

(2015) 01 AHC CK 0032
In the Allahabad High Court
Case No : Service Single No. 1106 of 2011

Praveen Kumar Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 10(m), 11, 11(1), 18
Constitution of India, 1950 — Article 226

Citation : (2015) 1 ADJ 242 : (2015) 2 ESC 870 : (2015) 145 FLR 598 : (2015) 1 LLN 312 : (2015) 2 UPLBEC 1252 : (2015) 1 UPLBEC 741

Hon'ble Judges : Devendra Kumar Upadhyaya, J.

Bench : Single Bench

Advocate : Pradeep Kumar Tripathi, Amit Bose and Purusottam Awasthi, for the Appellant; P.L. Nigam and Prem Lata Nigam, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Devendra Kumar Upadhyaya, J.—Heard Shri Amit Bose, learned counsel for the petitioner and Shri Neerav Chitrawanshi, learned counsel for the respondents. These proceedings under Article 226 of the Constitution of India have been instituted by the petitioner, who was appointed as Constable (Bigular) in the Central Reserve Police Force (hereinafter referred to as "CRPF") assailing the order dated 16.11.2009, whereby he has been inflicted with the punishment of removal from service. The petitioner has also challenged the orders dated 4.3.2010 and 24.11.2010 passed respectively by the appellate and revisional authorities, whereby the appeal and revision preferred by the petitioner against the punishment order dated 16.11.2009 have also been rejected.

2. As submitted by the learned counsel for the petitioner, the petitioner was appointed in the Central Reserve Police Force on 16.9.2003. The petitioner applied for Earned Leave which was granted to him for the period commencing on 12.3.2008 and ending on 10.4.2008. Accordingly, the petitioner proceeded on leave, however, even after expiry of the period of the aforesaid sanctioned leave

on 10.4.2008, the petitioner did not report on duty.

3. The Commandant-85th Battalion passed an order on 23.5.2009 declaring the petitioner a deserter from the Force in terms of the provisions contained in Rule 31(c) of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as the CRPF Rules), which have been framed by the Central Government in exercise of its power vested in it under Section 18 of the Central Reserve Police Force Act, 1949 (hereinafter after referred to as the CRPF Act").

4. The order dated 23.5.2009 declaring the petitioner a deserter from the Force makes a mention that after availing Earned Leave, the petitioner was to report on duty either in the night of 10.4.2008 or on 11.4.2008, however, he did not report on duty and thus had been absent w.e.f. 11.4.2008. The said order also mentions that the Company Commander by means of the letters dated 20.4.2008 and 3.5.2008 directed the petitioner to report on duty at the earliest and further that the office of the Commandant itself, by means of the letter dated 18.4.2008, had directed the petitioner to report on duty. The order further records that since the petitioner did not report on duty and remained absent, a complaint was lodged for issuing arrest warrant against him. Accordingly, the arrest warrant was issued on 23.5.2008 for arresting the petitioner, however, neither was he arrested by the Meerut Police nor did he report on duty on his own. The order dated 23.5.2009 further states that in terms of the provision contained in the Group Centre and Officer Battalion Manual, a Court of Inquiry was ordered by means of the order dated 25.6.2008 to enquire into the reasons of the petitioner's absence from duty. The said Court of Inquiry was conducted by the Court of Inquiry Committee which submitted its report and the Commandant fully agreeing with the opinion expressed by the Court of Inquiry Committee, passed the order declaring the petitioner as a deserter from the Force w.e.f. 11.4.2008. The said order was passed by the Commandant under the provisions contained in Rule 31(c) of the CRPF Rules. While declaring the petitioner as a deserter from the Force, the Commandant further provided that the petitioner shall not cease to belong to the Force and he will still be the member of the Force despite having been declared a deserter. The order further provided that in case the petitioner reports or surrenders, he shall be treated to be guilty of the offence described in Section 10(m) of the CRPF Act and shall also be liable to minor punishment under Section 11(1) of the said Act.

5. After the petitioner was declared a deserter from the Force, a charge-sheet was issued through the memorandum dated 2.6.2009 containing the substance of accusation. The substance of accusation annexed with the charge-sheet, charged the officer with a charge that the petitioner has misconducted himself being member of the Force as after availing the thirty days" Earned Leave from 12.3.2008 to 10.4.2008, the petitioner did not report on duty on due date and thus the petitioner had been absent from duty without any leave or permission granted by the appropriate authority w.e.f. 11.4.2008 which is punishable under Section 11(1) of the CRPF Act and is also against the discipline and the dignity of

the Force.

6. The petitioner appears to have submitted a representation dated 12.6.2009 from his residence stating therein that he had apprised the Commandant of his problem but he did not receive any satisfactory answer and that he attended Guru Teg Bahadur Hospital, Dilshad Garden, Delhi w.e.f. 3.4.2008 for treatment of stammering and had been furnished the medical certificates to the authorities concerned.

7. The Dy. Commandant was appointed as the Enquiry Officer, who initiated the same and informed the petitioner to be present for preliminary hearing, however, on the date fixed for the said purpose, the petitioner did not appear and thereafter the petitioner was informed that ex parte enquiry shall be held against him. It appears that the petitioner did not participate in the enquiry and the enquiry against him proceeded ex parte. The Enquiry Officer submitted his report dated 8.9.2009, which has been annexed as Annexure No. 15-A to the writ petition. The said enquiry report submitted by the Enquiry Officer is a detailed report which discusses the evidence available on record in detail.

8. The Enquiry Officer on the basis of the enquiry conducted by him, though ex parte, found the petitioner guilty of the charge of absence without leave and overstaying the leave granted to him without any sufficient cause. The enquiry report was sent to the petitioner by means of the letter dated 15.10.2009 through registered post requiring him to make his representation in respect of the enquiry report, however, no representation was submitted by the petitioner against the enquiry report. The Commandant considered the entire matter and while agreeing with the findings recorded by the Enquiry Officer that the charge levelled against the petitioner is proved, finally passed the order of punishment dated 16.11.2009, whereby the petitioner was removed from service w.e.f. 16.11.2009 itself. The petitioner challenged the said order of punishment before the appellate authority, however, the appeal was dismissed. Thereafter the petitioner challenged the order of punishment by way of filing a revision petition before the revisional authority, which too was dismissed.

9. While assailing the impugned order of punishment of removal from service, learned counsel for the petitioner has urged two points; (1) that once the order of desertion from the Force is passed, that, in itself, will amount to removal; in other words, the effect of declaring a member of the Force as deserter is that he is no longer a member of the Force and hence once such a declaration in respect of a member of the Force is made, the order of removal becomes meaningless and (2) that neither the CRPF Act nor the CRPF Rules provide any provision for taking any disciplinary action against a member of the Force, who has been declared to be a deserter.

10. On the other hand, learned counsel representing the respondents has countered the arguments advanced by learned counsel for the petitioner relying upon the provisions contained in Rule 31(c) of the CRPF Rules itself. According to

the learned counsel for the respondents, merely because a member of the Force is declared a deserter, he will not cease to be the member of the Force for the purposes of taking either disciplinary action or any criminal action as permissible under law.

11. I have given my anxious consideration to the arguments advanced by the learned counsel appearing for the respective parties and have also perused the record available on the writ petition.

12. The Central Reserve Police Force has been constituted in terms of the provisions contained in the CRPF Act, 1949. It is one of the prime Para Military Forces in the country engaged in various combatant and non-combatant operations, whenever and where-ever required. The conditions of service of the members of the Force are governed by a parliamentary enactment, namely, Central Reserve Police Force Act, 1949 and the rules framed by the Central Government under Section 18 of the said Act which are known as Central Reserve Police Force Rules, 1955.

13. Section 9 of the CRPF Act provides punishment for "more heinous offences". Section 10 of the Act provides punishment "for less heinous offences". Sub-section (m) of Section 10 of the Act provides that if a member of the Force absents himself without leave, or without sufficient cause over-stays leave granted to him, may be punished with imprisonment for a term which may extend to one year, or with fine which may extend to three months" pay, or with both. Apart from making "more heinous offences" and "less heinous offences" punishable, Section 11 of the CRPF Act provides for minor punishments, according to which, any member of the Force, if found guilty of disobedience, neglect of duty or remissness in the discharge of duty or he is found guilty of other misconducts in his capacity as a member of Force, he may be awarded various punishments described in Section 11 of the Act in addition to or in lieu of suspension or dismissal.

14. Rule 27 of the CRPF Rules contains statutory prescription relating to procedure for award of punishment. Rule 31 of the CRPF Rules deals with desertion and absence without leave. Rule 31(a) of the CRPF Rules provides that if a member of the Force is liable for trial under Section 9(f) or Section 10(m) or for deserting the Force while not on active duty then the Commandant shall assemble a Court of Inquiry consisting of at least one Gazetted Officer and two other members to enquire into the desertion, absence, or overstay of leave of the member of the Force concerned. The Court of Inquiry is required to record evidence and its findings. Sub-rule (c) of Rule 31 provides that the Commandant shall then publish in the Force Order the findings of the Court of Inquiry and the absentee shall be declared a deserter from the Force from the date of his illegal absence.

15. Rule 31 of the CRPF Rules is reads as under:

"31. Desertion and Absence without leave: (a) If a member of the Force who

becomes liable for trial under clause (f) of Section 9 or clause (m) of Section 10 or for deserting the Force while not on active duty under clause (p) of Section 10 read with clause (f) of Section 9, does not return of his own free will or is not apprehended within sixty days of the commencement of the desertion, absence or overstay of leave, then the Commandant shall assemble a Court of Inquiry consisting of at least one Gazetted Officer and two other members who shall be either superior or Subordinate Officers to inquire into the desertion, absence or overstay of leave of the offender and such other matters as may be brought before them.

(b) The Court of Inquiry shall record evidence and its findings. The Court's record shall be admissible in evidence in any subsequent proceedings taken against the absentee.

(c) The Commandant shall then publish in the Force Order the findings of the Court of Inquiry and the absentee shall be declared a deserter from the Force from the date of his illegal absence, but he shall not thereby cease to belong to the Force. This shall, however, not bar to enlisting another man in the place of the deserter."

What is relevant to notice, at this juncture, to consider the arguments raised by learned counsel for the petitioner in its correct perspective, is the phrase "but he shall not thereby cease to belong to Force" occurring in Sub-rule (c) of Rule 31 of the CRPF Rules. After publishing the findings of the Court of Inquiry in the Force Order, the absentee can be declared as a deserter from the Force. If the provisions of Rule 31(c) of the CRPF Rules are read appropriately, it would mean that such a declaration of a member of the Force as a deserter will not result in automatic cessation of his membership of the Force. This is amply clear from a bare reading of the provisions contained in Rule 31(c) of the Rules. In my considered opinion, no other meaning can be assigned to the aforesaid provisions of Rule 31(c) of the Rules and hence, the submission made by the learned counsel for the petitioner that once a member of the force is declared to be a deserter, he ceases to be a member of the Force and thus, any disciplinary proceedings resulting in his removal cannot be undertaken, merits rejection. The provision contained in Rule 31(c) of the Rules are more than explicit, according to which, mere declaration of a member of the Force as a deserter would not resultantly amount to depaneling him from the Force, so as to make him immune from being subjected to disciplinary action or enquiry if he is charged of some misconduct which is otherwise punishable.

16. In view of the aforesaid discussions, the first ground urged by the learned counsel for the petitioner does not have any force.

17. As regards, the second ground canvassed by the learned counsel for the petitioner for assailing the impugned order in this writ petition that neither the Act nor the Rules contain any provision for initiating any disciplinary proceedings against a deserter, the same also loses all significance and force in view of the

discussions made above, wherein it has already been concluded that mere declaration of a member of the Force as deserter would not automatically result in cessation of his membership of the Force. If a person remains member of the Force, it is well within the jurisdiction of the authority concerned to institute and initiate departmental proceedings against such a person and pass appropriate punishment order if he is found guilty of some misconduct. For the discussions made and reasons given above, I do not find any merit in the writ petition, which is, thus, hereby dismissed.

There will be no order as to costs.