

(1998) 10 OHC CK 0006
In the Orissa High Court
Case No : O.J.C. No. 8656 of 1997

Pareswar Tripathy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-10-1998

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27
Constitution of India, 1950 — Article 14

Citation : (1998) 10 OHC CK 0006

Hon'ble Judges : Susanta Chatterji, J; D.M. Patnaik, J

Bench : Division Bench

Advocate : P.V. Ramdas and P.V.B. Rao, for the Appellant; U.C. Panda, Addl. S.C. (Central), for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—The present writ petition is an illustration of illegality which draws the attention of the Court both with head and heart.

2. The Petitioner was appointed as a Constable in the Central Reserve Police Force on and from 31-10-1987. He worked at different places without any blemish. He was granted leave for 59 days from 14.4.1994 to 11-6.1994. He was to report to duty on 13-6-1994. In fact, he could not join duty on 13.6.1994 but reported to duty on 6-1-1995 after overstaying for 207 days. The Petitioner was treated as a deserter by an order of the authority dated 11.12.1994 with effect from 13-6.1994 for being unauthorized absent from duty. The said letter dated 11-12.1994 was, however, cancelled by the concerned authority by order dated 6-1-1995, on the ground that the Petitioner had reported to duty on 6-1-1995. Thereafter Departmental Proceeding was initiated against the Petitioner by opposite party No. 3 by his order dated 7-1-1995 under the C.R. P.F. Rules, 1955 on the ground that the Petitioner had unauthorized over-stayed the leave for 207 days. The charge framed was as follows:

That the said No. 871262174 Ct/Ft Pareswar Tripathy while functioning as Constable//Ftr in HQ Coy 114 BN, C.R.P.F. at Dett. Tripura committed an offence of misconduct and disobedience in his capacity as a member of the Force u/s 11(1) of C.R. P.F. Act, 1949 and that he failed to rejoin duty on 13-6-1994 after expiry of 59 days EL sanctioned to him from 14-4-1994 to 11-6-1994 with permission to avail 12,6-1994 being Sunday and reported at his own duty on 6.1-1995 at 11.00 hours after overstaying leave for 207 days unauthorized.

3. In response to the show cause, the Petitioner submitted a representation that he had over-stayed on account of his ill-health and produced documentary evidence in support of his stand that it was impossible on part to report to duty on the due date and he was compelled to over-stay the leave. On receipt of the Petitioner's representation dated 26-4-1995 the Disciplinary Authority, opposite party No. 3, by order dated 3-5-1995 passed an order of removal declaring the Petitioner as "Deserter" from force w. e. f.13-6 1994 (FN).

4. Being aggrieved by the said order of opposite party No. 3 (Disciplinary Authority), the Petitioner preferred an appeal before the D. 1. C.P., Special Ranger, C.R.P.F., R.K. Puram, New Delhi, opposite party No. 2. The said appellate authority did not interfere in the order-of the Disciplinary Authority and rejected the appeal finding the same devoid of merit. The appellate order was made in February, 1997. The Petitioner has filed the writ petition on 27-6-1997 before this Court seeking the relief stated earlier.

5. A comprehensive counter affidavit has been filed by the opposite parties controvert the allegations of the Petitioner. It is reiterated that the Petitioner had committed act of misconduct for which the charges were leveled against him. The orders of the authorities are not to be found fault with. The writ Court on examining the decision making process may not interfere in the order of removal.

6. Mr. Ramdas, learned Counsel for the Petitioner, has strongly argued that although there was illegality and irregularity in the enquiry to find the Petitioner guilty of the charges, yet the punishment passed was disproportionate to the charges leveled and the order of removal cannot be sustained in law. He has argued with much force that the Petitioner in his service career never committed any offence of misconduct to disobedience. It is submitted that the Petitioner's wife had sent a letter dated 5-6-1994 to the Commandant 14 BN, C.R.P.F. Ambassa (Tripura) for extension of leave of the Petitioner. An application dated 1-7-1994 was also sent to opposite party No. 3 for extension of leave of the Petitioner. In support of his application for extension of leave the Petitioner had enclosed the Certificate of posting in the address of Commandant 114 C.R.P.F., Ambassa, Tripura. Mr. Ramdas emphasized that in view of the ratio of, earlier decisions of the Apex Court as well as different High Courts the matter needs be sent back to the disciplinary authority to pass a lesser punishment than removal from service.

7. Mr. Ramdas draws attention of the court to Rule 27 of Chapter VI of the

Central Reserve Police Force Rules, 1955. There is various nature of punishment. He has also drawn attention of the Court to Section 10 of the Central Reserve Police Force Act, 1949 and submits that Section 10(m) read with Rule 27 of the Central Reserve Police Force Rules, 1955 indicates, inter alia, that in a case absence without leave or unauthorized absence does not warrant measure punishment like dismissal or removal from service, but instead there is provision for passing lesser punishment and such an offence is considered as less heinous as per statutory indication of Section 10 of the Act itself.

8. In support of his contention Mr. Ramdas has relied on a decision of the Apex Court reported in AIR 1992 S.C. 417 *Ex. Naik Sardar Singh v. Union of India and Ors.* In this decision the Apex Court has referred to an English decision reported in (1984) 3 All E. Rule 935 *Council of Civil Service Unions v. Minister for the Civil Service* besides A.I. Rule 1987 S.C. 2386 *Ranjit Thakur v. Union of India* and A.I. Rule 1983 S.C. 454 *Bhagat Ram v. State of Himachal Pradesh*. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, it has been held:

The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be as disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. "The doctrine of proportionality, I as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.

In A.I. Rule 1983 S.C. 454 (*supra*) it has been observed:

It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

9. In A.I. Rule 1992 S.C.-417 (*supra*) the matter was sent back to the Court Martial as the Petitioner Naik Sardar Singh had carried certain more bottles of Rum from his Unit Canteen to celebrate the marriage of his brother-in-law where there was prohibition to carry such quantity of Rum. There was observation that the removal from service was disproportionate and the matter should be considered accordingly.

10. Another decision has been brought to our notice as reported in A.I. Rule 1996 S.C. 484 B.C. *Chaturvedi v. Union of India and Ors.* It has been observed:

Disciplinary authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and

impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary / appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

11. Mr. Panda, learned Addl. Standing Counsel for the Union of India vehemently opposed the argument of Mr. Ramdas. It has been stated that the Petitioner absented himself for 207 days and in this regard no sympathy of the Court can be drawn to grant any relief. There was no irregularity, or illegality in the enquiry conducted. The order of removal was just and the same has also not been interfered by the appellate authority.

12. We have considered the submissions of Mr. Ramdas for the Petitioner and Mr. Panda for the opposite parties at length. We have perused the materials on record. We have considered the ratio of the decisions as referred to and relied on by the Petitioner. Precisely" we find that the Petitioner was ill. He was granted Earned Leave for 59 days. He overstayed the leave for 207 days. There is reference that due to illness of the Petitioner he should not join on 13-6-1994 and instead reported to duty on 6-1-1995. It is placed on record" that the Petitioner"s wife had sent repeated applications intimating the illness of her husband and the letters were sent Under Certificate Posting. If the intimation was given time to time, there was no lack of bona fide on the part of the Petitioner with regard to his illness. We appreciate the Submission of Mr. Ramdas that the Petitioner was physically unable to attend his duties. His past records do "not indicate as to insincerity in discharging his duty at any point of time. If the illness is not disputed and bona fide of the Petitioner is hot in doubt, then absence for 207 days although unauthorized may not warrant the punishment of removal from service. Section.10(m) of the C.R.P.F. Act, 1949 provides for lesser punishment on account of unauthorized absence. To the case at hand, both Section 10 and Rule 27 can be referred and the Petitioner can legitimately ask for relief. The Court"s conscience is shocked to see that a bona fide Constable loses the job for his absence from duty on medical ground. It is true that regarding the quantum of punishment this Court may not substitute by passing the order of punishment as..the case deserves, but this Court can hold that the ultimate punishment of removal from service is not warranted. As life includes livelihood, the matter should be reconsidered by the disciplinary authority once again and any other penalty be inflicted except the punishment of removal from service.

13. For the foregoing reasons, we allow the writ petition; quash the order of punishment meted out to the Petitioner as to removal from service. The matter is sent back to the Disciplinary authority. We observe that notwithstanding the order of the appellate authority or the impugned, order of punishment the matter should be considered by the Disciplinary Authority and lesser punishment be awarded to the Petitioner as the law permits other than removal from service and

the Petitioner be reinstated in service with such benefits as admissible in law within a period of four months of communication of the writ. The Disciplinary Authority will make all endeavors to conclude the matter within the time frame as above. No costs.

D.M. Patnaik, J.

I agree.

Writ petition allowed.