

(2010) 11 DEL CK 0111

In the Delhi High Court

Case No : Writ Petition (C) No. 2467 of 2001 CM No. 4278 of 2001

Dr. S.B.P. Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 226

Citation : (2010) 11 DEL CK 0111

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

Bench : Division Bench

Advocate : Shambhu Nath Singh, for the Appellant; Atul Nanda, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The writ Petitioner has assailed the order dated 5th March, 2001 (page 121) whereby the Director General of the Central Reserve Police Force (hereinafter referred to as 'CRPF') agreed with the findings of the inquiry officer finding the Petitioner guilty of the article of charge for which disciplinary proceedings were held against him and imposed a punishment of dismissal from service.

2. The facts giving rise to the petition are undisputed. The Petitioner is a trained doctor and had joined the CRPF as Medical Officer on 19th April, 1988 at their 81st Battalion in Patna. He thereafter served with the various battalions of the CRPF at various places. So far as the instant case is concerned, it is necessary to note that on 14th August, 1996, while serving with the 11th Bn. which had moved to Mathura, the Petitioner was also serving at this station. It is contended that, at this stage, the Petitioner sought a transfer to the Signal Group Centre of the CRPF at Ranchi on the compassionate ground that his father was not keeping good health and that the Petitioner's cousin brother who was a doctor and was looking after his father, had prematurely expired on 13th June, 1996. This

request was premised on the Petitioner's contention that there was none else at Ranchi to look after the Petitioner's father. The Respondents on 27th February, 1997 rejected the Petitioner's request for such a transfer.

3. The Petitioner was thereafter granted six days casual leave w.e.f. 16th June, 1997 to 21st June, 1997 with permission to avail 15th June, 1997 22nd June, 1997 being Sundays as leave. Unfortunately the Petitioner failed to report back to duty and kept sending representations and requests either for extension of leave or for transfer to Ranchi. It is an admitted position before us that the Petitioner reported to the 36th battalion, where he was then posted only on 1st June, 1999 after the initiation of the disciplinary proceedings against him during this period in accordance with law.

4. The challenge on behalf of the Petitioner is premised on the contention that the Petitioner being a dutiful son was bound to look after his ailing and suffering father and that the Respondents had failed to consider his request for transfer to Ranchi on humanitarian ground. It is urged that the Petitioner was compelled to stay away from duty for reasons which were completely beyond his control on the ground of the extreme ill health of his father and that the writ Petitioner's request for extension of the leave ought to have been favourably considered. It has also been contended that there was no justification in the Respondent's failing to consider the Petitioner's request for transfer to Ranchi where his father was residing.

5. The Petitioner also assails the punishment of the dismissal imposed upon him on grounds of proportionality and has urged that the circumstances placed on record by the Petitioner did not merit the severe punishment of dismissal from service.

6. We have heard learned Counsel for the parties and also perused the available records.

7. The Petitioner has placed strong reliance on his contention that his father was unwell necessitating his presence with him. In this behalf, the Petitioner is stated to have sent an application dated 23rd June, 1997 whereby he had informed the commandant of the 150th Bn. CRPF that his father was in critical position as he had suffered a severe heart attack and "he was still under oxygen". The Petitioner did not seek any extension of leave. Instead by this communication he peremptorily informed the Respondents that he was extending his leave till his father did not recover from the present situation.

8. The Petitioner also has completely ignored the Respondent's intimation dated 30th June, 1997 directing him to join duty on receipt of the letter. The Petitioner was thereby also informed that he stood transferred by an order dated 20th June, 1997 to the 36th Battalion and was requested to join immediately to get clear the proceedings of transfer. On 19th July, 1997, an order was issued relieving the Petitioner w.e.f. 25th June, 1997 on paper strength for the reason that he was presently overstaying from leave.

It is noteworthy that more than 63 officers were transferred by this communication.

9. A preliminary inquiry was conducted against the Petitioner wherein he was given opportunity to participate. The Petitioner repeatedly delayed the proceedings in this inquiry on one pretext or another necessitating several extensions of time to make his statement.

10. The sheer arrogance in the stand adopted by the Petitioner is evident from the tenor of his communications to the Respondents. On 21st July, 1997, the Petitioner informed the Respondents that if the Director General did not stay his present transfer order or consider the Petitioner's transfer to Ranchi decided, he would not join his duties. Interestingly, the Petitioner refers to his "ill bed ridden father" in this communication. This stand has been reiterated in his subsequent communications.

11. The Petitioner also could not be persuaded to act as per prescribed procedure or to maintain the discipline which he was bound to maintain being a member of the para military force as per CRPF performing serious duties as a medical specialists. In this regard, the Petitioner himself has placed the request which he received from the 36th Battalion, CRPF dated 11th August, 1997 requesting him to join duty in the battalion for inclusion of his name.

12. So far as the Petitioner's request for his choice posting to Ranchi is concerned, our attention has been drawn by learned Counsel for the Petitioner to the communication dated 20th September, 1997 whereby the Establishment Section of the CRPF has informed that displeasure has been awarded to the Petitioner on account of his conduct. Reference is also made to his past record and that the Petitioner being an indisciplined sheep, his case for such choice posting was not recommended. It was also pointed out that the medical officer was absent without leave from the 25th of June, 1997 and had failed to join the unit and that the disciplinary action was necessitated against him.

13. So far as the propounded reason of his father's sickness is concerned, it is essential to note the reasons placed by the Petitioner at different places for his unauthorized absence. In a communication dated 7th May, 1998, the Petitioner informed the commandant of the 11th Battalion that he could not reach Mathura in response to the letter dated 6th May, 1998 because of the reason that his younger brother was getting married on 15th May, 1998 and that being the only brother, his stay was essential. Additionally, it may be mentioned that the Petitioner had also submitted that his father was admitted "in a nursing home for the last many days and under medical supervision". No records or documents to substantiate either of these reasons have been placed either before the Respondents or even on the record of the present case.

14. Reference may also be made to a communication dated 3rd November, 1998 by the Petitioner to the Director General of the CRPF wherein it has been stated by the Petitioner that he was on leave since June, 1997 "because of repeated

attacks of anti-social elements on me, my family, house and farm land". This communication was followed by a letter dated 7th November, 1998 addressed to the Inspector General of the CRPF seeking cancellation of the order of transfer wherein the Petitioner stated that it was not possible for him to join duty at the 36th Battalion at Manipur with the "ongoing personal problem". In this representation, it has further been submitted that the Petitioner could not join duty at 36th Battalion because of "My family problem". Reference is also made to the Petitioner's having been on leave in June, 1997 because of gall bladder stone problem.

15. It is apparent from the above narration that the sole ground which has been advocated before the Respondents as well as this Court of the Petitioner's father being so dangerously ill that the Petitioner being a doctor, could not have left him, is clearly not made out by the representations addressed by the medical officer of the CRPF.

16. It is also evident that the Petitioner has shown no respect for duty or authority in his total belligerence as an officer to the repeated requests of the Respondents, including from the battalion to which he stood transferred, to resume duties.

17. It has been pointed out that the Respondents gave full opportunity to the Petitioner to join duty before taking any action at all against him. The Petitioner was a serving doctor with the CRPF and certainly his services would have been needed with the force with which he was employed. The Respondents gave the Petitioner opportunity of almost 17 months before issuing the memorandum in November, 1998 proposing to commence disciplinary proceedings against him under Rule 14 of the Central Civil Services (Classification, Control Appeal) Rules, 1965. The Petitioner was admittedly in receipt of the articles of charge, statement of imputations of misconduct or misbehavior in respect of which the inquiry was proposed, list of documents as well as the list of witnesses by whom the charges were proposed to be sustained. Opportunity was given to the Petitioner to submit his response to the same.

18. The Petitioner contested the charges necessitating a full fledged departmental inquiry. There is no submission before this Court that the Petitioner was not given adequate opportunity to defend the case. There is no contention before us that the procedure prescribed by law was not complied with or followed or that there was any violation of the principles of natural justice. On a consideration of the charges leveled against the Petitioner and the evidence led by the parties, the inquiry officer submitted a report dated 1st February, 1995. The copy of the report was furnished to the Petitioner under cover of a letter dated 7th June, 2000 and the Petitioner made a representation dated 3rd July, 2000 which was duly considered by the Director General of the CRPF who was the Petitioner's disciplinary authority. On a consideration of the same, the disciplinary authority held that the charges against the Petitioner stood established and had imposed a punishment of dismissal from service.

19. It is noteworthy that prior to imposing the formal penalty upon the Petitioner, the disciplinary authority had also sought advice of the Union Public Service Commission which has also been provided to the Petitioner and also placed before us.

20. In view of the sole ground of challenge to the findings of the disciplinary authority and the punishment imposed upon him, the consideration before this Court is limited. It needs no elaboration that the jurisdiction of this Court in any case in exercise of its power of judicial review under Article 226 of the Constitution of India into disciplinary proceedings is limited. This Court has undertaken this exercise of examination of the contentions of the Petitioner in view of the ground that the Respondents have ignored the material evidence which was led by the Petitioner with regard to his father's sickness and that the stand of the Respondents is arbitrary, unreasonable and unjust.

21. So far as the sickness of the Petitioner's father is concerned, we find that the learned Counsel for the Petitioner is unable to point out any record which would manifest that the Petitioner's father was dangerously ill with effect from 24th June, 1997 till 1st June, 1999 when he joined duties. At different places, different ailments have been suggested. The inquiry officer has noted that the Petitioner in his statement as well as in his written brief dated 27th April, 2000 had suggested that his father was getting treatment from various doctors from time to time for diabetes, heart problem gall bladder and suspected kidney stone.

22. There is also a reference to the Petitioner's father receiving treatment from 27th October, 1997 to 3rd September, 1998 but a clear finding has been returned that the Petitioner was unable to establish the nature or the gravity of the sickness or condition. Reference is made to the advice of a doctor on 3rd September, 1998 for various tests and continued treatment of diabetes and heart problem. There is no material of the Petitioner's father being given artificial respiration. There is nothing to show that he was even under close medical monitoring, let alone continuous hospitalization or treatment. The record placed before the inquiry officer discloses that the Petitioner's father was not under continuous treatment of any particular doctor and did not also need hospitalization. There is nothing to suggest that the Petitioner's father was bed ridden for this long period of over 700 days for which the Petitioner was absent from duty.

23. We also find that the Petitioner's contention that his father's sickness prevented him from resuming duties, has been utilized as a shield for the purposes of creating a defense to the disciplinary proceedings as well as for the purposes of prosecuting the present writ petition. We may note that there is nothing to shake the findings of the inquiry officer as well as the disciplinary authority to the effect that the Petitioner has failed to substantiate his contention that his father was so unwell that the Petitioner could not leave his bed side. The record and the above representations disclose that apart from the Petitioner, his family included his mother, brother and sister who were in a position to look after

the father if he was so unwell. The Petitioner's wife is stated to be a practicing doctor and there is not even a whisper of explanation as to why she was not in a position to look after the father in case he needed continuous medical supervision.

24. It is also come on record and so noted in the proceedings of the inquiry officer that in December, 1997, the Petitioner's wife was operated at the Moolchand Hospital, New Delhi. The Petitioner does not explain as to how he was in a position to accompany his wife to New Delhi and how he could leave his father then and justify his absence from duty.

25. We may observe that even the Petitioner's submission in his letter dated 23rd June, 1997 informing the Respondents that he was extending his leave is unsupported by any medical record, the Petitioner has been unable to support in any manner that his father was fighting for life or that he was in hospital on artificial respiration.

26. From the above discussion, it is evident that the Petitioner has used the the alleged father's sickness as merely a ruse for staying away from his assigned duties. During the course of submissions today, we are informed that the Petitioner's wife, a doctor by profession is running a cosmetic practice at South Delhi and that the whole family is residing at Gurgaon. The Petitioner's address in writ petition filed as back as in 2001 and affidavits is also of South Delhi. The Petitioner is a registered medical practitioner. The facts placed on record clearly establish design in the Petitioner's conduct and his lack of desire to serve the force. Certainly the propounded excuse is devoid of factual and legal merit. The Petitioner has consciously and deliberately deprived the force of the services of a medical officer at which post he was serving.

27. So far as the family members of the Petitioner are concerned, there are four responsible adult family members in the family of the Petitioner who may have very well looked after the Petitioner's father if he was unwell as claimed. We are pained to note that the Petitioner does not even mention existence of such family members let alone suggest any reason why they were not in a position to look after the ailing father.

28. We may observe that certainly, consciousness and duties towards aged parents is salutary. However, in the instant case, the Petitioner has not been guided by any element of altruism, duty or responsibility towards his parents in the manner in which he has conducted himself. It is in fact unfortunate that the Petitioner has utilized the shield of age and sickness of his father to justify his indiscipline and misconduct. It is apparent that the Petitioner is well established in life and is pursuing this writ petition with mala fide intention with no sense of devotion to duties.

29. In view of the above discussion, the Petitioner's contention that his leave application merited favourable consideration is clearly devoid of any merit. For the same reasons, we are unable to hold that the punishment which has been

imposed upon the Petitioner is disproportionate to the gravity of the charges for which the inquiry proceedings were conducted against him. It is also noteworthy that in the communications referred to above, the Petitioner has not sought extension of leave but has arrogantly and belligerently informed the Respondents that he is extending his leave and that he will not join his assigned duties. On the other hand, the Respondents have adopted a humanitarian approach in giving the repeated opportunities to the Petitioner. There is no substance in the Petitioner's contention that the Petitioner has adopted an in humanitarian approach. The Petitioner was a member of the disciplined force and was expected to act in a responsible manner. The responsibility on a medical officer who is a trained expert, is even more serious. In our view, the Respondents have been over generous in granting repeated opportunities to the Petitioner in resuming duties. No member of the disciplined force can stay away from duty and adopt the completely arrogant stand which the Petitioner has adopted. At no point of time he has shown any repentance or remorse for his absence. In our view, this writ petition is wholly devoid of merit and is gross abuse of the process of law. The Petitioner deserves to be burdened with heavy costs. Valuable judicial time has been caused to be expended on this petition for over nine years. Public money has been caused to be utilized by the Respondents in defending the same which must be compensated.

30. Accordingly, this writ petition is dismissed with costs of Rest. 50,000/- to be paid to the Respondents. The costs shall be paid to the Respondents within a period of six weeks from today.

31. C M No. 4278/2001 In view of the orders passed in the writ petition, this application is rendered in fructuous and is also dismissed.