

(2011) 05 DEL CK 0039
In the Delhi High Court
Case No : Writ Petition (C) 2893 of 1997

K.S.Pundir

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0039

Hon'ble Judges : Suresh Kait, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S.M. Pandey, for the Appellant; Ankur Chhibber and Sashi Mohan and Abdus Salam, Asstt. Comdt., CISF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—K.S. Pundir, the Petitioner, lays a challenge to the order dated 14.9.1996 passed by the Disciplinary Authority levying penalty of removal from service on account of Petitioner being unauthorizedly absent from duty for 259 days commencing from 30.12.1995 till 13.9.1996 i.e. the immediate day preceding when the penalty was levied. He also questions the order dated 15.9.1997 rejecting the appeal filed by him against the order dated 14.9.1996.

2. Relevant facts are that K.S. Pundir, a Sub-Inspector with Central Industrial Security Force, requested for 15 days" earned leave, which was sanctioned from 15.12.1995 to 29.12.1995 with permission to avail 2 days" journey time and add on 2 days CCL and thus he left the Unit at Uri (J and K) on 11.12.1995. He was to join back on 30.12.1995. He failed to do so.

3. It may be noted that he was posted at Obra before he was sent to Uri, which is in the State of jammu and Kashmir, as extra force personnel were needed for security at Uri. He was to report at Uri on 25.9.1995 but he joined late on 21.10.1995. This period was condoned. joining at Uri on 21.10.1995 he worked at Uri for less than 2 months.

4. On 6.1.1996 a call of notice was sent at his leave address with a direction that

he should join immediately. On 25.1.1996 he sent a letter P.W. 2/Ex.14 to the Commandant of his Unit stating that he was detected with hepatitis and was advised medical rest for 15 days commencing from 30.12.1995 and along with the letter he sent photocopy of an OPD card from a Primary Municipal Dispensary at Mehrauli as per which he was advised 10 days rest on statedly being diagnosed with infective hepatitis i.e. jaundice. It may be noted that the letter afore-noted sent by the Petitioner under his signatures on 26.12.1995 records that the residential accommodation where the Petitioner was residing is House No. 42, Ganesh Nagar Extension-II, Shakarpur, Delhi-110092. The colony Ganesh Nagar Extension Shakarpur is in East Delhi, where i.e. in East Delhi, there are more than 5 Primary Municipal Health Centres and prima facie there is no logic in the Petitioner to have got himself treated as an Out Patient at the Primary Municipal Dispensary in Village Mehrauli which is more than 25 km away.

5. Ignoring the aforesaid striking abnormality and from which abnormality one can presume that the Petitioner knew somebody at the Primary Municipal Dispensary at Mehrauli and thus obtained a contrived document, since it was recommended therein that the Petitioner was advised rest for 10 days, waiting for 10 days to be over, and noting that the Petitioner had not joined, vide letter dated 31.1.1996 he was asked to join back. Petitioner ignored the same, resulting in the Disciplinary Authority deciding that the Petitioner be charge-sheeted and an inquiry be held for the misdemeanour of continued unauthorized absence and for which on 7.3.1996 a memorandum was issued enclosing therewith a charge-sheet which was sent to the Petitioner at the address House No. 42, Ganesh Nagar Extension-II, Shakarpur, Delhi-110092, which we note is the address noted by the Petitioner himself in his own handwriting as per his letter dated 26.12.1995 which we have referred to in para 4 above. The docket containing the memorandum and the charge-sheet as also the annexures with the charge-sheet were sent by Regd.A.D. Post. 3 Articles of Charge were listed against the Petitioner as under:

ARTICLE OF CHARGE-I

An act of gross-misconduct, indiscipline and unbecoming of a member of the Armed Force in that CISF No. 8217116 SI/Exe.K.S. Pundir was granted 15 days Earned Leave from 15.12.95 to 29.12.95 with permission to avail 2 days Joining Time on 11/12.12.95 and 2 days CCL on 13/14 Dec" 95, but he failed to do so and "WILLFULLY OVERSTAYING LEAVE" w.e.f. 30.12.95 to till date without any valid permission from the Competent Authority. Thereby he exhibited an act of gross misconduct, indiscipline, dereliction towards duties and disobedience of lawful orders.

ARTICLE OF CHARGE-II

In violation of Good orders and considering the prevailing situation in the Valley No. 8217116 SI/Exe.K.S. Pundir proceeded on leave and unauthorizedly overstaying leave afraiding of Militant Activities and in spite of various Call-up

notice, with a direction to report back for duty immediately, even though he did not turn-up for duty and in which he exhibited an act of Cowardice and Disobedience of Lawful orders, which is unbecoming of member of Armed Force of the Union.

ARTICLE OF CHARGE-III

Being a member of a disciplined Para-Military Force, the said SI/Exe.K.S. Pundir should be brave and courageous to serve anywhere in India, as per the terms of agreement of appointment being SI/Exe. But, on being posted at Valley, during his leave and unauthorized OSL period, he has mounted pressure through outside agency/persons on the Higher Formations for posting-out to some other Units from HEP Uri. Moreover, knowing fully well that being a member of Force he is forbidden to restore any method other than prescribed one to claim/obtain redressal of his alleged grievances/reversal of orders. Which he violated and, violating the Good order of the Force and attempted to mount pressure from outside persons which amounting to indiscipline.

6. The Petitioner received the memo afore-noted and the charge-sheet enclosed therewith and sent a reply stating as under:

Sir,

Reference to your Memo No. V.15014/CISF/HEP(U)/Disc-34/96-160 dated 7 March 96 received by registered post on 24.4.1997 as per the RAD No. 1911, I am to inform you that your proposal to hold an enquiry against me is very shed and disgusting as I am lying sick as per the Medical Certificate sent by me by registered posts and as per the Ack. Receipt from your office. I have not misbehaved in any manner and hence the statement of imputation against me is totally incorrect and the charge therein are vague and biased. I deny the charges in toto and will like to be heard in person as and when I fully recover from my ailments and is declared fit for joining my duties, by the physician attending me in Govt. Hospital. No other letter that as alleged was ever received by me in the past.

In the end I argue sir that I am most obedient servant of the force and shall abide by the orders of the higher authorities as soon as I am medically fit to join my duty.

Submitted for kind information please.

7. Since the Petitioner was to file a reply to the charge-sheet within 10 days, and none being sent within said time, on 16.4.1996, the Disciplinary Authority had appointed Asstt. Commandant Ratan Singh as the Inquiry Officer with a direction to hold an inquiry and submit a report on the charge sheet.

8. Sh. Ratan Singh sent a notice dated 20.4.1996 by post to the Petitioner informing him to appear before him on 6.5.1996. The Petitioner did not appear and thus the Inquiry Officer sent another letter on 13.5.1996 informing that he

would be holding an inquiry on 12.6.1996 also informing Petitioner that if he desired somebody to act on his behalf as a Defence Assistant his name should be intimated to the Inquiry Officer to enable the Inquiry Officer to do the needful.

9. Record of the Inquiry Officer would reveal that he received photocopy of a letter which was not signed by the Petitioner but purported to emanate from the Petitioner recording therein that the Petitioner's health did not permit him to move anywhere; which letter was received by the Inquiry Officer on 8.6.1996.

10. On 12.6.1996 the Inquiry Officer recorded the evidence of the prosecution witnesses being 4 in number and took on record, as proved, 23 documents and needless to state the testimony and the documents establish that being granted leave up to 29.12.1995, the Petitioner did not join back and that his leave was not extended.

11. The Inquiry Officer submitted a report and needless to state held the Petitioner guilty of Charge No. 1 and 3. It is apparent that the indictment as per Charge No. 2 of Petitioner overstaying leave on account of being afraid of militant activities could inherently not be proved for the reason obvious; what was in the mind of the Petitioner was difficult to be proved but certainly could be inferred as the probable cause for Petitioner not joining duty at Uri.

12. The report of the Inquiry Officer was sent to the Petitioner by Regd.A.D. Post on 6.8.1996 for his response to which he gave a response on 1.9.1996 and considering the response as also the report of the Inquiry Officer, the Disciplinary Authority rejected the response and accepting the report of the Inquiry Officer, levied the punishment of removal from service vide impugned order dated 14.9.1996.

13. The Disciplinary Authority duly considered the medical certificate sent by the Petitioner evidencing his being treated as an Out Patient at the Municipal Primary Health Centre at Mehrauli and in respect thereof opined, a reason with which we agree, that a person infected with hepatitis i.e. jaundice would not remain sick for 9 months and alternatively if the sickness was so severe, nobody would be seeking treatment at a Municipal Primary Health Centre when the person concerned had the facility of taking treatment at full-fledged hospitals maintained by the Government and/or at recognized private Hospitals. The Disciplinary Authority noted that there were 5 punishments inflicted upon the Petitioner in the past and on one occasion penalty of dismissal from service was inflicted but later on Petitioner was reinstated in service by the Revisional Authority and in respect of which penalty we may note that the reason why said penalty was levied in the past was Petitioner remaining unauthorizedly absent from duty after deserting the Unit lines. The Disciplinary Authority levied the penalty of dismissal from service. Not that the misdemeanour was held not proved, but taking a lenient view, the Revisional Authority levied a lesser penalty and this was the reason why, for the said past misdemeanour, Petitioner was reinstated in service.

14. The order dated 14.9.1996 was sent to the Petitioner, which he received, and against which he preferred an appeal which came to be rejected on 15.9.1997.

15. The Appellate Authority concurred with the reasoning of the Disciplinary Authority to ignore the medical certificate relied upon by the Petitioner and additionally noted the previous penalties levied and especially the one where on account of deserting the unit and remaining unauthorizedly absent a penalty of dismissal from service was levied but on sympathetic grounds, taking a lenient view, was reduced to a lower penalty and Petitioner was reinstated. In para 15 of the Appellate Order the Appellate Authority recorded that it clearly indicates that the Petitioner has not learnt to remain disciplined and prefers to abscond, remain absent and join at his will. It was held that such conduct not only breeds indiscipline but even encourages indiscipline.

16. We note that the Petitioner filed the writ petition on 22.7.1997 without awaiting the decision in the appeal filed by him and we find that the Petitioner mentioned in the writ petition that he had preferred an Appeal against the penalty order dated 14.9.1996 and raised a grievance of the same not being decided.

17. The writ petition was disposed of, on the very first day it was listed i.e. 24.7.1997, noting that the appeal filed by the Petitioner had not been decided, with a direction to decide the same.

18. Petitioner filed CM No. 9244/1997 seeking revival of the writ petition and praying that the Appellate Order dated 15.9.1997 may also be quashed and for unexplainable reasons on 10.11.1998 "Rule" was issued in a disposed of writ petition with a direction that CM No. 9244/1997 would be listed along with the main writ petition.

19. In the counter affidavit filed on 7.7.2000, it was informed that the appeal stood rejected on 15.9.1997, copy of which order was enclosed along with the counter affidavit as Annexure-A.

20. Thereafter, Petitioner filed CM No. 4268/2001 to amend the writ petition praying that the prayer clause be amended to lay a challenge to the Appellate Order, which application was allowed on 15.1.2002.

21. Arguments were heard on 2.5.2011 when matter was reserved for judgment and before we deal with the contentions urged during arguments, we would be failing not to note that instant writ petition is the 20th which we encountered in the last about 15 days where the same counsel, whose name we do not want to record in a Judicial Order, appears to have got a crop of litigants who were dismissed from service as force personnel in CISF, suggestive of the fact that the learned Counsel had some contact in the department and rather than help his clients, learned Counsel raised mechanical grounds of challenge and indeed the instant writ petition also shows that the same grounds have been pleaded; such as the charge-sheet being vague; the reply to the charge-sheet and the report of

the Inquiry Officer not being considered; the Petitioner not being supplied with the listed documents and statements of the listed witnesses; the stated illegality of the Inquiry Officer to act as a Prosecutor in cross-examining the witnesses. Which we find in the instant writ petition have been set out as the stated important questions of law vide sub-para (a), (b), (e) and (f) of para 2 of the writ petition and in respect thereof we may only note that the pleadings were most embarrassing for the learned Counsel who ultimately argued the writ petition as the counsel had to concede that the charges were not vague and from the facts noted herein above, we find that the Disciplinary Authority duly considered the reply filed by the Petitioner to the report of the Inquiry Officer. Since the Petitioner never appeared before the Inquiry Officer he self denied an opportunity to receive the statements of the witnesses recorded and relevant would it be to note that when the inquiry report was furnished to him by conducting an inquiry ex-parte, Petitioner never demanded deposition of the witnesses recorded during inquiry. As regards the ground that Petitioner was not given the listed documents as per the memorandum under which the charge-sheet was sent, we may only note that law requires the charged officer to seek inspection of or request for copies of the documents to be supplied and it is not the mandate of law that the relied upon documents by the department have to be sent. The Petitioner never so demanded. The statements of the witnesses recorded before the Inquiry Officer do not reveal the Inquiry Officer cross-examining any witness. Only 2 clarificatory questions have been put to SI F.C. Aryan P.W. 2.

22. We express our pain and anguish at the manner in which the counsel concerned has literally, if we may use the expression, butchered his clients and needless to state after filing the writ petitions, not in one did the learned Counsel have courage to appear. Most of them went by default or the counsel who had to appear, as in the instant case, faced embarrassment.

23. This is our reason for referring extensively to the Record of Inquiry for the reason the inchoate and frivolous pleadings in the writ petition have resulted in a response which naturally had to be one of denial and thus in the interest of justice we thought that it would be better to rely upon the record of inquiry which we obviously can, inasmuch as it is settled law that a return to a writ of certiorari is the original record being produced before the Writ Court.

24. Only issue of substance which could be advanced under the circumstances and indeed was advanced at the hearing was: Whether the Petitioner, due to circumstances beyond his control, overstayed leave? If yes, the effect thereof. An ancillary argument was advanced that for the wrong of overstaying leave penalty of removal from service was unjustified.

25. We may note that learned Counsel had made a feeble attempt to urge that the Appellate Authority was obliged to give reasons while dismissing the appeal, and for which counsel relied upon a decision of a Division Bench of this Court deciding a batch of writ petitions, lead matter being WP(C) No. 9427/2005

"Const. Hans Raj v. UOI and Ors." in which the Division Bench held that the Appellate Authority was obliged to give reasons, which decision has been set aside by the Supreme Court holding that there is no such requirement in law, and in any case, learned Counsel conceded that in the instant case the Appellate Authority has given adequate reasons and has dealt with the contentions urged in the Appeal.

26. From the facts noted herein above, it needs to be highlighted that the Petitioner was admittedly residing at House No. 42, Ganesh Nagar Extension-II, Shakarpur, Delhi-110092 during the period he was charged to be unauthorizedly absent and for which period he claims to be unwell. As noted herein above he claimed to be unwell, being suffering from jaundice i.e. infective hepatitis. He relied upon an OPD card purported to have been issued by the Senior Medical Officer In-Charge of the Primary Health Centre MCD at Mehrauli.

27. We have already noted herein above that Mehrauli is about 25 km away from Shakarpur and in respect thereof the Disciplinary Authority has rightly observed that nobody can remain sick with jaundice for 9 months and alternatively if the sickness was grave it was against human conduct not to obtain treatment from a recognized full-fledged hospital. We concur with the reasoning of the Disciplinary Authority. We reinforce the reasoning with further reasons that why should the Petitioner go 25 km away and that too to a Primary Health Centre for medical treatment; we can understand a person travelling said distance if the medical centre visited was a specialized or a superspeciality health centre, for then it could be argued that it is a matter of choice for the person concerned to avail the best treatment, but with respect to Primary Health Centre such an argument advanced would be laughed at. We do.

28. The Petitioner was a Sub-Inspector and not an ordinary constable. As a Sub-Inspector he had been discharging supervisory functions over Force Personnel and knew the procedures of the law. He knew that unless leave is sanctioned, unilateral action to sit in the house on ground of stated medical infirmity would jeopardize the career. If the Petitioner could travel 25 km to Mehrauli we see no reason why he could not appear before a doctor at a Government Hospital and obtain a proper certificate pertaining to his sickness.

29. We factor in herein that the Petitioner had shown reluctance to join at Uri where a hydro-electric power plant was under construction, as we all know, Uri is in the State of Jammu and Kashmir and there was militancy in said area in the year 1995. Though charge No. 2 has not been sustained wherein it was alleged that the Petitioner has evidenced cowardice by not joining in a terrorist/militancy affected area, but the fact of the matter remains that there is evidence of Petitioner not being willing to work in Uri evidenced by the fact that his initial joining was after availing unauthorized leave and having worked hardly for a month at Uri he availed 15 days" leave, but never came back till the 259th day, when penalty was levied.

30. The Petitioner admits not joining back and the ground of justification is the stated medical infirmity, which we find has been rightly rejected by the authorities concerned and thus we answer the first question posed in para 24 above by holding that the authorities concerned have returned correct findings.

31. The second question posed in para 24 has to be answered against the Petitioner for the reason this was not the second time the Petitioner remained unauthorizedly absent. He did so in the past when penalty of dismissal from service was inflicted, the misdemeanour stood, but taking a lenient view the Revisional Authority then reduced the penalty and reinstated the Petitioner in service. It was expected that the Petitioner would mend his ways. He did not do so.

32. There is evidence that the Petitioner was not wanting to work in Uri and thus he feigned sickness. All Force Personnel have to serve in hard areas and those who unjustifiably do not so cause hardship to others, inasmuch as their burden would have to be shared by others, and indeed if this kind of deviant behaviour is overlooked, others would be tempted to do so. We concur with the view taken by the authorities concerned that such kind of deviant behaviour has to be suppressed with a heavy hand. Keeping in view the past service profile of the Petitioner we do not find the penalty inflicted to be disproportionate to the gravity of the offence and hence we dismiss the writ petition.

33. No costs.