

**(2012) 08 DEL CK 0475**  
**In the Delhi High Court**  
**Case No : WP (C) 2263 of 1999**

Inder Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision :** 27-08-2012

**Acts Referred:**

**Citation :** (2012) 08 DEL CK 0475

**Hon'ble Judges :** Pradeep Nandrajog, J; Manmohan Singh, J

**Bench :** Division Bench

**Advocate :** H.S. Dahiya, for the Appellant; Archana Gaur, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

Pradeep Nandrajog, J.—Inflicted with the penalty of removal from service as per order dated August 05, 1996, and appeal being dismissed vide order dated January 30, 1997 as also the Revision Petition filed being rejected vide order dated February 27, 1997, the instant writ petition has been filed, surprisingly praying that only order dated August 05, 1996 be set aside. The undisputed facts are that the petitioner was transferred from the CISF Unit CLZS Chittorgarh to the CISF Unit HMT Srinagar on September 15, 1994 but was relieved on December 13, 1994, and granting admissible joining time, was required to report to the CISF Unit at Srinagar on January 12, 1995. He left Chittorgarh on being relieved but did not report to the CISF Unit at Srinagar. He remained absent till July 04, 1995.

2. Finding no justifiable reason for unauthorizedly absents himself the respondent proceeded to serve a charge-sheet on the petitioner on October 07, 1995 for the charge of unauthorizedly absents himself and not joining the CISF Unit at Srinagar.

3. Not disputing that he did not join CISF Unit by January 12, 1995 and conceding that he reported for duty on July 04, 1995, in response to the charge-sheet, the petitioner took a stand that when he was at Jammu and was required

to stay at the BSF Transit Camp, at the roll call on January 07, 1995, the Battalion Havaladar Major (BHM) of BSF informed that due to snowfall the Jammu-Srinagar highway was blocked and announced that since it was uncertain as to when the highway would be open the Force personnel could proceed on leave. As per the petitioner he waited in Jammu till January 13, 1995, hoping that the highway would open. The highway never opened. He fell sick and had no money. He spoke to the Asstt. Comdt. BSF in-charge of the transit camp who told the petitioner to go home and accordingly he left for his house on January 14, 1995 and reached his house on January 15, 1995. He fell sick and took treatment at Ram Manohar Lohia Hospital, Delhi till June 13, 1995 and upon being declared fit to resume duties he reached Srinagar on July 04, 1995.

4. At the inquiry three witnesses examined by the department proved the petitioner being relieved from Chittorgarh on December 13, 1994 and his being required to join at Srinagar on January 12, 1995 and petitioner joining on July 04, 1995 and that during this interval of time neither was any application received by the Unit from the petitioner seeking leave, much less on medical grounds nor any medical documents filed; save and except when he rejoined on July 04, 1995, facts which are even otherwise not in dispute.

5. The petitioner did not examine any witness in defence and reiterated a version as afore-noted.

6. The Inquiry Officer has returned a verdict of guilt and has punched holes in the version given by the petitioner on account of the reason that the Jammu-Srinagar highway had opened on January 09, 1995 and the BSF convoy had transported jawans and officers of various Central Para Military Forces from Jammu to Srinagar on said date, and in proof whereof was a communication to said effect received from BSF authorities. We note that though not highlighted by the Inquiry Officer, the movement order pertaining to the petitioner, Ex. D-3 proved at the inquiry, would reveal that the petitioner arrived at the BSF Transit Camp on December 25, 1994 and departed therefrom on January 07, 1995; entry to this effect is to be found in Ex. D-3. Thus, the story spun by the petitioner that the Jammu-Srinagar highway remained closed till January 13, 1995 is incorrect, as also his version that there being no signs of the highway opening, the Battalion Havaladar Major told that whosoever wanted to leave should leave is incorrect.

7. It is apparent that the petitioner left the BSF Transit Camp of his own volition on January 07, 1995.

8. As regards the petitioner falling sick and availing treatment at Ram Manohar Lohia Hospital, Delhi, the Inquiry Officer has noted that the OPD card(s) filed by the petitioner after he joined service on July 04, 1995 did not appear to be credible documents for numerous reasons. There were cuttings and overwritings which were not initialed. Registration serial number space did not bear a serial number, which we understand would mean the number as per a register

maintained in government hospitals when an OPD card is issued; in the register the name of the patient concerned and the name of the doctor concerned to whom the patient would visit for treatment is noted. Further, with respect to the medical certificates filed by the petitioner, it was noted that even the same did not bear a registration number as also the fact they were purportedly signed by a residency doctor and not a doctor on OPD duty. The Inquiry Officer has noted that when examined with respect thereto the petitioner could furnish no valid explanation. The Inquiry Officer has also noted that when asked as to why the petitioner did not inform the Force headquarter at Delhi of his serious sickness, the petitioner had stated before the Inquiry Officer that due to his sickness his mental condition was not proper. The Inquiry Officer has noted that the OPD cards submitted by the petitioner would reveal that the same recorded the petitioner to be having a back-ache.

9. We highlight that the OPD cards Ex. D-1 and Ex. D-2 record that the petitioner was having occasional fever with back-ache. The signatures of some person, purporting to be a doctor are scribbled. Four certificates Ex. D-4 to Ex. D-7 under the signatures of a senior resident doctor dated 14.03.1995, 14.05.1995, 15.05.1995 and 30.06.1995, filed by the petitioner would reveal that the same do not bear any registration number.

10. The petitioner, of his own showing, took treatment at an Out Patient Department and this shows that the so-called back-ache, if at all, was not of a nagging kind. What is most important to note is that not a single bill or a cash memo pertaining to medicines purchased by the petitioner concerning the so-called back-ache were filed by the petitioner. It is apparent that the petitioner did not take any medicine. With what ease one can procure OPD cards and fake medical certificates is a subject upon which we need not comment. We need not comment, for the reason we are not sitting in an appeal and in relation to disciplinary action the Rule of Law is that if the opinion formed by the departmental authorities is a reasonably probable opinion on the given evidence, the Writ Court would not interdict.

11. The witnesses of the department have proved a letter and a telegram sent by the Commandant of the CISF Unit at Srinagar to the petitioner to report for duty. In spite of having received the same, the petitioner did not respond. The explanation given by the petitioner during inquiry that due to the nagging back-ache he was not in a proper mental condition and thus he neither sought leave on medical grounds nor he submitted the medical documents, has rightly been opined to be a ruse by the Inquiry Officer.

12. We cannot lose sight of the fact that the year was 1995 when militancy was very high in Srinagar, and sitting on the current roster pertaining to Armed Forces and Central Para Military Forces; highlighting that one of us: Pradeep Nandrajog, J. had sat on the same roster for 9 months commencing from January 2011 and ending on September 2011, during which it was being noted that not only jawans of CISF but even CRPF were adopting all kinds of strategies

to avoid working in the valley; instant case appears to be one of the same kind.

13. We highlight once again that the version of the petitioner that he remained at Jammu till January 13, 1995 and the Jammu-Srinagar highway remained closed till then, being found to be false in the context of the movement order Ex. D-3 which shows that the petitioner left the transit camp on January 07, 1995, and therefrom the very edifice of the case set up by the petitioner as a defence having failed, we concur with the report of the Inquiry Officer and it being accepted by the Disciplinary Authority. The writ petition is dismissed but without any order as to costs.