer had held that the charges were proved against him only "on the basis of the statement of the prosecution witnesses". It was also contended by him that if his request for extension of

leave was not considered by the competent authority then he should have been informed of the same by the competent authority and told to report back for duty immediately but this was not done. The petitioner also contended that he could not be punished twice for the punishments which he had already undergone.

11. After considering the proceedings of the inquiry, the recommendation of the inquiry officer and the representation made by the petitioner, the disciplinary authority passed a final order dated 17th February, 2007 agreeing with the recommendations of the inquiry officer and found the petitioner guilty of the charges. It was held that the petitioner had committed gross misconduct, indiscipline act, dereliction of duty and disobedience of lawful orders by overstaying out pass permission and that his past service record showed that he was a habitual offender of overstaying leave/absence without leave. He had failed to improve his conduct despite previous punishments and, therefore, he deserved stringent punishment.

12. So far as the imposition of punishment is concerned, despite the nature of the misconduct of which the petitioner was found guilty, the disciplinary authority took a compassionate view. It has been observed in the order dated 17th February, 2007 that keeping in view the long service of the petitioner, in exercise of powers conferred upon him under Rule 32(1) read in conjunction with Schedule-I and Rule 34 of CISF Rules, 2001, the Commandant of the CISF Unit, BCCI, Dhanbad imposed a punishment of compulsory retirement upon him. The disciplinary authority had further directed that the petitioner would be entitled to full pension and gratuity as admissible to him on the date of his compulsory retirement as per Rule 40 of CCS (Pension) Rules, 1972. The period of his absence i.e. from 27th April, 2006 to 23rd July, 2006 was directed to be separately regularized.

13. As noticed above, the petitioner's appeal to the Deputy Inspector General of the force was also considered and rejected on 22nd May, 2007.

14. Learned Counsel for the petitioner is unable to point out any procedural error or illegality in the conduct of the inquiry proceedings, orders of the disciplinary authority or the appellate authority. There is no grievance that the orders are without jurisdiction. It is also not contended that the orders are not based on material on record. No violation of principles of justice is complained of.

15. The primary ground of challenge to the orders against the petitioner is premised on the submission that the petitioner had submitted applications for grant of leave with medical certificates. It is urged that the petitioner having done so, could not have been required to do anything further and the petitioner's illness supported by the medical certificates was an adequate reason for his not reporting to the unit.

We have noticed hereinabove, the call-up letters which had been issued to the petitioner requiring him to report back immediately. The very fact that the petitioner was repeatedly asked to report back to the unit itself shows that his

application for extension of leave had not been granted. This was adequate notice to the petitioner to return to his unit and that his application for grant of extension of leave had been rejected.

16. The petitioner claims to have sent these certificates and applications under postal certificates.

17. We also find substance in the respondent's observation that if the petitioner had taken ill at Allahabad, he could have reported to his unit where he would have been adequately treated. More so, when the petitioner had a limited out pass permission and further when Rohtas, Bihar was closer to Allahabad than Mathura. On a careful analysis of the fact of the case, the respondents have found pre-meditation in the petitioner's conduct. The petitioner has failed to produce any document of travelling from Allahabad to Mathura. So far as the claimed treatment at Rohtas is concerned, it has been noticed that the petitioner is relying on certain outpatient treatment slips which manifest that the petitioner was not so sick as to require hospitalization and was not on any bed rest. A perusal of a medical certificate dated 26th April, 2006 would show that the petitioner was complaining only of pain on the back of both hands.

18. We may also note that the respondents have proved that the petitioner has also not reported to the standard medical facility.

19. So far as the second charge is concerned, the same is based on eleven previous instances of unauthorized absence/overstay of leave/absence without leave/refusal and disobedience of lawful orders between the period 1987 to 2004. The punishments which were imposed were reduction of pay for one stage for one year; withholding one increment for one year without cumulative effect, censure, etc. These had no effect on the petitioner at all.

20. It cannot be disputed that the petitioner is the member of a disciplined force which is performing serious functions in the present day context. The action of the respondents is based on the material on record; suffers from no procedural infirmity and there is compliance of principles of natural justice. In our view, the petitioner has failed to make out any ground for interference with the action taken by the respondents.

21. The challenged punishment imposed upon the petitioner on the ground of proportionality is also devoid of any merit. The disciplinary authority has carefully considered the matter and imposed the punishment of compulsory retirement while further directing that the petitioner would be entitled to full pension and gratuity as would be admissible to him on the date of his compulsory retirement. For all the above reasons, we find no merit in the writ petition. The writ petition and application are dismissed.