

(2024) 05 GAU CK 0021

In the Gauhati High Court

Case No : Writ Petition (C) No. 7845 Of 2015

No. 971420374 Constable/GD Sri Santosh Kumar

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 13-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 34, 136, 226
Central Reserve Police Force Rules, 1955 — Rule 27, 29, 31
Central Reserve Police Force Act, 1949 — Section 11(1)
General Clauses Act, 1897 — Section 27

Citation : (2024) 05 GAU CK 0021

Hon'ble Judges : Soumitra Saikia, J

Bench : Single Bench

Advocate : B.D. Das, R Deka, R.K.D. Choudhury

Final Decision : Disposed Of

Judgement

1. The writ petitioner, who was appointed as a Constable/GD in Central Reserve Police Force (CRPF) on 01.01.1997 bearing No. 971420374, is before this Court challenging his dismissal from service pursuant to orders passed by the disciplinary authority following an enquiry instituted against the petitioner. At the relevant point in time, the petitioner was posted at 36 Battalion, CRPF, Khonsa in the district of Tirap, Arunachal Pradesh. With effect from 10.01.2011, the petitioner applied for and was granted 15 days casual leave for arranging his sister's marriage in his native place in the district of Saharsa in Bihar. Because of some domestic problems which arose during his period of casual leave, he applied for sanction of further 45 days of earned leave. The Commandant of 36 Battalion, CRPF, Khonsa in the district of Tirap, Arunachal Pradesh sanctioned 60 days earned leave and cancelled the earlier 15 days casual leave. According to the petitioner that although his leave expired on 10.03.2011 and he was required to resume duties from 11.03.2011, but because of illness that he had suffered during the first week of March, 2011, he could not proceed to his battalion to resume his duties.

2. The pleaded case of the petitioner is that he was under treatment from 04.03.2011 to 12.08.2011 and due to further illness suffered, the petitioner was again under medical treatment upto 22.03.2012. According to the petitioner, he intimated the department about his illness and treatment and his inability to join due to the illness by sending letters through speed post. After recovery from his illness, as per the petitioner, he reported for resumption of his duties on 03.04.2012 (AN) and submitted his application on 04.04.2012 along with all medical certificates, cash memos of medicines, pathological reports etc before the Commandant, 36th Battalion, CRPF, Khonsa, in the district of Tirap, Arunachal Pradesh. However, the petitioner was informed that a departmental enquiry contemplated against the petitioner is in the advance stage and hence his application for resumption of duty was refused to be accepted. Subsequently, the petitioner came to be aware that he was declared a deserter with effect from 11.03.2011 vide office Order No. 1-10-16/2011-36-Estt-2 dated 04.10.2011. It is stated by the petitioner that notwithstanding the communications sent by the petitioner indicating his illness, the petitioner was declared a deserter by the said order. Further the disciplinary proceedings which were initiated against the petitioner was conducted by the Enquiry Officer ex-parte and the explanations forwarded by the petitioner through his communications were not taken note of that the petitioner was suffering from illness and was undergoing treatment. The entire enquiry was conducted ex-parte and no opportunity was granted to the petitioner to examine, cross-examine the witnesses. The enquiry report was duly submitted before the Commandant, 36 Battalion, CRPF, Khonsa in the district of Tirap, Arunachal Pradesh. Thereafter, by order dated 16.04.2011 vide Office Order No. P-8-1/2012-36-Estt-2, the Disciplinary Authority namely the Commandant, 36 Battalion, CRPF, Khonsa in the district of Tirap, Arunachal Pradesh imposed the punishment of removal from service to the petitioner on the basis of the ex-parte findings in the enquiry report.

3. The petitioner being aggrieved by the order of removal dated 16.04.2012 preferred an appeal before the Deputy Inspector General of Police, CRPF, Khatkhatti. The said appeal, however, came to be dismissed vide order No. R-XIII.7/2012-DA-2 dated 12.12.2012 upholding the enquiry report as well as the order of dismissal passed by the Commandant, 36 Battalion, CRPF, Khonsa in the district of Tirap, Arunachal Pradesh.

4. The petitioner also preferred a revision petition on 04.01.2013 against the appellate order dated 12.12.2012 before the Inspector General of Police, N.E. Sector, CRPF under Rule 29 of the CRPF Rules. The said revision petition also came to be dismissed by order No. R-XIII-04/2012-NES-Estt-3 dated 24.05.2013. Being aggrieved, the petitioner has filed this writ petition assailing the dismissal order, the Appellate as well as the Revisional order.

5. The respondents on the other hand stated that the petitioner failed to resume his duties inspite of extensions being granted and opportunities being given. The medical documents which were sent by the petitioner by his communications

were placed before the company Medical Officer by the Enquiry Officer calling for a report. The competent Medical Officer gave a report that the petitioner appeared to have been suffering from jaundice but no conservative treatment was prescribed and he did not require hospitalization even for a single day and therefore, such long periods of rest stated to have been advised by the treating doctor, in the opinion of the Company Medical Officer was not justified and the petitioner ought to have reported for resumption of his duties. The respondents further stated that the petitioner was declared as deserter by the Court of enquiry instituted by the Commandant vide order No. 1-10-16/2011-36-Estt-2 dated 04.10.2011. The show cause notice was sent to the petitioner at his address in his native place. However, no reply was received from the petitioner in respect to the memo of charges. Several opportunities were granted intimating the petitioner that he should appear and participate in the enquiry proceedings. However, petitioner failed to appear and continued to be on unauthorized leave. Having no alternative, the respondents proceeded with the enquiry ex-parte and the enquiry officer concluded that the charges against the writ petitioner stood proved. It is further stated that the disciplinary authority as well as the appellant and revisional authority upon examining the entire facts and circumstances of the case and upon due application of their mind, accepted the findings of the enquiry and confirmed the order of dismissal passed by the Disciplinary authority. In view of the several opportunities being granted to the petitioner to resume his duties and also to participate in the disciplinary proceedings, the departmental authorities were left with no alternative but to proceed with the enquiry ex-parte and therefore there is no infirmity in the order which was passed.

6. The learned Senior counsel appearing for the petitioner submits that the entire proceedings instituted against the petitioner was motivated with the sole intention of deliberately declaring the petitioner's guilty of misconduct and terminating him from service. The petitioner was suffering from illness and was undergoing treatment and these facts are not disputed by the respondent authorities. The necessary documents along with medical prescriptions were all communicated by the petitioner from time to time informing the competent authority that he was suffering from illness and therefore, could not resume his duties. The learned Senior counsel further submits that since the petitioner had reported for his duties but was not permitted to join, there is no question of declaring the petitioner to be a deserter.

7. The learned Senior counsel placing reliance on the Judgment of the Apex Court in *Krushnakant B. Parmar Vs. Union of India & Anr.*, reported in (2012) 3 SCC 178 strenuously submits that where absence is not willful, the same will not amount to misconduct leading to imposition of major penalty like dismissal from service of any employee. The learned Senior counsel submits that where the petitioner had repeatedly furnished information regarding his illness and treatment, it is evident that his absence from service was not willful and deliberate. This aspect of the matter was not taken into consideration by the

enquiry officer and therefore, the conclusions arrived at by the enquiry officer is not justified as they have same are contrary to a law declared by the Apex Court. He has also referred to a Judgment of the Apex Court rendered in State of Uttaranchal & Ors Vs. Kharak Singh, reported in (2008) 8 SCC 236. The learned Senior counsel submits that the very fact that the enquiry proceeded ex-parte against the petitioner is opposed to the basic principles of natural justice as the petitioner was never heard. When the petitioner proceeded for resumption of his duties, the authorities ought to have allowed him to resume his duties and the enquiry proceedings ought to have conducted in his presence. The charge memo as well as the enquiry report was never received by the petitioner. Under such circumstances, the entire disciplinary proceedings which was conducted ex-parte behind the back of the petitioner, being opposed to the principles of natural justice, is an eye wash and cannot be given legal sanctity on the basis of which a major penalty of dismissal from service was imposed on the petitioner. The learned Senior counsel has also referred to and relied upon Judgment of the Coordinate Bench rendered in Kukheswar Saikia Vs. Union of India and Anr, reported in (2003) 3 GLR 1. It is submitted that this Court had earlier held that orders passed by Court of enquires instituted by the Force declaring a person to be deserter cannot be understood to an order for imposition of any penalty. Under Rule 31 of the CRPF Rules, 1955, the Court of enquiry is neither a trial nor any disciplinary proceedings and therefore findings of the Court of enquiry cannot be used in respect of a departmental proceeding conducted under Rule 27 of the CRPF Rules and thereby imposing major penalty on the petitioner. The learned Senior counsel submits that the enquiry being totally contrary to the prescription under the CRPF Rules as well as the Judgments of the Apex Court and this Court, is required to be interfered with and a Writ be issued setting aside the enquiry proceedings and reinstating the petitioner with all backwages.

8. Per contra, the learned Deputy Solicitor General of India, Mr. R.K.D. Choudhury submits that the petitioner was declared a deserter and that order had never been put to challenge in any proceedings and therefore, the fact remains that the petitioner is declared as a deserter by order dated 11.03.2011. It is further submitted that the enquiry had to proceed ex-parte because the petitioner declined to resume his duties and participate in the enquiry proceeding notwithstanding the several opportunities granted to the petitioner and therefore the claim of the petitioner that he did not receive the enquiry report is not a correct statement. The learned DSGI representing the respondents submits that all other communications which were addressed to the home address of the petitioner were duly received and therefore there is no question that the enquiry report and the dismissal order was not received by the petitioner which was also sent by post at his home address. He relies upon the Judgment of the Apex Court in Union of India and Ors. Vs. Ghulam Mohd. Bhat reported in (2005) 13 SCC 228 to submit that where the absence without leave is for a substantial period of time then dismissal from service has been held to be justified by the Apex Court. The learned counsel has also referred to a Judgment of the Division Bench of this

Court rendered in Union of India and Ors, Vs. Irfan Ali (Md.), reported in 2012 (1) GLT 542 wherein under similar circumstances a Division Bench of this Court refused to interfere with the punishment of dismissal imposed on the petitioner. The learned counsel for the respondents submits that in view of the repeated intimations issued to the petitioner to resume his duties and failure of the petitioner to resume his duties and being absent without authority for more than 300 days and without proper reasons, the departmental authority had no other alternative but to proceed with the departmental proceedings as had been done and consequently the imposition of major penalty dismissal from service does not warrant interference by a writ Court in Judicial Review.

9. The learned counsel for the parties have been heard. Pleadings on record have been carefully perused. The records of the proceedings both in original and translated copies are placed before the Court by the respondent counsel. The Judgments pressed in the bar have also been carefully noted.

10. There is no dispute that the petitioner was initially granted casual leave for 15 days w.e.f 10.01.2011. Upon his request for extension of leave, the Commandant, 36 Battalion CRPF, Khonsa in the District of Tirap, Arunachal Pradesh sanctioned 60 days earned leave and cancelled the earlier 15 days casual leave. According to the petitioner, he had domestic problems and subsequently fell ill and was in need of periodic medical treatment and checkup and therefore upon completion of the sanctioned leave, he was not in a position to report at the Battalion for resumption of his duties. What is also not disputed are that the petitioner had periodically sent medical documents in support of his contentions that he had undergone medical treatment and was required to be at bed rest as per medical advice. What is however disputed by the petitioner are the receipt of the orders declaring the petitioner to be a deserter by Court of enquiry as well as the enquiry report stated to have been furnished to the petitioner. Because the petitioner was absent without due sanction from the appropriate authority, a show-cause notice with the following charges was issued to the petitioner:

“ITEM-ONE

That, the Force No. 971420347/F/36 CRPF Battalion Constable/GD Santosh Kumar working in the capacity of Constable/GD has done the act of insubordination/laxity in performing the duty/negligence of duty and other misconduct/malpractice under section 11 (1) of CRPF Act, 1949. The personal had gone on a sanctioned Earned leave for 60 days w.e.f. 10.01.2011 to 10.03.2011. Accordingly, he was supposed to report for duty on 10.03.2011 but he did not report on the stipulated time and he has been absent since 04.03.2011 without any authorized permission which is against the orderliness and discipline of the force.

ITEM-ONE That, the Force No. 971420374/F/36 CRPF Battalion Constable/GD Santosh Kumar F/36 battalion CRPF, working in the capacity of Constable/GD

being the member of the force, has done the act of insubordination/laxity in performing the duty/negligence of duty and other misconduct/malpractice under section 11(1) of CRPF Act 1949 under which Company's vide letter No. L 2-6/2011-F/36 dated 20.07.2011, issued by this officer, the personnel had been directed /ordered to report for duty immediately but he has neglected the direction/order and has been remained absent willfully which is a punishable offence of indiscipline."

11. The show-cause notice was accompanied by a detailed description in support of the charges as well as the list of documents and the list of witnesses sought to be relied upon during the enquiry. Since the petitioner did not resume his duties and participate in the enquiry instituted, the department proceeded with the departmental enquiry ex-parte. The enquiry officer submitted the enquiry report holding both the charges against the petitioner to be proved. The said enquiry report was duly considered by the disciplinary authority and by order dated 16.04.2012, the disciplinary authority namely the Commandant, 36 Battalion, CRPF, Khonsa in the district of Tirap, Arunachal Pradesh imposed a major penalty of dismissal from service. When the petitioner subsequently came to resume his duties, he was informed of the disciplinary proceedings conducted and the order of the disciplinary authority imposing the order of dismissal on the basis of the enquiry conducted. He preferred an appeal before the appellate authority namely the Deputy Inspector General of Police, CRPF which came to be dismissed by order dated 12.12.2012 upholding the order passed by the Disciplinary Authority as well as the order of dismissal. The further revision petition filed by the petitioner before the Inspector General of Police in N.E Sector, CRPF also came to be dismissed by order dated 24.05.2013.

12. The fact that the petitioner was suffering from ailments is not disputed by the authorities concerned. The same finds reference in the enquiry report as well as in the orders passed by the higher authorities. However, the claim of the petitioner that because of the ailments that he suffered, he was unable to resume to his duties is disputed and not accepted by the Enquiry Officer as well as the Disciplinary Authority in view of the opinion given by the Group Medical Officer on the documents furnished by the petitioner. According to the opinion rendered, although from the medical prescription, it is evident that the petitioner was suffering from jaundice. However, as the petitioner was never hospitalized even for a single day, the treating Doctors advise long periods of rest was not agreed to by the Group Medical Officer. It is under such circumstances that the enquiry officer as well as the Disciplinary authority declined to accept the explanation furnished by the petitioner and consequently the major penalty of dismissal from service has been imposed on the petitioner.

13. In so far as the averments made by the petitioner that he did not receive the copies purportedly stated to have been sent by the department in respect of the disciplinary proceedings conducted, besides the burden not being specifically discharged by the petitioner that no such copies were received at his residence

by referring to any relevant records which may be available in the postal department near his residence, the same also cannot be accepted in view of the law laid down by the Apex Court that where notices are served by registered post at the home address, under Section 27 of the General Clauses, it is to be considered that those have been properly served. Reference in this may be made to the Ratio laid down in Harihar Banerji and Others Vs Ramsashi Roy and Others reported in (1918) AIR PC 102 as well as the Judgment of the Apex Court in Income Tax Officer, Etawah Vs Dharam Narain reported in 2018 (13) SCC 499.

14. A writ court is not an appellate forum for deciding the punishments awarded pursuant to disciplinary proceedings. A writ court is only required to examine process of the decision arrived at by the Enquiry Officer, as well as by the disciplinary authority, and whether the procedure prescribed has been duly followed and that the basic requirements of natural justice have been complied with and also whether such enquiry was conducted on the basis of evidences adduced before the Enquiry Officer. These salutary principles have been laid down by the Apex Court in State of Karnataka and Anr. Vs Umesh reported in (2022) 6 SCC 563.

15. These principles culled out by the Apex Court in the case of Deputy General Manager (Appellate Authority) and Others Vs Ajai Kumar Srivastava reported in (2021) 2 SCC 612 reiterates that the limits for judicial review under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed in matters of disciplinary enquiries conducted by departmental or Appellate authorities. The Apex Court in this Judgment after examining the earlier judgments of the Apex Court rendered, reiterated the principles for exercise of judicial review under inter alia Article 226 of the Constitution of India. The Apex Court held that in respect of disciplinary enquiries conducted or alleged misconduct against public servant, the Court is to examine and determine the following:-

"25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine:

- (i) Whether the enquiry was held by the competent authority;
- (ii) Whether rules of natural justice are complied with;
- (iii) Whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion".

16. It was held that strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegations against the delinquent must be established by some evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against a delinquent employee. It is true that mere conjectures or surmises cannot sustain the finding of guilt even in Departmental enquiry proceedings. A Constitutional Court while exercising jurisdiction under Article 226 would not interfere with the findings of fact arrived

at in departmental enquiry proceedings except in a case of malafides or perversity, namely, where there is no evidence to support a finding or where a finding is such that no man reasonable and with objectivity would have arrived at those findings. No interference is called for so long there is some evidence to support the conclusion.

17. In *State of Karnataka and another Vs Umesh* reported in (2022) 6 SCC 563, the principles for exercise of judicial review by Constitutional Court while exercising jurisdiction under Article 226 of the Constitution of India has yet again been reiterated. The Apex Court, while examining the challenges made in respect of findings of the disciplinary authority, held that the court does not act as appellate forum over the findings of a disciplinary authority and does not appreciate evidence on the basis of which findings of misconduct have been arrived at in the course of disciplinary enquiry. The Court in exercise of judicial review must restrict its review to determine whether- i) rules of natural justice have been complied with, ii) findings of misconduct are based on some evidence, iii) statutory rules governing the conduct of disciplinary enquiry were followed, iv) findings of disciplinary authority does not suffer from perversity, v) penalty imposed should not be disproportionate to the proved misconduct.

18. It is only when all or any of these findings are arrived at by a Constitutional court in exercise of judicial review, that it would warrant interference of disciplinary proceedings conducted and as well as consequential orders of penalty imposed on the delinquent personal and any personal.

19. An analysis of the law laid down of the Apex Court clearly reveals that under Judicial Review, it is not open for a writ Court to examine the sufficiency of evidence led in a departmental enquiry. Whether the explanation given by the petitioner in support of his unauthorized absence that he was suffering from the ailments and was advised long period of rest, was incorrectly appreciated by the enquiry officer on the basis of the Group Medical Officer's opinion, is an area which the writ Court is not required to venture into. Under Judicial Review of Departmental Proceedings, a writ Court would ordinarily interfere where the proceedings are not conducted as per the Rules of the provisions of law, opportunity of proper hearing is not granted to the delinquent employee, the officer conducting the enquiry is not authorized under the provisions of law to be appointed as an Enquiry Officer or the findings of the enquiry officer is completely perverse inasmuch as that it is based on no evidence or it has taken into consideration materials which are not at all relevant for the purposes of deciding the issue or has left out materials which are germane for deciding the issue.

20. Upon a careful consideration of the facts and circumstances in the present proceedings, it cannot be said that the disciplinary proceedings in question do not satisfy any or all of the parameters as discussed above. What is also to be noted is the law laid down by the Apex Court in *Krushnakant B. Parmar* (Supra) and *Ghulam Mohd. Bhat* (Supra). While in *Krushnakant B. Parmar* (Supra), the

Apex Court had laid down a law that unauthorized absence in all cases are not to be treated as willful without proper evidence available to that effect, before the enquiry officer in the disciplinary proceedings. While in Ghulam Mohd. Bhat(Supra), the Apex Court declined to interfere with the punishment of dismissal imposed where the unauthorized absence of the delinquent employee was for more than 300 days.

21. Keeping in view the law laid down by the Apex Court in the above Judgments and upon careful consideration of the facts and circumstances of the case, it is seen that the petitioner was absent without leave for a period of more than 300 days i.e. 357 days from the date he was originally required to report for duty. The enquiry officer had conducted the enquiry and had taken note of the grounds cited by the petitioner for the reasons of his absence and it has held that his absence was willful and deliberate.

22. Under such circumstances, if the principles culled out by the Apex Court while considering or during Judicial Review of disciplinary proceedings are to be applied to the facts and circumstances of the present case, it cannot be held that this enquiry proceedings was not conducted as per the procedure prescribed under the CRPF Act and the Rules. It also cannot be held that the proceedings were not conducted by a person competent as such under the provisions of the Act and the Rules. The proceedings were conducted ex-parte as the petitioner did not or could not report for his duties. The question of sufficiency or inadequacy of evidence before the enquiry officer and the manner in which the enquiry officer is required to arrive at a conclusion has been expressly held to be an area which writ Court's are not required to venture into under Judicial Review of disciplinary proceedings unless the same are otherwise contrary to the procedure prescribed as per Rules or the enquiry was conducted in a manner which is completely opposed to the principles of natural justice.

23. The grounds urged on behalf of the petitioner that the enquiry proceedings although conducted ex-parte, it cannot be likely interfered with in the absence of any materials before the Court to suggest that there were evidence in the possession of the petitioner to show that his absence from service after expiry of sanctioned leave was due to compelling reasons was prevented him from resuming his duties. The medical opinion relied upon by the petitioner has not been agreed to by the Group Medical Officer in respect of the long periods of rest stated to have been advised by the treating physician. In other words, in view of the long absence, it does not inspire the Court to arrive at a conclusion that the ex-parte proceedings conducted by the department against the petitioner was violative of any procedure prescribed under the Act and the Rules. The documents and the medical prescriptions etc which were sent by the petitioner were duly considered by the enquiry officer and the enquiry officer returned his findings on the basis of the opinion of the Group Medical Officer. No additional or new materials have been placed before the Court to reveal that the petitioner was incapacitated from resumption of his duties because of his ill-health for such

the long dated period of time.

24. Under such circumstances, this Court is of the considered opinion that the petitioner has not been able to pursue the Court to interfere with the ex-parte disciplinary proceedings conducted by the respondent authorities. However, what is also seen is that the ailment of the illness suffered by the petitioner is not in dispute and the materials thereto were placed before the competent authorities. Although the petitioner is a member of the disciplined Force and in respect of such employees, discipline is an implicit requirement of continuation of services under such force, in the peculiar facts and circumstances in the case, this Court is of the considered view that dismissal from service imposed on the petitioner by the disciplinary authority appears to be harsh. The Court is of the view that any other punishment other than dismissal from service as permissible under the provisions of the Act ought to have been imposed on the petitioner. This view of the Court is arrived on the peculiar facts and circumstances of the case as there is no allegation of mischief or mutiny or falsification of any documents or papers against the petitioner nor are there any such direct or indirect findings arrived at by the Enquiry Officer or by the Disciplinary Authority. The unauthorized absence of the petitioner may make the petitioner unworthy of continuing in a disciplined Force, however, such severance from his employment as deemed proper by the competent authorities need not be only be at the cost of the dismissal order from service.

25. In that view of the matter, this Court having expressed that imposition of dismissal from service is found to be harsh, this Court directs the respondent authorities to revisit the question of imposition of punishment on the petitioner. The authorities will now proceed to impose any other punishment on the petitioner other than dismissal from service as is permissible under the provisions of law. The directions of this Court shall be carried out within a period of 60 days from the date of receipt of a certified copy of this order. This imposition of punishment other than the order of dismissal will be treated to be an order which runs or is granted with effect from the date the order of dismissal was passed by the disciplinary authority namely w.e.f 28.10.2011.

26. Upon such imposition of other punishments, as directed by this Court, in place of dismissal from service, if any financial or service benefits are found to be payable then the same shall be released to the petitioner accordingly.

27. The writ petition is disposed of in terms of the order.

28. Records be returned to the learned counsel for the respondents.