
(2014) 03 OHC CK 0034
In the Orissa High Court
Case No : W.P. (C) No. 31738 of 2011

Golak Chandra Swain

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)

Citation : (2014) 118 CLT 250 : (2014) 141 FLR 954 : (2014) 1 ILR 710 :
(2014) LabIC 3707 : (2014) 2 OLR 185 Suppl. : (2014) 2 OLR 185

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Sanju Panda, J

1. This Writ Petition has been filed by the petitioner challenging the order of dismissal dated 25.2.2010 under Annexure-9 passed by the Commandant-III BN, CRPF after an ex parte enquiry and the order dated 22.7.2010 under Annexure-11 passed by the appellate authority as well as the order dated 28.7.2011 under Annexure-14 passed by the revisional authority confirming the order of the Disciplinary Authority. The brief facts of the case are that the petitioner has joined the Central Reserve Police Force (CRPF) on 10.8.1994. During his service period he served the Force in many capacities without demur and to the utmost satisfaction of the superior authorities as a disciplined, obedient and dutiful member of the Force. He has also maintained high degree of discipline, etiquette and good behavior and at no point of time the superior authorities have made any adverse remark against the petitioner. While continuing as such he has applied for leave to attend his ailing mother as well as for other work. The leave was approved and sanctioned from 06.1.2009 to 06.3.2009. During the leave period, his old knee joint injury resurfaced and the Doctor advised the petitioner to undergo a surgery, which fact was intimated to his superior authority with a prayer to extend the leave period. Though repeated

applications were made by the petitioner, the authorities have not considered the same and the Commandant-III BN, CRPF - opposite party No. 4 passed an order on 06.10.2009 declaring the petitioner as "Deserter" from the Force w.e.f. 07.3.2009 F.N. i.e. from the date of his unauthorized absence. While continuing as such, the petitioner has received Memorandum of Article of Charges under Annexure-3 on 15.10.2009 to file his reply within fifteen days. Thereafter, he has received a letter dated 19.10.2009 under Annexure-4 to report the Unit immediately. By office order dated 07.11.2009 under Annexure-5 the petitioner was intimated that a Departmental Enquiry under Rule 27 of CRPF Rules, 1955 has been initiated against him and Sri A.D. Ganapathy was appointed as the Enquiry Officer. Considering the Enquiry Report, the Disciplinary Authority passed the order of dismissal from service on 25.2.2010 under Annexure-9 which reveals that they have intentionally penalized the petitioner in the Departmental Proceeding even though the overstay on leave was due to events beyond his control. The petitioner filed his show cause reply to the Article of Charges leveled against him explaining that after expiry of the leave period on 06.3.2009 he had applied for extension of leave on medical ground but the authorities without considering the same passed an ex parte order of dismissal from service on 25.2.2010 under Annexure-9. Thereafter, the petitioner filed an appeal on 30.3.2010 under Annexure-10 against the order of dismissal from service before the appellate authority - opposite party No. 4. However, the appeal was rejected on 22.7.2010 under Annexure-10 being devoid of merit. Being aggrieved, the petitioner filed revision under Annexure-12 before opposite party No. 3 on 20.8.2010. During pendency of the revision, the petitioner approached this Court in W.P. (C) No. 19383 of 2011. The said Writ Petition was disposed of on 27.7.2011 directing the Revisional Authority to dispose of the revision within a period of two months from the date of communication of the order. The Revisional Authority dismissed the revision vide order dated 28.7.2011 under Annexure-14. Hence the Writ Petition.

2. A counter affidavit has been filed by the opposite parties inter alia taking the stand that the petitioner was granted 60 days Earned Leave w.e.f. 06.1.2009 to 06.3.2009. On expiry of the sanctioned leave, he was required to report back to duty on 06.3.2009 but he did not report on due date and overstayed from 07.3.2009 without any permission or sanction of competent authority, which is prejudicial to the good on order and discipline of the Force and is punishable u/s 11(1) of CRPF Act, 1949 read with Rule 27 of CRPF Rules, 1955. It is stated that the punishment of dismissal from service was imposed by Disciplinary Authority after considering all pros and cons of the case which fully commensurate with the gravity of offence committed by the petitioner, hence, the impugned orders need not be interfered with.

3. Learned counsel appearing for the petitioner submitted that the petitioner has served the Force from 1994 till his removal from service i.e. about 16 years and during his service period there is no allegation against him. He further submitted that though the petitioner has repeatedly filed applications for extension of his

leave period, the same were not considered by the authorities rather they have directed to report back to duty and initiated a Departmental Proceeding due to overstay on leave w.e.f. 07.3.2009 without any permission or sanction of competent authority. He also submitted that the Appellate Authority as well as the Revisional Authority held that the petitioner has overstayed on leave without any information to the authorities, which is not correct. Therefore, the punishment imposed on the petitioner is disproportionate to the charges leveled against him and the same need to be interfered with, in alternative he has submitted that taking into consideration the past service of the petitioner, the authorities should have allowed him to retire from service and sanction the pension. In support of his contention learned counsel for the petitioner relied on the decisions reported in B.C. Chaturvedi Vs. Union of India and others, , Pareswar Tripathy Vs. Union of India (UOI) and Others and >2011 (I) ILR - CUT 398.

4. After hearing learned counsel for the parties and going through the report of the Departmental Rehabilitation Board before which the petitioner appeared, it reveals that while playing Volleyball in the Inter Battalion Volleyball Competition in October-November, 1996, the petitioner's left knee was injured. He has off and on pain in knee joint with instability while walking from left knee. He was treated in Assam and KEM Hospital, Pune and operated for ACL reconstruction (Bone Patellar Grafting) on 18.5.1999. Again on 18.5.2003 he was operated for ACL reconstruction Surgery with hamstring tendon authroscopically. The above fact reveals that while discharging his duties in the Force, the petitioner has sustained the injuries as found by the Medical Board and it is quite natural that corollary to the said injuries he has sustained new chronic problem for which he overstayed beyond the period of sanctioned leave. The offence as alleged against the petitioner is a minor offence. The Appellate Authority should have considered all those things as well as the health problems occurred to the petitioner during his service period because before joining in service the petitioner was hale and hearty. Therefore, the punishment of dismissal from service is grossly disproportionate to the charge of unauthorized absence and shockingly harsh and excessive, which need to be quashed.

5. In the case of Pareswar Tripathy Vs. Union of India (UOI) and Others this Court held that the Court's conscience is shocked to see that a bona fide Constable loses the job for his absence from duty on medical ground. It is true that regarding the quantum of punishment this Court may not substitute by passing the order of punishment as the case deserves, but this Court can hold that the ultimate punishment of removal from service is not warranted. As life includes livelihood, the matter should be reconsidered by the Disciplinary Authority once again and any other penalty be inflicted except the punishment of removal from service.

5.1 Further in the case of Chandrama Bhusan Sarangi Vs. Union of India and others reported in >2011 (I) ILR CUT 398 this Court held that in a Departmental

Proceeding if the charge is unauthorized absence from duty for 441 days, petitioner explained the reasons for his absence, the punishment of removal from service is unduly harsh and excessive. The employer to take into consideration the magnitude and degree of misconduct before imposing such major punishment.

5.2 In the case of Veer Pal Singh Vs. Secretary, Ministry of Defence, the Supreme Court held that although the Courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasized is that the opinion of the experts deserves respect and not worship. The courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.

5.3 The Supreme Court in the case of B.C. Chaturvedi Vs. Union of India and others, held that Disciplinary Authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

5.4 The petitioner has not denied the charge of unauthorized absence from duty but he has explained the same on the ground of his illness and has also made repeated request to the authorities to extend his leave period. However, the authorities instead of considering the request of the petitioner for extension of his leave period, framed charges against him and in the Disciplinary Proceeding passed the impugned order of dismissal from service.

In view of the discussions made above and considering the decisions referred to (supra), this Court while quashing the impugned order of dismissal dated 25.2.2010 under Annexure-9 passed by the Commandant-III BN, CRPF directs the said opposite party to allow the petitioner to retire from service as he has already completed more than fifteen years of service in the Force. The petitioner is also entitled to all the consequential service benefits. The above exercise shall be completed, as expeditiously as possible, preferably within a period of four months from the date of production of certified copy of this judgment. Accordingly, this Writ Petition is disposed of.