

(2010) 08 DEL CK 0243

In the Delhi High Court

Case No : Writ Petition (C) No. 1879 of 2010

Anil Kumar Kanoojia

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11
Central Reserve Police Force Rules, 1955 — Rule 27, 9
Constitution of India, 1950 — Article 226

Citation : (2010) 08 DEL CK 0243

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Narender Kaushik, for the Appellant; Sonia Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The present case manifests the worst abuse of process of law possible. In as much as, there is no dispute to the material facts giving rise to the present petition, the same to the extent necessary are briefly noticed hereafter. It is an admitted position that on 14th February, 2006, the petitioner was recruited to the responsible position and post of Head Constable with the Rapid Action Force (?RAF? hereafter) of the Central Reserve Police Force (?CRPF? hereafter). The petitioner sought one day?s casual leave on 1st July, 2006 with permission to avail Sunday which fell on 2nd July, 2006 without giving any kind of explanation or reason for the same.

2. This application of the petitioner was accepted. However, the petitioner failed to resume duties on 3rd July, 2006 and did not at any point of time join the duties till his dismissal from service on 21st January, 2008.

3. The respondents have pointed out that the petitioner was due for basic training with effect from 7th August, 2006 to 3rd November, 2006 which he could not undergo for the reason that he failed to report on duty after 3rd July, 2006.

4. It has been pointed out that the persons who were recruited and newly appointed as Head Constable were assigned as Service Record Clerks.

5. So far as the reminders to the petitioner to resume duties are concerned, the respondents have placed reliance on the letters dated 10th July, 2006, 29th July, 2006, 14th December, 2006 and 11th January, 2007 calling upon the petitioner to resume duties. Despite receipt of these communications, the petitioner did not care to even respond to the same letters.

6. In this background, the respondents exercised jurisdiction and proceeded against the petitioner in terms of Section 11(i) of the CRPF Act, 1949 and Rule 27 of the CRPF Rule, 1955. A memorandum of charges dated 4th August, 2007 was duly sent to the petitioner seeking his response thereto. Upon failure of the petitioner to respond, the respondents appointed Smt. Santosh Rani, Assistant Commandant of the Unit as a Inquiry Officer to inquire into the charges leveled against the petitioner. The Inquiry officer is stated to have sent letters dated 8th August, 2007; 18th August, 2007; 3rd September, 2007 and 11th September, 2007 calling upon the petitioner to join the inquiry.

7. The petitioner was also given adequate opportunity to communicate his response to the charges, etc. which were levelled against him. It is on record before us that there was compliance of the procedural requirements for conduct of the inquiry. However, the petitioner failed to respond to the entreaties of the Inquiry Officer and also did not join or contest the inquiry. In this background, after a careful consideration of the evidence placed before her, including the documents and the statements of the witnesses, the Inquiry Officer arrived at a conclusion that the charges against the petitioner stood duly proved.

8. The report of the Inquiry Officer was also served upon the petitioner by the disciplinary authority vide registered letter No. 1818 dated 11th December, 2007. We may note that the petitioner was also thereby directed to submit a representation/reply to the report of the Inquiry Officer within 15 days from the receipt of the letter. Neither any representation nor any material was received from the petitioner contesting the findings and conclusion of the Inquiry Officer.

9. In these circumstances, after a careful consideration of the entire matter, the Commandant who was the disciplinary authority of the petitioner was left with no option but to accept the report of the Inquiry Officer finding the petitioner guilty of the charges levelled against him. The Commandant had further imposed the punishment of dismissal from service upon the petitioner in exercise of jurisdiction under Rule 27 of the CRPF Rule, 1955 in keeping with the gravity of the offence of the petitioner.

10. Mr. Narender Kaushik, learned Counsel appearing for the petitioner has contended that the petitioner was suffering from grave family problems in the nature of depression of his parents and for this reason, he had sought the casual leave and was unable to resume duties after 3rd July, 2006. We may note in this regard that the petitioner stated no such reason when he submitted the

application for resignation. No such reason was also placed before the respondents in response to the repeated communications sent by them to the petitioner to join his duties or the several letters from the Inquiry Officer to contest the inquiry proceedings. Even if the petitioner was preoccupied with the sufferings of his parents, certainly nothing prevented the petitioner from placing the same before the respondents. Such reason certainly was not sufficient to detain the petitioner from even addressing a single communication to the respondents, let alone resuming duties at any point of time. The petitioner did not even acknowledge receipt of the communications from the respondents or contest the inquiry report despite having been given due opportunity to do so.

11. We may note that the respondents have made detailed submissions with regard to the repeated opportunities given to the petitioner to join duties for a period of almost two years. From the rejoinder which is filed by the petitioner, we find that there is no contest at all to the same.

12. As noted above, the petitioner had succeeded in being appointed to a disciplined para military force. As a Head Constable, onus was laid upon him to show his sincerity and to abide by the discipline of the force. The petitioner has acted in a manner most unbecoming of members of a disciplined force. He has taken his employment for granted as if it entitled him to treat his service in any manner as he may desire and displayed rank indiscipline. This is not only most improper but cannot be countenanced at all by the authorities. Certainly his conduct in the force is indefensible.

13. The petitioner has assailed the order of dismissal before us primarily on two grounds. He has contended that in view of his family problems, he had sent a letter of resignation dated 28th November, 2006 and that the respondents were bound to accept the same. This submission deserves to be noted only for the sake of rejection. This letter sent on 28th November, 2006 further displays the callousness with which the petitioner has treated his responsible appointment with the force. The letter of resignation placed before us has been sent almost four months after the sanctioned leave of the petitioner came to an end on 3rd July, 2006 and it has been sent after repeated entreaties and notices from the respondents to the petitioner to join duties. Undoubtedly, the letter has been sent as a shield for his completely illegal and unwarranted action in not resuming his duties and as a cover for the disciplinary action which the petitioner appeared to be aware would follow in the light of his afore noticed conduct.

14. We may note the manner in which the respondents have responded to the request for resignation of the petitioner. Upon receipt of this letter of resignation, the respondents did not reject the same. The respondents addressed the letter dated 14th December, 2006 to the petitioner to report for duty so that necessary action could be taken on his application for discharge. The admitted position is that the petitioner did not respond any further to this request of the respondents. On 11th January, 2007, the petitioner was directed to hand over regular charge of the Service Record Clerk - III where he was working and that

further action would be taken on his application for resigning from service. As noted above, none of these communications have deserved even any acknowledgment from the petitioner. In view of the above, the action of the respondents in finally rejecting the application of the petitioner cannot be assailed on any legally tenable grounds.

15. A plea of desperation has been urged on behalf of the petitioner by Mr. Naresh Kaushik, learned Counsel representing him. It is contended that the petitioner had not taken the oath under Rule 9 of the CRPF Rules, 1955 and for this reason, the inquiry under the proposed charges could not have been held against him. It is admitted by Mr. Kaushik that, after his enrollment on 14th February, 2006, the petitioner had joined his appointment. The petitioner submits that he was performing duties as the Service Record Clerk from the day of his joining 103 Battalion of the RAF of the CRPF. It is admitted before us that the petitioner received salary, wages and all benefits and allowances as were admissible to him from the date of his joining. The petitioner has admitted that he was regularly enrolled with the respondents in as much as he claims to have sought casual leave to which he was entitled under the Rules as well. The prayer in the writ petition refers to 'resignation' and 'discharge' which could only be if the petitioner was a member of the force. For this reason, we find no merit in the submission of the learned Counsel for the petitioner.

16. We may notice that the petitioner is solely responsible for the orders which came to be passed against him. It is urged before us that the order of dismissal could come in the way of his future prospects with the Government. Given the above narration of facts which have transpired in the present case, we see no reason to have sympathy for a person who has treated his appointment with the para military force in any manner other than the way in which the respondents have been compelled to deal with his conduct.

17. We may also notice that conduct of such unwarranted actions deserves stringent actions. The respondents appeared to have been reacted to the petitioner's absence by cajoling him to resume duties and give him the nature of duties which the CRPF and the para military forces are required to perform. It has also to be noted that the respondents have taken a period of almost two years in completing disciplinary action and finalizing the action against the petitioner.

18. We may note that in the instant case, the petitioner does not even suggest any explanation for his absence of two years in the writ petition. Of course, that could not have been considered by us while considering the merits of the action taken by the respondents. Such actions have to be contested in the light of materials which were before the respondents and not on material placed in the writ petition.

19. We have found that the petitioner has failed to make out any legal ground to support his challenge. It is trite that when the extraordinary jurisdiction of this

Court under Article 226 of the Constitution of India is invoked, the court may not exercise the same even on the making of a legal point of the petitioner. Several material factors which include the conduct of a person as well as the consideration of public interest would guide exercise of such discretion (reference has been made to the pronouncement of the Apex Court in the case of Ramniklal N. Bhutta and another Vs. State of Maharashtra and others,

20. The petitioner also assails the appellate order dated 22nd October, 2008 and revisional order dated 9th April, 2009 whereby the said order of dismissal has been confirmed. The challenge to these orders is premised on the same grounds as the challenge to the order of the disciplinary authority. For the detailed reasons recorded hereinabove, this challenge is also not sustainable and is hereby rejected.

21. The present writ petition is wholly misconceived and misguided.

22. For all the foregoing reasons, we find no merit in this writ petition. Accordingly, the same is dismissed with costs which are quantified at Rs. 20,000/-. The costs shall be positively paid within a period of four weeks from today.