

(2002) 08 DEL CK 0114
In the Delhi High Court
Case No : CWP 5653 of 2001

Jaipal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11, 11(1)
Central Reserve Police Force Rules, 1955 — Rule 28
Constitution of India, 1950 — Article 14

Citation : (2002) 08 DEL CK 0114

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : JPS Sirohi, for the Appellant; Babita and Rekha Palli, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The petitioner was enlisted as Constable in CRPF on or about 27th September 1988. For 128 days" alleged unauthorized leave, departmental proceedings were initiated against him, as the petitioner, despite an order to take part in the Inter-Sector Shooting Competition to be held on 25th February 2000, went on casual leave from 1st March 2000 to 6th March 2000 with holidays falling on 29th February 2000 and Sunday 5th March 2000.

2. Although he was to report on duty on 6th March 2000, he remained absent till 5th July 2000. He was, there from, shown absent from duty. By a Regd. Letter dated 22nd April 2000, he was directed to report to duty immediately but he neither complied therewith nor sent any information to the concerned officer. As he failed to report to his duty, a warrant of arrest was issued against him. However, he reported on duty on 5th July 2000 before the Commandant Group Sector, CRPF, Mukammaghat.

3. In the departmental proceeding the petitioner was asked to submit his written statement, list of witnesses and documents etc. before the Inquiry Officer. On

12th September 2000, he appeared before the Inquiry Officer and produced two certificates alleging that he was ill during the afore-mentioned period. He also produced a First Information Report alleging theft of a suitcase containing clothes, Identity Card, Leave Certificate etc.

4. The Inquiry Officer in his report dated 18th September 2000, on the basis of the materials brought on records by the parties inter alia, found that although the petitioner complained that he had been suffering from paralysis, the Medical Certificate produced by him disclosed that he had been suffering only from pain. He also accepted that the registered letters sent to him to resume his duties had been received. The petitioner was, Therefore, found guilty of the charges leveled against. He was thereafter by an order dated 5th December 2000 dismissed from services by the Commandant, 36 Battalion, CRPF, Kalkaji, New Delhi. There against, he preferred an appeal to the Deputy Inspector General in terms of Rule 28 of the CRPF Rules wherein he, inter alia, accepted that during the period of his unauthorized absence, he even did not report his sickness or submitted any application for leave. He, Therefore, prayed:

"Sir, the punishment of dismissal from service is very harsh considering the cause of my absence from duty and I, Therefore, pray for a sympathetic consideration by your honour and pray for quashing of order of dismissal passed by the worthy Commandant and further pray for my reinstatement in service. Sir, I assure of not repeating the mistake which I did as stated above and I further assure your honour of sincere and dedicated service without any room for any complaint in future."

5. He filed a supplementary petition of appeal on 11th April 2001 praying for reinstatement upon setting aside departmental proceedings. By an order dated 2nd August 2001, the said appeal was also dismissed.

6. In the counter-affidavit, it has been pointed out that during the period of service, he had been awarded several punishment and further he overstayed of leave unauthorisedly which or an under:

(a) 28 days confinement to Q.G. by Comdt. After DE for 107 days OSL.

(b) 10 days confinement to line w.e.f. 24.09.1994 to 03.10.1994 by Comdt. As he had deserted line himself for two days on route from 19.09.1994 to 20.09.1994 while he was going to B.H.I. for attender duty of Lnk. Vijay Kumar.

(c) 34 days OSL from 25.07.1992 to 27.08.1992.

(d) 107 days OSL from 13.05.1993 to 27.08.1993.

(e) one day OSL on 29.01.1996

(f) one day OSL on 24.06.1996"

7. It has further been pointed out that although the petitioner was said to have been under treatment in a private nursing home at Shahdara but he submitted

his Fitness Certificate issued by one Dr. Ravinder Mohan of Ghaziabad which appeared to be a fabricated one and in any event thereby it had not been proved that he was suffering from any illness.

8. The learned counsel for the petitioner would submit that the respondents completely misdirected themselves in passing the impugned orders in so far as they failed to take into consideration that having regard to the long service of the petitioner, the punishment of dismissal from services is disproportionate to the charge of misconduct leveled against him.

9. In support of the said contention, reliance has been placed on a decision of a learned single Judge of this court in *Shri Parimal Singh Vs. Union of India and Others*, wherein, inter alia, it has been held:

"7. The Disciplinary Authority was well aware of the discretion available to him which is palpably evident from the underlined portions in the extract of the impugned order given above. He himself stated that he could have taken a lenient view. This is also borne out from the provisions of Section 11 of the Act itself. It does not mandate that a dismissal order must be passed in all cases. The petitioner could have been punished with a reduction in rank, or a fine not exceeding one month's pay and allowances, or confinement to quarters etc. or removal from any office of distinction or special emolument. The officer did not correctly exercise the discretion expected of him in holding that the intentions of the delinquent were purposeful. Had his action not been "purposeful", necessary means read or guilt would have been absent and he would not have been liable to any punishment. The Disciplinary Authority ought to have also kept in mind the fact that the petitioner had already served for over seven long years and that his ignorance was writ large by the fact that he could have otherwise been recruited by invoking the relaxation contained in Rule 11(h) of the Rules. Courts of law do not normally review the exercise of jurisdiction. Such judicial review is, however, called for where the exercise of discretion is perverse or lacking in substance."

10. The factual matrix involved in the said decision is quite different. In that case, this court inter alia made the said observations having regard to the fact that a forged document was allegedly filed only as regards age which was within the power of relaxation of the competent authority. However, we do not agree in the broad proposition of law laid down therein.

11. The learned counsel has further placed reliance upon the decision of the Apex Court in *Union of India and others Vs. Giriraj Sharma*, wherein the Apex Court held:

"2. Mr. Jain the learned counsel for the appellant Union of India contended that the interpretation placed on Section 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter called "the Act") is not correct and it is on account of this erroneous understanding of the provision that the High Court quashed the order of dismissal. In support of his contention he invited our attention to a decision of

the Rajasthan High Court Shyamsingh Vs. Deputy Inspector General of Police, Central Reserve Police and Others, . He also relied on certain other decisions but it is sufficient to state that according to him the learned Judges of the High Court had committed an error in interpreting the said sub-section. In our opinion it is not necessary for us to construe Sub-section (1) of Section 11 of the Act in the backdrop of the fact of the present case. Assuming Mr. Jain is right, we are of the opinion that so far as the present case is concerned the allegation is in regard to the incumbent having over-stayed the period of leave by 12 days. The incumbent while admitting the fact that he had over stayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for over-staying the period of 12 days in the said circumstances which have not been controverted in the counter is harsh since the circumstances show that it was not his intention to willfully flout the order, but the circumstances force him to do so. In that view of the matter the learned counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty. If they so desired, but a major penalty of dismissal from service was not called for. We agree with this submission."

12. In the instant case, the petitioner not only was unauthorisedly absent for 128 days, it was found as of fact that he had produced a bogus Medical Certificate. His defense had been disbelieved for cogent and sufficient reasons. His past conduct, as noticed hereinbefore, has also been taken notice of by the disciplinary authority.

13. The question as to whether in a situation of this nature, this court should exercise its discretionary jurisdiction or not is squarely covered by a recent decision of the Apex Court in *Om Kumar and Ors. v. Union of India* 2000(8) SC 217 : AIR 2000 SC 3689 wherein it was observed:

"Where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the Court is confined to *Wednesbury* principles as a secondary reviewing authority. The Court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that *Wednesbury* principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment."

14. In view of the afore-mentioned decision of the Apex Court wherein a large number of earlier decisions had been taken into consideration, we are of the opinion that it is not a fit case wherein this court should exercise its discretionary jurisdiction.

15. This writ petition is dismissed accordingly without any order as to costs.