
(2008) 07 PAT CK 0023
In the Patna High Court

Santosh Kumar

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

General Clauses Act, 1897 — Section 27

Citation : (2008) 4 PLJR 208

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioner and the counsel for the Union of India.

2. Petitioner at the relevant time served as Sepoy/GD, Force No. 981280059 with the 114 Battalion of the CRPF. He filed this writ application on 30.6.2005 praying, inter alia, to direct the authorities of the CRPF, including the Commandant of 114 Battalion to accept his joining which was not being accepted and for such relief, he had already represented before the Deputy Inspector General and the Inspector General, vide his representations dated 15.4.2005 and 25.4.2005, as contained in Annexure-1 and 1/A to this application, but the representations were not being considered. By filing supplementary affidavit dated 21.4.2006 in the office of this Court on 15.5.2007, copy whereof was served on the office of the learned Assistant Solicitor General of India on 17.8.2006, as is evident from the receipt appended with the said supplementary affidavit, petitioner further submitted that he was granted 60 days earned leave on 11.12.2004 for the period between 13.12.2004 to 10.2.2005 by the Officer Commanding, 114 Battalion with further direction to report at the transit camp, Jammu on 10.2.2005 by the time of evening roll call. In compliance of the aforesaid instructions, petitioner having availed the leave, reported his joining at the transit camp, Jammu on 11.2.2005 when there was heavy snowfall on the Jammu-Srinagar highway. Petitioner was, accordingly, detained at the transit camp, Jammu until 14.2.2005, whereafter he was again allowed 15 days earned

leave from 15.2.2005 to 1.3.2005 since the weather conditions in the area did not improve and there was no likelihood of the road being opened for traffic so as to enable the petitioner and others to move towards the assigned place of duty. In compliance of the direction to report for duty on 1.3.2005, he boarded Archana Express for reaching Jammu on 1.3.2005, but on account of obstruction on the railway track beyond Ambala, said train reached Jammu on 3.3.2005 whereafter he reported at the transit camp, Jammu and remained in the transit camp, Jammu till 10.3.2005 on account of the continued inclement weather when he was again allowed 20 days earned leave from 11.3.2005 to 30.3.2005. On 31.3.2005, he again reported at the transit camp, Jammu and remained there for the night. The fact that petitioner was allowed earned leave for the period 13.12.2004 to 10.2.2005 is evident from the memo of the Commanding Officer dated 11.12.2004, which is appended as Annexure-3 to the supplementary affidavit. Further fact that the petitioner was again allowed further earned leave for the period 15.2.2005 to 1.3.2005 and 11.3.2005 to 30.3.2005, is evident from endorsement made by the officers present at the transit camp, Jammu on the reverse of the memo of the Commanding Officer dated 11.12.2004, Annexure-3. Petitioner was informed by the Inspector present in the transit camp, Jammu that the Battalion has been moved from Srinagar in J & K to Tura in the State of Meghalaya via Guwahati. Petitioner, accordingly, reached Guwahati by train along with other Jawans of the Battalion on 4.3.2005. The Dy.S.P (O.C.) and Chief Havaldar Major also accompanied him and other Jawans. From Guwahati, the Battalion was to move to Tura by road, but petitioner was prevented from boarding the vehicle for going to Tura and was left at Guwahati Railway Station where he stayed on the platform on 4.3.2005 after purchasing platform ticket and later came back to Patna and filed representations dated 15.4.2005 and 25.4.2005, Annexures-1 and 1/A to this application, but the representations were also not considered then he filed the present writ application.

3. During the pendency of this writ application, petitioner was served with the memo of charge dated 28.11.2005 issued under the signature of the Commandant, 114 Battalion alleging that petitioner remained under unauthorized absence after expiry of the leave with effect from 11.2.2005 and is required to be proceeded against in terms of the provisions contained in Sub-section (1) of Section 11 of the CRPF Act, 1949 and the Rules framed thereunder. Petitioner placed the said memo of charge and other documents as Annexure-2 to the aforesaid supplementary affidavit. He also placed on record the journey ticket from Jammu to Guwahati, platform ticket of Guwahati Railway Station and other documents to establish that he has been in attendance at the Jammu Transit camp on 11.2.2005 as also on subsequent dates until he moved for Guwahati by train on way to Tura along with other Jawans of the Battalion. He also placed on record the representation addressed to the Commandant, 114 Battalion dated 27.12.2005, Annexure-5 after receipt of the memo of charge dated 28.11.2005 giving graphic description of the events in support of the fact

that he has been reporting in the transit camp at Jammu with effect 11.2.2005 and again requested the authorities to accept his joining and thereafter to proceed in accordance with law.

4. The authorities have filed two counter affidavits in the office of this Court on 30.4.2008 duly affirmed by the Additional Deputy Inspector General (Administration), Bihar Sector, CRPF on 13.12.2007 and on 17.12.2007, perusal of the counter affidavit affirmed on 13.12.2007 indicates that petitioner has been proceeded against ex parte for his failure to join the Battalion on 11.2.2005 and in the ex parte proceeding he has been held guilty of the charge that he failed to join the Battalion on 11.2.2005 and has been dismissed from service under order dated 1.12.2006, but the dismissal order has not been placed on record for the reasons best known to the authorities. While affirming the counter affidavit dated 13.12.2007, the authorities of the CRPF have conveniently ignored the facts stated in the supplementary affidavit filed by the petitioner that having availed the 60 days earned leave till 10.2.2005, he joined the transit camp at Jammu on 11.2.2005 when there was heavy snowfall on the Jammu-Srinagar highway. Petitioner was, accordingly, detained at the transit camp, Jammu until 14.2.2005, whereafter he was again allowed 15 days earned leave from 15.2.2005 to 1.3.2005 so as to enable the weather conditions in the area to improve for his onward movement to the assigned place of duty. In order to report at the transit camp, Jammu on 1.3.2005, he boarded Archana Express for reaching Jammu on 1.3.2005, but as there was obstruction on the railway track beyond Ambala, the train reached Jammu on 3.3.2005 when he reported at the transit camp, Jammu, but on account of inclement weather, was again detained in the transit camp, Jammu until 10.3.2005 when he was allowed 20 days earned leave with effect from 11.3.2005 to 30.3.2005. On 31.3.2005, he again reported at transit camp, Jammu and remained there for the night and in the morning he proceeded with other Jawans of the Battalion to Tura in the State of Meghalaya via Guwahati. Petitioner reached Guwahati along with other Jawans of the Battalion on 4.3.2005. The Dy.S.P (O.C.) and Chief Havaldar Major also accompanied him. From Guwahati, the Battalion was to move to Tura by road, but petitioner was prevented from boarding the vehicle for going to Tura and was left at Guwahati Railway Station where he stayed on 4.3.2005 on the platform after purchasing platform ticket and later came back to Patna and thereafter filed representations dated 15.4.2005 and 25.4.2005, Annexures-1 and 1/A to this application.

5. In paragraphs 5,6 and 7 of the other counter affidavit affirmed on 17.12.2007, the Addl. DIGP (Administration), Patna has taken notice of the submission made by the petitioner in paragraphs 3 to 6 of his supplementary affidavit that he was allowed further leave from transit camp, Jammu and has stated that no such information about grant of leave to the petitioner at the transit camp, Jammu was received in his office. He has further stated that if petitioner was allowed leave until 30.3.2005 from transit camp, Jammu then he should have reported either at the Company Headquarter or Battalion Headquarter or should have made communication/correspondence with the office of Addl. DIGP, Bihar Sector,

CRPF, Patna instead of remaining absent from duty for a long time. Further bald statement has been made in the counter affidavit denying receipt of representation(s) from the petitioner. In paragraph 6 of the counter affidavit, deponent has disputed the claim of the petitioner that on 4.3.2005 he was not allowed to board the vehicle at Guwahati Railway Station for going to Tura, as according to the deponent, Tura is only six hours from Guwahati and petitioner instead of coming back to Patna, should have gone to Tura.

6. During the hearing of this application on 9.7.2008, learned Counsel for the petitioner relied on the statements made in the supplementary affidavit dated 21.4.2006 as also on Annexure-3 appended therewith and submitted that petitioner has all along been diligently present in the transit camp, Jammu right from 11.2.2005 and as the weather was not conducive for onward movement, he was allowed further leave from 15.2.2005 to 1.3.2005 and thereafter he again reported at the transit camp Jammu where he continued until 10.3.2005 and was allowed further 20 days earned leave with effect from 11.3.2005 to 30.3.2005 and then again reported on 31.3.2005 and remained at the transit camp for the night and on 1.4.2005 moved by train to Guwahati for onward journey to Tura, but was not allowed to board the vehicle at the Guwahati Railway Station for the road journey to Tura and with reference to these facts, it was submitted that the charge sheet dated 28.11.2005, as contained in Annexure-2 to the supplementary affidavit is wholly misconceived and the authorities should be directed to accept the joining of the petitioner in the light of the representations dated 15.4.2005 and 25.4.2005, Annexures-1 and 1/A appended with the writ application and representation dated 27.12.2005, Annexure-5 appended with the supplementary affidavit. As regards representation dated 27.12.2005 appended with the supplementary affidavit as Annexure-5, it was submitted that the same was sent to the Commandant, 114 Battalion, CRPF through registered post on 27.12.2005 and the receipt showing dispatch of the said representation by registered post was also placed on record along with Annexure-5 to the supplementary affidavit.

7. This Court having noticed the stand of the petitioner that he was allowed further leave at transit camp, Jammu until 30.3.2005, which fact has not been controverted in the two counter affidavits, wanted to proceed with the case on 9.7.2008, but counsel for the Union of India submitted that the copy of the supplementary affidavit has been misplaced and, accordingly, this Court permitted him to collect the copy of the supplementary affidavit from the counsel for the petitioner and the matter was adjourned so as to enable him to confirm the correctness or otherwise of the entries made in Annexure-3 appended with the supplementary affidavit, granting further leave to the petitioner until 30.3.2005, whereafter the matter was taken up today.

8. Learned Counsel for the Union of India submitted that he could not seek instruction from the authorities of the CRPF regarding the statements made in Annexure-3 and he wanted further time for the purpose. This Court declined the

request as from the records of this case, it is evident that the copy of the supplementary affidavit dated 21.4.2006 was served on the office of the Assistant Solicitor General of India on 17.8.2006, whereafter two counter affidavits were affirmed by the authorities on 13 and 17.12.2007 and from the averments made in paragraphs 5, 6 and 7 of the counter affidavit dated 17.12.2007, it is evident that the authorities have dealt with the averments made in the supplementary affidavit without disputing the correctness of the statements made in Annexure-3 wherefrom it is evident that petitioner was allowed further leave until 30.3.2005 on 15.2.2005 and 10.3.2005. The authorities further have not categorically disputed that they did not receive representations dated 15.4.2005 and 25.4.2005, Annexures-1 and 1/A to the writ application and representation dated 27.12.2005, Annexure-5 to the supplementary affidavit. Representation dated 27.12.2005, Annexure-5 having been dispatched under registered cover and the receipt showing dispatch through registered cover being placed on record, it has to be presumed by invoking the presumption u/s 27 of the General Clauses Act that such representation was received by the authorities. From the averments made in paragraph 5 to 7 of the counter affidavit affirmed on 17.12.2007, it is evident that there is no specific denial by the authorities that petitioner was not allowed further leave at the transit camp, Jammu on 15.2.2005 and 10.3.2005, which continued until 30.3.2005 as is evident from Annexure-3 appended with the supplementary affidavit. The authorities further have not categorically disputed that they did not receive representations dated 15.4.2005 and 25.4.2005, Annexures-1 and 1/A to the writ application. Representation dated 27.12.2005, Annexure-5 having been dispatched under registered cover and the receipt showing dispatch through registered cover being placed on record, it has to be presumed by invoking the presumption u/s 27 of the General Clauses Act that such representation was received by the authorities.

9. In view of my findings above, I hold that the ex parte proceeding taken against the petitioner is wholly without jurisdiction and as the authorities for the reasons best known to them, have not placed the dismissal order dated 1.12.2006 on record, as such, the same is not being quashed, but it is directed that the said dismissal order dated 1.12.2006 be ignored and the joining of the petitioner be accepted and thereafter fresh proceeding be conducted to ascertain the correctness or otherwise of the memo of charge alleging that the petitioner remained absent from his place of posting with effect from 11.2.2005 after his leave was over on 10.2.2005 and conclude the same in accordance with law, as early as possible, in any case within three months from the date of acceptance of joining of the petitioner.

10. The arrears of salary for the period of dismissal till the date of acceptance of his joining in compliance of this order shall be subject to the result of the proceeding. Arrears of salary for the period between 11.2.2005 till the date of his dismissal must be paid soon after his joining.

This application is, accordingly, disposed of.