
(2015) 04 GAU CK 0029
In the Gauhati High Court
Case No : WP(C) No. 378 of 2009

Faruk Ahmed Laskar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Constitution of India, 1950 — Article 226

Citation : (2015) LabIC 2744

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : J. Ahmed and S. Das, for the Appellant; P. Gogoi, CGC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ujjal Bhuyan, J.—Heard Mr. J. Ahmed, learned counsel for the petitioner and Ms. P. Gogoi, learned Central Govt. Counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 13.12.2007, issued by the Commandant, 49th Bn. CRPF, imposing the punishment of "removal from service" on the petitioner as well as order dated 12.04.2008, passed by the Deputy Inspector General of Police, CRPF, Guwahati, dismissing the appeal filed by the petitioner against imposition of penalty.

3. Facts of the case may be briefly noted.

4. Petitioner joined service in the Central Reserve Police Force (CRPF) as Constable on 24.09.1998 following a recruitment process. In the course of his service, he was posted in different places of the country.

5. A show cause notice was issued to the petitioner on 05.04.2007 informing the petitioner that an enquiry was proposed to be conducted against him under the provisions of the CRPF Act, 1949 and the CRPF Rules, 1955 on the charges

mentioned therein. The charges basically related to willful absence from duty and overstay of leave on a number of occasions. A statement of allegation along with list of documents and list of witnesses were annexed to the show cause notice. Petitioner was directed to submit his reply.

6. It appears that petitioner submitted his reply, which was received on 26.04.2007. It further appears that the reply was not accepted and therefore it was decided to hold enquiry. One Sri Rishi Shankar Kumar, Assistant Commandant was appointed as Inquiry Officer. The Inquiry Officer conducted an enquiry and thereafter submitted his report dated 05.12.2007, holding that the charges brought against the petitioner stood proved. Copy of the enquiry report was furnished to the petitioner vide letter dated 11.12.2007. Petitioner submitted his response to the enquiry report.

7. After considering the report, the response of the petitioner and various other aspects, the disciplinary authority imposed the punishment of removal from service on the petitioner by exercising power conferred under section 11(1) of the CRPF Act and Rule 27(a) of the CRPF Rules.

8. Petitioner preferred an appeal before the appellate authority against the punishment imposed. However, the appellate authority vide the order dated 12.04.2008 rejected the appeal filed by the petitioner.

9. Hence, the writ petition.

10. On receipt of notice, respondents have filed a common affidavit. It is stated that petitioner had unauthorisedly left Quick Reaction Team (QRT), which was deployed to fight anti national elements. This was a grave misconduct on the part of the petitioner. Therefore, penalty imposed on the petitioner is justified. Despite being a member of a disciplined force like the CRPF, petitioner repeatedly absented from duty. He overstayed leave for several times and ultimately deserted the force from operational duty without handing over arms and ammunitions. Whenever petitioner had applied for leave, he was granted leave, but petitioner had the habit of overstaying leave. Details of overstay of leave and desertion from force have been mentioned in para 18 of the counter-affidavit. Petitioner had appeared in the departmental inquiry. Statements of all the witnesses were recorded in his presence. Documents were exhibited in his presence as well. He was given adequate opportunity to defend himself in the inquiry. He was afforded full opportunity to cross-examine the witnesses. It was a fit case for imposing the penalty of dismissal, but the disciplinary authority considered the case of the petitioner leniently and imposed the penalty of removal from service. Therefore, it is contended that no interference is called for; the writ petition is devoid of merit and should be dismissed.

11. Mr. J. Ahmed, learned counsel for the petitioner submits that it would be wrong to say that petitioner had deserted the force on certain occasions. Though he admits that petitioner had absented without permission on a couple of occasions and on other occasions had overstayed leave, it was because of

compelling reasons that the petitioner had to do so. Petitioner's father was sick and since he was the eldest son, he had to rush home to look after his father. He, however, submits that all the periods of unauthorized absence and overstay of leave were regularized by the authority and, therefore, framing of charges against the petitioner on the basis of such unauthorized absence and overstay of leave was not justified. Coming to the departmental inquiry, learned counsel for the petitioner has contended that no Presenting Officer was appointed by the disciplinary authority to present its case in the inquiry and in the absence of the Presenting Officer, the Inquiry Officer discharged dual functions of the prosecutor and the judge. This was in violation of the principles of natural justice, which vitiated the inquiry and consequently the penalty imposed on the basis thereof. In support of his submissions, learned counsel for the petitioner has placed reliance on the following decisions:-

i) *Mutum Shantikumar Singh Vs. Union of India (UOI) and Others*, (2005) 3 GLR 243 : (2005) 1 GLT 413 .

ii) *State of Manipur and Others Vs. Chongtham Homendro Singh*, (2005) 3 GLT 154 .

iii) *Mahendra Kr. Singh Vs. Union of India (UOI) and Others*, (2007) 1 GLT 648

12. Per contra, Ms. P Gogoi, learned Central Govt. Counsel appearing for the respondents submits that there is no infirmity in the procedure followed in the departmental proceeding as well as in the inquiry. There is no bar for framing charge relating to unauthorized absence and overstay of leave, which were regularized earlier for the purpose of salary. Petitioner's conduct was unbecoming of a member of a disciplined force. The charges were proved in the inquiry. Therefore, disciplinary authority was justified in imposing the penalty of removal from service on the petitioner. There was no violation of the principles of natural justice. There is no requirement of appointment of Presenting Officer in the inquiry either under the CRPF Act or under the CRPF Rules. Therefore, no interference is called for. Writ petition should be dismissed.

13. Submissions made have been considered.

14. It is seen that two charges were framed against the petitioner. As per the first charge, at 0615 hrs., on 02.12.2006 while the petitioner was attached to QRT and performing duty, he deserted the force leaving behind his arms and ammunitions at the Line without taking permission from any competent authority. After a gap of 21 days, he turned up before the company at 1800 hrs. on 23.12.2006. Petitioner was thus charged with negligence, indiscipline and insubordination in the discharge of duty. As per charge No. 2, petitioner remained absent from duty on five occasions without taking permission from the competent authority. In addition, on three occasions, he deserted the force, including on one occasion where he left behind his arms and ammunitions in the Line instead of depositing in the barrack. He was, thus charged with insubordination, negligence and indiscipline in the discharge of his duty. The

details of abovementioned instances are as under:-

- i) Petitioner availed 15 days casual leave from 08.01.2003 to 27.01.2003, but he reported for duty after 112 days from 27.01.2003;
- ii) Petitioner availed 15 days paternity leave from 13.07.2003 to 27.07.2003, but remained absent for 22 days thereafter;
- iii) He availed 30 days earned leave from 07.10.2005 to 06.11.2005, but remained absent for further 23 days;
- iv) He availed casual leave for 10 days from 27.02.2006 to 09.03.2006, but reported back for duty 7 days thereafter;
- v) On 16.08.2006 he obtained permission for local holiday, but reported for duty after 2 days of absence;
- vi) At 1100 hrs. on 04.01.2006 petitioner deserted duty leaving behind arms and ammunitions in the Line instead of handing over to somebody and without taking permission from the competent authority; he returned back to the camp at 19:45 hours on 06-01-2006;
- vii) He deserted guard duty from 17.02.2006 to 19.02.2006 without taking permission from any competent authority;
- viii) He again deserted the camp for 9 days from 06.10.2006 to 15.10.2006.

15. In his written statement, petitioner admitted his unauthorized absence and overstay of leave. Despite admission by the petitioner, it was decided to hold inquiry. In the inquiry, petitioner admitted that he had deserted the camp, but such desertion was under compulsion. He admitted his guilt, but assured that he would not commit any such mistake in future. In his statement recorded in the inquiry, petitioner stated that he had overstayed leave and deserted the force because of household problems and illness of his father. He admitted to deserting the camp. The Inquiry Officer in his inquiry report held that the charges against the petitioner stood proved. When a copy of the inquiry report was furnished to the petitioner for his response, petitioner responded by saying that he had remained absent due to overstay of leave or had deserted the force on different occasions for attending to his father. Even in the writ petition, petitioner has admitted his unauthorized absence, but has attributed such absence to the problems he faced as indicated above.

16. Thus from the above, it is evident that petitioner had admitted the charges framed against him. Deserting the force when he was discharging duty as part of QRT, is a very serious misconduct. If that is not enough, abandoning of arms and ammunitions in the Line without depositing the same before the appropriate authority is a most serious breach of discipline. It was found by the disciplinary authority as well as by the appellate authority that the petitioner had a habit of repeating such misconduct, but the misconduct committed on 02.12.2006 (charge No. 1) was a more serious one, in that while deserting, he had left

behind his arms and ammunitions unattended in the Lines. With such a track record and proven misconduct, it became impossible to retain the petitioner in the force. It would have jeopardised the safety and security of others and would have put the force to security risk. Regularization of the absence periods for the purpose of continuity in service and for payment of salary cannot be a ground to condone or overlook such repeated misconduct. There appears to be no bar to initiate departmental proceeding on such grounds. Regularization of unauthorized absence had no relevance to the initiation of departmental proceeding against the petitioner and, thus, did not bar the disciplinary authority from holding a departmental proceeding against him. From the record, it appears that a departmental proceeding was drawn up against the petitioner earlier for the same offence i.e., deserting the force on 19.05.2004 and reporting back for duty after 93 days. The departmental proceeding ended with the award of punishment of stoppage of annual increments for two years without cumulative effect. According to the disciplinary authority as well as the appellate authority, petitioner was a habitual offender and was given enough leeway in the past.

17. The ground urged by the petitioner regarding non-appointment of Presenting Officer in the enquiry may be a valid ground, but it has to be borne in mind that for invoking the discretionary jurisdiction under Article 226 of the Constitution of India, mere making out a legal point may not be sufficient. The relief under Article 226 being a discretionary one, the writ court will weigh various pros and cons before making any intervention keeping in mind that the writ remedy is primarily a public law remedy. Conduct of the petitioner is a relevant consideration to be taken into account before granting relief. In the instant case, the facts speak for themselves. Petitioner had repeatedly absented from duty or overstayed leave without permission from the competent authority and on two occasions, he had left QRT leaving behind his arms and ammunitions unattended in the Line. With such a conduct, keeping in mind that petitioner was a member of a disciplined force, no relief can be granted to the petitioner. In any case, both during the departmental proceeding as well as in the present proceeding, petitioner has admitted to his unauthorized absence. In such circumstances, Court is not inclined to interfere in the matter though, as noticed above, the ground urged by the petitioner regarding non-appointment of Presenting Officer may have some force. But as already adverted to, in view of the admission by the petitioner himself, no prejudice can be said to have been caused to him by such omission.

18. For all the aforesaid reasons, this Court finds no merit in the writ petition, which is accordingly dismissed, but without any order as to costs.

19. Record furnished by the learned Central Govt. Counsel be returned back.