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(2012) 05 DEL CK 0670

Delhi High Court

Case No: Writ Petition (C) No.7098 of 1999

Ex. Constable Ashok Kumar	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision: May 24, 2012

Acts Referred:
Central Industrial Security Force Rules, 1969 â€" Rule 29(1), 34

Citation: (2012) 05 DEL CK 0670

Hon'ble Judges: Sudershan Kumar Misra, J; Anil Kumar, J

Bench: Division Bench

Advocate: Sheetesh Khanna and Mr. Gautam Anand, for the Appellant; Archana Gaur, for the Respondent

Final Decision: Allowed

Judgement

Anil Kumar, J.
The petitioner has sought the quashing of order dated 15th January, 1999 passed by the Commandant 5th Res/Bn

Ghaziabad dismissing the petitioner from service under Rule 29 (1) of the Central Industrial Security Forces Rules, 1969 and the order dated 30th

September, 1999 passed by the Deputy Inspector General, NZ dismissing the appeal of the petitioner. Brief relevant facts to comprehend the

controversies are that the petitioner while serving in the Central Industrial Security Forces (CISF) was posted at the Central Wrestling Team at

Shakurbasti, Delhi. The petitioner was, thereafter, directed to move on 21st November, 1996 to report to IOC Mathura on 26th November,

1996. The petitioner, however, did not report on 26th November, 1996 allegedly on account of an injury on his right leg, suffered by him during

the wrestling practice, because of which he remained absent from 20th November, 1996 up to 14th March, 1997, i.e. a total of 115 days without

the alleged proper permission of the concerned officer. The petitioner also admitted that he had received the letters dated 20th January, 1997, 9th

February, 1997 and 7th March, 1997 directing him to report to the IOC Mathura, but he couldn''t do so since he was undergoing treatment for his

injury.

2. The petitioner further submitted that he had received a letter dated 8th February, 1997 from the Deputy Commandant, CISF declaring the

petitioner as a deserter and intimating him that his act of remaining absent without permission from a Competent Authority is an act of indiscipline.

Referring to the letter received from the petitioner, wherein he had stated that he was not well and that he had injured his foot during practice, the

respondents had categorically intimated in the letter dated 8th February, 1997 that the date on which he had fallen ill or had incurred the injury had

not been disclosed by him in his communication, nor was any medical certificate sent by the petitioner along with his letter. The respondents,

therefore, cautioned that the petitioner must appear before the Government Hospital CISF Headquarters, New Delhi along with the necessary

medical certificates, otherwise stern action would be taken against him.

3. According to the petitioner, he took the medical fitness certificate and documents of his treatment from the concerned Hospital Dispensary and

reported for duty on 15th March, 1997, however, he was served with a notice, vide letter No. V-15014/5RB Disc./8/98-974 dated 24th April,

1998 stipulating the framing of the charges of absence without proper permission from the Competent Authority for the period of 20th November,

1996 up to 14th March, 1997. The charge which was framed against the petitioner is as under:-

No.854507511 Cost. Ashok Kumar was asked to report wrestling team Mathura but member of the force did not report to Mathura Unit and he

remained absence from 20.10.96 to 14.03.1997 i.e. 115 days without proper permission of officer which is sign of indiscipline gross misconduct

and negligence.

4. The charge sheet was sent to the petitioner by registered post at his home address and he was asked to reply within 10 days. The petitioner

replied to the charge sheet. Without taking the reply into consideration and on the assumption that reply had not been filed by the petitioner, an

Inquiry Officer was appointed by order dated 4th May, 1998.

5. The Inquiry Officer, thereafter, sent notices to the witnesses and three witnesses, namely Chinamuthu, Clerk, Jai Bhagwan, Clerk, and Sh.

Rohtas Singh, Wrestling Coach, were examined on behalf of the respondents, and the petitioner was given the opportunity to cross-examine them.

K. Chinnamuthu, PW-1 who was the dealing assistant regarding documents, had categorically deposed about the letter dated 8th February, 1997

sent by the Deputy Commandant R.H.P.P. Pipri to the petitioner intimating him that he has been declared as a deserter, since he had remained

absent without any leave and that he should appear with the relevant documents and medical certificate before the respondents. The said witness

was cross-examined by the petitioner as well. The petitioner had asked him about the letter dated 20th November, 1996 whereby the petitioner

was sent to IOC Mathura for practice. The respondents also examined Sh. Jai Bhagwan, PW-2, who had deposed that he was posted at Mathura

since 11th October, 1996. He deposed that the petitioner had reported on 15th March, 1997 which is when he had submitted his medical papers

regarding his treatment. The next witness examined by the respondents was Sh. Rohtas Singh, Chief Wrestling Coach Central Team, CISF, PW-

3, who had deposed that the petitioner had injured himself on 20th November, 1996. Due to the injury the petitioner was sent to the hospital along

with two other wrestlers. He also deposed that the Commandant had told him about the receipt of the medical papers of the petitioner by

registered post and that the petitioner had also reported on 15th March, 1997 at IOC, Mathura. To the Court''s question as to where they were

training on 20th November, 1996, the witness replied that they were practicing at Rajendra Nagar Gymnasium (Vyayamshala), and he also

categorically stated that the petitioner had suffered an injury on his right foot during practice.

6. The petitioner was also examined by the respondents. In his statement recorded on 17th July, 1998, the petitioner had categorically stated that

he did not require a copy of any of the documents in relation to the enquiry. He also stated that he does not want to examine any witnesses in

support of his defense. Regarding the question whether he wants to produce any documents, the petitioner had stated that he has medical

documents pertaining to his injury which he would like to produce.

7. In the statement of the petitioner recorded by the respondents, he had categorically stated that on 20th November, 1996, his team was

practicing at Rajender Nagar Gymnasium (Vyayamshala) and that while doing the exercises he had injured his right foot. He also categorically

deposed that he was sent to the hospital by the Coach along with two other persons. The petitioner further deposed that the doctor at the Govt.

Dispensary Bupania had advised him to take medicine and complete rest. During this time, he came to know that his entire team had gone to IOC

Mathura. The petitioner categorically stated that he was told that on recovery he should report at IOC Mathura. He also stated that he had

intimated IOC Mathura that as soon as he would recover, he would join them. The petitioner deposed that he had recovered only on 15th March,

1997 which is when he had reported there.

8. The Inquiry Officer considered the statements of the witnesses and the documents produced by the respondents which were the Wireless

Message of Deputy Commandant Sports on 13th January, 1997, Wireless Message of Deputy Commandant, RHPP Pipri dated 20th January,

1997, Call Up Notice dated 7th March, 1997 and OSL Report dated 6th March, 1997. The documents of the petitioner which were considered

were the application of the petitioner dated 7th February, 1997, 21st February, 1997, 20th February, 1997 and the medical papers/certificate of

AMO, Govt. Ayurvedic Hospital, Bupania, Rohtak. The Inquiry Officer also considered the Court Exhibits. Ex. CE-1 which was a communication

addressed by the Deputy Commandant to AIG/Sports regarding the salary for the month of November, 1996 being returned back; Ex. CE-2

about the petitioner not reporting to the Unit Coach of the team and that the whereabouts of the petitioner was not known to them; Ex. CE-3

which is a letter by the Deputy Commandant to the petitioner at his home address to report for the concentration of wrestling team; Ex. CE-4

which is a letter by the Coach of the wrestling team informing the Commandant the home address of the petitioner and Ex. CE-5 which is a letter

by the Deputy Commandant whereby he requested the Commandant at IOC Mathura to send all the documents pertaining to the petitioner for

further action.

9. The Inquiry Officer, after careful consideration, gave its report holding that the petitioner had failed to report at the IOC Mathura for the

wrestling practice in the Central Team and remained AWL w.e.f. 20th November, 1996 to 14th March, 1997 for 115 days on his own without

prior permission of the competent authority and that he did not respond to the call up notices for joining duty and thus, the article of charge framed

against the petitioner stipulating that he remained absent from 20th November, 1996 to 14th March, 1997 for 115 days without permission of any

superior officer is made out. The copy of the report was sent to the petitioner who replied by his representation dated 6th January, 1998 stating

that on 20th November, 1996 he had injured his foot seriously because of which he was sent to the Govt. hospital where the doctor advised him

complete rest. He stated that he had undergone treatment continuously and that in the meantime, the wrestling team had gone to IOC Mathura Unit

and that he could not report on account of his injury and also that as soon as he was fully recovered, he had reported at the IOC Mathura. The

petitioner further stated that he had periodically intimated the respondents about his medical rest and the treatment received by him. The

Disciplinary Authority, however, by order dated 15th January, 1999 held that the inferences of the Inquiry Officer were correct and that it is

apparent that the petitioner had been directed to go along with the wrestling team to Mathura, however, the petitioner did not go with the wrestling

team and was, thereafter, declared as a deserter, which was also intimated to the petitioner by the order from the Deputy Commandant, Pippari

dated 8th February, 1997. Since the petitioner did not report to duty, he was also sent other letters dated 9th February, 1997 and 7th March,

1997. The Disciplinary Authority, however, considered the reply dated 6th January, 1998 and the medical certificates stipulating that he had

suffered a serious injury in his right foot. The Disciplinary Authority also held that since the petitioner was getting treatment from an Ayurvedic

Dispensary, therefore, his injury/disease was not so serious so as not to report for duty and remain absent (AWL) for 115 days. It was held that

since the petitioner could go to the dispensary and was getting treatment as an outdoor patient, therefore, clearly the petitioner was in a position to

move about and thus he could have very well reported to his Unit. From the medical certificate, it was also inferred that though the petitioner had

injured his right leg, however, he was taking the treatment for another disease as per the medical certificated produced by him. The Disciplinary

Authority also held that since the petitioner had not produced any bill regarding the purchase of the medicines, therefore, the medical certificates

submitted by him did not justify his period of absence without leave and consequently, the charge framed against the petitioner is made out. The

Disciplinary Authority thereby passed the order of dismissal from service under Rule 29 (1) of the CISF Rules, 1969.

10. The appeal filed by the petitioner was also dismissed by the respondents by order dated 30th September, 1999. The Appellate Authority,

while dismissing the appeal, held that the movement order is not issued to every individual member of a team but is instead issued to the in-charge

of the team. The Appellate Authority also emphasized that the appellant was given an opportunity to cross-examine the respondents? witnesses,

however, he did not ask any questions regarding the plea that he had not received any movement order from PW-3, Coach, Rohtas Singh. It was

further observed that in the first statement recorded during the course of the inquiry, the petitioner was given an opportunity and it was asked

whether he wanted any documents in relation to the inquiry, and the petitioner had replied that he does not want any documents.

11. The Appellate Authority also repelled the plea that the petitioner had not absented himself since the reason for his absence was in the

knowledge of the Inspector/Exe. Rohtas Singh, Chief Wrestler, who was well aware that the petitioner had sustained injuries and was receiving

treatment, on the ground that the appellant did not send any medical certificate about his sickness, nor had he intimated the authorities. It was also

observed that even though the petitioner had sent an application which was received at the CISF Unit, RHPP Office on 7th February, 1997,

however, in that too he did not enclose any medical certificate, therefore, he remained AWL at his own will. The Appellate Authority in the order

dated 30th September, 1999 has held as under:-

4. The first plea of the appellant is that he had not received the movement order on 20.11.96 to proceed to CISF Unit, IOC Mathura. His plea is

devoid of merit. Movement order is not being issued individually in case of movement of sports teams. It is being issued to the in charge of the

team and not to all personnel whose names are mentioned in the same movement order. Appellant was given opportunity to cross examine the

PWs in the departmental enquiry, but he did not ask any question on this plea from the PW-3 Coach/Inspector Rohtas Singh. In the first statement

recorded during the course of enquiry, he was given an opportunity to state, as to whether he wants any document, to which he replied that he

does not want any document, to which he replied that he does not want any document. The present plea of the appellant in the appeal is nothing

but just to obtain sympathy of the appellate authority.

5. The second plea of the appellant is that he had not absent himself because it was in the knowledge of Inspector Exe Rohtas Singh Chief wrestler

coach that the appellant had sustained injuries and sent to Hospital and is undergoing treatment. The medical papers sent by him were received by

the commandant IOC Mathura and thereafter he reported at IOC Mathura on 15.3.1997 along with Fitness Certificate. As per records it appears

to be correct that Inspector/Exe Rohtas Singh, Chief wrestler coach deposed in his statement that during practice, appellant sustained injury in his

leg and was sent to Hospital on 20.11.96 with the help of two other wrestlers. In the mean time ordered were issued by the Force Hqrs. To the

said wrestler team for reporting at IOC Mathura on 26.11.96. till issued of call up notice by the Dy. Commandant, CISF unit RHPP Pipri on

20.1.97 appellant neither sent any medical certificate about his sickness nor intimated to the authority. He sent an application which was received

at CISF Unit, RHPP Office on 7.2.97 in that too he did not enclose any medical certificate. He remained AWL at his own will. Had he been

actually sick, he should have sent medical papers along with his application requesting for leave, but he did not do so. Further on perusal of

medical papers produced by him on his joining, it is found that he was not admitted in hospital but was taking treatment as outdoor patient. Hence

his plea is not tenable.

12. The fact that the petitioner had taken treatment as an outdoor patient and that he was not hospitalized also weighed on the mind of the

Appellate Authority. The Appellate Authority had held that he could have joined the duty and then proceeded on leave for taking treatment if

needed. The Appellate Authority also noticed that the plea of the petitioner is that he suffered injury in the right foot, however, his medical

certificate shows that he was taking treatment for ""Sciatica"" and gastric from an Ayurvedic Dispensary and not for any fracture. It was also noted

that since he had approached the doctor many times it was reflective of the fact that the disease was not so grave so as to prevent him from joining

the duty. If the petitioner could go to the doctor a number of times for his treatment, then he could have reported to the Unit as well and thereafter,

proceed on leave if needed.

13. In para 10 of the Appellate order dated 30th September, 1999 the Appellate Authority had held as under:-

10. His plea that Disciplinary Authority is not expert in medical line, also reflects more of his indisciplines state of mind. The appellant is a resident

of Rajinder Nagar, New Delhi. This is a Central place and close to several prestigious Govt. and private hospitals, from where the appellant could

take treatment, which was for sciatica and gastric and not for fracture. The appellant expects that the Disciplinary Authority should not have

questioned this difference that the appellant claims to have fractured his leg during practice, but taking Ayurvedic treatment 50 KM away for

gastric and sciatica. His plea is more of arrogance rather than true presentations of facts. The sports personnel have been recruited in CISF to give

them an opportunity to improve their performance and also give them opportunity to participate at National level and raise image of force. But if

the appellant is not available at the time of sports meet, then the very purpose of their recruitment is lost. The appellant has not preferred to serve

the Force at the time he was required and this has lost his right of service in Force in public interest.

14. Thus, what weighed with the Appellate Authority was that sports persons are recruited in the CISF to give them an opportunity to improve

their performance and also to give them an opportunity to participate at national level and raise the image of the force and that if the petitioner was

not available at the time of the sports meet then the very purpose of his recruitment was lost and thus, the Appellate Authority had dismissed the

appeal and upheld the punishment of dismissal from service.

15. The petitioner has challenged the order of dismissal on the ground that he was not a deserter and that there was sufficient reason for him not to

have reported for duty and that the punishment of dismissal is disproportionate to the gravity of the offence imputed against him. The petitioner also

has contended that he was under bona fide impression that permission had been granted by the Chief Wrestling Coach, and therefore, he

continued with his treatment and in the circumstances, the severe penalty of dismissal from service could not be imposed on the petitioner. The

petitioner also contended that he had sent copies of all the medical certificates received by him from time to time which had not been considered

either by the Disciplinary Authority or the Appellate Authority which are, however, on the record of the file of the respondents.

16. The writ petition is contested by the respondents who filed a counter affidavit of Lt. Col. R.L. Mann who stated that the charge sheet under

Rule 34 of the CISF Rules, 1969 was issued by the Commandant by memo dated 24th April, 1998 and that the petitioner was charged for

absence without leave from 20th November, 1996 to 14th March, 1997. The petitioner had submitted a reply to the charge sheet on 6th July,

1998, however the Disciplinary Authority on not being satisfied with the reply, had appointed an Inquiry Officer who conducted the departmental

inquiry and on considering the prosecution''s evidence held that the guilt of the petitioner is made out. The copy of the inquiry report was served on

the petitioner by letter dated 2nd December, 1998. The petitioner had represented against the findings in the inquiry report, however the

Disciplinary Authority agreed with the inquiry report and imposed the punishment of dismissal from service by order dated 15th January, 1999.

The respondents also disclosed that the petitioner was permanently posted at CISF Oil Campus, Shakurbasti, Delhi. He was attached to the said

unit for wrestling practice with the Central Wrestling Team, though the CISF unit of the petitioner''s was otherwise posted at BCCL, Dhanbad and

subsequently at Pipri and then to 5th Res./BN Ghaziabad.

17. The respondents admitted that the petitioner was attached to the CISF Wrestling Team and was under the administrative control of the AIG/

sports as well as Commandant CISF Unit OCS, Shakurbasti, Delhi. The respondents, however, denied that the team''s movement is controlled by

the authority of the Coach. According to the respondents, the team''s movement is controlled by the AIG/sports and that the coach is not

empowered to sanction any kind of leave or move the team''s/individual''s temporary duty at his own will, as he is not the Head of the office to

have exercised such administrative power. The respondents also disclosed that when the petitioner had injured his leg on 20th November, 1996,

he was sent to hospital, however, he went to his village without any valid permission or leave from any competent authority and since the injury

sustained by the petitioner was not of grave nature he was taken as an outdoor patient. According to the respondents, it was incumbent on the part

of the petitioner to have submitted the diagnosis, medical advice, medical prescription and medical unfitness certificate to his controlling officer

along with his leave application for the period he was given medical rest. Since the petitioner did not seek any permission, nor inform regarding his

treatment after 20th November, 1996, therefore, his absence was treated as an intention to desert the force. Reliance was also placed on the call

up letter sent by the Deputy Commandant, CISF Unit, Pipri on 20th January, 1997, 9th February, 1997 and 7th March, 1997. The respondents,

however, admitted that the petitioner did sent replies that he would join the duty after recovering from his illness, but the respondents found the

replies of the petitioner to be very vague. Regarding the medical certificate given by the petitioner, it was asserted that as per the medical

certificates though he was getting the treatment for ""Sciatica"", according to the petitioner, he had sustained injury in his right foot and thus, the

medical certificates are clearly a ploy to cover up his unauthorized absence and are thus not genuine. The emphasis was also laid on the fact that

the Ayurvedic dispensary at Bupania was at a distance of 25 Kms. from his village and that if he could go to the Ayurvedic Dispensary, then he

could have reported to his controlling authority as well. Regarding the leave of the petitioner, the respondents disclosed that he had only 232

earned leaves and 186 half pay leaves to his credit. The respondents stated that in any case, it is not a question of how many leaves were remaining

for the petitioner, but the fact that the petitioner had remained on unauthorized absence for 115 days. Since the petitioner is a member of the para

military force, he is expected to follow the rules, and therefore, the dismissal of the petitioner from service was contended to be justified.

18. The petitioner, by way of a rejoinder dated January, 2001, has refuted the pleas and contentions raised by the respondents in their counter

affidavit and contended that for all practical purposes, the decisions are taken by the Coach of the Team as otherwise the Coach could not have

sent them anywhere to participate in the Wrestling matches. The petitioner has emphasized on the authenticity of the medical certificate given by the

petitioner, which have not been denied by the respondents. Reliance was also placed by the petitioner on the fact that he has completed an

unblemished service of 12 years, and therefore, he is entitled for pro rata pension as envisaged in the statutory rules.

19. Reliance was also placed on the decision of the Supreme Court in Major G.S. Sodhi Vs. Union of India (UOI), . The petitioner has also filed

an additional affidavit dated 2nd February, 2012 contending that on 20th November, 1996 he had not gone to the doctor on his own but since he

had sustained injury during practice, therefore, the Coach had sent him to the doctor with the assistance of two other persons. The petitioner could

not have come back on the next date as the unit had moved on 21st November, 1996 to IOC at Mathura where he had to report by 26th

November, 1996. However, as the petitioner had been injured and he wasn''t even aware of the movement order as the same was not

communicated to him by the Coach, therefore, he could not report on 26th November, 1996 at IOC, Mathura. The petitioner also referred to

various medical certificates which were sent by him to the commandant from time to time. Reliance was further placed by the petitioner on the

medical tickets/prescriptions issued from the Govt. Dispensary Bhupania, Rohtak advising him rest. Reliance was also placed on the medical

certificate dated 20th November, 1996 advising him rest from 20th November, 1996 to 31st December, 1996; medical certificate dated 31st

January, 1997 advising him medical rest from 31st January, 1997 to 28th February, 1997; medical certificate dated 14th March, 1997 holding that

the petitioner had become fit to join the duty on 15th March, 1997. The petitioner also produced the postal receipts dated 3rd February, 1997

and two postal receipts of 15th February, 1997.

20. In the additional affidavit filed by the petitioner, it was categorically deposed that though the petitioner had joined his duty on 15th March,

1997 and he had also furnished the relevant documents, however, during the inquiry the documents produced by the petitioner for the alleged

unauthorized absence for 115 days had not been considered.

21. After the petitioner had reported for duty on 15th March, 1997, he was directed to report at RHPP, Pipri on 5th June, 1997 and was sent to

CISF Unit 5th Res. BN Ghaziabad on regular posting by order dated 7th June, 1997 and posting order dated 1st May, 1997.

22. Refuting the inquiry report and the orders of the Disciplinary and Appellate Authorities, it was asserted that the witness of the respondents,

PW3, had deposed that the Commandant of IOC Mathura Unit had informed him that medical documents were received from the petitioner by

registered post. According to the petitioner, this establishes that the petitioner had been informing regularly and periodically about his inability to

join the duty which fact is substantiated by the medical certificates sent by the petitioner which were also received by the concerned authorities and

which are on record. The petitioner also emphasized that he had sufficient number of leave to his account which could have been adjusted for his

absence and in the circumstances, the order of dismissal from service is disproportionate and has been passed without application of mind and

thus, is not sustainable.

23. Learned counsel for the petitioner also relied on Shri Bhagwan Lal Arya Vs. Commissioner of Police Delhi and Others, ; B.K.Sharma v. Union

of India & Ors. W.P.(C) 4370/1992, W.P.(C) 4370/1992 decided on 21st May, 2008 and K.S.Pundir v. Union of India & Ors., WP (C)

2893/1997 decided on 10th May, 2011.

24. This Court has heard the learned counsel for the parties and has also perused the original record pertaining to the inquiry conducted against the

petitioner, produced by the learned counsel for the respondents. Perusal of the original file of the inquiry reveals that the petitioner had filed the

reply to the charges made against him by his reply dated 4th July, 1998 which was received by the respondents on 6th July, 1998. In the said

reply, the petitioner had categorically disclosed that during the wrestling practice he had hurt himself and it became difficult for him to move around

and he was sent by the Coach to the Govt. Hospital, Bhupania for treatment. Though the petitioner had sustained injuries in his Rt. leg, however,

the medical officer on 20th November, 1996 after investigation had told the petitioner that he is also suffering from Sciatica and thus he had

advised compete rest to him. The petitioner also stated in his reply to the charge sheet that since he is a sports man, he did not know much about

the procedural matters. Though the petitioner had filed the reply to charge memo but the respondents assumed that the reply to charge memo was

not filed by the petitioner.

25. Perusal of the original file of the respondents pertaining to the petitioner also shows letter dated 7th February, 1997 along with the registered

envelop and the other letters sent by the petitioner where he has requested his Commandant that he is unable to join on account of the fact that he

is not fit. The original file also has the copy of the medical certificate of fitness dated 14th March, 1997 declaring the petitioner to be fit and

capable for resuming his duty on 15th March, 1997. The original record also contains the medical certificate dated 20th November, 1996 advising

complete rest to the petitioner from 20th November, 1996 to 31st December, 1996, and the medical certificate dated 31st January, 1997

certifying that the petitioner is suffering from Sciatica and his absence from duty for 29 days from 31st January, 1997 to 28th February, 1997 is

absolutely necessary for treatment. The petitioner has not only produced the medical certificate certifying that he has to take rest but he has also

produced his prescription showing that he visited the Govt. Dispensary on 20th November, 1996; 23rd November, 1996; 30th November, 1996

and 10th December, 1996. Other prescriptions have also been produced showing that the petitioner had visited the dispensary on 1st January,

1997, 8th January, 1997, 14th January, 1997, 17th January, 1997 and 24th January, 1997. Another prescription/outdoor ticket shows the

consultation done by the petitioner on 1st March, 1997 and 8th March, 1997.

26. It is a settled law that it is not the function of the High Court exercising its jurisdiction under Article 226 to review the findings and to arrive at

independent findings on the same evidence. However, in the case of mala-fides or perversity i.e where there is no evidence to support a finding or

where the finding is such that no one acting reasonably or with objectivity could have arrived at or where a reasonable opportunity has not been

given to the delinquent to defend himself or it is a case where there has been non application of mind on the part of the inquiry authority or if the

charges are vague or if the punishment imposed is shocking to the conscience of the Court, the Court will be entitled to interfere. The Court will

interfere in such matters if the decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Whether action falls

within any of the categories is to be established. To be ""irrational"" it has to be held, that on material, it is a decision ""so outrageous"" so as to be in

total defiance of logic or moral standards. If the power is exercised on the basis of facts which do not exist and which are patently erroneous, such

exercise of power shall be vitiated. Exercise of power will be set aside if there is manifest error in the exercise of such power or the exercise of

power is manifestly arbitrary. To arrive at a decision on ""reasonableness"" the court has to find out if the respondents have left out a relevant factor

or taken into account irrelevant factors.

27. Form the above it is apparent that while going into the correctness of the facts established against the delinquent, though the Court cannot take

over the function of the Disciplinary Authority, nor can it sit in appeal on the findings of the Disciplinary Authority and assume the role of the

Appellate Authority, however, if there is an irrationality, illegality or procedural impropriety, the Court must interfere. It also cannot be disputed

that the Court can interfere with the findings of the fact arrived at in the disciplinary procedure, in case where there is no evidence to support the

finding or the finding is such that a person acting reasonably or with objectivity could not have arrived at the said conclusion or where a reasonable

opportunity has not been given to the delinquent to defend himself or if it is a case where there has been non application of mind on the part of the

Disciplinary Authority or if the charges are vague or if the punishment that is imposed is shocking to the conscience of the Court. The Court will

have no option but to interfere if the decision is tainted with vulnerability, illegality, irrationality or procedural impropriety.

28. It has to be assumed that a conclusion that is arrived at is on the basis of careful examination of the material on record. However, if such a

conclusion is so outrageous so as to be in utter defiance of logic or moral standard, then it is the duty of the Courts to correct the same. If the

power is exercised on the basis of the facts which do not exist and which are patently erroneous, such exercise of power shall be vitiated. Exercise

of power is also likely to be set aside if there is any manifest error in the exercise of such power or the exercise of power is manifestly arbitrary. To

arrive at a decision on ""reasonableness"" the Court has to ensure that the respondents have not left out a relevant factor or taken into account an

irrelevant factor.

29. The respondents have proceeded on the assumption that since the petitioner had been only an `outpatient? and he was undergoing treatment

for the ailment suffered by him, it is to be assumed that the circumstances of the petitioner were not so grievous so as to render him completely

incapable of reporting to the respondents. Apparently, this is based on the assumption of the respondents, that if the petitioner could go for the

Ayurvedic treatment, then the ailment for which he was treated was not so serious so as to disable him from reporting for duty. This also cannot be

disputed on the basis of the material on record, the medical certificates and the medical report of the Govt. Dispensary, that he was advised rest

for the period the petitioner was absent. The various certificates which had been produced by the petitioner in no uncertain terms stipulate that the

period of absence from the duty, as indicated in the certificate, is absolutely necessary for his treatment and the restoration of his health. If that be

so, then only on account of the fact that the petitioner had gone to the dispensary and was receiving treatment as an outpatient, the respondents

could not assume that he was fit to re-join the duty. If the respondents had doubt about the unfitness of the petitioner at the time he was absent

without leave and the authenticity of the medical certificates produced by the petitioner, then they should have examined the doctors of the Govt.

Dispensary who had issued the various certificates for the different periods advising rest to the petitioner, rather than assuming on their own that the

petitioner was fit enough to join the duty. This is not the case of the respondents that the petitioner had procured the medical certificates and his

prescription.

30. The respondents have also doubted the medical unfitness of the petitioner on the ground that the certificates were issued by an Ayurvedic

Dispensary. Whether the certificates are issued by an Ayurvedic Dispensary or Allopathic Dispensary, in the opinion of this Court, it will not make

any difference. The fact which requires consideration is whether the petitioner indeed was ill at the time he was absent without leave and therefore

whether there was sufficient cause for the same.

31. The petitioner had explained that though he had injured his leg during the training session and he was sent with two persons as per the

directions of the Coach, as he was incapable of going on his own, which fact has not been denied by the respondents, the doctors discovered that

not only was there an injury to his leg but that the petitioner was also suffering from sciatica. The respondents, however, have disbelieved the said

medical documents on the ground that the medical certificates produced by the petitioner is clearly a ploy to cover up his unauthorized absence and

thus are not genuine since even though he complained of the injury in his right foot, he had been treated for sciatica, which is an altogether different

disease.

32. As per Dorland''s Medical Dictionary, ""Sciatica"" is a set of symptoms including pain that may be caused by general compression or irritation of

one of the five spinal nerve roots that give rise to each sciatic nerve, or by compression or irritation of the left or right or both sciatic nerves. The

pain is felt in the lower back, buttock, or various parts of the leg and foot. In addition to pain, which is sometimes severe, there may be numbness,

muscular weakness, pins and needles or tingling and difficulty in moving or controlling the leg. Thus, from the said definition it is clear that sciatica is

not an unrelated ailment to the injury suffered by the petitioner in his right foot but might have in fact been in connection or arising out of it.

Therefore, the plea of the respondent that inspite of the injury in the right foot, the petitioner was not treated for the same but he was treated for an

altogether different ailment of `sciatica?, is utterly irrational and cannot be countenanced. It is clear that the respondents did not make any attempts

to verify the consequences and the reason for the sciatica suffered by the petitioner, and instead merely, on its own, assumed in a mechanical

manner that sciatica is completely unrelated to the injury suffered by the petitioner on his right foot and therefore the medical documents specifying

its treatment are unreliable. The respondents have, therefore, acted on the facts which are patently erroneous and consequently their decision will

have to be vitiated. In any case, even if it is to be believed that sciatica is a disease which is completely different to the injury suffered by the

petitioner in his right foot, it would not make any difference, since it is quite possible that on being examined by the doctor one comes to know of

being suffering from an altogether different disease, which one might not have been aware of oneself, but which could have only been realized on

being examined by a medical expert such as the doctor. The issue, therefore, to be determined by the respondents in the facts and circumstances is

whether or not there was suitable cause for the charged officer to have been absent without leave, regardless of the ailment suffered by him which

in the present facts and circumstances was clearly there, as the petitioner was suffering from sciatica and was therefore not in the fit condition to

rejoin his duty.

33. This is not disputed by the respondents that the injury was sustained by the petitioner during the training session in the presence of PW3, the

Coach of the petitioner. PW3 has also deposed that the injury was suffered by the petitioner and that he had to send two other persons with the

petitioner so that he could be taken to the hospital. Therefore, from the facts deposed by PW-3 it is clear that the injury suffered by the petitioner

must have been so severe that he needed the help of two other persons. During the treatment, if the doctors have also found him to have sciatica

and have advised him complete rest, the petitioner cannot be faulted for the same. The reasoning of the respondents that if the petitioner could go

to the dispensary which was at a distance from his place, he could have joined the duty as well, is in total defiance of the understanding of what

sciatica is, by the respondents. The persons suffering from sciatica may be capable of going to the dispensary, however, it cannot be assumed that

he would also be in a position to perform the normal duties expected of him or fit to rejoin the duty. The petitioner was to rejoin the duty after

becoming medically fit and under rules and in the facts and circumstances, he was not required to join duty though not medically fit and thereafter

to have applied for the leave. In the circumstances, the reasoning of the Disciplinary Authority and the Appellant Authority is without any logic and

is rather reflective of their non-appreciation and their non-understanding of the problem of the sciatica and its ramification.

34. The respondents, the Disciplinary Authority and the Appellate Authority, have also stated that the petitioner had been only an outdoor patient

and that he had undergone Ayurvedic treatment for the ailment suffered by him, therefore it does not lead to the inference that the circumstances

were so grievous so as to render him completely incapable of informing the competent authority about the nature of his illness or for requesting for

leave by forwarding an application. This reasoning is also based on the assumptions of the respondents which is, however, contrary to the record.

The petitioner may not have been right in not intimating the respondents about his problem initially, but it cannot be denied that he did write to the

respondents. The petitioner had written to the respondents on 7th February, 1997 besides other communications explaining the reason for his

absence. In the undated letter which was received on 7th February, 1997 by the respondents, he categorically stated that on account of the sudden

injury in his leg and his sudden illness he is unable to come and join and will immediately report on becoming medically fit along with the relevant

documents. The petitioner had also sent an undated letter which was received on 21st February, 1997 and another undated letter which was

received on 20th February, 1997. These letters and their contents have not been considered by the respondents. Rather, by letter dated 8th

February, 1997 the petitioner was informed that after the receipt of the said letter he should appear before the Central Reserve Police,

Headquarter Sports Cell along with relevant documents. Since the petitioner had been transferred to Mathura, therefore, on becoming fit he did

appear before the concerned official at Mathura Refinery and also submitted a letter on 15th March, 1997 stating that he was getting treatment

from the doctor and he is reporting after becoming medically fit and that he wants to join and therefore, he should be taken on duty. He also

produced a medical certificate dated 14th March, 1997 from the Govt. Dispensary stipulating that the petitioner has become fit to resume his duty

on 15th March, 1997. The concerned doctor of the Govt. Dispensary had also certified that he had examined the certified copy of the medical

certificate and the statement of the case on which the absence was granted and extended and have taken these into consideration while arriving at

the decision. In the circumstances, the observation of the respondents that the petitioner had not intimated the respondents about his incapability

before joining the duty, is contrary to the record and suffers from the illegality of not considering the relevant record. PW3 examined by the

respondents during the enquiry has also deposed that the Commanding Officer had admitted that he had received the relevant medical record and

the certificates from the petitioner. Since the petitioner was asked to submit the medical certificate and medical record about the injury to his leg

and his other medical problem on re-joining on 15th March, 1997 and since the petitioner had duly produced the relevant documents on his

joining, nothing adverse can be inferred against the petitioner on this sole ground that he had not produced the medical certificate along with his

communication addressed to the respondents intimating about his illness and injury to his leg.

35. The inferences of the respondents appear to be irrational and not based on the facts established on record and are rather based on their own

assumptions. The petitioner is not a regular soldier, which is admitted by the respondents. The respondents have rather contended that the Sports

personnels are recruited in the CISF to give them an opportunity to improve their performance and also to give them an opportunity to participate

at national level and raise the image of the force. If such persons are not available at the time of tournaments then the very purpose of their

recruitment is lost. Since the petitioner did not prefer to serve the force at the time he was required, therefore, he has lost the right of service in the

public interest.

36. The respondents have not disclosed whether during the period of absence there had been any such sports meet in which, on account of the

absence of the petitioner, the respondents lost any wrestling competition or due to which the purpose of the recruitment of the sports personnels in

the CRPF was lost. The reasoning of the respondents is just based on their own assumptions. The observation of the respondents, Disciplinary

Authority and Appellate Authority are utterly outrageous and in complete defiance of normal logic. Such observations and reasoning have to be

termed unreasonable as the respondents have left out relevant factors and have taken into consideration irrelevant factors and have based their

findings on their own assumptions and surmises.

37. The charge against the petitioner is that he remained absent from 20th November, 1996 to 14th March, 1997 without proper permission of the

concerned officer, however, the petitioner has shown sufficient cause for his absence. This also cannot be disputed that the petitioner had suffered

injury during the practice session about which the coach Sh.Rohtas Singh, PW3, had also deposed categorically. It is also imperative to keep in

mind that the petitioner had rendered 16 years of service without any misconduct on his part. The respondents too have not pointed out any other

misconduct or any other incident of indiscipline against the petitioner. PW3, Sh.Rohtas Singh, had also deposed that the Commandant himself had

intimated to him that he had received the relevant medical documents from Sh. Ashok Kumar, the petitioner. The Coach, Sh. Rohtas Singh, was

aware of the injury caused in the Rt. foot of the petitioner which had also necessitated sending him to the hospital accompanied by two other

persons. Thereafter, if during the treatment the doctors also discovered that the petitioner is suffering from sciatica and treated him for the same

and during the treatment advised him rest, the petitioner cannot be faulted for the same and the absence has therefore been sufficiently justified by

the petitioner. In these circumstances, holding that the charge is made out against the petitioner and that he is liable to be dismissed is nothing but

unreasonable, since the said conclusion has clearly been arrived at by leaving out the relevant factors and taking into consideration the irrelevant

factors and there is manifest error in the finding of the respondents.

38. The penalty of dismissal is therefore, ex facie disproportionate to the alleged misconduct on his part. This cannot be disputed that the maximum

penalty which can be awarded is dismissal. The petitioner had already rendered 16 years of service without any other act of indiscipline or

misconduct on his part. In these circumstances, awarding such an extreme penalty of dismissal is unwarranted, especially in light of the above

discussion that the absence has been sufficiently justified by the petitioner and proved on record.

49. While dealing with the power of judicial review, the power of the High Court or Tribunals in judicial review relating to the punishment imposed

by the disciplinary authority, the Supreme Court after considering the case law on the subject had held as under. In B.C. Chaturvedi Vs. Union of

India and others, it was held as under:

18. ..... If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it

would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the

litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

The Supreme Court in para 22 also held as under:

22..... The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the

punishment/penalty by moulding the relief, which power it undoubtedly has, in view of a long line of decisions of this Court, to which reference is

not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present

nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience.

40. The Supreme Court in U.P. State Road Transport Corporation and Ors. v. Mahesh Kumar Mishra and Ors., (2000) ILLJ SC 1113 had held

as under:

8. This will show that not only this Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee if, that

penalty, shocks the conscience of the Court. The law, therefore, is not, as contended by the learned Counsel for the appellants, that the High Court

can, in no circumstance, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings.

41. Considering the nature of the charge, the punishment awarded and the circumstances of the case, the punishment of dismissal does not conform

to the gravity of the alleged misconduct imputed against the petitioner. In Braj Kishor Singh Vs. State of Jharkhand and Others, it was held that if

after explanation, it appears that the charged officer had remained absent from duty due to any sufficient reason, he shall be granted leave

admissible to him for that period and the punishment is to be inflicted only in the cases where it is proved that the delinquent has violated the rules

at his own will. In the said case the petitioner, who was a constable and had over stayed leave for 38 days, had given sufficient cause for the same

and had proved it on the record with proper medical documents, which however wasn''t duly appreciated by the Disciplinary Authority. The Court

had, therefore, held that the punishment of compulsory retirement was unconscionable, excessive and disproportionate to the charge imputed

against the charged officer and consequently the Court had set aside the penalty of compulsory retirement and the charged officer was reinstated

with part of back wages.

42. Normally, in such cases when the punishment order is found to be illegal and unsustainable, the matter is remitted to the disciplinary authority or

the appellate authority, who are competent to consider the facts and evidences. But keeping in view the fact that the misconduct itself has not been

substantiated against the petitioner and sufficient cause had been given by the petitioner for his absence, this Court feels that by remitting the matter

back to the authorities there would be further delay. The petitioner was dismissed from service in 1999. He is a wrestler and he joined the force to

take part in sports events. On account of dismissal order passed about thirteen years back, in a way it has already ruined his career to

considerable extent as wrestler. It is, therefore, held that his period of absence be adjusted against his admissible leave and if the petitioner is found

short of leave, he be granted extraordinary leave without pay For the foregoing reasons, the orders of dismissal passed by the respondents

dismissing the petitioner from service are set aside. The petitioner be reinstated forthwith with 50% of his back wages from the date of his dismissal

to the date of his reinstatement. The petitioner shall, however, be given all other consequential benefits such as promotions etc. and there will be no

discontinuity in the period of his service. The petitioner is also awarded a cost of Rs. 10,000 which shall be paid by the respondents within four

weeks. With these directions the writ petition is allowed.