

(2009) 11 GAU CK 0017

In the Gauhati High Court

Case No : Writ Appeal No. 80 of 2008 in WP (C) No. 3263 of 2005

Prabhakar Goswami

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27

Citation : (2010) 5 GLR 121 : (2010) 2 GLT 55

Hon'ble Judges : C.R. Sharma, J; Amitava Roy, J

Bench : Division Bench

Advocate : T.J. Mahanta, for the Appellant; N. Bora, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The subject matter of challenge is the judgment and order dated 19.6.2007 passed in WP(C) No. 3263/2005 dismissing the same.

2. The assailment in the writ proceeding was laid by the appellant herein, challenging his removal from service as a disciplinary measure.

3. We have heard Mr. T.J. Mahanta, learned Counsel for the appellant and Mr. N. Bora, learned Central Government Standing Counsel for the respondents.

The appellant/writ petitioner's version, in short, is that he had joined the Central Reserve Police Force (Force) as Constable (General Duty) on 20.3.1987 and had been rendering his services without any blemish. As a recognition of his Satisfactory performance, he was inducted on deputation in the contingent of "National Security Guards" (NSG) wherein he discharged his responsibilities to the best of his capabilities. On his reversion to the parent department after his deputation term, he on his request was granted leave for 21 days with effect from 23.10.2002 to 12.11.2002. He, while availing the leave, however, fell sick and had to take treatment at the Gauhati Medical College Hospital. His ailment was diagnosed to be "Intestinal Tuberculosis". After intensive treatment, which

included complete rest, he reported back for duty on 26.5.2003. He was allowed to join, but thereafter was served with a memorandum of charges dated 3.10.2003 by the Commandant, 49 Battalion, CRPF initiating a disciplinary proceeding against him under the Rule 27 of the Central Reserve Police Force, Rules, 1955 (Rules) on the ground of misconduct for having overstayed the leave without any valid reason or permission from the competent authority.

After the appointment of the Inquiry Officer, the proceeding was conducted. According to the petitioner, however, he continued to be on duty and was required to present himself before the Inquiry Officer every day and sign on the inquiry proceedings under duress. He has alleged that though several witnesses were examined and documents exhibited, those were behind his back and not only was he not allowed to be present in the proceedings, he was also not afforded any opportunity of cross-examining the witnesses or scrutinizing the documents. Thereafter, though the inquiry report was submitted on 23.3.2004 he was not furnished with a copy thereof. He has alleged that instead he was called to the office of the Inquiry Officer and forced to sign on the said report without being apprised of the contents thereof. The petitioner, however, admitted receipt of the letter dated 29.4.2004 purportedly enclosing the said enquiry report for his reply in defence. Eventually, by the order dated 1.5.2004 of the Commandant, 49 Bn. CRPF he was removed from service.

4. The respondents in their affidavit, while authenticating the validity of the departmental proceeding and affirming the observance of the procedure prescribed by Rule 27 of the Rules have asserted that the appellant-writ petitioner while availing his leave did not inform the authority concerned about his illness and treatment. Moreover, on a scrutiny of the necessary medical documents pertaining to his treatment, his illness was diagnosed to be not so serious, so as to disable him to report for duty. They, in categorical terms have stated that the appellant-writ petitioner was allowed to participate in the departmental proceedings and was amongst others afforded opportunity to examine the witnesses. A copy of the statements made by the witnesses and signed by him was handed over to him by the Inquiry Officer on each occasion. The allegation of obtaining his signature forcibly on the documents of the records of the disciplinary proceeding has been denied. The respondents have pleaded that not only was the appellant/writ petitioner furnished a copy of the Inquiry Report and afforded an opportunity to represent against the same, he was also personally heard by the disciplinary authority before imposition of the penalty. According to the respondents an expert opinion from the Chief Medical Officer of the unit was also obtained on the medical documents relating to his treatment, which revealed that his absence from duty by overstaying his leave was without any sufficient cause. The respondents have justified the impugned action on the ground that the conduct of the writ petitioner-appellant had the potential of adversely affecting the efficiency and discipline of the Force.

5. Mr. Mahanta, in course of the arguments, however, has limited his submission

only to the penalty imposed. He has fervidly urged that having regard to the blemish free services of the appellant-writ petitioner and the unforeseen circumstances rendering him unable to report for duty in time, the penalty of removal from service is disproportionately excessive and is, thus, liable to be interfered with. He, however, has apprised this Court that the post of constable held by the petitioner is the lowest rank of the service.

6. Mr. Bora while referring to the records of the disciplinary proceeding has argued that having regard to the proved charge, the appellant-writ petitioner, in view of his misconduct has been rightly removed from the service of a disciplined force and, therefore, no interference with the Judgment and order in appeal is called for. The learned Central Government Standing Counsel has maintained that the learned Single Judge having exhaustively examined all the impugnants to the disciplinary proceeding and the penalty on the basis of contemporaneous records, this Court in appeal would not lightly interfere therewith.

7. We have cautiously weighed the pleadings of the parties and the arguments advanced. A plain reading of the impugned Judgment and order unequivocally demonstrates that each and every grievance of the appellant-writ petitioner had been meticulously analysed, vis-a-vis the pleadings available and the official records pertaining to the disciplinary proceeding and thereafter the plea of procedural irregularity in the disciplinary proceeding has been rejected. On an examination of the records pertaining thereto, it has been observed as well that he had been provided with an opportunity of submitting his written statement in defence to the charges, as well as the Inquiry Report. The satisfaction of the writ petitioner-appellant about the inquiry and the report as mentioned in his representation dated 6.5.2004 in response to the letter dated 29.1.2004 has also been recorded. That he in course of his personal hearing had simply requested for being forgiven has also been noticed. The contention on his behalf that having regard to the charge, the penalty of removal could not have been imposed in the face of Sections 10 and 11(1) of the Central Reserve Police Force, Act, 1949 (Act) was also rejected on the reasons as recorded in the Judgment and order assailed herein. The impeachment of the disciplinary proceeding in the above premise has also been negated referring to Rule, 27 of the Rules. The learned Single Judge, in particular has placed on record the admission of the charge by the appellant-writ petitioner.

Though, in view of the limited submission made before us, the above narration was not strictly called for, this factual account is with a view to attest the findings recorded by the learned Single Judge on verification by us of the original records of the disciplinary proceeding placed by the learned Central Government Standing Counsel. Not only the Inquiry Report endorses the scrutiny of the medical documents produced by the appellant-writ petitioner in course of the disciplinary proceeding and the medical opinion against the necessity of his absence from duty, therefor, he in categorical terms in his letter dated 6.5.2004 had expressed his satisfaction on the disciplinary proceeding held. He was also

heard in person by the disciplinary authority on 15.5.2005 in course whereof he did question the validity of the disciplinary proceeding. We are, therefore, of the unhesitant opinion that the impugned judgment and order does not call for any interference.

8. We have been told that the appellant-writ petitioner is presently aged about 43 years and that he has a family to maintain. It is also submitted on his behalf that his service career is otherwise free from any such failing on his part.

9. It is a trite law that this Court in exercise of its power of judicial review ought to be restrained in interfering with any order imposing penalty as a disciplinary measure, more particularly, if the person concerned is a member of a disciplined force. The respondent authorities after balancing all relevant considerations, as the best and ultimate judge of the discipline and probity of the Force has considered it expedient to impose the penalty of removal from service. The charge as alluded hereinabove stands proved. Admittedly, not even any endeavour had been made by the appellant-writ petitioner to inform the concerned respondent authority of his illness, and inability to attend the duty in time. He also failed to establish that he was for his illness rendered unable to do so during the entire period of his overstay. Being a member of the Force and having regard to the nature of the ailment from which he claim to have suffering at the relevant point of time, we cannot persuade ourselves to conclude that his conduct was not irresponsible and blame worthy. As a member of the Force in our estimate he ought to have been more circumspect and sensitive to his responsibilities. The materials on record do not present any extenuating circumstance to positively respond to his plea of disproportionate penalty. We are therefore, not inclined to lend our concurrence thereto.

On a totality of the considerations as above, we find no merit in the writ appeal, which is accordingly dismissed. No costs.