

(2012) 06 MP CK 0082

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12421 of 2007

Premal Irpache

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 3 MPJR 109

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Anubhav Jain, for the Appellant; Vikram Singh, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—Challenging the orders passed by the competent authority, appellate authority so also the revisional authority as contained in Annexures P/1, P/2 and P/3 dated 25 March, 2005, 2nd April, 2000 and 4.10.99, dismissing the petitioner from service and rejecting his appeal and revision, this writ petition has been filed. Petitioner joined the Central Industrial Security Force as a "Sepoy" in the year 1982. He was promoted on the post of Head Constable and according to the petitioner he has an unblemished service record of more than 17 years. At the relevant time in the year 1998 it is stated that petitioner was sanctioned 20 days earned leave from 5.11.1998 to 24.11.1998. The leave was sanctioned to him for treatment of his wife at Bombay. Before leaving for Bombay it is stated that petitioner went to his home town in District Hoshangabad, Madhya Pradesh, where it was intimated to the petitioner that he and his brother Amar Singh have been implicated in a criminal case for various offences particularly, an offence u/s 302/ 34 of IPC in Crime No. 95/1998 by Police Station Kesla, District Hoshangabad and a arrest warrant has been issued against the petitioner and the police was in the look out for the petitioner. It is stated that under such circumstances, as he was falsely implicated in the

criminal case, petitioner requested for extension of his leave but his request was rejected on 19.11.98. It is stated that even though petitioner was to report back to duty after 24.11.1998 but as police was constantly searching for him, the petitioner and his brother were making endeavor to get anticipatory bail in the criminal case and in this process due to hectic activities and stress petitioner fell ill and therefore, submitted an application on 24.11.1998 indicating that he is ill, he submitted the OPD slip and requested for leave and thereafter it seems that respondents rejected his request and vide Annexure P/4 cautioned the petitioner that he is overstaying his sanctioned leave, he should therefore report for duty. It seems that petitioner instead of complying with this order is said to have again communicated to the respondents on 8.4.99, intimated that as he is involved in a criminal case, he is not in a position to collect the amount of his salary and therefore, made a request for deposit of his salary in the Government Treasury. The petitioner did not report for duty and continued to remain absent. In the meanwhile, on 13.10.99 his brother co-accused was honorably acquitted in the criminal case and therefore, petitioner also surrendered on 27.10.99, he was put to trial and by a judgment passed on 22.11.1999 by the First Additional Sessions Judge, Hoshangabad, Annexure P/6 he was also acquitted and was released from jail on 3.11.99. The petitioner therefore, after coming out of jail on 29.11.1999 reported for joining back the duty and when he was informed that due to his unauthorized absence a charge sheet was issued on 17.4.99 and on the basis of an ex-parte inquiry conducted, he has been dismissed from service vide Annexure P/3. Appeal and revision having been rejected, challenge is made to the impugned action merely on the ground that the respondents knew that petitioner was unable to join duties because of the circumstances explained by him, inspite thereof, by sending notices at his home address, an exparte enquiry was conducted and he was dismissed from service. Inter alia contending that action under taken by the respondents in the manner done is highly illegal, it amounts to dismissing the petitioner from service without granting him proper opportunity of hearing and without considering his defence, Shri Anubhav Jain argued that the action is unsustainable. Placing reliance on the judgment of Andhara Pradesh High Court in the case of M. Gopalakrishna Vs. Divisional Security Commissioner, Railway Protection Force, S.C. Railway and Others, another judgment of the Andhara Pradesh High Court in the case or M. Krishnam Raju, Asst. Technical Officer, Commercial Electronics Group, ECIL Vs. The Electronics Corporation of India and Others, , a judgment of Supreme Court in the case of Syed Zaheer Hussain Vs. Union of India (UOI) and Others, Shri Anubhav Jain argues that in an illegal manner without granting proper opportunity to the petitioner, exparte enquiry is conducted and petitioner is dismissed from service, that also on a minor allegation of unauthorized absence for a few days and therefore, the punishment is highly disproportionate. Accordingly, contending that action taken against the petitioner is illegal, not only on the ground of denial of opportunity of hearing but also in view of the fact that punishment of dismissal for the misconduct of unauthorized absence is highly disproportionate, interference into the matter is sought for.

2. Respondents have filed a detailed reply and have brought on record the past service conduct of the petitioner wherein certain punishments have been imposed upon him on various counts. Shri Vikram Singh, learned counsel for the Union of India argued that petitioner was a Member of the Disciplined Force and maintenance of discipline at the highest level is of paramount consideration in such an establishment. It is argued that the petitioner was unauthorizedly absent, he had overstayed his leave and his whereabouts were not known. As notices served on him were received back with a remark that "petitioner was not available in place" it is stated that action was taken under Rule 34 of the Central Industrial Security Force Rules, 1969. An enquiry was conducted and the punishment imposed after due consideration. Accordingly, Shri Vikram Singh submits that enquiry was conducted in accordance to law. Petitioner himself is to be blamed for the misconduct committed by him and as action taken is in accordance with law, the same does not warrant any interference. Accordingly, Shri Vikram Singh, learned counsel for the Union of India prays for dismissal of this writ petition.

3. I have heard learned counsel for the parties at length and perused the record. From the record it is clear that on the ground of his wife's illness, petitioner was sanctioned 20 days earned leave between 5.11.98 to 24.11.1998. He was working at CISF Unit, BHEL, Bhopal and he had taken leave on the ground that he was required to take his wife to Bombay for treatment. After expiry of leave, petitioner was required to report for duty on 25.11.98 but instead of reporting for duty w.e.f. 25.11.98 petitioner continued to remain absent till the impugned action was taken. Petitioner's request for extension of leave was rejected. Petitioner was clearly informed to report for duty on 28.11.98 but he did not report for duty. Records indicate that petitioner personally visited the Unit at Bhopal on 14.11.98 seeking 10 more days earned leave upto 4.12.98. This was rejected and on 19.11.98 he was informed through telegram about rejection of his request and he was instructed to report for duty on expiry of leave on 25.11.98. He did not do so and therefore, another notice was issued on 11.12.98 at the address given in his leave application. He did not respond to this notice also and therefore, another notice was issued to him on 18.12.98 followed by notices on 22.1.99 and 19.2.99. Record indicates that all these notices were sent on the address indicated by the petitioner in the service record and in the leave application but when the petitioner did not respond to the notice sent till 19.2.99, charge memorandum was issued to him in accordance to the provisions of Rule 34 of CISF Rules 1969 (repealed as Rule 36 of CISF Rules 2001). Charge sheet was issued to him on 17.4.99 and he was intimated about his unauthorized leave continuously from 25.11.98 upto 17.4.98. Charge sheet was sent at his home address but it was received back with a postal remark that "PANE WALA GHAR PAR NAHIN MILA". Thereafter, an enquiry officer was appointed and Enquiry Officer fixed the departmental enquiry to be conducted on 17.6.99, 24.6.99 and 5.7.99 and notices were sent to him with regard to the enquiry on the same address. Again all the notices were received back unserved with the

same remark as indicated herein above and even a visit by personal of his unit on 28.6.99 to his house yielded the same result. As petitioner was not responding to the notices issued, an ex-parte enquiry was conducted and finding the petitioner to be unauthorizedly absent, impugned action is taken. In view of aforesaid narration of facts it is clear that petitioner a Member of Disciplined Armed Force of the Union was unauthorizedly absent and petitioner's own showing indicates that he was absconding because of his involvement in a criminal case, as such he did not report for duty. Therefore, allegations against the petitioner to the effect that he was absent from duty is found to be correct. Even for the purpose of conducting enquiry when the notices were issued, petitioner was not available. In such circumstances, enquiry, ex-parte in nature conducted by the department cannot be faulted with. When a departmental enquiry is conducted and on the allegations of misconduct action taken, the petitioner has to show procedural violation in the matter of conducting departmental enquiry and has to prove before this Court as to how and on what basis the statutory rules or regulations have been violated in the matter and how the principles of natural justice are not followed or the statutory rules governing conduct of departmental enquiry breached. In the instant case nothing is shown as to how and on what basis the departmental enquiry conducted even though ex-parte is illegal. The enquiry officer was appointed and on three different dates as indicated herein above, notices were tried to be served on the petitioner but the petitioner's whereabouts were not known. Petitioner continued to be absconded and he was overstaying leave. In spite thereof he did not respond to the call of the department to report for duty. It seems that on the apprehension that if he joins duty he will be arrested from his office, petitioner continued to remain absconded and therefore, ex-parte enquiry was conducted. When a departmental enquiry is conducted even though ex-parte after following due process in accordance with law and when no statutory provisions, rules or regulations are shown to be violated in doing so, this Court exercising limited jurisdiction in a petition under Article 226 of the Constitution cannot interfere with the departmental proceedings by holding it to be illegal. While exercising powers in a petition under Article 226 of the Constitution, this Court does not sit over the decision of the disciplinary authority as if it exercises appellate jurisdiction. The domain of this Court is not to exercise any appellate jurisdiction or to reappreciate the entire matter as if it is exercising the original appellate jurisdiction. On the contrary the jurisdiction of this Court is only to see as to whether statutory provisions are followed and proper opportunity was granted and a proper and reasonable procedure has been followed before taking the action. If the case in hand is evaluated in the backdrop of the aforesaid principles and if the conduct of the petitioner in remaining absent unauthorizedly and not disclosing his whereabouts are taken note of, the act of the respondents in proceeding with the enquiry in the manner done cannot be said to be illegal. The CISF is an armed force of Union of India and Member of such a force is required to maintain high standards of discipline and devotion. Unauthorized absence in an armed force are serious act of misconduct and it is for the authorities

concerned to consider the act of a Member of such force in the light of requirement of force and take action. A writ Court exercising jurisdiction in a writ petition under Article 226 of the Constitution is not supposed to interfere in such matters. In the present case, petitioner was unauthorizedly absent for a period of 6 to 8 months, his where about was not known and he was not cooperating with the department and as such an enquiry was conducted in accordance to rules and the impugned action was taken.

As there is nothing available on record to show that the action of the department is vitiated due to breach of any statutory rules or regulations, interference into the matter cannot be made by this Court.

4. As far as quantum of punishment and interference with the same is concerned, the same is beyond the scope of judicial review in a petition under Article 226 of the Constitution. It is within the domain of the disciplinary authority or the appellate authority to consider the question of interfering with the quantum of punishment. Judgment as indicated herein above and relied upon by Shri Anubhav Jain are mainly pertaining to employment in a private establishment and in one of the judgment namely M. Gopalakrishna (supra) even though matter pertains to Member of the armed force but in that case finding of the enquiry officer was to the effect that the delinquent employee was sick for various period and there is justification for his absence. Facts of the said case are entirely different from the present case. Petitioner was absconding in the absence of any exonerating circumstances being available to show justification on the part of the petitioner in doing so, this Court cannot exercise its discretionary jurisdiction in interfering with the quantum of punishment. Accordingly, finding no case for interference into the matter on the grounds raised, this petition is dismissed. In case petitioner wants to raise objection with regard to the quantum of punishment, it is for the petitioner to represent in this regard to the competent authority and it is the discretion of the competent authority to consider the grievance of the petitioner in the light of the submissions that may be made.

Accordingly, finding no case for interference on the grounds raised, this petition is dismissed.