
(2003) 07 JH CK 0039
In the Jharkhand High Court
Case No : C.W.J.C. No. 1111 of 1998 (R)

Sanjeev kumar Verma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 367

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.M. Bannerjea, Jitendra Shanker Singh and Kaushal Kishore Mishra, for the Appellant; M.M. Prasad, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. M.M. Bannerjea, learned counsel for the Petitioner assisted by Mr. Jitendra Shanker Singh and Mr. M.M. Prasad, learned counsel for the Respondents.

2. The Petitioner is aggrieved by Annexures 1, 2 and 3. By Annexure 3, a secret/confidential letter was sent to different authorities by the Commanding Officer informing that the Petitioner was a "deserter absentee". From Annexure 2, which are the minutes of proceedings of the summary Court Marshall, it appears that the Petitioner made a statement which is to be found at running page 52 and which reads as follows :

"I have made a mistake and I have nothing more to say."

3. After the aforementioned Court Marshall proceedings, the Petitioner was inflicted with the following punishments :-

A. To be reduced in Rank.

B. To be dismissed from service.

This order was passed on 05.06.1996. Thereafter, the Petitioner preferred a representation/appeal before the chief of the Army Staff but that was also rejected on 31.12.1996 and the same was communicated to the Petitioner by letter dated 03.01.1997 as contained in Annexure 1.

4. The Petitioner was enrolled in the Army Medical Corps on 28.8.1986 on the post of Store Keeper (Technical Group) whereafter, he joined as a Trainee in the Army Medical Corps, Lucknow and on completion of Training, he was posted and transferred at various places and subsequently promoted to the post of "Havildar" and transferred to Jammu and Kashmir. Thereafter, he was posted to Ranchi on the same post of a Havildar.

5. The learned counsel for the Petitioner has submitted and stated that in order to enhance his educational qualifications, he desired and intended to appear at the intermediate examinations conducted by the Bihar Intermediate Educational Council at Patna and accordingly, applied for the same. He was issued Admit Card, Roll Code and Roll Number. The Admit Card has been brought on record as Annexure 5 to the Writ Application. The programme of the examinations was published on 26.01.1996 intimating to all concerned that the same would finally end on 4th April, 1996. However, so far as the Petitioner is concerned, his examinations were notified for commencement with effect from 11.03.1996 and closure was also notified on 25.03.1996. The aforementioned programme has been brought on record by Annexure 6.

6. In order to appear, the Petitioner made a request for Casual Leave giving his address etc. and accordingly, by Leave Certificate issued on 02.03.1996, the Petitioner was granted permission to avail leave during the period 06.03.1996 to 25.03.1996. The Leave Certificate is Annexure 7 to the Writ Application.

7. As bad luck would have it, the programme was renotified and the exams were rescheduled and by Annexure 8, it was notified that the last paper would be on 08.04.1996 instead of 25.03.1996. The aforementioned renotification was made on 08.03.1996 as would be apparent from Annexure 8. Since the Petitioner's leave was to come to an end on 25.03.1996, the Petitioner, by way of abundant caution, sent a Telegram on 17.03.1996 which was followed by a letter dated 18.03.1996 (Annexures 9 and 10) informing the Commanding Officer, APO, Ranchi about the aforementioned rescheduling of the examination. In the same letter also, the Petitioner prayed for an extension of his leave by a month.

8. According to the Respondents, however, the aforementioned leave was not sanctioned and a Telegram to that effect was sent to the Petitioner informing him about refusal to grant extension. According to the Petitioner on the other hand, this letter never reached its destination thereby depriving the Petitioner of knowledge about such refusal because this was not sent to the address given by the Petitioner.

9. Whether the Petitioner received this communication (Annexure 11) or not is not relevant for purposes of deciding this case as will be explained later on.

10. Reverting to facts, the Petitioner has stated that after his examinations were over, he contracted Jaundice and consulted medical experts as is evident from Annexure 12. At paragraphs 17 to 19, the Petitioner has stated about his illness and has also stated that upon recovery, he was finally advised to join duty by Certificate dated 12.05.1996 as contained in Annexure 14 appended to the Writ Application.

11. The Respondents, on the other hand at Paragraph 15 of the Counter Affidavit have shown their disinclination to accept the plea of the Petitioner falling ill and suffering from Jaundice. However, their statements are based on presumption and are full of "ifs" and "buts". Their only anger and/or displeasure against the Petitioner is that the Petitioner had failed to report his medical sickness and had he done so, he would have been sent by the Army themselves for further investigation.

12. So far as the matter pertaining to receipt or non-receipt of the Telegram as indicated above is concerned, the same loses significance because notwithstanding the aforementioned Telegram, the Petitioner did remain absent and finally reported for duty on 14.05.1996.

13. It is not a case where the Petitioner was totally and completely without explanations, On the contrary, this is a case where the Petitioner has come out with a number of plausible explanations. The documents go to show that there was an examination. It is also evident that these examinations were initially stated to be held during the period 06.03.1996 to 25.03.1996 whereafter, the schedule was renotified to end on 08.04.1996. The Petitioner has an explanation to give and that is to the extent that after the examinations were over, he fell ill and contracted Jaundice (infective Hepatitis) and was under the treatment of a Doctor during the period 09.04.1996 to 11.05.1996.

14. If the leave was sanctioned up to 25.03.1996, and if the Petitioner could not join immediately thereafter, the Respondents cannot fasten guilt upon the Petitioner because it was beyond his control in as much as the examinations were rescheduled and came to an end on 08.04.1996. Therefore, the period that is relevant is after 08.04.1996. But, even here, the Petitioner had an explanation to offer and the Respondents were bound to have considered that explanation. So far as the period between 25.03.1996 to 08.04.1996 is concerned, the Respondents cannot point any finger upon the Petitioner because that was beyond his control totally. However, for the period after 08.04.1996, it is evident that the Petitioner did have a valid explanation and the Respondents were required to assess and consider the explanation.

15. In the instant case neither Annexure 3 shows any such assessment/consideration nor does Annexure 2 show such consideration and finally, Annexure 1, i.e., the order of the Chief of Army Staff is also totally devoid of any such consideration. In any event, the absence for the period 08.04.1996 to 13.05.1996 amounts to approximately 35 days. The case has also to be looked

upon taking into consideration the otherwise unblemished service record of the Petitioner because the Petitioner has categorically stated that he was given a number of promotions and that there was nothing against him otherwise. These statements have not been denied.

16. For the foregoing reason, therefore, this Court is of the opinion that the punishment inflicted upon the Petitioner is extremely harsh and disproportionate to the nature of the offence alleged against the Petitioner. This Court is also of opinion that the Respondent authorities have not given proper consideration to the case of the Petitioner.

17. This Writ Petitioner therefore must succeed and it is accordingly allowed to do so. The impugned orders are therefore quashed. There shall, however, be no order as to costs.