

(2023) 06 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1459 Of 2011

Mushtaq Ahmad Khan

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 02-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 15, 16, 145, 311
Central Reserve Police Force Rules, 1955 — Rule 27, 31
Central Reserve Police Force Act, 1949 — Section 9(1), 10(m), 10(p), 11(a), 11(1), 11(I), 27

Citation : (2023) 06 J&K CK 0004

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Bilal Ahmad Malla, H. Aman Ali

Final Decision : Dismissed

Judgement

Vinod Chatterji Koul, J

1. Petitioner was serving as Constable in Central Reserve Police Force (CRPF) since 2007. He has been dismissed from services on the charge that he remained absent from his duties. He alleges that he has been dismissed without conducting any enquiry as was required under the provisions of CRPF Act of 1949 (Act) and CRPF Rules 1955 (Rules) and, therefore, his dismissal from services is in violation of constitutional safeguards which prescribes procedure to be adopted before imposing punishment of dismissal. Petitioner has sought issuance of writ of certiorari to quash the Order of dismissal dated 04.02.2011 (Annexure A with writ petition), and writ of mandamus to direct respondents to restore services of petitioner with all consequential benefits.

2. The case set up by the petitioner in the petition is that on 15.05.2010, he applied for earned leave which was granted to him upto 05.06.2010. During the said period, he developed serious ailments of kidney which was reported by him to the authorities and that he would report back when he would recover from

ailment. The earned leave granted to him was availed by him on account of ailment of his parents. During the said period, his parents who are old aged and his wife also suffers from various diseases and he being the only source of sustenance and the elder one in the family was duty bound to take care of the ailments of his parents. The respondents, however, have in haste dismissed him from the services vide order dated 04.02.2011. The said order of dismissal has been issued by the Commandant by invoking Section 11 Subsection (a) read with Section 27 of the Act, and he was declared as deserted by virtue of the Force Order No.2/2010-D dated 13.11.2010. Under the provisions of the Act and the Rules, a detailed enquiry was required to be conducted before imposing punishment of dismissal from services which has not been followed or adhered to by the respondents before passing the order impugned.

3. Petitioner challenges order of dismissal on the following grounds which are detailed in the writ petition:

" (i) The substance of accusation is to be reduced in written charge which should be as precise as possible; the charge shall be read out to accused and its copy given to him at least 48 hours before commencing enquiry but in the case in hand petitioner was never furnished with any substance of accusation nor any charge was read over to him.

(ii) At the commencement of the enquiry the accused shall be asked to enter a plea of "guilty" or "not guilty"; after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary; if oral it shall be direct and it shall be recorded by the officer conducting the enquiry himself in presence of the accused. The accused shall be allowed to cross examine the witnesses. However in the case in hand petitioner was never accorded an opportunity to cross examine the witnesses or to take plea of not guilty therefore the evidence which would have form the material for the enquiring authorities has not been taken into consideration. In that way the petitioner has been deprived of the safeguards prescribed under the Rules.

(iii) When documents are relied upon in support of the charge they shall be put to evidence as exhibits and accused shall, before he is called upon to make his defence, be allowed to inspect such exhibits, but in the case in hand no such opportunity was afforded to petitioner.

(iv) The accused shall then be examined and his statement recorded by the officer conducting the enquiry if the accused has pleaded guilty and does not challenge the evidence on record the proceedings shall be closed for orders. If he pleads not guilty he shall be required to file a written statement and a list of such witnesses as he may wish to cite in his defense within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the officer conducting the enquiry on

the expiry of the period allowed. But in this case the petitioner has never got any occasion to cite any witness that would have favoured him in the interests of justice as such the order impugned is the offshoot of the hegemony and the tranquillity of the authorities to keep their supremacy intact and not to bother for the law prescribing procedure to be adopted while conducting the enquiries.

(v) That if the Commandant has himself held the enquiry he shall record his findings and pass order where he has power to do so. If enquiry has been held by any officer other than the Commandant, the officer conducting enquiry shall forward his report together with the proceedings to the Commandant who shall record his findings and pass order where he has power to do so, but in the case in hand the enquiry has been conducted at the back of the petitioner without allowing him to participate in the said enquiry and have also recorded witnesses in the order of dismissal but the petitioner is completely, unaware and ignorant of the enquiry conducted at his back which is unwarranted and unconstitutional and de hors the rules.

(vi) That in the impugned order it has been reflected that the petitioner was declared as deserter by virtue of Force Order No.2/2010-D dated 13.11.2010 but the said order has never been served upon that petitioner. For issuing such an order the procedure is laid under Section 31 of the Rules, which is reproduced as under:-

"Desertion and absence without leave:- (a) if a member of the force who becomes liable for trial under clause (1) of section 9, or clause (m) of section 10 or for deserting the force while not on active duty under clause (p) of section 10 read with clause (1) of section 9, does not return of his own free will or is not apprehended within sixty days of the commencement of the desertion, absence or overstayed of leave, the Commandant shall assemble a court of inquiry consisting at least one Gazetted officers and two other members who shall be either superior or subordinate officers to inquire into the desertion, absence or overstayed of leave of the offender and such other matter as may be brought before them. (b) The court of inquiry shall; record evidence and its findings. The courts record shall be admissible in evidence in any subsequent proceedings taken against the absentee. (c) The commandant shall then publish in the force order the findings of the court of enquiry and the absentee shall be declare a deserter from the force from the date of his illegal absence, but he shall not thereby cease to belong to the force. This shall, however be no bar to enlisting another man in the place of a deserter."

But in case of the petitioner the order of desertion though reflected has never been served upon the petitioner and no court of inquiry has been constituted nor any evidence has been recorded; if at all the proceedings have been conducted yet the same have been conducted at the back of petitioner and without affording him an opportunity of hearing.

(vii) The petitioner overstayed from leave which was not a deliberate or

intentional but was an act beyond the control of petitioner and he has done what a man of reasonable prudence would have done because nothing is precious than life; even petitioner through signals applied before respondent No.3 for extension of leave; whether the same was considered or rejected, the petitioner did not receive any reply about the same, as such, respondent No.3 having a personal grudge against the petitioner was all along after him to implicate petitioner on one pretext or the other in which he has lastly succeeded by showing the door to petitioner.

viii. Order impugned has been issued in violation of principles of natural justice and in violation of Rules.

ix. That the order impugned is in violation of Article 145, 15, 16 and 311 of the constitution of India.”

4. The petition has been contested and its dismissal is sought by the respondents in their objections. The respondents have sought dismissal of the writ petition on the ground that same is not maintainable as same is based upon wrong and misstatement of facts. The allegations against respondents are false and incorrect. The respondents have given brief history regarding the case, which is:

“...Petitioner was enlisted in CRPF in the rank of CT/GD on 09-02-2007 and undergone Basic Training at RTC, CRPF, Dharampur. On completion of B/Training he reported in 185 Bn CRPF on 31-03-2008 at Tral, Pulwama (J&K) and was posted in A/185 Bn. CRPF. Petitioner was sanctioned 22 days earned leave w.e.f 15.05.2010 to 05-06-2010. He was required to report for duty on 06-06-2010 (F.N.). But he committed an offence under which he remained overstayed from leave w.e.f. 06-06-2010 to 29-11-2010, i.e., total 177 days without prior approval of the department. The OC-A/185 Bn sent letter No. L.11-2/10-A/185 dated 17-06-2010 and 28-06-2010 to home address of petitioner to report on duty immediately, if not reported disciplinary action will be initiated against him. Similarly, the office also sent letter No. L.II-1/2010-EC-II dated 28-06-2010 to his home address to report on duty within five days; if not reported stern disciplinary action will be taken against him. OC-A/185 Bn made a telephonic call to petitioner on 09-07-2010 and directed him to report on duty immediately and he replied that he is undergoing treatment in Govt. Hospital Kangan due to his kidney problem and will report on duty with all self treatment related documents. Further, another letter No. L.11-1/2010-EC-II dated 05-07-2010 was sent to his home address by the Commandant-185 Bn with a direction to report on duty by 14-07-2010 for which only normal action will be taken against him, if reports after 14-07-2010 then stern disciplinary action will be initiated/taken against him and for which he himself will be held responsible for such mistake. But neither he reported nor any response/reply to aforesaid four letters was received from him. He remained absent continuously without fear and without caring departmental direction/instructions which shown his reluctance toward his job. Consequent on his daring absent/OSL Warrant of arrest was issued against him and sent to S. P. Baramulla, J&K, vide letter No. W.II-9/2010-Estt-II dated 21.07.2010 for his

apprehension. But he was not apprehended by civil police of J&K State. Consequent on his continuous overstayed from leave for more than 60 days a Court of Inquiry was ordered vide office Order No. I.X-29/2010-EC-II dated 23.08.2010. As a result of Court of Inquiry petitioner was declared deserter from the Force with effect from 06.06.2010 vide office order No. I.X-29/2010-EC-II dated 14.09.2010 and copy of the same order was, also sent to petitioner on his home address through registered post. Still neither he reported on his duty nor any reply received from him. Thereafter charge under section 11(1) of CRPF Act 1949 read with Rule 27 of CRPF Rules 1955 were framed against him by issuing memorandum No. P.VIII-8/2010-EC-II dated 19-10-2010 with direction to submit his documentary evidence/defence statement by or before 01-11-2010 otherwise further course of action will be initiated against him. To process the case further an Enquiry Officer was detailed to conduct departmental enquiry against petitioner vide office order No: P.VIII-8/2010-EC-11 dated 11-11-2010. He reported his arrival for duty at his own on 29-11-2010 at 1635 hrs. at Bn Hqrs. During conducting of Departmental Enquiry statement of prosecution witnesses in the presence of petitioner were recorded exhibits produced by prosecution witnesses were also handed over to the petitioner after that opportunity of cross examination was given to him. After that petitioner gave his statement to Enquiry Officer and during question answer he pleaded guilty. Accordingly the Enquiry Officer submitted his report before the disciplinary authority. The disciplinary authority gave 15 days opportunity along with copy of enquiry report to petitioner for submitting his defence statement as well as evidence. In reply he submitted an application received vide Adjutant-185 En letter No. P.VII-1/2011-SI(A) dated 28-01-2011 in which he stated that he was overstaying from leave for 177 days due to domestic problem but he did not submit any supporting document/evidence to his plea. Considering the gravity of the case the Departmental Enquiry was finalized in which he was awarded the punishment of "Dismissal from Service" vide Office, Order No. P.VIII-8/2010-EC-11 dated 04-02-2011."

5. In their objections, it is also stated by respondents that during the departmental enquiry, petitioner admitted that he remained overstayed from the leave due to domestic problem and treatment of parents, but no such medical report /document relating to the treatment of the parents was produced. Regarding his ailment of kidney, he himself informed and promised to his Officer Commanding over phone that he would report on duty with self treatment related medical documents but on being asked by the enquiry Officer for production of such document, he had stated that he does not have any treatment related document and, therefore, he could not produce the document before the enquiry officer. The petitioner has failed to produce any document in support of his claim regarding the ailment of his parents or his ailment. The petitioner was given sufficient opportunities to justify overstayed from the leave, but he could not justify the same during the enquiry and the disciplinary authorities proceeded in the matter in accordance with the rules.

6. It is also stated by respondents that insofar as detailed enquiry to be conducted before imposing punishment of dismissal from service is concerned, as per department (CRPF) Rules, the procedure was followed in true letter and spirit. Consequent on his continuous overstayed from leave for more than 60 days a Court of Inquiry was ordered vide office Order No. I.X-29/2010-EC-II dated 23.08.2010. As a result of Court of Inquiry petitioner was declared deserter from the Force with effect from 06.06.2010 vide office order No. I.X-29/2010-EC-II dated 14.09.2010 and copy of the same order was also sent to petitioner on his home address through registered post. Still neither he reported on his duty nor any reply received from him. Therefore charge under section 11(I) of CRPF Act 1949 read with Rule 27 of CRPF Rules 1955 were framed against him by issuing memorandum No. P.VIII-8/2010-EC-II dated 19.10.2010 with direction to submit his documentary evidence/defence statement by or before 01.11.2010 otherwise further course of action will be initiated against him. To process the case further a Enquiry Officer was detailed to conduct departmental enquiry against the petitioner vide office order no. P.VIII-8/2010-EC-II dated 11.11.2010. He reported his arrival for duty at his own on 29.11.2010 at 1635 hrs. at Bn. Hqrs. During conducting Departmental Enquiry statement of prosecution witness3s in the presence of petitioner were recorded exhibits produced by prosecution witnesses were also handed over to the petitioner after that opportunity of cross examination was given to him. After that petitioner gave his statement to Enquiry officer and during question answer he pleaded guilty. Accordingly the Enquiry Officer submitted his report before the disciplinary authority. The disciplinary authority gave 15 days opportunity along with copy of enquiry report to petitioner for submitting his defence statement as well as evidence. In reply he submitted an application received vide Adjutant - 185 Bn. letter No. P.VIII/2011-SI(A) dated 28.01.2011 in which he stated that he was overstaying from leave fro 177 days due to domestic problem but he did not submit any supporting document/evidence to his plea. Considering the gravity of the case the Departmental Enquiry was finalized in which he was awarded the punishment of "Dismissal from Service" vide Office Order No. P.VIII/8/2010-EC-II dated 04.02.2011.

7. Regarding grounds (i) to (ix), respondents submitted that under section II(I) of CRPF Act 1949 read with Rule 27 of CRPF Rules 1955, charge was framed against petitioner by issuing memorandum No.P-VIII-8/2010-EC-II dated 19.10.2010 with direction to submit his documentary evidence/defence statement by or before 01.11.2010 otherwise ex parte departmental action will be initiated against him. But petitioner neither reported nor submitted any document/reply to the said memorandum. Since petitioner was not physically present in unit, process of read out the memorandum of charges to him was not possible. Hence further action as per rule, i.e. ex parte departmental enquiry was started and for that an Enquiry Officer was detailed. However, on his physically reporting to Unit Hq. at his own on 29.11.2010 at 1635 hrs. Enquiry officer called him on next day, i.e. 30.11.2010 and read out the memorandum of charges to

the petitioner after that petitioner was directed to appear before Enquiry Officer for further proceeding by giving 48 hours, i.e. on 02.12.2010 at 1000 hrs. Hence allegation about not to read out and not given 48 hrs before starting of Departmental Enquiry is completely baseless.

8. After preliminary hearing on 02-12-20 10, 48 hrs, were given to petitioner for pleaded guilty or not guilty and only on 04-12-2011 the Enquiry Officer had asked the delinquent/petitioner to plead "guilty" or "not guilty" in respect of charge. Here, the delinquent pleaded guilty also stated that he pleaded guilty willingly at his own and not under any pressure. On next day, i.e. 05/12/20 10 statement of Prosecution Witnesses were recorded in the presence of petitioner after recording the statement, questions were asked to PWs by the Enquiry Officer in presence of the petitioner during this process exhibits if any produced by PWs the copy of statement, question-answers and exhibits were also given to the petitioner only after that the petitioner was given opportunity to cross examine the PWs for his safeguard. But in the instant case he did not ask any question to PWS and also refused to make cross examination with PWs willingly and in this regard statement is duly signed by Enquiry Officer, Prosecution Witnesses and petitioner himself Hence he has not been deprived of the safeguards prescribed under the Rules and also given sufficient opportunity at every stage to maintain the clause of natural justice moreover he has signed all documents related to activities done on day to day basis. Hence, punishment of Dismissal from service is absolutely proportionate to the gravity of offence committed by petitioner.

9. It is further submitted by respondents that since beginning, i.e., his date of overstay from leave, petitioner was kept informed about every action being taken by the office about his overstay from leave. All legal methods to recall the petitioner went in vain. Finally, as per existing rules Ex-parte departmental enquiry was started but petitioner reported his arrival at his own on 29-11-20 10 at 1635 hrs. at 185 Bn Hqr, Tral. On his physically reporting at unit Hq at his own on 29-11-2010 at 1635 hrs. Enquiry Officer called him on next day, i.e. on 30-11-2010 and read out the memorandum of charge to the petitioner and also asked whether he has received the memorandum of charges along with Annexure-1, 11, 111 & IV and other related documents which were sent to his home address by registered post by the office. He accepted in Written Statement that he has received the memorandum of charges along with Annexures-I, II, III & IV and other related documents which were sent to his home address by registered post by the office. As per existing rules statement of PWs were recorded in the presence of petitioner, and copies of statement as well as question answer and exhibits, if any was handed over to the petitioner he gone through them, only then petitioner was asked to cross examine. All the documents cited as exhibits were given to petitioner along with memorandum of charge. Copies of same exhibits were also given to him during prosecution part. The Departmental Enquiry file was being prepared before him, he was inspecting exhibits on file every stage in addition therefore documents cited as exhibits

have been given to him twice and allowed inspection which is even more than the opportunity of natural justice. Hence allegation regarding petitioner was not allowed to inspect such exhibits is completely baseless.

10. It is further stated by respondents that at the very beginning during preliminary hearing, petitioner was asked by Enquiry Officer whether you want to appoint any defence assistant but he stated that he does not want to appoint any defence assistant and this statement is duly signed by petitioner and the Enquiry Officer. During preliminary hearing the petitioner pleaded guilty in his written statement duly signed by him and Enquiry Officer. Despite this to maintain natural justice statement of PWs were recorded in the presence of the petitioner and opportunity for cross examination and go through the exhibits produced by PWs was given at every stage. After completion of prosecution, statement of petitioner was recorded and he was again asked for plead guilty or not guilty at this stage in that he again pleaded guilty and did not challenge the evidence on record accordingly, proceeding closed for submitting to the disciplinary authority by the Enquiry Officer. Here, the disciplinary authority had also given him 15 days opportunity for submitting his evidence/reply for his safeguard vide letter No. P.VIII-3/2010-EC-11 dated 18-01-2011. Hence from the beginning of this departmental proceeding the petitioner has plead "guilty". Hence, punishment of Dismissal from service is .absolutely proportionate to the gravity of offence committed by petitioner.

11. It is also averred by respondents that enquiry was not conducted by the disciplinary authority, secondly as far as enquiry is conducted at the back of petitioner is concerned it is submitted that petitioner was kept well informed at every stage about action being taken by disciplinary authority/Enquiry Officer. However, departmental proceeding was started only 'after physical reporting of the petitioner at unit Hqr on 29/11/10 at 1635 hrs. In the instant case, the Enquiry Officer had started departmental enquiry in the presence of the petitioner by conducting preliminary hearing. Plead guilty or not guilty in which petitioner pleaded guilty and recorded statement of PWs. Then the Enquiry officer had submitted the enquiry report to the Commandant (disciplinary authority). Hence, allegation for conducting enquiry at the back of delinquent without allowing him to participate in the enquiry is completely baseless.

12. It is further submitted that as far as non-serving of order No. G.1I.2/2010-D (DE) dated 13-11-2010 to the petitioner is concerned it is to submit that petitioner has physically reported at 185 Bn. Hqr. Tral on 29-11-2010 at 1635 hrs. and on 30.11.2010 on being asked by Enquiry Officer to petitioner about receipt of said order/letter dated 13-11-2010 which was sent to his home address by registered post he admitted that he had received this letter order. However, after conducting the court of inquiry the order of desertion as sent to his home address through registered post. Further tie copy, of the same was handed over to him on 05-12-2010 during departmental proceeding and the same has been received and acknowledged by putting his signature. As far as

conducting of COI at the back of petitioner is concerned it is to submit that Court of Inquiry was conducted to declare the petitioner as deserter from the force then how it can be possible to conduct the enquiry 'in the presence of the petitioner who is going to be declared as deserter from:-the force. Hence allegation about conducting of COI at the back of the petitioner is not only baseless but also an example of ignorance of facts.

13. It is also being submitted that the petitioner overstayed from leave deliberately/consciously/intentionally and shown reluctance to give reply to our aforesaid letters as he has also pleaded guilty during the course of departmental enquiry. He has done recklessness/thoughtlessness activities by telling a lie about self treatment/parents treatment as well as non-replying to aforesaid letters. Even after promising over phone to his Officer Commanding that he will report back on his duty with all treatment related documents he did not keep his promise. Here it is crystal clear that neither he was taking treatment for himself nor, rendering assistance for treatment to his parents except telling a lie and making his seniors fool as proved in the enquiry. There is no ambiguity that he has committed an offence by disobeying orders/directions of the elite Force which is prejudice to good orders. The Force stands on command and control. Hence, to avoid further infection of bad deeds committed by petitioner to other Force personnel he was awarded punishment of 'dismissal from the service'. Hence, punishment of dismissal from service is absolutely proportionate to the gravity of the offence committed by delinquent. Petitioner has unnecessarily arrayed Commandant 171 Bn as respondent No. 3 in the instant case when the fact of the matter is that he has nothing to do with the present litigation.

14. It is also stated that disciplinary authority after taking in consideration all pro and cons and gravity of his offence and in the light of CRPF Act & Rules justice was given to the petitioner.

15. Record has also been produced.

16. Heard learned counsel for the parties and perused the record on filed.

17. Learned counsel for petitioner has reiterated the grounds taken in the petition and has submitted that he was not provided the annexures with the charge sheet, thus, he was deprived from making effective representation. He has been deprived of his right which amounts to violation of principles of natural justice and provisions of Article 311 of Constitution of India as well as violation of Rule 27 of CRPF Rules, 1955. He has also not been allowed to cross examine the witnesses and was also not given opportunity to produce evidence in defense despite his requests.

Learned counsel for petitioner also contends that the enquiry officer has not acted impartially and that report of enquiry was not furnished to him. He submits that there had been violation of his rights and that the punishment awarded is disproportionate. He has relied upon the judgments (2010)2 SCC 772 (Relevant Paras 36 and 39), (1991) 1 SC C 588, relevant Para No. 3, 2008 (8) SCC 236,

relevant Para No. 14. Learned counsel also relies on the judgment passed by the Hon'ble Division Bench of this Court in case titled Manzoor Ahmad Bhat vs. Union of India and Ors, bearing LPA no. 108/2011 (relevant para 12), K.B. Parmar vs. Union of India & Ors reported as (2012) 3 SCC 178, relevant Paras, 15 & 21, and Mohammad Ashraf Bhat vs. State of JK and others bearing SWP no. 16/2015.

18. On the other hand, counsel appearing for respondents would say that no violation has been committed by respondents. The petitioner was given ample opportunities to present his case. He submits that petitioner deserted the services after availing the leave. He was asked to join but he did not and accordingly he was declared deserter. The charge sheet was prepared. Petitioner reported for duty on 29.11.2010. Memorandum of charge along with annexures was provided to him which was also read and explained to him. He pleaded guilty. Thereafter statement of witnesses was recorded. In the enquiry he was given opportunity to cross examine the witnesses. All the documents which were relied upon in support of the charges were exhibited and opportunity was given to the petitioner to inspect them.

19. While considering the case following dates are necessary:

09.02.2007: Petitioner was appointed in CRPF as constable.

31.03.2008: He on completion of the basic training reported at 185 Bn CRPF, Tral, Pulwama.

15.05.2010: He was sanctioned 22 days earned leave from 15.05.2010 to 05.06.2010 and was to report back on 06.06.2010.

He overstayed the leave from 06.06.2010 to 29.11.2010 (total 177 days).

17.06.2010: Letter was sent to him for joining the duty.

28.06.2010: Another letter was sent to him for rejoining the duty

05.07.2010: Third letter was sent to him for rejoining the duty.

21.07.2010: On his remaining unauthorizedly absent warrant of arrest was issued.

23.08.2010: On account of his overstaying leave for more than 60 days, court of enquiry was ordered.

14.09.2010: He was declared as deserter from the force

19.10.2010: Charge under Section 11(1) of CRPF Act read with Rule 27 of CRPF Rules, 1955 was framed against him.

01.11.2010: Petitioner was directed to submit his documentary evidence/defense statement by or before 01.11.2010.

11.11.2010: Enquiry officer was directed to conduct departmental enquiry vide order dated 11.11.2010.

29.11.2010: Petitioner reported back to duty. On his reporting back to duty he was called by the enquiry officer on 30.11.2010 and memorandum of charges as well as annexures and related documents were provided to him and read over to him.

20. Petitioner has accepted in his written statements that he received memorandum of charge. After preliminary hearing, petitioner pleaded guilty. Statement of PW was recorded and petitioner was given opportunity to cross examine the witnesses. Documents which were relied upon in support of the charges put as exhibits and opportunity was given to him in respect of the same.

21. Record on the file would reveal that so far as petitioner is concerned, he had after availing the leave of 22 days, overstayed the leave till 29.11.2010, and thus overstayed 117 days. He had not produced any documentary proof regarding ailment which he alleged nor any evidence.

The respondents, as is clear from the record on the file and the pleadings, have followed the procedure as was required to be followed in terms of CRPF Act and Rules thereunder.

22. The evidence after having been appreciated by the enquiry officer was held to be sufficient to prove the charges which otherwise have not been denied by the petitioner. There is no dispute with regard to the effect that the petitioner has remained absent after availing 22 days leave which was sanctioned in his favour. He was report back on 06.06.2010, after availing leave, but he overstayed and despite letters sent to him by the respondents, he did not report back to his duty. He pleaded certain ailments not only of his parents but his wife and also about his own self, but he could not produce any documentary proof before the enquiry officer to substantiate such ailments. The enquiry officer has appreciated and considered the evidence in this matter. The petitioner has not avail remedy of appeal /revision which was available to him under the provisions of CRPF Act and Rules and instead of challenging is dismissal from the services in appeal/ revision, he has approached this Court seeking an order quashing of order of dismissal which is based upon the proof of the charges in the enquiry conducted that too on the evidences produced.

23. The jurisdiction of Court of judicial review is limited. Disciplinary proceedings, however, being quasi criminal in nature; there should be some evidence to prove charges. The charges in departmental proceedings are not required to be proved like criminal trial, i.e., beyond all reasonable doubt, but we cannot lose sight of the fact that the enquiry officer performs a quasi judicial function, who upon analyze the documents must arrive at a conclusion that there had been preponderance of probability to prove the charges on the basis of material on record. While doing so, he cannot take into consideration any irrelevant fact and cannot refuse to consider relevant facts. As is evident from the record of this case, the evidence has been collected in this matter and the enquiry officer has considered the evidence and the evidence so produced make the probability of

proving the charges.

24. Record further would show that all the requirements as required to be complied with as per the Act and Rules have been followed while conducting the enquiry in this case. Sufficient and reasonable opportunity granted to the petitioner to defend his case, but the petitioner has overstayed the leave and remained unauthorizedly absent from the duties for about 177 days. The order of dismissal, therefore, cannot be said to be harsh or excessive. Thus, the instant writ petition is dismissed.