

**(2011) 07 DEL CK 0148**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 687 of 1998**

Zulfiqar Khan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

---

**Date of Decision :** 15-07-2011

**Acts Referred:**

Central Industrial Security Force Rules, 1969 — Rule 29A(2), 31, 34

**Citation :** (2011) 07 DEL CK 0148

**Hon'ble Judges :** Sunil Gaur, J; Pradeep Nandrajog, J

**Bench :** Division Bench

**Advocate :** H.S. Dahiya, for the Appellant; Abdus Salam, Asst. Commandant, CISF, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Pradeep Nandrajog, J.—The present writ petition challenges the order dated 25.11.1997 passed by the Appellate Authority, Deputy Director General, CISF (WZ) whereby the appeal of the Petitioner was dismissed and the order dated 30.6.1997 of the Commandant, CISF, Unit IPCL, Baroda, whereby penalty of "removal from service" imposed upon the Petitioner was upheld.

2. The brief facts of the case are that the Petitioner was working as a Constable with CISF at its IPCL Unit, Baroda. He was sanctioned earned leave from 8th July-22nd July 1996. During the period of the leave, vide letter dated 17.7.1996 Petitioner sought extension of leave for 45 days on medical grounds. The Commandant responded informing the Petitioner that he should get himself examined at the nearest Government hospital and obtain and submit a medical certificate pertaining to his alleged sickness and further that the medical certificate should be from the date of admission till discharge from the hospital and should evidence that the Petitioner was unable to travel due to serious illness. Petitioner was advised that if he was not seriously sick and was able to travel, he should return to the unit so that he could get proper treatment in the local hospital and that if he was an O.P.D. patient, he should report to the unit for

his duty as soon as possible.

3. The Petitioner did not comply with the advisory of the Commandant nor joined duty till 9.12.1996 and this resulted in a memorandum dated 19.2.1997 being issued under cover whereof a charge-sheet was served upon the Petitioner under Rule 34 of the CISF Rules. The Petitioner being served with the charge memorandum submitted a reply on 3.3.1997.

4. The reply being found unsatisfactory, vide order dated 29.3.1997 the Commandant directed inquiry to be held and appointed Inspector Mohinder Singh as the Inquiry Officer who issued a notice dated 1.4.1997 intimating Petitioner that he would hold a preliminary hearing on 2.4.1997 at 11:00 am in the Commandant Office C-Coy. Petitioner presented himself before the inquiry officer on the date notified where by way of preliminary questions the inquiry officer recorded Petitioner's affirmation of having received the charge-sheet, relied upon documents and whether the Petitioner desired a defence assistant or had any objection to the inquiry officer conducting an inquiry and fixed 4.4.1997 as the next date of inquiry. On which date prosecution evidence was recorded, which needless to state was that the Petitioner was sanctioned leave till 22.7.1996 and that without a justifiable cause he remained absent for 140 days as also a witness to the character of the Petitioner, who, with reference to the service file of the Petitioner proved 3 previous misdemeanors resulting in penalties on the fact proved of act of either indiscipline or lack of devotion to duty.

5. It need hardly be emphasized that the fact of not being extended leave and overstaying sanctioned leave by 140 days was not a matter in dispute inasmuch as the Petitioner pleaded his sickness as the reason for his inability to report for duty and thus it is apparent that in view of the defence taken by the Petitioner, the department having laid the foundation for the charge required the defence to be established.

6. In defence the Petitioner filed a medical certificate dated 5.12.1996 issued by a doctor at Shujaat Hospital Amroha; medical prescription dated 20.7.1996 issued by a doctor of Shujaat Hospital Amroha; bills dated 20.7.1996 & 25.11.1996-5.12.1996 of Janta Medical Store and a medical certificate of Dr. Anand B. Khorana of 103 Racecourse Medical Centre dated 30.12.1996. No. witness was examined in defence by the Petitioner.

7. In a nutshell, the witnesses examined by the department, PW-1 Inspector D.K. Nath, who was posted as Company Commander as B-Coy; PW-2 Sub-Inspector B.M. Singh, who was posted in the office of Commandant in the Document Section, and PW-3 S. Subban Sub-Inspector, who was posted on 11.12.1996 at the Material Gate as shift in-charge proved the case of the department that the Petitioner was not sanctioned extended leave and he overstayed sanctioned leave by 140 days without intimation in dereliction of duty.

8. In view of the evidence led at the departmental inquiry and the written

defence statement of the Petitioner, the Enquiry Officer submitted his report on 7.5.1997 holding that the Petitioner was absent for 140 days, over staying sanctioned leave without permission from 23.6.1996 to 9.12.1996 and held the same to be a case of indiscipline i.e. held the charge proved.

9. Supplying the report of the inquiry officer to the Petitioner and considering the reply dated 10.6.1997, vide order dated 30.6.1997 the Disciplinary Authority imposed a penalty of dismissal from service upon the Petitioner under Rules 29A(2) & 31(a) CISF Rules, 1969.

10. Appeal preferred was rejected vide order dated 25.11.1997.

11. Conceding that leave sanctioned till 22.7.1996 was not extended, learned Counsel for the Petitioner urged that the Petitioner had a justification for not reporting for duty, being medically unfit for which proof was given in the form of certificates issued by doctors and bills issued by a chemist and thus counsel urged that the Petitioner had made good the defence; nobody can be punished if situation is beyond the control of the person was the argument advanced. It was urged that No. call letter requiring Petitioner to report back was issued. It was also urged that the previous misdemeanours were on trivial issues and for which the Petitioner was punished and that the same could not be reconsidered.

12. With reference to the evidence led before the Inquiry Officer, we find that the department has proved facts which establish the foundation of the department i.e. Petitioner's continued unauthorized absence without leave being sanctioned. Indeed, at the heart of the matter remains the question whether the Petitioner, due to sickness, was helpless to join back.

13. We have noted herein above that when the Petitioner sought leave to be extended, the Commandant advised him to get himself examined from a government hospital, and the Petitioner admittedly did not do so. The documents filed by the Petitioner before the Inquiry Officer have been opined to be not inspiring any confidence and as long as there is reasonable basis to so hold, exercising writ jurisdiction, it would be impermissible for us to re-appreciate the same as if we are sitting in Appeal.

14. The medical certificate dated 5.12.1996 purportedly issued by a doctor at Sujaat Hospital Amroha bears some initials, without the stamp of the doctor. The doctor issuing the same was not examined and thus there is every possibility of the document being created. The next medical document is a prescription dated 20.7.1996 which does not record that the Petitioner was advised rest. The next medical certificate is dated 5.12.1996 and mentions that the Petitioner was treated at the hospital since 20.7.1996 and was advised rest for 5 months. The authors thereof have not been examined. No. receipts have been produced issued by Sujaat Hospital or to the doctor concerned and this would additionally make susceptible the certificates produced by the Petitioner. We further find that on a bill issued by Janta Medical Store the same is dated 25.11.1996 to 5.12.1996; and we have never seen such kind of a continuous running bill.

Further, the medicines stately sold under the bills have No. corresponding prescriptions. Interestingly the medical prescription dated 20.7.1996 with follow up dates 21.7.1996, 22.7.1996, 25.7.1996, 2.8.1996, 15.8.1996, 5.9.1996, 30.9.1996, 15.10.1996, 25.11.1996 and 5.12.1996 have No. corresponding bills for medicines purchased.

15. The documents do not inspire any confidence. That apart, the Petitioner has not proved that he was hospitalized. Assuming the Petitioner obtained treatment at Sujaat Hospital, he did so as an Out Patient and we see No. reason why he could not get himself examined by the Government Civil Hospital.

16. Concurring with the report of the Inquiry Officer, law being that past misdemeanours can be considered if a government servant indulges in a wrong doing again and holding that merely because a formal call letter was not issued, but meaningfully one was issued when the Commandant sent an advisory to the Petitioner to either get himself examined at the nearest government hospital or report to the Unit, we conclude by dismissing the writ petition but refrain from imposing any costs.