
(2010) 04 JH CK 0008
In the Jharkhand High Court

Rinku Kumar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11

Citation : (2010) 127 FLR 264

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.N. Patel, J.—Learned Counsel appearing on behalf of the petitioner, has submitted that the petitioner is challenging an order, passed by the Commandant, 133 B.N CRPF, dated 8th December, 2006 (Annexure-"5" to the memo of petition) as well as an order, passed by the Deputy Inspector General of Police, dated 3rd March, 2009 in a departmental appeal, preferred by the petitioner (order at Annexure-"8" to the memo of petition), whereby, the services of the present petitioner has been brought to an end as the petitioner has remained absent unauthorizedly from 23rd May, 2005 to 8th December, 2006 and against this order, the present petition has been preferred.

2. Learned Counsel for the petitioner has further submitted that the petitioner had taken leave for fifteen days and thereafter, he had fallen sick and was suffering from Jaundice as well as Malaria and several certificates have been annexed with the memo of petition in support thereof at Annexures-T, "2", "3", "3/1" etc. and, therefore, the case of the petitioner may be considered sympathetically. The petitioner could not report the respondents because of the aforesaid sickness. The petitioner was taking medicines regularly and was unable to attend or resume his duties. This aspect of the matter has not been properly appreciated by the Commandant, 133 B.N. CRPF as well as by the Deputy Inspector General of Police and, therefore, the orders at Annexure-5 as well as Annexure-"8" deserves to be quashed and set aside.

3. It is also submitted by the learned Counsel for the petitioner that even otherwise also the punishment is shockingly disproportionate to the nature of misconduct and, therefore, also the order of dismissal deserves to be quashed and set aside.

4. I have heard learned Counsel for the respondents who has mainly submitted that the petitioner was working as a Constable in the Central Reserve Police Force and has remained, on leave unauthorizedly from 23rd May, 2005 till his dismissal i.e. for more than 560 days. On more than one occasion, the petitioner was requested to resume the duties, but, has not resumed the duties. He has also not sent any communication of over-staying to the competent authority, as stated in Paragraph No. 6 of an order at Annexure-"5", passed by the disciplinary authority i.e. by the Commandant 133 BN, C.R.P.F. Though there was no duty vested with the respondents to request the petitioner to resume the duty, but, he was directed on several occasions to report his duties, but, the present petitioner has not responded to any of the communications. He has also failed to remain present before the inquiry officer during the course of the departmental inquiry.

5. It is also submitted by the learned Counsel for the respondents that the petitioner was given charge-sheet for his unauthorized absenteeism, as per C.R.P.F. Act, 1949 to be read with C.R.P.F. Rules, 1955. Thereafter, Inquiry Officer was also appointed and inquiry was also conducted and the respondents have examined several witnesses. Inquiry Officer gave report and the charges have been proved, as per the inquiry report. The petitioner has been punished by the disciplinary authority i.e. by the Commandant 133 BN, CRPF and the petitioner was dismissed from the services with immediate effect i.e. 8th December, 2006, as per order, at Annexure-5 to the memo of petition. Against this order, departmental appeal was preferred and the appeal was also dismissed, after giving adequate opportunity of being heard to the petitioner. Appeal was dismissed by the appellate authority i.e. by the Deputy Inspector General of Police vide order dated 3rd March, 2009 (Annexure-"8" to the memo of petition). Thus, adequate opportunities have been given to the petitioner, inquiry has been conducted, in accordance with law. There is no defect in conducting the departmental inquiry, charges have been proved and so far as the quantum of punishment is concerned, it is submitted by the learned Counsel for the respondents that the petitioner is working as Constable in the Central Reserve Police Force and were evading with the discipline for very long period. The petitioner has remained absent unauthorizedly from 23rd May, 2005 onwards till his dismissal i.e. up to 8th December, 2006, the petitioner was absent and, therefore, looking to the nature of misconduct, the punishment imposed upon by the disciplinary authority and confirmed by the appellate authority can not be labelled as shockingly disproportionate nor it can be said that it is unreasonably excessive punishment, on the contrary, looking to the nature of misconduct, the punishment imposed upon the petitioner is absolutely just and proper and, in consonance with the Central Reserve Police Force Act, 1949 to be read with C.R.P.F. Rules 1955 and, hence, this petition deserves to be dismissed.

6. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, I see no reason to entertain this writ petition mainly for the following facts and reasons.:

(i) It appears that the present petitioner was working as a Constable in the Central Reserve Police Force. Initially, the petitioner took leave for fifteen days and thereafter, the petitioner has remained absent from 23rd May, 2005 onwards for several months and, therefore, a charge-sheet was issued and the charge, levelled against the present petitioner reads as under

ARTICLE-I

That the said No. 035173444 CT (GD) Rinku Kumar Singh while functioning as Constable/GD, in A/133 BN, CRPF committed an act of misconduct and disobedience of orders in his capacity as member of the Force u/s 11(1) of the CRPF Act, 1949 read with Rule 27 of CRPF, Rules 1955 in that he has been willfully absenting himself from duty and obverstaying leave with effect from 23/5/2005(FN) without sufficient reasons/orders of extension of leave from competent authority and he has not yet reported for duty inspite of repeated directions to do so.

After receiving the aforesaid charge-sheet by the petitioner, inquiry officer was appointed.

(ii) It appears that the petitioner has not replied any of the communications, whereby, he was requested to resume his duties, nor he has remained present before the inquiry officer. Thereafter, respondents have examined their witnesses and the charge, levelled against the present petitioner has been proved, as per the inquiry report. Inquiry report was given vide order dated 24th April, 2006. Copy of this report was also sent: to the petitioner-delinquent vide Registered post AD letter.

(iii) It appears that thereafter also no response was given by the present petitioner to the respondents and ultimately punishment of dismissal was imposed upon the petitioner by the disciplinary authority order dated 8th December, 2006 by the Commandant 133 BN, CRPF (Annexure-"5" to the memo of petition), the petitioner was dismissed from the services with immediate effect i.e. with effect from 8th December, 2006.

(iv) It appears that the petitioner is now raising a ground of sickness of so-called Malaria and so-called Jaundice. This contention is not accepted mainly for the reason that never ground of sickness was pleaded before the respondents in any of the communications. It has been observed in Paragraph No. 6 by the disciplinary authority while passing the order of dismissal at Annexure-"5" which reads as under

I have carefully examined the DE proceedings, reports of the inquiry officer, statements of witnesses and documentary evidences. On the basis of material available on record. No. 035173444 CT (GD) Rinku Kumar Singh was granted 15

days C/L w.e.f. 4/5/05 to 22/5/05. He was required to report at T/C Dharmanagar on 23/5/05 (FN) but he failed to do so. He also failed in communicating the reason for overstaying leave to the competent authority. He was directed on several occasions to report for his duty but he did not respond to any of the communications. He also failed to appear before EO during course of D.E. to defend his charge. All prosecution witnesses and exhibits have clearly indicated overstaying on part of No. 03513444 CT (GD) Rinku Kumar Singh without any justifiable reason. The enquiry has been conducted as per the laid down procedures and CT/GD Rinku Kumar Singh has been given all reasonable opportunities to meet the ends of natural justice and to put up his defence but the said CT/GD neither presented himself to the E.O. nor did he present himself to the disciplinary authority or make any communication and still continues to absent himself from duty unauthorizedly and willfully. As such I conclude that he is not interested in continuing service of C.R.P.F. The manner, in which the said CT/GD has conducted himself so far renders him unsuitable for retention in the service of the Force.

(Emphasis supplied)

(v) In view of the aforesaid facts, never there was any communication of so-called sickness by the petitioner to the respondents and, therefore, the contention of sickness raised by the petitioner is not accepted by this Court and rightly the same has also not been accepted by the respondents. Against the order of disciplinary authority, the petitioner had preferred an appeal and the appeal was heard and was dismissed by the Deputy Inspector General of Police, vide order dated 3rd March, 2009, Annexure-"8" to memo of petition.

(vi) Thus, it appears that there is no procedural defect in holding inquiry and in imposing the punishment upon the present petitioner. Enough and adequate opportunities were given to the present petitioner, but, never the petitioner has replied the charges nor has remained present before the Inquiry Officer nor he has examined any witnesses in his behalf to prove the so-called Jaundice and so-called Malaria.

(vii) In view of these facts, I see no reason to entertain this writ petition. So far as the quantum of punishment is concerned, the petitioner was working as a Constable in the Central Reserve Police Force and persons who are working in the Police Force are wedded with the discipline. Long absenteeism i.e. 564 days and that too without any communication on the part of the petitioner though there are several requests from the respondents to the petitioner to resume the duties and, therefore, the punishment of the dismissal imposed upon the petitioner, neither be said to be shockingly disproportionate punishment nor it can be labelled as unreasonably excessive punishment, on the contrary, the quantum of punishment is in consonance with the nature of misconduct, committed by the present petitioner.

7. As a cumulative effect of the aforesaid facts and reasons, there is no

substance in the writ petition. Hence, the same is hereby, dismissed.