
(2007) 08 DEL CK 0170
In the Delhi High Court
Case No : Writ Petition (C) 4501 of 1996

Kuldeep Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-08-2007

Acts Referred:

Central Industrial Security Force Rules, 1969 — Rule 34, 49
Constitution of India, 1950 — Article 226, 227

Citation : (2007) 115 FLR 392 : (2008) 2 SLJ 254

Hon'ble Judges : Vikramajit Sen, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : Manpreet Kaur, for the Appellant; A.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Bhayana, J.—By way of this writ petition, the Petitioner prays for issuance of a Writ of Mandamus for setting aside the orders dated 13.05.1992 and 26.05.1995, issued by the Respondents, whereby the Petitioner was removed from service on the grounds of grave misconduct, indiscipline and carelessness.

2. The brief facts leading to the filing of the present writ petition are that the Petitioner was appointed as a Constable on 19.05.1989 in the Central Industrial Security Force (for short "CISF") in the Sports Quota. The Petitioner submitted that on 20.09.1991 he had applied for two days Earned Leave and 20 days Half Pay Leave from 03.10.1991 to 24.10.91 on the ground that his wife was in a family way. The said leave was sanctioned by the Company Commander but later on refused by the higher authorities. The question was that the leave during this period was unauthorized as the higher authorities did not grant the sanction. On 06.11.1991 Petitioner's wife delivered a male child in the state of delirium. The Petitioner proceeded on further leave on medical grounds for a period from 31.10.1991 to 01.11.1991 but did not submit any medical fitness certificate on 02.11.1991 and thereafter absented himself from duty. The Petitioner was found absent by the Respondents since 14.11.1991 and there was no satisfactory

Explanation to justify his absence.

3. On 11.02.1992, the Respondents issued a charge-sheet to the Petitioner on the ground of his unauthorized absence from service and the allegations of misconduct were levied against the Petitioners for non-production of Medical Fitness Certificate on 02.11.1991. The Petitioner had remained absent continuously from duty w.e.f. 14.11.1991. Secondly, the Petitioner was in the habit of absenting himself from service without any prior permission or information. He was informed that if he does not submit any written reply on or before the due date an enquiry under Rule 34 of CISF Rules 1969 (hereinafter referred to as "CISF Rules") would be proceeded ex-parte against the Petitioner.

4. On 09.03.1992 Enquiry Officer was appointed by Respondent No. 4 to conduct the Departmental Enquiry, under CISF Rules that deals with major penalty proceedings against the Petitioner. After conducting enquiry in accordance with law and after giving opportunity, the Petitioner was held guilty of grave misconduct by remaining absent from service without prior permission. The findings of the Enquiry Officer was duly sent to the Petitioner by the Disciplinary Authority vide communication dated 16.04.1992 with the stipulation that he may submit his representation against the same within 15 days from the receipt of the said communication. The Petitioner did not submit any written reply, Therefore, statutory punishment was awarded to the Petitioner and he was ordered to be removed from service w.e.f. 13.05.1992.

5. Aggrieved of the order dated 13.05.1992, the Petitioner filed an application dated 28.11.1994 before Respondent No. 3, i.e. Director General, CISF for reinstatement. On 26.05.1995, the Appellate Order was passed reiterating the findings, as there was no merit in the application. The application was rejected and the Petitioner was held guilty on the ground of grave indiscipline and carelessness.

6. Further aggrieved, the Petitioner filed the present writ petition for setting aside the orders dated 26.05.1995 & 13.05.1992 on the ground of violation of principles of natural justice and fundamental rights as the punishment of removal has been inflicted without application of mind by the Authorities and disproportionate to the misconduct.

7. We have heard learned Counsel for the parties and perused the record carefully.

8. Learned Counsel for the Petitioner argued that the punishment awarded to the Petitioner is not commensurate with the charges of misconduct leveled against the Petitioner. The Respondents failed to appreciate the circumstances prevailing in the house of the Petitioner. It is submitted that the Petitioner was not a habitual absentee. He remained absent from the duty because after delivery of the child, Petitioner's wife developed serious complications. He consulted Doctors as his wife used to walk out of the house naked and had no sense of eating. As advised by Doctors, she needed an attendant and there was nobody to

attend her except the Petitioner.

9. It is further submitted, on behalf of the Petitioner, that the Petitioner sent letters by registered post dated 12.02.92, 22.03.92, 06.04.92 and undated appeal explaining his unauthorized absences from duty. He had also requested for grant of two years of special disability leave or post him in his home State but the same was refused by the Respondents.

10. Learned Counsel vehemently argued that the removal of Petitioner from service is totally unjustified in the eyes of law as he has not been afforded any opportunity to defend himself in the departmental proceedings. He argued that the removal of the Petitioner from service was improper, illegal, arbitrary and against the principles of natural justice. It is also submitted that the punishment of removal is highly disproportionate to the offence.

11. Learned Counsel for the Respondents controverted the arguments raised by the learned Counsel for the Petitioner. He relied upon the orders passed by the Authorities. It is submitted that this Court in view of the limited power of judicial review cannot go into the question whether the punishment awarded is disproportionate to the offence. He further submitted that as the Petitioner absented himself continuously from duty without submitting any medical fitness certificate, the same amounts to grave negligence and indiscipline towards his duty. The fact that the Petitioner was in the habit of absenting himself is clear from various instances when he reported to duty after 28 days without seeking any leave from 03.10.1990 to 30.10.1990, and again for three days from 24.11.1990 to 26.11.1990. He was again found absent from duty during a surprised checking in the intervening night of 9/10-05-1991. The fact that when a person absents himself from duty, even without sanctioned leave for a very long period, prima facie, shows lack of interest in work.

12. Learned Counsel for the Respondent submitted that at the time of appointment of the Petitioner a sum of Rs. 3437/- towards cost of training, as per the agreement executed by the Petitioner, was spent on the Petitioner. The Petitioner was informed by Respondent No. 4 vide letter dated 29.08.1991 that as per the agreement the Petitioner was liable to pay a sum of Rs. 3437/- towards the training cost. On this account, the Petitioner tendered his resignation from service prior to the sanction of leave.

13. It is further submitted that the leave of the Petitioner from 03.10.91 to 24.10.91 was refused by the higher authority due to exigency of service for good and sufficient reason, Therefore, the Petitioner had no right to remain absent without prior permission and he continued to remain absent even thereafter. This kind of habitual absenteeism of the Petitioner from duty without permission of the Authority constitutes grave negligence, indiscipline and carelessness.

14. Learned Counsel for the Respondent further submitted that the order dated 13.05.92 passed by the Respondent was not arbitrary as the same was passed after following the provisions of CISF Rules. The Petitioner had the opportunity of

filing the written reply but he did not avail the same within the stipulated time. The Petitioner did not even file any appeal before any authority under Rule 49 of the CISF Rules, 1969 against the said order.

15. Having considered the rival contentions and on going through the records, we do not find any merit in the writ petition. It is an admitted case that the Petitioner had unauthorizedly absented himself from duty during this period and did not perform the duties as a Constable in CISF. We feel that such unauthorized leave and absence cannot be tolerated in a disciplined security force.

16. The punishment imposed by the Respondents, Therefore, is neither vindictive nor arbitrary and is well within the jurisdiction of the authority. The Petitioner took leave for 22 days and that too was not sanctioned by the higher authorities and he never reported to duty thereafter. Members of the armed forces cannot absent themselves on frivolous grounds and without prior permission, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if goes unpunished, will greatly affect the discipline of the force. In such forces habitual absenteeism and unauthorized absence is a serious matter to be taken into consideration.

17. This view finds support from the observations of the Supreme Court in Union Of India and Ors. v. Datta Linga Toshawad (2005) 13 SCC 709, wherein it was held that the desertion of a person serving in the armed forces was held to be a serious matter and dismissal from service held to be a justified disciplinary action is in no way disproportionate to the misconduct alleged.

18. In our view, each case has to be viewed and examined after taking into consideration the facts and circumstances and evidence before the authorities concerned. In the present petition, the Petitioner never filed any reply to the show cause notice served upon him by the Respondents. The Petitioner was found absent from service on various occasions without prior sanction or permission. Departmental enquiry was conducted against the Petitioner following the proper procedure as prescribed and the reports of enquiry were also sent to the Petitioner but no reply was received from the Petitioner. The Petitioner has been found extremely negligent in performing his duty.

19. On the issue of quantum of punishment, we do not think that it is a fit case in which we can interfere. It is a settled law that power of judicial review about quantum of punishment is extremely limited. It is only in cases where the punishment awarded is ex facie highly disproportionate or unconscionable that the Court can interfere under Articles 226 & 227 of the Constitution of India. It is for the Disciplinary Authority and the Appellate Authority to decide and determine the quantum of punishment. See : Om Kumar and Others Vs. Union of India, Regional Manager, Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, , Ranjit Thakur Vs. Union of India (UOI) and Others, and Surender Kumar Vs. Commissioner of Police and Others,

20. The Court, while exercising powers under Articles 226 and 227 of the

Constitution, cannot interfere with the punishment merely because it considers the same to be disproportionate. The quantum of punishment is in any event a matter in which it is difficult for any authority to maintain precise consistency. It depends on a variety of factors including the subjective satisfaction of the Disciplinary Authority.

21. In view of the above, we find no merit in the Writ Petition and the same is dismissed.

22. No Costs.