

**(2014) 04 OHC CK 0050**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 6227 of 1993

Narayan Samantaray

APPELLANT

Vs

Director General, C.R.P.F. and Others

RESPONDENT

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**Date of Decision :** 16-04-2014

**Acts Referred:**

Central Reserve Police Force Act, 1949 — Section 10, 11, 11(1), 9

**Citation :** (2014) 118 CLT 645 : (2014) 1 ILR 1147 : (2014) LabIC 3366 :  
(2014) 2 OLR 299

**Hon'ble Judges :** B.R. Sarangi, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Dr. B.R. Sarangi, J.—The petitioner has filed this application challenging the order of dismissal passed by the Commandant, 21 Bn. C.R.P.F. dated 30.11.1983 in Annexure-2 as well as the order of the appellate authority confirming the order of dismissal dated 23.11.1992 under Annexure-5 on the ground of long absence from duty. The short fact of the case is that the petitioner having been selected by following due procedure of selection as a Constable joined in C.R.P.F. in May, 1979. After completion of his training, he was posted at Mukamaghat and thereafter posted at 21st C.R.P.F. Bn., Mizoram and then transferred to 21st Bn. C.R.P.F., Ajmer-7. While he was continuing there, he applied for two months leave from 26.02.1983 but one month leave, i.e. from 26.02.1983 to 27.03.1983 was sanctioned. As his marriage was suddenly fixed, he sent a telegram on 25.03.1983 for extension of his leave. As a murder was occurred in his village on 24.03.1983 wherein the petitioner has been falsely implicated, he sent a letter to the Commandant 21st Bn. C.R.P.F., Ajmer on 26.04.1983 under Annexure-1 intimating that he has been falsely implicated in a case and is likely to be arrested at any moment and will report to duty after acquittal from the criminal case. Thereafter the petitioner was arrested and remanded to jail custody till he was released on 04.02.1991 after the judgment was passed by this Court on 31.01.1991 in Criminal Appeal No. 177 of 1987 acquitting him from the criminal

case. Due to non-joining of the petitioner in duty after expiry of one month sanctioned leave, charge was framed and an ex-parte inquiry was conducted whereafter he was dismissed from service on 30.11.1993 vide Annexure-2. It is stated that he had no knowledge about the charge and ex-parte inquiry as he was in jail custody no notice was issued to him and after acquittal and release from jail he preferred an appeal on 07.05.1991 explaining the position stating that his absence from duty was neither due to his own fault or willful due to negligence. Therefore, there is no question of disobedience of any order on his part. The Disciplinary Authority vide letter dated 11.11.1991 under Annexure-3 asked the petitioner to intimate the period of detention in police/judicial custody for necessary action. In appeal dated 28.11.1991 vide Annexure-4, the petitioner intimated the period of detention in jail custody and explained the detailed position. The appellate authority on consideration of the same, confirmed the order of dismissal vide order dated 23.11.1992 under Annexure-5.

2. Mr. G.A.R. Dora, learned Senior Counsel appearing for the petitioner states that the order of dismissal has been passed ex-parte without giving opportunity of hearing to the petitioner. Therefore, the order passed by the disciplinary authority as well as the appellate authority is liable to be set aside. More so, no notice has been given to the petitioner in view of the fact that the petitioner was in jail custody and as such, there is no material available on record to indicate that notice has been issued to the petitioner in the address of the jail giving opportunity to him. Therefore, the order of dismissal has to be set aside. Apart from the same, it is urged that the petitioner having intimated the authorities vide Annexure-1 that due to village dispute, he has been falsely implicated in the criminal case and FIR has been lodged against him and he is likely to be arrested at any moment he shall report to his duty after acquittal from the criminal case. Therefore, sufficient intimation has been given to the authority indicating his long absence thereby the authority could not have taken such harsh step for dismissal against the petitioner.

3. Mr. S.D. Das, learned Asst. Solicitor General appearing for the opposite parties urged that remaining in long absence without any authority more particularly in a disciplined job like that of C.R.P.F., the action taken against him is wholly and fully justified. More so, after the petitioner availed one month leave i.e. from 26.02.1983 to 27.03.1983 he did not join in duty on expiry of such leave. Vide letter dated 30.06.1983 and 04.10.1983 though he was directed to join his duty, he did not join. Therefore, due to unauthorized absence from duty from 28.03.1983, for disobedience of the order, the disciplinary inquiry was ordered on 16.10.1983 and memorandum of charge was submitted. Since no reply was given, and no document about the period of detention either in police or judicial custody has been provided and no order of acquittal has been submitted by the petitioner, action was taken against the petitioner. Due to long absence, the petitioner has been declared as "deserter" vide order dated 23.09.1983. As some departmental articles were lying with him in the barrack, as per the report in the court inquiry, the same were recovered. Therefore, the petitioner has

intentionally absented from Government duty and not complied with the order and charges were proved, in that view of the matter, no illegality has been caused in taking action taken against him. In support of his contention, he has relied upon the judgments of the apex Court in Union of India (UOI) and Others Vs. Ghulam Mohd. Bhat, , Laxmidhar Nayak Vs. Union of India and Others and an unreported judgment of this Court in Sushant Kumar Gouda v. Union of India and others in W.P. (C) No. 7984 of 2010 disposed of on 07.02.2013.

4. Considering the aforesaid facts and circumstances of the case, the admitted fact is that the petitioner was continuing as constable having been duly selected by following due procedure of selection, who applied for leave for two months but leave was sanction w.e.f. 26.02.1983 to 27.03.1983. He did not join after expiry of the leave. Thereafter vide order dated 30.06.1983 and 04.10.1983 though he was called upon to join in his duty, he did not join, thereby he remained unauthorized absence from duty w.e.f. 28.03.1983 and for disobedience of orders, a disciplinary inquiry was directed on 16.10.1983 and memorandum of charges were also submitted to him, which was received on 22.10.1983 and the said charges were sent vide letter dated 16.10.1983 by registered post with A.D. and the A.D. has been returned and formed part of the record. That itself indicates that the petitioner was aware of the proceeding due to unauthorized absence from duty initiated by the authorities and in spite of that he did not take any step. The authorities appointed inquiry officer. In course of inquiry he sent a telegram requesting for extension of time in the disciplinary inquiry for seven days more i.e. from 31.10.1983 to 06.11.1983. Even though such time was granted, he did not participate in the inquiry. Therefore, the authorities proceeded with the inquiry by examining three witnesses as P.Ws. on behalf of the department. But the petitioner did not examine any person. After conducting due inquiry, the inquiry officer submitted his report on 21.11.1983 wherein the charges leveled against him have been proved.

5. Considering the said inquiry report, the disciplinary authority ordered for dismissal from service. The petitioner preferred an appeal against the order of dismissal passed by the disciplinary authority on 07.05.1991 wherein he has stated that he was involved in a murder case and was an accused in that case and subsequently he was acquitted from the said criminal case. The petitioner relied upon the letter dated 26.04.1983 wherein it is stated that though leave was sanctioned for the period from 25.02.1983 to 26.03.1983, but due to sudden fixation of his marriage in the last week of March, 1983 he sent a telegram for extension of his leave for one month but due to village dispute he has been falsely implicated in the criminal case and also likely to be arrested at any moment and further intimated that he would report to duty after acquittal from the criminal case. The said letter has not been received by the authorities and after acquittal, when the petitioner brought the said fact to the notice of the appellate authority by formulating grounds of appeal the same has also been taken into consideration and the order of dismissal has been made confirmed by the appellate authority. The contention raised that no opportunity of hearing was

given to the petitioner by the authorities is not correct in view of the fact that the petitioner has been called upon vide letters dated 30.06.1983 and 04.10.1983 to join in his duty. In spite of that he did not join and remained in unauthorized absence from duty from 28.03.1983. When the charge was framed, the same was communicated by registered post with A.D. and though he acknowledged the same, he did not choose to participate in the proceeding itself. In view of this, the inevitable conclusion is that though opportunity of hearing had been given to the petitioner, he did not avail the same. In view of such position, the contention raised that no opportunity has been given to the petitioner, has no legs to stand.

6. It is further urged that there is no material available before this Court with regard to the communication of the notice to the petitioner in his jail address. Once the notice regarding framing of charge has been communicated to the petitioner in his own address, which has been duly acknowledged, question of any fresh notice in the jail address is not warranted and more so the petitioner having been given opportunity to participate in the proceeding and he having not choose to avail the same, it cannot be said that principle of natural justice has not been complied with. Therefore the contention raised by Mr. G.A.R. Dora, learned Senior Counsel appearing for the petitioner fails.

7. It appears from Annexure-2, the office order dated 30.11.1983 that following a departmental enquiry u/s 11(1) of C.R.P.F. Act, 1949 read with Rule 27(b) of C.R.P.F. Rules, 1955 against the petitioner bearing No. 791140712/CT, he has been dismissed from service for an act of misconduct in his capacity as a member of the Force w.e.f. 30.11.1983 i.e. from the date he remained in unauthorizedly absent.

8. On perusal of the C.R.P.F. Act, 1949, it appears that Section 9 of the said Act mentions serious or heinous offences and also prescribes penalty, which may be awarded for them. Section 10 deals with less heinous offence and clause (m) thereof shows that absence of a member of the force without leave or without sufficient cause or overstay without sufficient cause, is also mentioned as less heinous offence and for that also a sentence of imprisonment is provided. It is, therefore, clear that Section 11 deals with only those minor punishments, which may awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of dismissal can certainly be awarded thereunder even if the delinquent is not prosecuted for an offence u/s 9 or Section 10.

9. On bare perusal of the Section 11 of the C.R.P.F. Act, 1949, it appears that the said section deals with minor punishment as compared to the major punishments prescribed in the preceding section. It lays down that the Commandant or any other authority or Officer, as may be prescribed, may, subject any Rules made under the Act, award any one or more of the punishment to any member of the force who is found guilty of disobedience, neglect of duty, or remissness in the discharge of his duty or of other misconduct in his capacity as a member of the force. The use of words "in lieu of, or in addition to, suspension or dismissal" appearing in sub-section (1) of Section 11 before clauses (a) to (e) shows that

the authorities mentioned therein are empowered to award punishment of dismissal or suspension to the member of the Force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clause (a) to (e) may also be awarded. It is fairly well settled position of law that removal is a form of dismissal as both stand in the same footing and bring about termination of service. Rule 27 of C.R.P.F. Rules, 1955, clearly permits removal by the competent authority. Referring to Gulam Mohd. Bhat(supra) the petitioner having overstayed w.e.f. 30.11.1983 there is no infirmity in passing the order of dismissal of service by the authority.

10. In State of U.P. and others Vs. Ashok Kumar Singh and anothers, where the employee is a police constable, the apex Court held that an act of indiscipline by such person needs to be dealt with sternly. It is for the employee concerned to show how the penalty was disproportionate to the proved charges and serving as a police constable in a disciplined force demands strict adherence to the rules and procedures more than any other department. Having noticed the fact that the petitioner had remained absent from duty unauthorizedly for petty long period, the action taken for dismissal from service by the authority by following due procedure of law cannot be faulted with.

11. In Mithilesh Singh Vs. Union of India (UOI) and Others, , the apex Court held that mere making an application for grant of leave cannot be construed to be of any consequence in the background of the strict requirement of giving proper intimation. Therefore, the contention raised by the petitioner that vide Annexure-1 he has intimated the authority expressing his inability to join, has no consequence and more particularly the said letter has not reached the authorities so that the same could not be taken into consideration. More so, the conduct of the petitioner has also to be taken into consideration having availed the leave for a sanction period of one month and remained absent thereafter leaving the arms and ammunitions in the barrack, which has been subsequently recovered by the authority shows gross indiscipline on his part which aggravated the aberration. Therefore, the impugned order of dismissal passed by the authority cannot be interfered with.

12. In S.C. Saxena v. Union of India and Others, >(2006) 9 SCC 583 where the order of transfer of a Government servant has been defied and remained on leave for a long period, it was held that the said Government servant is guilty of misconduct of unauthorized absence from duty and in compliance with the transfer order for a long period coupled with submitting successive leave applications order of compulsory retirement held to be justified due to long unauthorized absence, as it leads to gross indiscipline in public service.

13. Applying the same analogy to the case in hand, the petitioner who is a constable in a disciplined service could not have remained in unauthorized absence w.e.f. 30.11.1983 and due to long absence the action taken by the authorities by dismissing him from service cannot be interfered with. More so the misconduct of the concerned employee having been proved by following

proceeding any subsequent explanation cannot mitigate the situation.

14. This Court in *Santosh Ku. Sahu (Dead) after Him Sabita Sahu Vs. Additional D.I.G.P., Group Centre, CRPF, BBSR and Another* referring to *Gulam Mohd. Bhat(supra)* has taken a similar view that due to overstay by following a departmental proceeding the petitioner having been punished, this Court did not inclined to interfere with such punishment.

15. In *Laxmidhar Nayak (supra)* this Court held that the punishment awarded to the petitioner in the background of the fact that the petitioner was a member of the force, who is required to maintain absolute discipline in the matters of performance of duty as well as in the matter of conduct in the normal life. The conduct and discipline expected from a member of a Force cannot be equated with other employees like a Sweeper or a Peon or even a Class-III employee of the Government establishment. Thus, keeping in view the unauthorized absence of about three years by the petitioner, it is held to be sufficient ground to inflict harshest punishment of removal from service. Therefore, this Court does not consider it expedient to interfere with the same. Keeping in view the ratio decided by this Court as well as apex Court, directing to retain the petitioner in service or showing any lenience in the matter of punishment would set a bad example for other members of the organization to follow. In that view of the matter this Court is not inclined to interfere with the order of punishment imposed on the petitioner. Accordingly, this court finds no merit in the writ petition which is dismissed.