
(2010) 03 DEL CK 0284

In the Delhi High Court

Case No : Writ Petition (C) No. 1353 of 2010

Ex. Sepoy/Driver Mahesh Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27

Citation : (2010) 03 DEL CK 0284

Hon'ble Judges : Vipin Sanghi, J;Gita Mittal, J

Bench : Division Bench

Advocate : Somvir Singh Deswal, for the Appellant; A.K. Bhardwaj, with Mr. Anuj Aggarwal and Mr. Gaurav Khanna, for UOI., for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—By this writ petition, the petitioner assails an order dated 9th January, 2004 passed against him pursuant to an inquiry u/s 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter referred to as "CRPF Act, 1949" for brevity) on account of his continuous absence without leave from the 21st April, 2003. It is stated that the petitioner was sanctioned leave w.e.f. 19th February, 2003 to 19th April, 2003. As per the order dated 9th January, 2004 of the disciplinary authority passed on the report of the inquiry officer, the petitioner failed to respond to the communication dated 12th May, 2003 requiring him to join duty immediately. The petitioner was communicated the memorandum of charges by a letter dated 6th August, 2003 enclosing also the allegations of misconduct and misbehavior in support of the charges. The respondents also sent the list of documents and list of witnesses on the basis of which the allegation against the petitioner was sought to be proved, to the petitioner at his residential address.

2. The disciplinary authority appointed Shri Kalyan Singh, Assistant Commandant of the 13 battalion as the inquiry officer to conduct the proposed inquiry. The

inquiry officer also issued communication dated 22nd August, 2003 to the petitioner informing him of the conduct of the inquiry and required him to report immediately for this purpose. The petitioner was also informed that in case he fails to report then the matter shall be proceeded against ex parte against him. The petitioner failed to either appear before the inquiry officer or give any information with regard to his absence.

3. In this background, the inquiry officer was compelled to record ex parte proceedings against the petitioner. Statements of two witnesses were examined on 21st October, 2003. Copies of the statement of the prosecution witnesses were sent to the petitioner by registered post at his residential address in terms of Rule 27 (c) of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as "CRPF Rules, 1955" for brevity) by the inquiry officer under cover of a letter dated 22nd October, 2003. The petitioner was once again given an opportunity to submit a statement of evidence in his defence by this communication but he failed to respond to the same. In this background, the inquiry officer completed the proceedings and submitted his inquiry proceedings dated 4th November, 2003 to the disciplinary authority.

4. It is noteworthy that a copy of the inquiry report was also sent to the petitioner under the cover of a letter dated 28th November, 2003. The petitioner was again given an opportunity to comment upon the departmental inquiry as well as the report of the inquiry officer. The respondents directed the petitioner to produce his statement in writing with complete evidences failing which it would be considered that the petitioner agreed completely with the report of the inquiry officer.

5. Even this evoked no response at all from the petitioner. In this background, the disciplinary authority carefully perused the report of the inquiry officer and arrived at a conclusion that proceedings have been conducted as per the applicable rules. The petitioner was found to be guilty of the charges of having been absent from duty without prior permission of the competent authority and without information of proceeding on leave amounting to disobedience of order and dereliction of duty. Consequently, in exercise of powers u/s 11(1) of the CRPF Act, 1949 and Rule 27 of the CRPF Rules, 1955, the penalty of removal from service was imposed upon the petitioner which was effective from the date of issuance of the order. That disciplinary authority further directed that the petitioner's period of unauthorised absence from leave w.e.f. 21st April, 2003 till the date of the order by the disciplinary authority shall be treated as "dies non" and also that the petitioner would not be entitled to pay, allowances and other benefits for the period w.e.f. 21st April, 2003.

6. We find from the record placed before us and the averments in the writ petition that the petitioner has not bothered to even inform the respondents with regard to his proposed absence w.e.f. 21st April, 2003.

The petitioner has placed before us a copy of the purported letter dated 24th

October, 2008 wherein the petitioner has vaguely mentioned "some family unavoidable circumstances" resulting in his inability to join duty after a lapse of two months. A vague reference to "umpteenth number of letters" to the commandant is also made. Interestingly, the petitioner sought information from the commandant with regard to steps taken in respect of his service. We find that in para 4 of this letter, the petitioner has clearly stated that if he had been removed from service, then his GPF, Risk Fund, GIS Fund and other benefits be sent to him. The petitioner further stated that he had informed the respondents of his account number by the letter dated 16th December, 2004.

7. Before us, it has been contended that the petitioner was not aware of the proceedings conducted by the respondents. The above narration would show that every reasonable step was taken by the respondents before they proceeded to conduct the disciplinary inquiry against the petitioner. It is the petitioner who failed to respond to the several letters sent by the respondents. The communication dated 24th October, 2008 suggests that the petitioner was aware of the fact that disciplinary action against him stood taken. Even in this communication, the petitioner did not seek to resume duty but sought release of his monetary benefit in case he has been dismissed.

8. No procedural infirmity is pointed out in the conduct of the disciplinary inquiry. Learned counsel for the petitioner has also not been able to place violation of any statutory provisions or principles of natural justice.

9. We may also find that the impugned order was passed against the petitioner on 9th January, 2004. There is not a whisper of an explanation for the delay and laches in filing the present writ petition.

For all these reasons, we find no merit in this writ petition which is hereby dismissed.

However, in view of the order of dismissal dated 9th January, 2004, it is directed that in case any monetary amounts as per rules are due to the petitioner on any account, the same may be processed as per applicable rules and forwarded to the petitioner within a period of eight weeks from today.