

(1999) 10 PAT CK 0087
In the Patna High Court
Case No : C.W.J.C. No. 10131 of 1998

Md. Abullais Khan

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Citation : (1999) 3 PLJR 824

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Md. Anisur Rahman, for the Appellant; Ravi Ranjan, for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—Petitioner has challenged the validity of the order of punishment dated 31st March, 1998, contained in Annexure-1, whereby the disciplinary authority has removed him from service of the Central Industrial Security Force (in short C.I.S.F.) with immediate effect, and also the order dated 20th/21st October, 1998 passed by the Appellate Authority rejecting his appeal and affirming the order passed by the Disciplinary Authority. In short, the relevant facts are that the petitioner was appointed as Head-Constable in C.I.S.F. on 22.3.1996. He was sent for basic training at R.I.C., Deoli, Rajasthan on 30.3.1996, but during the training period he first time absented from 17.4.1996 to 5.5.1996 and again from 2.6.1996 to 11.8.1996 without obtaining leave or permission from the competent authority. However, after his first absence a call up letter dated 23.4.1996 was sent to his home address by the Principal of Training Centre, whereafter he reported back at Training Centre on 6.5.1996. In his joining report he admitted that he absented because he was not getting interest in the training. However, he when realised the importance of job he requested for his being taken back. On consideration of the said request the Principal allowed him to undergo the basic training, but again only after 27 days he absented from training centre from 2.6.1996 without obtaining leave or

permission from the competent authority of the Training Centre. It appears that three call up notices dated 5.6.1996, 12.7.1996 and 29.7.1996 were sent to his home address, besides the first information report was also lodged in Birno Police Station, Ghazipur (U.P.) on 23.4.96 and 5.6.96 for his deserting the training without permission. The Superintendent of Police, Gazipur vide letter no. 1947 dated 29.7.1996 was also requested to take suitable legal action against the defaulter-petitioner. The petitioner did not bother to give reply to any of the call up letters. However, he voluntarily reported at the Training Centre on 12.8.1996, and submitted a petition in which he mentioned that he left for his home on 2.6.1996 without taking leave due to mental disturbance and requested for his acceptance for completing his training. According to the petitioner, he was allowed to complete the training, but this fact appears to be not correct as is evident from the counter affidavit in which the said fact has been specifically denied and further it is stated that he was returned to Central Industrial Security Force unit, Kahalgaon since the training was nearing completion with a direction to send him back in the next batch for basic training. It further appears that on 5th June, 1996 itself vide Annexure-B to the counter affidavit, the Commandant/Principal of the Training Centre requested for taking legal action in his case on account of his deserting the training from 2.6.1996. A disciplinary proceeding was initiated against the petitioner in which after thorough enquiry the charge has been proved, and on that basis the Disciplinary Authority passed the order, contained in Annexure-1, which has been affirmed in appeal also vide order, contained in Annexure-2.

2. From the order of the Appellate Authority, it appears that the petitioner changed his stand and claimed that he deserted the training centre as he had to attend his ailing mother, which the appellate authority on the materials on record and admission of the petitioner himself in the aforementioned two joining letters has found to be blatant lie. It is not the case of the petitioner that any such plea was taken in response to the notice initiating departmental proceeding. Moreover, nothing was/has been brought on record to show that he absented twice on account of ailment of his mother. Thus, this Court finds that the said plea was purely an afterthought to cover up his lapses.

3. It appears that the petitioner has vaguely attempted to challenge the manner of the conduct of the proceeding itself by stating that the copy of the Exhibits were not supplied, and that the statements of the P.Ws. were also not furnished before the cross-examination and, therefore he could not cross-examine the P.Ws. In reply to the said rejoinder, the Respondents have specifically stated that the petitioner was issued with all Exhibit vide Group Headquarters, Patna charge memorandum no. V-15014/DP-34(5)/Ad.I/ GHP/97/1337 dated 2.4.1997 which he had duly acknowledged by appending his signature in token of having the said exhibits. Besides that all the exhibits were shown to the petitioner during the course of enquiry, which he acknowledged to have verified the same. It is also stated that the petitioner himself declined to cross-examine the prosecution witnesses. The enquiry report was also supplied to the petitioner. It has been

contended that the petitioner never raised any objection.

4. Learned Counsel for the petitioner has confined his argument on the question that for the total 91 days absence the punishment of dismissal is disproportionate to the nature of mis-conduct, and thus, it is harsh. He has placed reliance on the two orders of this Court, which has been annexed as Annexure-3 series. None of the said two orders have any application to the facts of the present case, in which the disciplinary authority has found the petitioner's plea to be blatantly lie. Moreover, in none of the said two cases the petitioner unauthorisedly absented himself right from the very initial stage of training twice.

5. Dr. Ravi Ranjan, learned Additional Standing Counsel for the Respondents has placed reliance on the order dated 1.5.1997 passed in C.W.J.C. No. 12352 of 1997 (Bhoop Raj Kaul vs. The Union of India & ors.) (Annexure-G) wherein learned Judge having regard to the nature of job and in absence of any satisfactory explanation did not feel persuaded to hold that the punishment was disproportionate to the mis-conduct. It was also held that in such matters wilful absence from duty even without permission of the competent authority by a member of a disciplined force should not be casually condoned. The facts and circumstances of the present case does not in my opinion warrant any interference with the impugned orders. Accordingly, the writ petition is dismissed, but without costs.