
(2019) 10 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1822 Of 2013

Nissar Ahmad Parray

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 15-10-2019

Acts Referred:

Citation : (2019) 10 J&K CK 0026

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : T. M. Shamsi

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. The order of dismissal of the petitioner from service bearing Office Order No. P.VIII.3/06-EC-II/84 dated 26.02.2007 passed by respondent No. 3 is subject matter of challenge in this petition. The petitioner also calls in question an order of consideration bearing No. P.VIII.1/2013-EC-II/84 dated 03.08.2013 issued by respondent No.3 whereby respondent No.3, on consideration of the claim of the petitioner in terms of judgment of this Court dated 19.06.2013 passed in SWP No. 1093/2013, has rejected the same.

2. Briefly stated, the facts leading to the filing of this petition are that, the petitioner was appointed as Constable in the 84 Bn of Central reserve Police Force (CRPF) in the year 1994. He performed his duties smoothly till the year 2001 when he suffered some ailment. He claims that despite medical treatment provided to him in the CRPF Hospitals, his health deteriorated which constrained him to apply for 45 days earned leave with effect from 27th October, 2005 to 5th December, 2005. The leave was sanctioned in favour of the petitioner by the competent authority. The petitioner submits that after the expiry of the leave period he could not resume his duties as during the aforesaid leave period his mental condition got worsened. The petitioner further claims that his father

forwarded an application to the respondents for extension of leave and also appended therewith the relevant prescriptions issued by the doctors at the Government Psychiatric Hospital, Srinagar. It is further averred by the petitioner that the request of his father for extension of his leave was not accepted by the respondents, who, accordingly, directed the petitioner to report at Unit Headquarters immediately for further duties. Since the petitioner was not mentally fit and in a position to resume his duties, as such, he could not comply with the aforesaid notice and instead submitted a representation to the respondent No.3 through his father through which it was brought to the notice of the respondent No.3 that the petitioner was suffering from mental ailment and thus was not in a position to resume his duties. The petitioner claims that under bonafide belief that his request for leave made through his father had been accepted and his leave extended, he continued with his treatment in the Government Hospital at Srinagar. The petitioner submits that, after recovery from the disease, he went to the respondents for resumption of duty but he was not allowed to do so nor any reason therefor was indicated to the petitioner. Constrained, the petitioner filed SWP No. 1093/2013 which was disposed of by a Bench of this Court on 19.06.2013, directing the respondents to consider the claim of the petitioner. The claim of the petitioner was, accordingly, considered and vide communication dated 03.08.2013 the same was rejected. The petitioner submits that in the aforesaid communication dated 03.08.2013, it was for the first time revealed that his services had been dismissed by the respondent No.3 with effect from 26.02.2007. The petitioner asserts that even after passing of the consideration order, a copy of the order of dismissal was not served upon or provided to the petitioner.

3. The grievance of the petitioner, as projected in this petition, in short is that the petitioner was on sanctioned Earned Leave and overstayed the same for reasons beyond his control. He suffered from a mental disorder and was constrained to get medical treatment from doctors including Government Psychiatric Hospital, Srinagar. The Court of Inquiry alleged to have been conducted by the respondents was at his back and in violation of principles of natural justice. It is also his grievance that though the order of dismissal of the petitioner was passed on 26.02.2007 but the same was never communicated to him and, therefore, a non-communicated order cannot be said to have taken effect and the petitioner should be deemed to be in service with all consequential benefits. Reliance has been placed by the petitioner on several judgments of Hon'ble the Supreme Court, more particularly the judgments reported as 2001 AIR SC 3471, *State of West Bengal v. M. R. Mondal and another*, (2010) 1 SCC 126, *Satwati Deswal v. State of Haryana and others* and (2012) 4 SCC 786, *Krishan Lal v. Food Corporation of India and others*, to buttress his submissions and substantiate the grounds of challenge taken in appeal.

4. On the other hand, the respondents in their reply affidavit claim that the petitioner was sanctioned 40 days earned leave w.e.f. 27.10.2005 to 05.12.2005 not on health grounds but on his request that he needed some time to solve his

accommodation problem at home which had suffered damage due to earthquake. The petitioner was supposed to join his duties on 06.12.2005 after expiry of his leave, but he failed to do so and, therefore, became 'Over Staying Leave' (O.S.L) with effect from 06.12.2005. The respondents claim that on failure of the petitioner to join back his duties on expiry of his sanctioned leave, the Company Commandant vide his office letters dated 14.12.2005, 22.12.2005 and 31.12.2005 sent to the petitioner at his home address, called upon the petitioner to report for his duty immediately else disciplinary action may be initiated against him. It is submitted that all the aforesaid letters were sent through registered post on the home address given by the petitioner to the respondents for records. The petitioner, it is claimed, never reported back at his Unit for duty nor did he reply the aforesaid communications. After failing to persuade the petitioner to join back his duties, a complaint was lodged in the Court of Chief Judicial magistrate and also the aforesaid fact was brought to the notice of respondent No.3. The respondent No.3 vide his communication No. W.II.02/06-EC-II/84 dated 28.01.2006 requested the Superintendent of Police, District Baramulla, to apprehend the petitioner and handover him to the Additional DIGP, GC, Srinagar. It is submitted that neither the petitioner reported back in the Unit nor the civil Police was able to arrest him and handover him to the respondents. The Court of Inquiry was thus ordered against the petitioner, which led to the declaration of the petitioner as 'deserter' from the force vide Office Order No. 1.X.24/06-EC-II/84 dated 30.07.2006. The respondents also claim that special representative from the Unit, namely, HC/GD Mushtaq Ahmad was sent to the home address of the petitioner on 02.08.2006 to ascertain the actual facts for the petitioner's over staying leave and desertion, where it was revealed that petitioner was in good physical and mental health and had been running a garment shop in his home town. This fact was also got certified from the Naib Sarpanch of his village. The statement of the Naib Sarpanch, recorded by HC/GD Mushtaq Ahmad clearly substantiates that petitioner was hale and hearty and was engaged in the business of a garment shop and the plea of the petitioner, that he was undergoing some treatment at Government Psychiatric Diseases Hospital, Srinagar, was false. It is further submitted that the record in the shape of prescriptions produced by the petitioner also indicates that he was only an outdoor patient and never remained admitted in the hospital. To conclude, the respondents, in their reply affidavit, have taken a specific plea that petitioner, if at all was suffering from any ailment, he could have reported to any of the hospitals of CRPF and undertaken the treatment. It is a case of willful desertion by the petitioner from the services of the respondents. The petitioner, being a member of disciplinary force, cannot be permitted to leave the services without any leave and remain incommunicado for years together. The respondents were thus left with no option to initiate ex-parte departmental proceedings and in impose the major punishment of dismissal from service of the petitioner.

5. Having heard petitioner, appearing in person and the learned counsel for the respondents and perusing the record, I am of the view that the petitioner has not

only over stayed his leave with effect from 06.12.2005 but also remained willfully absent from duties thereafter. There is nothing placed on record by the petitioner to indicate that immediately after expiry of his sanctioned leave, he ever applied for extension of leave. The undated letter, purportedly written by the father of the petitioner to respondent No. 3, cannot be taken as an application for extension of leave. Neither the aforesaid application bears any date nor there is any proof brought on record that the same was ever sent to or received by the respondents. The communication aforesaid, allegedly written by the father of the petitioner, is apparently generated to justify the unauthorized absence of the petitioner. The medical record appended with the petition also does not indicate that the petitioner was ever admitted in any Government Hospital for treatment. As is rightly contended by the respondents that the medical record appended by the petitioner with the petition clearly indicated that the petitioner had received some treatment as an outdoor patient. There is no explanation forthcoming from the petitioner as to why he could not report to any of the CRPF Hospitals for treatment. The plea of the petitioner, that he got 40 days earned leave sanctioned because of his medical problem, is belied by record of the respondents. The petitioner had, in fact, applied for earned leave with a view to solve his accommodation problem at home which was allegedly damaged due to an earthquake. This Court cannot disbelieve the stand of the respondents that not only the petitioner was served with several notices sent through registered post to his home address but a special representative, HC/GD Mushtaq Ahmad was also sent to the home address of the petitioner on 02.08.2006 to ascertain the actual facts and where it was revealed that petitioner was not only hale and hearty but was engaged in the business of running a garment shop at his home town.

6. From the perusal of record produced before me by the respondents, it clearly transpires that several communications were issued to the petitioner from time to time to resume his duties and it is on account of his failure to respond that Court of Inquiry was ordered in which the petitioner was declared as 'deserter'. The ex-parte departmental proceedings were conducted as a result whereof the petitioner was dismissed from service.

7. The plea of the petitioner that he was never communicated the dismissal order is also without substance and misconceived. As is apparent from record produced by the respondents, the petitioner never responded to any of the communications of the respondents issued to him from time to time. The order of dismissal too was sent to the petitioner through registered post. The petitioner knew that he has been dismissed from service but filed SWP No. 1093/2013, claiming that petitioner was not being permitted to join back his duties by the respondents. The writ petition was disposed of by this Court, directing the respondents to consider the claim of the petitioner, as projected in the petition. The claim was, accordingly, considered by the respondents and vide Office Order dated 03.08.2013, impugned in this petition as well, a detailed consideration order was passed and the petitioner was intimated that his services have been

dismissed on the ground of his having deserted the disciplinary force.

8. Reliance placed by the petitioner on judgments supra is totally misplaced. It is not a case where the impugned order of dismissal of the petitioner from service has not been communicated to the petitioner. There is ample evidence on record which shows that several notices including the order of dismissal were sent to the petitioner through registered post on his home address, as indicated by him in the records, but it was the petitioner, who was avoiding the same on one pretext or the other. Even the warrant of arrest issued by respondent No.3 for apprehending the petitioner by civil police also failed to yield result. The special messenger, who visited the home town of the petitioner, found the petitioner in good physical and mental health and running a garments shop in his home town. This fact was substantiated by the Naib Sarpanch of the village of the petitioner as well.

9. In view of the foregoing evidence on record, the petitioner cannot be heard to say that before passing the impugned order of dismissal from service, the petitioner was not heard in the matter or that the respondents did not comply with the principles of natural justice.

10. Needless to say that, CRPF, a paramilitary force, is a disciplined force and such conduct of its members cannot be countenanced on any count. The petitioner availed of 40 days earned leave w.e.f. 27.10.2005 to 05.12.2005 and was supposed to report back for duties on 06.12.2005. He did not do so. The plea of the petitioner that he was prevented by some mental disorder he was suffering from to join back his duties, is not supported by any evidence brought on record by the petitioner. The petitioner has failed to cogently explain as to why he could not report to the nearest CRPF Hospital for treatment nor any explanation is forthcoming as to why he himself or his father could not inform the respondents with regard to his ailment and request for extension of his leave. The letter purportedly issued by the father of the petitioner to the respondents is, on the face of it, an afterthought generated document to justify the unauthorized absence, for it does not bear any date nor there is any proof that the same was ever sent to the respondents.

11. For the aforesaid reasons, it is difficult for this Court to accept the plea of the petitioner that the departmental proceedings against him were conducted at his back and that he was not afforded adequate opportunity to represent his case. The petitioner, in the give facts and circumstances, cannot be allowed to hide behind the legal technicalities.

12. In view of the foregoing discussion, I find no merit in this petition and the same is, accordingly, dismissed.