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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21794-2020

Decided on: 18.03.2026

VIVEK KUMAR

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Ms. Rishma Verma, Advocate for the petitioner(s).

Mr. Anil Sharma, Advocate with
Ms. Devyani Sharma, Advocate for the respondents

SANDEEP MOUDGIL, J

Prayer

1. The jurisdiction of this court has been invoked under Articles 226 and 227 of the Constitution of India seeking issuance of an appropriate writ, order or direction for calling the records of the proceedings before the respondents and for quashing the order dated 15.12.2018 passed by Respondent No. 3 (Annexure P-1), whereby the petitioner was declared a proclaimed person (absconder), as well as the order dated 25.04.2019 (Annexure P-2) passed by Respondent No. 3, whereby the petitioner has been dismissed from service. The petitioner further seeks issuance of an appropriate writ, order or direction in the nature of mandamus directing the respondents to reinstate the petitioner in service with all consequential and attendant benefits.

Brief Facts

2. The petitioner was enrolled in the Central Reserve Police Force on 01.11.2006 and was serving as Constable (CT/WC). He was posted to E/44 Battalion on 16.02.2016 and continued to serve in the said unit. The petitioner proceeded on sanctioned leave for 15 days from 19.05.2018 to 05.06.2018. Upon expiry of the leave, he was required to report for duty on 05.06.2018 at the Transit Camp, Jammu. However, due to a road accident resulting in a foot injury, the petitioner could not join duty and remained absent from 06.06.2018.

3. The petitioner reported at Transit Camp, Jammu on 05.07.2018 and was placed under medical care. He was reported sick on 09.07.2018 and thereafter examined at 44 Battalion Hospital on 14.07.2018, where he was granted two weeks' medical rest. Subsequently, further medical rest of four weeks was sanctioned from 25.07.2018 to 21.08.2018.

4. The petitioner could not resume duty on 22.08.2018. According to him, the continued absence was on account of medical condition and personal circumstances, and he communicated his inability to join duty, including through a legal notice dated 25.08.2018 seeking extension of leave. Thereafter, the petitioner remained under treatment and was admitted at Christian Medical College, Ludhiana from 01.10.2018 to 31.03.2019 for treatment of a non-healing ulcer of the left foot.

5. In the interregnum, the respondents passed an order dated 15.12.2018 declaring the petitioner as a proclaimed person with effect from 22.08.2018 and stopped his salary and service benefits. Subsequently, an ex parte departmental enquiry was conducted, culminating in the order dated

25.04.2019 whereby the petitioner was dismissed from service.

6. The petitioner, however, continued to suffer medical complications and also sustained a spinal injury in a road accident on 08.08.2019, due to which he remained under treatment and on bed rest, and was declared medically fit only on 20.03.2020. He claims that he attempted to report to the unit on 01.02.2020 but was not permitted to join.

7. Aggrieved against the order dated 15.12.2018 declaring him as proclaimed person and the order dated 25.04.2019 dismissing him from service, the petitioner has filed the present writ petition.

Contentions

On behalf of petitioner

8. Learned counsel for the petitioner contends that the impugned orders dated 15.12.2018 and 25.04.2019 are vitiated on account of gross violation of the principles of natural justice, inasmuch as no notice, summons or opportunity of hearing was ever afforded to the petitioner prior to declaring him a proclaimed person or proceeding with the departmental enquiry. It is submitted that the entire enquiry was conducted ex parte without ensuring effective service upon the petitioner, thereby rendering the proceedings legally unsustainable.

9. It is further contended that the absence of the petitioner from duty was neither wilful nor deliberate but was occasioned by circumstances beyond his control, namely the road accident immediately after expiry of leave, followed by prolonged medical treatment, including hospitalization from 01.10.2018 to 31.03.2019, and subsequent spinal injury. It is argued that the medical record substantiates the incapacity of the petitioner to resume duty,

and such involuntary absence could not have been treated as misconduct warranting the extreme penalty of dismissal.

10. Learned counsel submits that the petitioner had duly intimated the respondents regarding his inability to join duties, including through legal notice dated 25.08.2018 seeking extension of leave, which was neither considered nor responded to. The action of the respondents in ignoring such communication and proceeding mechanically is stated to be arbitrary and non-application of mind.

11. It is also argued that the declaration of the petitioner as a proclaimed person with effect from 22.08.2018 is per se illegal, as such a declaration carries serious civil consequences and could not have been made without strict adherence to due process and affording reasonable opportunity to the petitioner. The consequential stoppage of salary and benefits is, therefore, asserted to be unsustainable.

12. On the proportionality of punishment, it is contended that even assuming absence, the same did not warrant the extreme penalty of dismissal from service, particularly in the backdrop of medical exigencies and long years of unblemished service since 01.11.2006. The impugned orders are thus assailed as arbitrary, disproportionate and liable to be set aside, with a prayer for reinstatement along with consequential benefits.

On behalf of respondent

13. Learned counsel for the respondents, while opposing the writ petition, contends that the petitioner was a habitual absentee who wilfully overstayed sanctioned leave commencing from 06.06.2018 and failed to report even after expiry of duly sanctioned medical rest on 21.08.2018. It is

submitted that repeated communications dispatched to the petitioner at his recorded address directing him to resume duty, but he neither reported nor furnished any explanation thereby consciously disregarding lawful commands of the force.

14. It is further contended that upon continued absence and non-traceability, a Court of Inquiry was constituted on 05.11.2018, and based on its findings, the petitioner was declared a deserter under the applicable provisions of the CRPF framework. The subsequent steps, including issuance of arrest warrants and initiation of departmental proceedings under Section 11(1) of the CRPF Act, 1949 read with Rule 27 of the CRPF Rules, 1955, were undertaken strictly in accordance with law.

15. Learned counsel submits that due and repeated opportunities were granted to the petitioner at every stage of the departmental enquiry. Memorandum dated 15.01.2019, appointment of Enquiry Officer on 08.02.2019, notices issued during enquiry proceedings, and forwarding of enquiry report were all duly sent through registered post. Despite this, the petitioner failed to participate or submit any defence and thus, the enquiry was conducted ex parte.

16. It is further argued that the plea of medical incapacity is unsubstantiated inasmuch as no contemporaneous intimation, as mandated under service discipline, was furnished to the unit authorities during the relevant period. The subsequent production of medical documents does not absolve the petitioner of wilful misconduct. It is contended that the petitioner's conduct reflects indiscipline incompatible with a uniformed force, justifying his dismissal.

17. Heard.

Analysis

18. The controversy, thus, narrows to the legality of the decision-making process, the existence of wilful misconduct, and the proportionality of punishment within the statutory framework of the CRPF Act and Rules.

19. At the threshold, the scope of judicial review in service jurisprudence permits interference not only where procedure is flawed, but also where findings are perverse, material evidence is ignored, or punishment is disproportionate. It is settled principle of law that in exercise of power under Article 226 of Constitution, the Court can interfere in the cases where there is alleged perversity in the finding of the respondent-authority who has passed the order in breach of law or there has been any abuse of power. Recently in case of ***Amrendra Kumar Pandey v. Union of India and others reported in 2022 SCC Online SC 881*** has considered the power of judicial review and as well as the doctrine of reasonableness and in this regard it is useful to quote following paragraphs.

"29. Where an Act or the statutory rules framed thereunder left an action dependent upon the opinion of the authority concerned, by some such expression as 'is satisfied' or 'is of the opinion' or 'if it has reason to believe' or 'if it considered necessary', the opinion of the authority is conclusive, (a) if the procedure prescribed by the Act or rules for formation of the opinion was duly followed, (b) if the authority acted bona fide, (c) if the authority itself formed the opinion and did not borrow the opinion of somebody else and (d) if the authority did not proceed on a fundamental misconception of the law and the matter in regard to which the opinion had to be formed.

30. The action based on the subjective opinion or satisfaction, **in**

our opinion, can judicially be reviewed first to find out the existence of the facts or circumstances on the basis of which the authority is alleged to have formed the opinion. It is true that ordinarily the court should not inquire into the correctness or otherwise of the facts found except in a case where it is alleged that the facts which have been found existing were not supported by any evidence at all or that the finding in regard to circumstances or material is so perverse that no reasonable man would say that the facts and circumstances exist. The courts will not readily defer to the conclusiveness of the authority's opinion as to the existence of matter of law or fact upon which the validity of the exercise of the power is predicated.

31. The doctrine of reasonableness thus may be invoked. Where there are no reasonable grounds for the formation of the authority's opinion, judicial review in such a case is permissible. [See **Director of Public Prosecutions v. Head**, [1959] A.C. 83 (Lord Denning)].

32. When we say that where the circumstances or material or state of affairs does not at all exist to form an opinion and the action based on such opinion can be quashed by the courts, we mean that in effect there is no evidence whatsoever to form or support the opinion. The distinction between insufficiency or inadequacy of evidence and no evidence must of course be borne in mind. A finding based on no evidence as opposed to a finding which is merely against the weight of the evidence is an abuse of the power which courts naturally are loath to tolerate. Whether or not there is evidence to support a particular decision has always been considered as a question of law. [See **Reg. v. Governor of Brixton Prison, Armah, Ex Parte**, [1966] 3 WLR 828 at p. 841].

33. It is in such a case that it is said that the authority would be deemed to have not applied its mind or it did not honestly form its opinion. The same conclusion is drawn when opinion is based on irrelevant matter. [See **Rasbihari v. State of Orissa**, (1969) 1 SCC 414 : AIR 1969 SC 1081].

34. In the case of **Rohtas Industries Ltd. v. S.D. Agarwal, (1969) 1 SCC 325 : AIR 1969 SC 707**, it was held that the existence of circumstances is a condition precedent to form an opinion by the Government. The same view was earlier expressed in the case of **Barium Chemicals Ltd. v. Company Law Board, AIR 1967 SC 295**.

35. Secondly, the court can inquire whether the facts and circumstances so found to exist have a reasonable nexus with the purpose for which the power is to be exercised. In other words, if an inference from facts does not logically accord with and flow from them, the Courts can interfere treating them as an error of law. [See **Bean v. Doncaster Amalgamated Collieries, (1944) 2 All ER 279 at p. 284**]. Thus, this Court can see whether on the basis of the facts and circumstances found, any reasonable man can say that an opinion as is formed can be formed by a reasonable man. That would be a question of law to be determined by the Court. [See **Farmer v. Cotton's Trustees, [1915] A.C. 922**]. Their Lordships observed: "..... in my humble judgment where all the material facts are fully found, and the only question is whether the facts are such as to bring the case within the provisions properly construed of some statutory enactment, the question is one of law only." [See also **Muthu Gounder v. Government of Madras, (1969) 82 Mad LW 1**].

36. Thirdly, this Court can interfere if the constitutional or statutory term essential for the exercise of the power has either been misapplied or misinterpreted. The Courts have always equated the jurisdictional review with the review for error of law and have shown their readiness to quash an order if the meaning of the constitutional or statutory term has been misconstrued or misapplied. [See **Iveagh (Earl of) v. Minister of Housing and Local Govt., [1962] 2 Q.B. 147; Iveagh (Earl of) v. Minister of Housing and Local Govt. (1964) 1 AB 395**].

37. Fourthly, it is permissible to interfere in a case where the power

*is exercised for improper purpose. If a power granted for one purpose is exercised for a different purpose, then it will be deemed that the power has not been validly exercised. If the power in this case is found to have not been exercised genuinely for the purpose of taking immediate action but has been used only to avoid embarrassment or wreck personal vengeance, then the power will be deemed to have been exercised improperly. [See **Natesa Asari v. State of Madras, AIR 1954 Madras 481**].*

*38. Fifthly, the grounds which are relevant for the purpose for which the power can be exercised have not been considered or grounds which are not relevant and yet are considered and an order is based on such grounds, then the order can be attacked as invalid and illegal. In this connection, reference may be made to **Ram Manohar v. State of Bihar, AIR 1966 SC 740; Dwarka Das v. State of J. and K., AIR 1957 SC 164 and Motilall v. State of Bihar, AIR 1968 SC 1509**. On the same principle, the administrative action will be invalidated if it can be established that the authority was satisfied on the wrong question : [See [1967] 1 A.C. 13]."*

20. Tested on this anvil, the present case reveals a deeper infirmity than mere procedural lapse. The edifice of misconduct rests on the premise of "wilful absence". However, the law is unequivocal that absence per se does not constitute misconduct unless it is deliberate. In **Krushnakant B. Parmar v. Union of India, (2012) 3 SCC 178**, it was authoritatively held that unless absence is proved to be wilful, the same cannot be treated as misconduct warranting penalty. The respondents have proceeded on presumption rather than proof. The medical record, indicating injury, continuous treatment, and hospitalization from 01.10.2018 to 31.03.2019, has neither been discredited nor meaningfully considered. The finding of wilfulness, therefore, stands vitiated.

21. The invocation of Rule 31 and its operational corollary concerning declaration of deserter also warrants close scrutiny. The provision is reproduced as under for reference:

Rule 31. Desertion and Absence without leave

(a) If a member of the Force who becomes liable for trail under clause (f) of Section 9, or clause (m) of section 10 or for deserting the Force while not on active duty under clause (p) of section 10 read with clause (f) of Section 9, does not return of his own free will or is not apprehended within sixty days of the commencement of the desertion, absence or overstayal of leave, then the Commandant shall assemble a Court of Inquiry consisting of at least one Gazetted Officer and two other members who shall be either superior or subordinate officers to inquire into the desertion, absence or overstayal of leave of the offender and such other matters as may be brought before them.

(b) The Court of Inquiry shall record evidence and its findings. The Court's record shall be admissible in evidence in any subsequent proceedings taken against the absentee.

(c) The Commandant shall then publish in the Force Order the findings of the Court of Inquiry and the absentee shall be declared a deserter from the Force from the date of his illegal absence, but he shall not thereby cease to belong to the Force. This shall however be no bar to enlisting another man in the place of a deserter.

22. Rule 31 of the CRPF Rules, 1955 lays down the procedure for declaration of a member of the Force as a deserter, it requires assembling of a court of inquiry and giving of its findings. Once a finding of desertion is given, the same is required to be published by the concerned Commandant and the effect of the desertion is given from the date of illegal absence. However, a declaration of deserter would not mean that the absentee shall cease to belong to the Force. The power exercised by the respondents, though administrative,

carries severe civil consequences and must be exercised with procedural rigour and substantive satisfaction that the absence is deliberate and contumacious. Though the petitioner absented himself, he also submitted medical certificate from to show his bona fide that he had underwent medical treatment and that he was medically unfit to join services. He was charged under Section 11(1) CRPF Act. In such circumstances, once the charges were framed under Section 11(1) for minor offences read with Rule 27 of CRPF Rules, 1955 and the authority has proceeded on the said basis, they should have considered the fact that the absence without leave must not have been equated with the desertion which ultimately resulted into the dismissal of the appellant from the service. The record, however, indicates a mechanical invocation of the provision, without reconciling the petitioner's medical condition or examining whether he was incapacitated rather than absconding. Statutory power cannot be exercised in abstraction of facts and it must be tethered to reason.

23. The Supreme Court in the case of *Captain Virendra Kumar v. Chief of the Army Staff*, ((1986) 2 SCC 217, examined the expression desertion vis-a-vis absence without leave in the context of the Army Act, 1950, and held that since every desertion necessarily implies absence without leave, the distinction between desertion and absence without leave must necessarily depend on the animus. If there is animus deserendi, absence would straightaway be desertion. Relevant extract is as hereunder:

In Black's Law Dictionary the meaning of the expression 'desertion' in Military Law is stated as follows :

"Any member of the armed forces who - (1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or (3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorised by the United States; is guilty of desertion. Code of Military Justice, 10 USCA 885."

14. As we mentioned earlier, the Army Act makes a pointed distinction between 'Desertion' and 'Absence without leave' simpliciter. 'Absence without leave' may be desertion if accompanied by the necessary animus deserendi' or deemed to be desertion if the Court of Inquiry makes the declaration of absence prescribed by Section 106 after following the procedure laid down and the person declared absent had neither surrendered nor been arrested.

In the context of CRPF Act, it is clear that petitioner's case is of absence without leave. In fact, the basic charge against the petitioner was of absence without leave w.e.f. 22.08.2018 without any permission/sanction of the competent authority. But from the medical certificates placed on record, it cannot be said that he was absent without sufficient cause. Therefore, the decision of dismissal from service is too harsh a punishment to be inflicted upon the appellant for being absent without leave.

24. In ***Ranjit Thakur v. Union of India reported in (1987) 4 SCC 611***, the Supreme Court invoked the doctrine of proportionality for quashing the order of punishment because the same was found to be shockingly disproportionate to the misconduct found proved against the appellant. The proposition laid down in that case reads as under:-

"Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-martial. But the sentence has to suit the offence

and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

25. Similarly, in case ***Ex Naik Sardar Singh v. Union of India & Ors***, reported in AIR 1992 SC (417) the Supreme Court have held as under :-

*"This principle was followed in **Ranjit Thakur v. Union of India, (1987) 4 SCC 611: AIR 1987 SC 2386** where this court considered the question of doctrine of proportionality and it was observed thus (at p.2392 of AIR): "The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the conclusive province of the court-martial, if the decision of the count even as to sentence is outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. (Emphasis supplied)."*

26. In ***Om Kumar v. Union of India (2001) 2 SCC 386***, the Apex Court considered the applicability of the doctrine of 'Proportionality' in the context of Article 14 of the Constitution. Referring to the judgments in ***Ranjit Thakur v. Union of India*** (supra) and ***B.C. Chaturvedi v. Union of India 1995 (6) SCC 749*** the Apex Court held:

"(1) In this context, we shall only refer to these cases. In *Ranjit Thakur v. Union of India (supra)*, this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In *B.C. Chaturvedi v. Union of India (supra)*, this Court stated that the Court will not interfere unless the punishment awarded was one which shocked the conscience of the Court. Even then, the Court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the Court could award an alternative penalty. It was also so stated in Ganayutham's case (*supra*)."
xxx ...".

22. In *Director General, RPF v. Ch. Sai Babu, (2003) 1 SCR 729* the Supreme Court reiterated that the High Court should not ordinarily interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed: "Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a Tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

27. The common thread running through in all these decisions is that the Court should not interfere with the disciplinary authority's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. It is true that quantum of punishment is within the jurisdiction and

discretion of the disciplinary authority, but it should neither be vindictive nor harsh. The approach should be judicious and punishment should be not so disproportionate to the offence as to shock the conscience of the Court. If the offence is outrageous defiance of logic, then the sentence may be set aside.

28. Equally, the so-called compliance with natural justice is more apparent than real. Mere dispatch of notices does not satisfy the mandate of fair opportunity. In *State of Orissa v. Dr. (Miss) Binapani Dei*, AIR 1967 SC 1269, the Supreme Court held that even administrative orders having civil consequences must be preceded by real and effective opportunity. Relevant extract is as under:

“We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting side the order of the State.”

29. The respondents have not established actual or constructive service in a manner ensuring participation. An ex parte enquiry, in such circumstances, becomes a façade of fairness.

30. Analysing, the entire facts and circumstances, it appears that the petitioner had explained the reason for his absence however, the respondent

chose to impose punishment of dismissal from the service by order dated 25.04.2019 (Annexure P-2) The petitioner, in service since 01.11.2006, is visited with dismissal, the harshest penalty, for absence intertwined with medical exigencies. The punishment, in its severity, screams the non-application of mind by the competent authority.

31. There is also a constitutional undercurrent that cannot be ignored. The State, even in its capacity as employer in a disciplined force, is bound by fairness under Articles 14 and 21. A member of a uniformed force does not forfeit his humanity at the altar of discipline. Institutional discipline and individual dignity are not antithetical but are complementary constitutional values.

32. In the case at hand, the respondents have treated absence as defiance, without examining whether it was in fact distress which prohibited the petitioner from reporting back and the law does not permit such substitution of assumption for adjudication. Judging on the touchstone of the law laid down by the Apex Court in afore-noted decisions, this Court is of the view that the punishment awarded to appellant is harsh and shockingly disproportionate.

33. Cumulatively, the impugned orders suffer from absence of proof of wilful misconduct, mechanical invocation of Rule 31 without due satisfaction, ineffective compliance with principles of natural justice, and imposition of a disproportionate penalty.

Conclusion

34. Accordingly, the order dated 15.12.2018 (Annexure P-1) declaring the petitioner as a deserter/proclaimed person and the order dated 25.04.2019

(Annexure P-2) dismissing him from service are set aside. The petitioner is directed to be reinstated in service with continuity for all purposes. The respondents are directed to release all consequential benefits, including arrears of salary with an interest of 6% p.a which shall be released within a period of 6 weeks from the date of receipt of certified copy of this order.

35. The writ petition is, thus, allowed.

36. Pending applications, if any, stand disposed of.

(SANDEEP MOUDGIL)
JUDGE

18.03.2025

Meenu

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*