
(2001) 09 AHC CK 0052
In the Allahabad High Court
Case No : C.M.W.P. No. 25230 of 1991

Musafir Yadav

APPELLANT

Vs

Commandant, 47 Bn., C.R.P.F., Gandhinagar (Gujarat) and
Another

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 12(1)
Central Reserve Police Force Rules, 1955 — Rule 27

Citation : (2001) 4 AWC 2976 : (2001) 91 FLR 613 : (2001) 3 UPLBEC 2196 :
(2001) 1 UPLBEC 325

Hon'ble Judges : D.R. Chaudhary, J

Bench : Single Bench

Advocate : A.B. Singh, for the Appellant; Ajit Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

D.R. Chaudhary, J.—The petitioner herein was initially recruited on 1.7.1974 as a constable in 47, Bn. C.R.P.F. He proceeded on 60 days leave (15.1.1991 to 15.3.1991) duly sanctioned by the competent authority. His wife was ill and her treatment was going on at Primary Health Centre, Lar, Deorta. She was not cured during the leave period, hence the petitioner sent a registered letter on 14.3.1991 along with the Medical Certificate of his wife for extension of leave for one month more. The petitioner, allegedly, made another request for further extension of time. When the petitioner received no communication from the competent authority, he reported for duty on 4.5.1991 after having overstayed the 60 days of leave for 49 days. On 29.5.1991, the petitioner was required to appear before the Judicial Magistrate. 1st Class, for trial, who without affording opportunity of defence, passed an order convicting and sentencing the petitioner to undergo simple imprisonment till rising of the Court. On the same date, i.e., 29.5.1991, the petitioner was required to appear before the respondent No. 1 who, in exercise of his powers conferred u/s 12(I) of C.R.P.F. Act, 1949 read with Rule 27 (c) (i) of C.R.P.F. Act, 1949, passed the impugned order of dismissal

which according to the petitioner is violative of principle of natural justice as no opportunity to produce the defence was afforded to him by the respondents.

2. A counter-affidavit on behalf of the respondents has been filed to which the petitioner has filed the rejoinder-affidavit.

3. Heard Shri A.B. Singh, learned counsel for the petitioner and Shri Ajit Kumar Singh for the respondents.

4. Concededly, the order impugned of dismissal of the petitioner from service has been passed on the charge that the petitioner overstayed the leave and remained absent from duty for 49 days. It is also not disputed by the respondents that the petitioner sent a registered letter dated 14.3.1991 seeking extension of leave on the ground of illness of his wife. The application for extension of leave for one month, as submitted by the petitioner, was accompanied by the Medical Certificate. The submission made on behalf of the petitioner that he sent another registered letter accompanied by the Medical Certificate could not be established on record.

5. In *Syed Zahir Husain v. Union of India and Ors.*, JT S999 (1) SC 319, the appellant therein was absent from duty from 9.1.1985 to 15.1.1985 unauthorisedly. When he tried to resume his duties, he was placed under suspension and after departmental enquiry, he was dismissed from service. The petitioner went to the Tribunal, which took a view that the punishment of dismissal was grossly disproportionate but declined to interfere in exercise of its jurisdiction. The Apex Court after after having considered the facts and circumstances of the case viewed that "the punishment of dismissal from service is too harsh and on the contrary, it is required to be substituted by an appropriate lesser punishment". With these observations, the Supreme Court passed the following order :

"In our view, ends of justice will be served if we set aside the order of dismissal of the appellant and instead direct reinstatement of the appellant in service with continuity and with all other benefits save and except withdrawing 50 per cent of back wages from the date of dismissal. (i.e., 11.10.1988 till today. In our view, this punishment which will involve substantial monetary loss to the appellant will meet the ends of justice and will be a sufficient corrective measure for the appellant. The request of learned counsel for the respondents that two future increments may also be withheld without cumulative effect does not appear to us to be justified on the peculiar facts and circumstances of the case. In our view, the aforesaid monetary loss to the appellant will meet the ends of justice so that he may be careful in future. It is ordered accordingly."

6. In case of *R.N. Mall v. Union of India and Anr.* (1994) 3 UPLBEC 1597, the petitioner was a Military personnel granted leave from 20.8.1985 to 2.9.1985 to visit his village in district Azamgarh to see his ailing mother who became more serious and shifted to Gola Bazar, Gorakhpur. The petitioner, who had to attend his mother, applied for extension of his leave, which was expiring on 2.9.1985 ;

the petitioner received no communication from the respondents ; he suffered mental stroke due to illness of his mother and family feud. The petitioner was dismissed from service on the charge of desertion. This Court, after having considered the facts and circumstances of that case, found as under:

"The punishment awarded to the petitioner, if tested on the doctrine of proportionality, is not commensurate with the gravity of the charges levelled against him, hence the punishment of dismissal is arbitrary and is, therefore, violative of the provisions of Article 14 of the Constitution of India."

With the above findings, the Court quashed the impugned orders of dismissal with the liberty to the opposite parties to award any minor punishment to the petitioner of that case without holding any further inquiry.

7. The identical controversy arose in Writ Petition No. 11850 of 1994, Satyendra Singh v. Union of India and Anr., decided on 29.7.1997. In that case, the petitioner was absent from service for 44 days for which he was subjected to inquiry and thereafter punishment of removal from service was imposed. This Court applying the ratio of the decision in R.N. Mall's (supra), came to the conclusion that the punishment of removal appears to be disproportionate and excessive in the background that the petitioner had absented himself without leave for 44 days on account of illness of his mother of which he has submitted Medical Certificate, resultantly the order of removal, being unsustainable in law, was set aside with liberty to the respondents to pass fresh order of punishment other than removal or dismissal.

8. After having carefully examined the record of the present case and the decisions referred to above cited on behalf of the petitioner. I am of the considered view that the ratio of decisions in cases of Zahir Husain, R.N. Mall and Satyendra Singh (supra), is fully applicable in the facts and events of the present case and as such punishment of dismissal from service being too harsh and disproportionate to the charge of over-staying the period of sanctioned leave of 60 days for 49 days is liable to be replaced by a minor punishment.

9. In view of the above, the writ petition succeeds and is allowed in part. The order dated 25.5.1991 (Annexure-3 to the writ petition) passed by respondent No. 1 is modified to the extent that the respondents shall impose minor punishment instead of dismissal, removal or termination. The petitioner shall be reinstated in service with continuity within a week on receipt of certified copy of the judgment. The petitioner shall be entitled to 50% of emoluments from the date of his removal till the date of his reinstatement provided that the petitioner submits affidavit to the effect that he was not gainfully employed in any Government (Central and State) or Semi-Government office during the period aforesaid. The loss of 50% of wages, in my view, shall deter the petitioner from committing such faults in future.

10. In view of the facts and circumstances of the case there shall be no order as to cost.