



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 4181/2001

Satya Narayan Gurjar S/o Shri Dhula Ram Gurjar, no-850856896 Constable B/19 Battalion Central Reserve Police Force, Barpeta Road, Aassam at present resident of Village Salve Kala, Post Kutti via Bandikui, District-Dausa.

-----Petitioner

Versus

- 1- Union of India through the Secretary Home Ministry CRPF New Delhi.
- 2- The Deputy Inspector General of Police CRPF Chennai.
- 3- The Commandant 19th Battalion CRPF Barpeta Road, Aassam.

-----Respondents

For Petitioner(s) : Mr. Himmat Singh
For Respondent(s) : Mr. Pawan Pareek

JUSTICE ANOOP KUMAR DHAND

Order

19/02/2025

Reportable

Discipline is the hallmark of the disciplined forces and its member is not expected to violate the discipline by sending incorrect information with regard to his death, more particularly when the delinquent officer is alive and remains unauthorizedly absent from duty.

1. The instant petition has been preferred with the following prayer:

"It is, therefore, most humbly prayed that this writ petition may kindly be accepted and allowed and order dt-28-8-2000 Annexure-5 awarding the punishment of dismissal from his





service upon the petitioner and the order dt-27-12-2000 Annexure-7 rejecting the appeal of the petitioner against his order of dismissal, be quashed and set-aside with all consequential benefits.

Any other relief which this Hon'ble High Court deems just and proper in the facts and circumstances of the case be passed in favour of the petitioner."



2. By way of filing this petition, a challenge has been led to the impugned order dated 28.08.2000 passed by the respondents by which the petitioner has been dismissed from service. The appeal preferred against the aforesaid order has also been rejected by the Appellate Authority vide impugned order dated 27.12.2000.

3. Learned counsel for the petitioner submits that the petitioner was posted as a Constable in the Central Reserve Police Force (for short 'CRPF') and he went on leave for 15 days, w.e.f. 04.10.1999 till 22.10.1999. Counsel submits that during the said period, the petitioner met with an accident on 16.10.1999, and he remained under treatment till 19.12.1999, and he became fit on 20.12.1999, and thereafter, he joined the services on 27.12.1999. Counsel submits that a disciplinary proceeding was initiated against the petitioner, after serving charge-sheet upon him with the charge of willful absence from duty. Counsel submits that a reply to the aforesaid charge-sheet along with medical certificate of a Medical Officer of Government Primary Health Centre, Sainthal, Dausa, was brought by the petitioner before the authority and it was pleaded before



the Disciplinary Authority that on account of the injuries sustained by the petitioner and on account of undergoing treatment, the petitioner could not join the duties after the expiry of the granted leaves. Counsel submits that these facts were overlooked by the respondent authorities and the order impugned was passed.

4. Counsel submits that the petitioner has rendered 15 years of service and looking to the length of his service and looking to the reasons explained by the petitioner regarding his absence, the penalty of dismissal from service is exorbitant and disproportionate, hence, interference of this Court is warranted.

5. In support of his contentions, the counsel for the petitioner has placed reliance upon the judgments passed by the Hon'ble Apex Court in the case of **Shri Bhagwan Lal Arya vs. Commissioner of Police Delhi and Ors.** reported in **2004 (2) Supreme 677**; and **Chhel Singh vs. MGB Gramin Bank, Pali and Others** reported in **2014 (13) SCC 166**. Counsel submits that in view of the submissions made herein above, the orders impugned are liable to be quashed and set aside.

6. Per contra, learned counsel for the respondents opposes the arguments raised by the counsel for the petitioner and submits that the petitioner being a member of a disciplined force remained unauthorizedly absent from duty for a period of 65 days. Counsel submits that when the sanctioned leaves of the petitioner expired, the petitioner was called upon to join the duties but a false information





was furnished on behalf of the petitioner that he has passed away. Counsel submits that when this fact was verified, it was found that the petitioner was alive. Counsel submits that no documentary evidence with regard to the injuries suffered by the petitioner in the accident was placed on record, neither any FIR was registered in this regard, nor any information was sent by the petitioner to the respondents, hence, under these circumstances, the plea of the petitioner with regard to the fact that he met with an accident was not relied upon by the disciplinary authority and looking to the misconduct of the petitioner, the punishment order has been passed. Counsel submits that under these circumstances, interference of this Court is not warranted.

7. Heard and considered the submissions made at Bar and perused the material available on record.

8. Perusal of the record indicates that 15 days leave was sanctioned to the petitioner by the respondents w.e.f. 04.10.1999 till 22.10.1999. The record further indicates that after expiry of the said period, the petitioner did not join the service. Thereafter, several notices were issued to the petitioner directing him to join the service, but subsequently, when the petitioner failed to join the duties, in consequence thereof, warrants were issued against him to procure his presence and finally, he appeared before the respondents on 27.12.1999. Thereafter, disciplinary proceedings were initiated against him, after serving a chargesheet with the allegation that he remained willfully



absent from duty, as such an act of the petitioner amounts to misconduct.

9. Reply to the aforesaid charge-sheet was submitted by the petitioner and an explanation was furnished along with a medical certificate (Annexure-3) before the disciplinary authority that he was not well w.e.f. 16.10.1999 till 19.12.1999. Thereafter, the Doctor concerned issued a medical certificate in this regard whereby the petitioner was found fit to join duty on 20.12.1999. The aforesaid medical certificate of the petitioner was not found to be satisfactory by the Disciplinary Authority, as no supportive document in corroboration was furnished by the petitioner. Considering the unauthorized absence of the petitioner, he was found guilty of the charges levelled against him and accordingly, a decision was taken for imposing penalty of dismissal from service upon the petitioner.

10. Now, the question which remains for consideration of this Court is that, 'whether the Court can interfere with the finding recorded by the Enquiry Officer and the decision taken by the Disciplinary Authority about misconduct of the petitioner ?'.

11. The law in this regard is well settled that the Court cannot act as an Appellate Authority over the disciplinary proceedings for re-appreciating the evidence, recorded before the Enquiry Officer. The law in this regard has been propounded by the Apex Court in the case of **Union of India and Ors. V. P. Gunasekaran** reported in **2015 (2)**





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SCC 610, wherein the Apex Court has held that the High Court can only see whether:



"(a) the inquiry is held by a competent authority;(b) the inquiry is held according to the procedure prescribed in that behalf
(c) there is violation of the principles of natural justice in conducting the proceedings;
(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person 13.could ever have arrived at such conclusion;
(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
13.(i) the finding of fact is based on no evidence."

12. Under Article 226/227 of the Constitution of Indian, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the inquiry, in case the same has been conducted in accordance with law;



- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience."



13. Keeping in view the proposition of law, as laid down by the Apex Court in the case of **P. Gunasekaran** (supra), this Court is conscious of the fact that the scope of interference of this Court in such like matter is limited.

14. It is true that while exercising the powers contained under Article 226 of the Constitution of India, the High Court should not function as a Court of Appeal over the findings of the Disciplinary Authority. Such orders can be interfered only when there is "no evidence" in the Departmental Enquiry.

15. Dealing with the scope of judicial review, the Hon'ble Apex Court has held in the case of **State of Bihar and Others vs. Phulpari Kumari** reported in **2020 (2) SCC 130** in para 6.1 and 6.2 as under:-

"6.1. It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of 'no evidence'. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal Court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand,



preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge.

6.2. The High Court ought not to have interfered with the order of dismissal of the Respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the Inquiry Officer."



16. Now the question which remains for consideration of this Court is 'whether the punishment/ penalty of removal from service of the petitioner is disproportionate ?'

17. The record reveals that when the petitioner did not report on duty, after expiry of his sanctioned leaves, a notice was sent to him with direction to report on duty. In response to the said notice, an incorrect information was sent on behalf of the petitioner that the petitioner has passed away. Thereafter, this fact was verified by the respondents, wherein he was found alive, hence, such an act of the petitioner tantamounts to indiscipline. The petitioner was a member of the disciplined force and he was supposed to act and behave in a disciplined manner.

18. It is clear that the petitioner has disobeyed the orders of his Superior Officers and has deserted the force for a period of 65 days. Such desertion is an act of gross misconduct.

19. This Court is in agreement with the findings and conclusion recorded by the Disciplinary Authority and confirmed by the Appellate Authority on the charge of



indiscipline on the part of the petitioner, being a member of the disciplined force.

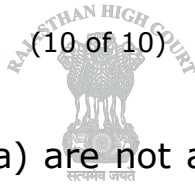
20. In **Om Prakash vs. State of Punjab and Others** reported in **2011 (14) SCC 682**, Hon'ble the Supreme Court held in para 11 as under:



"**11.** A similar issue came to be raised in this Court several times. In *State of M.P. v. Harihar Gopal* [1969 SLR 274 (SC)] this Court noticed that the delinquent officer in failing to report for duty and remaining absent without obtaining leave had acted in a manner irresponsibly and unjustifiably; that, on the finding of the enquiry officer, the charge was proved that he remained absent without obtaining leave in advance; that the order granting leave was made after the order terminating the employment and it was made only for the purpose of maintaining a correct record of the duration of service and adjustment of leave due to the delinquent officer and for regularising his absence from duty. This Court in the said decision held that it could not be accepted that the authority after terminating the employment of the delinquent officer intended to pass an order invalidating that earlier order by sanctioning leave so that he was to be deemed not to have remained absent from duty without leave duly granted."

21. This Court is of the considered opinion that a man in uniform must maintain greater discipline and the act of remaining unauthorizedly absent from duty is the gravest act of misconduct. Remaining absent from duty, after expiry of sanctioned leaves by a person, belonging to a disciplined force, is fatal.

22. The judgments relied upon by counsel for the petitioner in the case of **Shri Bhagwan Lal Arya** (supra)



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and **Chhel Singh** (supra) are not applicable upon the facts and circumstances of the case.

23. Looking to the fact that the petitioner remained willfully absent from duty on unauthorized leaves without sending any intimation to the respondents authorities and looking to the fact that an incorrect information was sent at his instance that he has passed away, such an act of the petitioner amount to gross misconduct. The petitioner has failed to maintain devotion towards his duty and being a member of the disciplined force, such indiscipline on the part of the petitioner cannot be tolerated. The Disciplinary Authority as well as the Appellate Authority has not committed any error in passing the order impugned, which requires any interference of this Court.

24. Accordingly, the instant writ petition stands dismissed. Pending applications, if any, also stand dismissed.

(ANOOP KUMAR DHAND),J

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