

(2002) 08 GAU CK 0054
In the Gauhati High Court
Case No : Writ Petition (C) No. 596 of 1999

K.K. Das, Constable No. 86302048

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Citation : (2003) 1 GLT 104

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : K.N. Choudhury, P. Bhowmik and B.C. Das, for the Appellant; P.N. Choudhury, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—The Petitioner K.K. Das, while serving as Constable in the Central Industrial Security Force, in short CISF, was subjected to disciplinary proceeding. The charge against the Petitioner was that Constable K.K. Das while posted at CISF Unit, IOC, Guwahati was informed on 25.12.95 about his transfer from Guwahati to Panchgram and he was directed to collect his movement order, railway warrant and LPC by 31.12.95. The Petitioner, however, absented from duty unauthorisedly and without leave with effect from 27.12.95 and he remained on unauthorised absence for 525 days. The Petitioner resumed his duty when he was served a call up notice.

2. The writ Petitioner denied the allegation of absence from duty from 27.12.95 and claimed that he went on leave from 1.1.96, upon hearing the illness about his wife. After returning from leave, the Petitioner moved from pillar to post to get a copy of the movement order but as nothing was furnished to him, he could not join his duty at Panchgram and he went back to his native place and stayed there till 3.6.1997.

3. On the basis of the report of the inquiry Officer, the Petitioner was awarded the punishment of removal from service. Hence, the present application.

4. In this case, there is no allegation regarding any illegality of contravention of the Rules and Regulations in holding the departmental proceeding. The Petitioner was given sufficient opportunity to defend himself and the principles of natural justice were duly followed. Although the Petitioner claims that he have attended his duty on 27.12.95, in view of the materials available on record, it is fully established that the Petitioner remained absent from 27.12.95 itself that is when he was informed about his transfer on 25.12.95. The fact that the Petitioner remained absent from duty for 525 days is admitted by the Petitioner himself. The reasons shown by the Petitioner is that the movement order was not furnished to him and it was collected by Anr. person by forging his signature and in absence of the movement order he could not join his duty at Panchgram. This plea was not accepted by the Inquiry Officer as well as the disciplinary authority and in view of the materials available on record we also do not find any ground to rely on such a cock and bull story. There was no reason on the part of the Respondent No. 5 to forge the signature of the Petitioner for collection of movement order, railway warrant etc. in favour of the Petitioner as those are of no use to Respondent No. 5 who is a senior officer.

5. Even if we find that the Petitioner failed to collect the movement order or it was given to somebody else, the Petitioner could have easily approached the senior officer and obtain fresh movement order or copies of the earlier order and proceed to his place of posting, but, instead of doing that the Petitioner left for native place and remained there for 1 1/2 years till he was brought back by issuance of call up notice. In view of the materials, the finding of guilt is well established and it needs no interference.

6. Learned Counsel for the Petitioner has further submitted that in the instant case the punishment of removal from service is not called for. From the Article of Charge No. 3 we find that the Petitioner had overstayed the leave earlier on one occasion and absented without leave on two occasions and has been awarded following punishments for OSI/AWL:

(1) One day pay fine for 15 days OSI from 4.7.94 to 18.7.94 vide Group Hqrs. Guwahati Service Order Part-II No. 287/94 dated 26.12.94.

(2) Stoppage of next increment for a period of two years without cumulative effect for AWL from 12.10.95 to 21.11.95 vide Assistant Commandant, CISF Unit, IOC, Guwahati Order No. V-15014/IOC/DISC/PA.95/4446 dated 23.12.95.

(3) Reduction of pay by two stages i.e. from Rs. 1020/- to Rs. 980/- for a period of one year which will not have the effect of postponing future increment of pay for 18 days AWL from 1.12.94 to 18.12.94 vide Group Commandant, CISF Group Hqrs., Guwahati Order No. V-15014/CISF/GHG/Disc/(30)/95-6662 dated 12.12.95.

In view of above, it is clear that inspite of awarding punishments, No. 86302048 Constable K.K. Das has not corrected himself and developed and irresistible habit of absenting unauthorisedly.

7. In the case of Union of India v. G. Ganayutham AIR 1977 SC 3387, the Apex Court had submitted that it is for the appropriate authority for deciding the quantum of punishment and the Court can direct re-consideration if it is of the view that the punishment meted out is irrational according to wednesbury or CGSU Norms. In the facts and circumstances of the case and considering the past conduct, we are unable to hold that the Petitioner may be awarded the punishment other than the removal of service, as imposed. The writ petition is accordingly dismissed. There is no order as to costs.