



CWP-24001-2014(O&M)

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**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

201

CWP-24001-2014(O&M)
Date of Decision: 07.08.2025**Vinod Kumar**

... Petitioner

VERSUS

Union of India & ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. R.S. Panghal, Advocate for the petitioner.

Ms. Anita Balyan, Sr. Panel Counsel for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

1. Challenging the order dated 31.08.2012 and the subsequent dismissal of the appeal as well as the revision vide orders dated 14.12.2012 and 06.06.2013 respectively along with response dated 10.06.2014 to the legal notice sent by the petitioner, the instant writ petition has been filed.

2. The undisputed facts that emerge from the perusal of the writ petition are that the petitioner was enrolled as a Constable in the Central Reserve Police Force (hereinafter referred to as 'CRPF') on 24.11.2003. The petitioner proceeded on paternity leave for a period of 15 days from 17.11.2011 to 01.12.2011. Unfortunately, on the fateful day, i.e. 01.12.2011, he fell from a tree and received spinal as well as head injuries, for which he also underwent treatment in the Neuro Department of the PGIMS Rohtak but despite the



factum of the petitioner not being well and being under treatment having been brought to the notice of the respondent-authorities by the brother of the petitioner, the respondents inflicted the punishment of dismissal from service and the subsequent appeal as well as revision against the same were also dismissed.

3. Learned Counsel for the petitioner contends that the disciplinary authority had imposed the punishment of dismissal invoking Section 11(1) of the CRPF Act, 1949 (for short the '1949 Act') read with Rule 29 of the CRPF Rules, 1955 (for short the '1955 Rules') on the ground of proven charge of unauthorized absence under Section 10(m) of the Act, 1949. He submits that the said order of dismissal of the petitioner and the subsequent dismissal of the appeal and revision are bad, illegal and liable to be set aside.

4. The first and foremost argument advanced is that Section 10 of the 1949 Act deals with less heinous offences. The punishment for the said offences is prescribed under Section 11 and the punishment of removal from service/dismissal cannot be imposed for a less heinous offence. He places reliance on the judgment of this Court passed in **Ram Singh Rai Vs. Union of India, 2003(1) SCT 523, (CWP No.6845 of 1993, decided on 13.09.2002)**. The relevant extract thereof is as under:-

“(12) Rule 27 of the C.R.P.F. Rule 1955 provides the procedure for awarding of punishment.

Rule 27 of the C.R.P.F. Rules, 1955, reads as under :—

CHAPTER VI

Discipline

27. Procedure for the Award of Punishment.— (a) The punishments shown as items 1 to 11 in column 2 of the table below



may be inflicted on non-gazetted officers and men of the various ranks shown in each of the headings of columns 3 to 6, by the authorities named below such heading under the conditions mentioned in column 7 :-

XX XX XX XX XX

XX XX XX XX XX

(b) When non-Gazetted officers or men of the various ranks are to be punished for any offence, a departmental enquiry, if necessary under clause (a), shall be held by the Commandant or other superior officer under the orders of the Commandant, provided that when the charge is against an officer of the rank of Subedar (Inspector) or Sub-Inspector the enquiry shall be held by an authority to be designated for the purpose by the Deputy Inspector General. Where the officer conducting the enquiry in the case of a Subedar (Inspector) or a Sub-Inspector considers that a punishment [under items (1) to (5) and (7)] of the Table is called for, he shall complete the departmental proceedings and forward the departmental proceedings and forward the same to the Deputy Inspector General for orders.

(c) The procedure for conducting a departmental enquiry shall be as follows :

(1) The substance of the accusation shall be reduced to the form of a written charge, which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs. before the commencement of the enquiry.

(2) At the commencement of the enquiry the accused shall be asked to enter a plea of "Guilty" or "Not Guilty" after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary, if oral;



(i) it shall be direct;

(ii) it shall be recorded by the Officer conducting the enquiry himself in the presence of the accused ;

(iii) the accused shall be allowed to cross examine the witnesses.

(3) When documents are relied upon in support of the charge, they shall be put in evidence as exhibits and the accused shall, before he is called upon to make his defence, be allowed to inspect such exhibits.

(4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry. If the accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads "Not guilty", he shall be required to file a written statement, and a list of such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the officer conducting the enquiry on the expiry of the period allowed.

(5) If the accused refuses to cite any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case, he may refuse to call such witness or to allow such documents to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant



evidence has been brought on record, the proceedings shall be closed for orders.

(6) If the Commandant has himself held the enquiry, he shall record his findings and pass orders where he has power to do so. If the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings, to the Commandant, who shall record his findings and pass orders, where he has power to do so.

*[(7) [***]]*

(cc) Notwithstanding anything contained in this rule :

(i) where any penalty is imposed on a member of the Force on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the authority competent to impose the penalty is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules; or

(iii) where the Director-General is satisfied that in the interest of security of the State, it is not expedient to hold any enquiry in the manner provided in these rules, the authority competent to impose the penalty may consider the circumstances of the case and make such orders thereon as it deems fit.

(ccc) when a member of the Force has been tried and acquitted by a Criminal Court, he shall not be punished departmentally under this rule on the same charge or on a similar charge upon the evidence cited in the criminal case, whether actually led or not, except with the prior sanction of the Inspector General.

(d) (1) Where two or more members of the Force, including those on deputation to the Force are concerned in any case,



the Inspector General [or any other authority competent to impose the penalty of dismissal from service on all such members of the Force] may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

Note. - Where in such a proceeding, the misconduct of a deputationist is to be dealt with, the consent of the disciplinary authority competent to impose the penalty of dismissal shall be obtained for the taking of such a disciplinary action.

(2) Such order shall specify-

(i) the authority which may function as the disciplinary for such a common proceeding;

(ii) the penalties specified in the table of sub-rule (a) above which such disciplinary authority shall be competent to impose;

(iii) whether such disciplinary authority shall hold the Departmental enquiry himself or may designate any other enquiry officer for that purpose; and

(iv) that the enquiry shall be held in accordance with the provisions of sub-rule (a) and sub-rule (c).

The perusal of the above table in Rule 27(a) of C.R.P.F. Rules 1955, shows the various punishments which are to be inflicted after departmental enquiry and punishments which may be inflicted without departmental enquiry. Dismissal or removal from the force as indicated at Serial No. 1 of the table in Rule 27(a) is to be inflicted after formal departmental enquiry. However, the minor punishments as indicated in the said table and mentioned in Section 11 of the C.R.P.F. Act 1949, may be inflicted without a formal departmental enquiry. In the case in hand, as already noticed above, the petitioner was as per the statement of imputations of mis-conduct in support of the articles of charge



informed that he committed an offence of disobedience of orders, neglect of duty and remissness under Section 11(1) of the C.R.P.F. Act 1949. This is also the position in the impugned office order dated 18.1.1990 (Annexure P-3). However, the petitioner has been removed from service despite the fact that he was issued notice for minor punishment only under Section 11(1) of the C.R.P.F. Act, 1949. The perusal of Section 11 of the C.R.P.F. Act, 1949, shows that it deals with minor punishments as compared to the heinous offences as provided under Sections 9 and 10 of the C.R.P.F. Act. Section 11 lays down that the Commandant or any other Authority or Officer as may be prescribed may, subject to any rules made under the Act, award in lieu of one or more of the punishments to any member of the force whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the force.”

5. It is submitted by the Learned Counsel that for imposing a major punishment, the respondents are required to conduct a departmental inquiry as stipulated under Rule 27 of the 1955 Rules. It is submitted that in the table appended to Rule 27, it is specifically mentioned that so far as the punishment of dismissal or removal from the Force is concerned, the same can be inflicted only after a formal inquiry has been conducted. It is vehemently argued that an *ex parte* departmental inquiry was conducted by the respondents, whereas the CRPF Rules do not empower the departmental inquiry to proceed *ex parte*.

6. It is also argued that as per Section 9, which deals with heinous offences, a punishment for dismissal can only be imposed in the eventuality of desertion once such an act is done by an employee while on active duty as defined under Section 2(a) of the CRPF Act, 1949. He submits that since the



petitioner was on leave on 01.12.2011 and he was not on active duty, as defined, hence, the act of desertion of the petitioner would only be a minor offence, for which minor punishment can be imposed.

7. He further contends that Section 10(m) states that the absence would be an offence only when a member of the Force absents himself without leave, or without sufficient cause, overstays the leave granted to him. It is contended that the respondents have not objectively considered the reasons cited by the petitioner for his overstay. It is submitted that the entire defence has been dealt with and impeached of its credibility by the respondents by simply doubting the entire documentary evidence and record on the premise that a member of the Force was unlikely to climb a tree on the day when he was to return. Reference and attention in support of the above argument is drawn to sub para 2 of para 3 under Charge-II in the order passed by the Appellate authority, which reads thus:-

“2) The plea of the appellant that he had fallen from the tree and his health deteriorated for which no medicine effected him and so he could not become present from duty, in that regard the appellant has produced the medical documents issued by Kumar Multiplicity Special Hospital, Rohtak, dated 1.12.2011. Although it is evident from the above said certificate that he had fallen from the tree and he has suffered the injuries but it may be pertinent to note that the appellant was on leave from 17.11.11 to 01.12.11 so he was to report at TC Jammu on the date the medical certificate is given, but he was present at his of that day. at present Therefore, it is clear that he had made up his mind to become absent from leave because he fee was to start for



duty in time then he would have not been at his home.

Therefore, there is no reliability in this fact.”

(emphasis applied)

8. Referring to the above, it is submitted that the reasoning given does not reflect an objective and independent assessment and rather reflects a premeditated interpretation. It is stated that the factum of the petitioner having produced the medical record, including the treatment chart from the Kumar Multiplicity Special Hospital, Rohtak, of the same day is not disputed, yet, the said record has been disbelieved in a pedantic manner and without any reason. The presumption has been drawn against the petitioner even before an independent and objective assessment of the record. The conclusion, thus, arrived at is tainted and invalid in law.

9. Responding to the above, learned counsel for the respondents submits that the petitioner committed the offence of absents without leave or with no sufficient cause, for which a Court of inquiry was held in terms of Rule 31 of the 1955 Rules. It is submitted that in terms of the CRPF Rules, if a person does not return of his own free will or is not apprehended within 60 days of the commencement of the desertion, absence or overstaying of leave, the Commandant is mandated to assemble a Court of Inquiry. She submits that once a person is declared as a deserter under Rule 31, thereafter, the departmental inquiry is undertaken since desertion is a heinous offence under Section 9(f). She submits that the Commandant has independent powers to impose a punishment under Section 11(1) read with Rule 27 of the CRPF Rules, and that in exercise of the said powers, the impugned order has been passed. The same being not only as per the procedure prescribed but also in exercise of



lawful powers, is valid and is not to be interfered with. She contends that for conducting departmental inquiries, the powers are drawn from CCS Inquiry Rules, which are adopted and are applicable to the departmental inquiry proceedings even in the CRPF. Hence, an ex parte inquiry can be conducted. She further relies upon the judgment of the Hon'ble Supreme Court in **Union of India & ors. Vs. Ghulam Mohd. Bhat, 2006(3) SCT 178**, to argue that the punishment which can be awarded under Section 11 is not limited only to reduction in rank, fine, confinement to quarters, etc. She further contends that Section 11(1) empowers the Commanding officers/officials to alter the punishment already awarded in lieu of what has already been imposed. By referring to the aforesaid, it is contended that the Commanding Officer can impose a major penalty of suspension/dismissal from service as well. Paras 5 to 7 thereof read thus: -

“5. A bare perusal of Section 11 shows that it deals with minor punishment as compared to the major punishments prescribed in the preceding section. It lays down that the Commandant or any other authority or officer, as may be prescribed, may, subject to any rules made under the Act, award any one or more of the punishments to any member of the force who is found guilty of disobedience, neglect of duty, or remissness in the discharge of his duty or of other misconduct in his capacity as a member of the force. According to the High Court the only punishments which can be awarded under this Section are reduction in rank, fine, confinement to quarters and removal from any office of distinction or special emolument in the force. In our opinion, the interpretation is not correct, because the section says



that these punishments may be awarded in lieu of, or in addition to, suspension or dismissal.

6. *The use of words 'in lieu of, or in addition to, suspension or dismissal', appearing in sub-section (1) of Section 11 before clauses (a) to (e) shows that the authorities mentioned therein are empowered to award punishment of dismissal or suspension to the member of force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clause (a) to (e) may also be awarded.*

7. *It may be noted that Section 9 of the Act mentions serious or heinous offences and also prescribes penalty which may be awarded for them. Section 10 deals with less heinous offences and clause (m) thereof shows that absence of a member of the force without leave or without sufficient cause or overstay without sufficient cause, is also mentioned as less heinous offence and for that also a sentence of imprisonment is provided. It is, therefore, clear that Section 11 deals with only those minor punishments which may be awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of dismissal can certainly be awarded thereunder even if the delinquent is not prosecuted for an offence under Section 9 or Section 10.”*

10. I have heard learned counsel for the parties and have gone through the documents appended along with the present petition.

11. Before proceeding further into the matter, it would be necessary to advert to the statutory provisions that are under consideration of this Court in the present case. The same are extracted as under: -



*“2. **Definitions** : In this Act, unless there is anything repugnant in the subject or context-*

(a) “active duty” means the duty to restore and preserve order in any local area in the event of any disturbance therein;

*“9. **More heinous offences.-** Every member of the Force who-*

*XX XX XX XX XX
XX XX XX XX XX
XX XX XX XX XX*

(d) directly or indirectly holds correspondence with, or assists or relieves any person in arms against the State or omits to discover immediately to his superior officer any such correspondence coming to his knowledge; or who, while on active duty-

*(e) disobeys the lawful command of his superior officer; or
(f) deserts the Force; or”*

*XX XX XX XX XX
XX XX XX XX XX
XX XX XX XX XX*

shall be punishable with transportation for life for a term of not less than seven years or with imprisonment for a term which may extend to fourteen years or with fine which may extend to three months’ pay or with fine to that extent in addition to such sentence of transportation or imprisonment.”

*10. **Less heinous offences.-** Every member of the force who-*

*XX XX XX XX XX
XX XX XX XX XX
XX XX XX XX XX
XX XX XX XX XX*



(m) absents himself without leave, or without sufficient cause over-stays leave granted to him; or

11. Minor punishments.

(1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say :-

(a) reduction in rank;

(b) fine of any amount not exceeding one month's pay and allowances;

(c) confinement to quarters, lines or camp for a term not exceeding one month;

(d) confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other duty; and

(e) removal from any office of distinction or special emolument in the Force.

(2) Any punishment specified in clause (c) or clause (d) of sub-section (1) may be awarded by any Gazetted Officer when in command of any detachment of the Force away from headquarters, provided he is specially authorised in this behalf by the Commandant."

27. Procedure for the award of punishments .—(a) [The punishments shown as items 1 to 11 in column 2 of the table] below may be inflicted on non-Gazetted Officers and men of the various ranks shown in each of the headings of columns 3 to 6, by the authorities named below such headings under the conditions mentioned in column 7.



SI. No.	Punishment	Subedar (Inspector)	Sub-Inspector	Others except Const. & enrolled followers	Consts. & enrolled followers	Remarks
1	2	3	4	5	6	7
1.	Dismissal or removal from the Force	DIGP	DIGP	Comdt.	Comdt.	To be inflicted after formal departmental enquiry
2.	Reduction to a lower time-scale of pay grade, post or service	DIGP	DIGP	Comdt.	Comdt.	To be inflicted after formal departmental enquiry
3.	Reduction to a lower stage in the time scale of pay for a specified period	DIGP	DIGP	Comdt.	Comdt.	
4.	Compulsory retirement	DIGP	DIGP	Comdt.	Comdt.	
5.	Fine of any amount not exceeding one month's pay and allowances	DIGP	DIGP	Comdt.	Comdt.	
6.	Confinement in the Quarter Guard exceeding seven days but not more than twenty-eight days with or without punishment drill or extra guard fatigue or other duty	--	--	--	Comdt.	
7.	Stoppage of increment	DIGP	DIGP	Comdt.	Comdt.	May be inflicted without a
8.	Removal from any office of distinction or	DIGP	DIGP	Comdt.	Comdt.	



	special emolument in the Force					formal departmental enquiry
9.	Censure	Comdt.	Comdt.	A. Comdt. Or Coy Comdr.	A.Comdt. Or Coy Comdr.	
10.	Confinement to Quarter Guard for not more than seven days with or without punishment or extra-guard fatigue or other duty	-	-	-	Comdt.	
11.	Confinement to quarters lines, camp, punishment drill, fatigue duties, etc., for a term not exceeding one month.	-	-	-	Comdt.	

XX XX XXXXXXXXXXXX

c) The procedure for conducting a departmental enquiry shall be as follows:—

(1) The substance of the accusation shall be reduced to the form of a written charge, which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs. before the commencement of the enquiry.”

“31. **Desertion and absence without leave** .—(a) If a member of the force who becomes liable for trial 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 atleast 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."

12. It is evident from the perusal of the above that for inflicting a major punishment of dismissal or removal from service, a formal departmental inquiry is required to be conducted. It also remains undisputed that if a person has overstayed leave without any sufficient cause, he can be declared a deserter in view of the report submitted by the Court of Inquiry. Rule 31(c) also establishes that a declaration of a person as a deserter does not by itself sever the relationship of a member of the Force from the Force. Such a member continues to belong to the Force till such time any action is taken in law. The specific case of the respondents is that once the Court of inquiry is accepted and the Commandant authorizes a publication to the effect that a member is a deserter in the Force Order, whereupon the member becomes amenable to



infliction of a major punishment under Section 9(f), which falls within the definition of more heinous offences.

13. The above argument however is misplaced and fails to convince this Court. A careful reading of the provisions of Section 9, however, shows that all the sub-clauses mentioned therein are independent, which would attract punishment for the commission of heinous offences. While the clauses (a) to (d) are not qualified, the offences from (e) to (l) are pre-qualified and such clauses would fall in the ambit of a heinous offence only on the occurrence of an eventuality, i.e. “while on active duty”. Further ‘active duty’ having been defined as the ‘duty to restore and preserve order in any local area in the event of any disturbance therein’, an independent act of absenteeism or overstay as stipulated under Section 10(m) would not, in view of this Court, fall in the definition of ‘desertion’ as stipulated under Section 9 (f) read with Section 2 (a) of the CRPF Act, 1949.

14. With the same having been answered as above, the question which arises for consideration of this Court is as to whether the absence of the petitioner, who was already on paternity leave, can be said to constitute desertion while on active duty. Invariably when the clause is to be interpreted in accordance with the legislative intent, the exclusion having been specifically made for any other nature of duty and the same conceded as not being an active duty, the petitioner being on paternity leave during the period of desertion, the offence in question cannot be treated as a more heinous offence merely on account of a finding recorded to the effect that the petitioner was a deserter under Section 10(m). The same, thus, remains only a less heinous offence.



15. The issue which thus next comes for consideration of this Court is as to whether Section 11 authorizes the Commandant to inflict the punishment of dismissal from service or not. A careful reading of the said clause specifically shows that the minor punishments can be awarded by the Commandant in addition to or in lieu of suspension or dismissal. The said provision does not take away any powers of the Commandant to inflict the punishment of suspension or dismissal since the power contemplated under Section 11 contemplates an addition to suspension or dismissal; hence, it is inherent in the said clause that the Commandant would have the power to inflict punishment of dismissal under Section 11. However, the final argument, which comes up for consideration of this Court, is as to whether a major punishment can be imposed for a less heinous offence or not.

16. A plain reading of Section 11 shows that it not only empowers the Commandant to impose the punishment of suspension or dismissal but also to alter it by way of reduction or addition of the punishments as prescribed thereunder where he considers a member of Force to be guilty of disobedience, neglect of duty, remissness in the discharge of the duty or of any other misconduct in his capacity as a member of the Force. While Sections 9 and 10 define the offences and the punishment that may be imposed for the commission of a more heinous or less heinous offence, Section 11 deals with orders that may be passed on a civil side in relation to the nature of employment. Sections 9 and 10 of the 1949 Act do not in any manner impact the relationship of an employer-employee against the member of the Force and only entail the consequence of punishment for which the punishment may be



imposed by taking recourse to Chapter 6-A, necessitating the trial proceedings in exercise of powers of the Magistrate by the Commandants with the aid of Rule 36, which deals with judicial trials. Thus, once a person is declared as having committed either a more heinous or a less heinous offence under Sections 9 and 10 respectively, the trials in relation to the same are required to be conducted as per Rule 36 and Chapter 6A of the Rules of 1955. The Commandant would nonetheless be within his powers to take departmental action which has civil consequences. The judgment of the Hon'ble Supreme Court in **Ghulam Mohd. Bhat (supra)** would crystallize the case in favour of the respondents, wherein it has been interpreted that the Commandant does have the power to impose the punishment of dismissal or suspension of a Member of Force, who is found guilty of any offences. The judgment relied upon by learned counsel for the petitioner in **Ram Singh Rai (supra)**, having been passed prior to the judgment of the Hon'ble Supreme Court in **Ghulam Mohd. Bhat (supra)**, thus, cannot be taken into consideration.

17. The question, which next comes up for consideration of this Court, is as to whether in the process of decision-making, the respondents have taken a proper count of the evidence that has been brought before the authorities. Noticing the reasoning that has been given by the respondents while disregarding the defence on a presumption, I find that the reasons so assigned by the respondents to discredit the medical certificates and the medical history produced before the authorities were not proper. It seems that respondent-authorities pre-decided the issue and thereafter, reasoned to justify the conclusion. In a fair procedure, a decision is to follow the evidence and its



objective assessment; however, the said process of decision making is severely lacking in the instant case. It was, thus, incumbent upon the respondents to ascertain the injuries and as to whether the factum of the injuries sustained by the petitioner, impacting his mobility and his ability to discharge the functions or not, was corroborated by medical evidence so as to provide a sufficient cause or not. A conclusion, on an assumption that the petitioner had made up his mind to become absent and thus, sustained injuries to himself for justifying his absenteeism/overstay is not based upon a correct way of appreciation of evidence. There can be no presumption as to the reasons behind an injury or the same to be motivated merely because it happened on the day of return without going into the nature of the injury and its gravity. The respondents have further observed that the petitioner was taking treatment not only from Kumar Multiplicity Specialty Hospital, Rohtak, but was also being issued a treatment certificate by Janta Hospital and Maternity Centre, Bhiwani. It is not unheard of that a person may approach the hospital or a Multi Specialty Hospital nearer to his place for minor ailments/follow up after the major checkup and treatment has been obtained from the hospital where the treatment had initially been taken. The probabilities drawn by the Commandant do not inspire an objective consideration of the material in a dispassionate manner and reflect the assessment thereof with an intent to inflict punishment.

18. Ordinarily, this Court would not interfere with the order of punishment that has been imposed by the competent authority in case the conclusions drawn are probable; however, the probability test requires a satisfaction that the probability has to be within the objective parameters of



ordinary prudence. The punishing authority, by an act which has civil ramifications, is required to reflect an independent application of mind and consideration of the evidence and also assign reasons in law as to why the evidence is not being relied upon. No person would ordinarily sustain an injury on his spine and head only to absent himself from service when there could be various other reasons or circumstances for such overstayal. The gravity of injury is also required to be seen in order to impute motive. Under normal circumstances, a person would not inflict to himself an injury that could render him handicapped for the rest of his life and have the potential of severely damaging the spine as well as the cognitive faculties.

19. In view of the above, the present petition is allowed and the impugned order is, accordingly, set aside. The matter is remanded to the respondent-authorities to pass a fresh order, after granting due opportunity to the petitioner to prove his case.

20. All the pending miscellaneous applications also stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

AUGUST 07, 2025.

monika

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No