

(2011) 10 DEL CK 0185
In the Delhi High Court
Case No : Writ Petition (C) 6565 of 2011

Satish Kumar Yadav

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

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

Citation : (2011) 10 DEL CK 0185

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Anjana Gosain, Advocate, for the Appellant; Himanshu Bajaj, Advocate with Mr. Vinay Kumar, Pairvi Officer, CRPF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The petitioner, appointed as a constable with the Central Reserve Police Force in the year 1995, was attached with 131st Bn. CRPF in the year 2003, deployed at Dimapur. While he was on 30 days earned leave and 15 days paternity leave from 22.12.2003 to 04.02.2004 the 131st battalion moved to Gund Srinagar from Dimapur. Having no knowledge of the same, petitioner reported for duty at Dimapur on 04.02.2004 i.e. the Battalion Headquarter, when he was informed that Unit had moved in the meanwhile to Gund Srinagar.

2. A party of personnel, including the petitioner, were sent under the command of Havaldar GT Mark, to the Battalion Headquarters at Gund Srinagar by train. En route, at the New Delhi Railway Station where the train had halted, the petitioner took permission to have tea and breakfast and thus he parted company for a few minutes but he disappeared from the station. As the train was about to leave, Hav.G.T.Mark and other members searched, but could not locate the petitioner. The party took a train and proceeded to Jammu and reaching the battalion headquarters on 13.2.2004 Hav.G.T.Mark reported petitioner having abandoned the party at New Delhi Railway Station. The report was given to the O.C.T.C.

3. A preliminary inquiry was conducted into the incident and upon finding sufficient prima facie evidence that it was a case of a Force personnel deserting from duty, vide letter dated 5.3.2004 the Coy Commander obtained a warrant to apprehend and produce the petitioner from the Chief Judicial Magistrate and sought to enforce the same through the police station within the jurisdiction whereof the petitioner permanently resided. The warrant was not executed. The Coy Commander sent two letters dated 10.7.2004 and 29.7.2004 directing petitioner to report to the Unit immediately, but the petitioner never returned.

4. The petitioner reported at the Battalion Headquarters at Gund Srinagar on 09.08.2004 i.e. after 182 days' absence and treating the matter with seriousness, the Commandant of the 131st Bn. CRPF issued a charge-sheet dated 13.09.2004 listing 2 charges against the petitioner, as under:

CHARGE-1

No.941321949 Sep.Satish Kumar of 131 Battalion CRPF while posted as Sepoy/G.D. being a member of the force has committed an act of indiscipline, act of misconduct/misbehaviour/other misconduct u/s 11(1) of the Central Reserve Police Force Act 1949 read with Rule 27 of the Central Reserve Police Force Rules 1955, thereby on 10.2.04 (forenoon), he left which he run away which was going to its New Det-Headquarter Gund, Srinagar from Deemapur (Nagaland) and ran away from Delhi Railway Station unauthorizedly. And he violated the orders/directions issued by his Company Commander to report back from his duty immediately upto 9.8.04 (Afternoon) and absented himself for a long period of 182 days unauthorizedly without any intimation which is against the discipline and system and is an offence punishable u/s 11(1) of the Central Reserve Police Force Act, 1949.

CHARGE NO.2

No.941321949 Sep.Satish Kumar of 131 Battalioin CRPF while posted as Sepoy/G.D. being a member of the force has committed an act of indiscipline, act of misconduct/misbehaviour/other misconduct u/s 11(1) of the Central Reserve police Force Act-1949 read with Rule 27 of the Central Reserve Police.Force Rules 1955, thereby in his short period of service of ten and four time years, he came back from leave O.S.L. five times and four times half pay leave (without pay) for OSL period and besides this given sentence three times. From it appears that his is a indiscipline personnel and is in the habit of O.S.L. which is an offence punishable u/s 11(1) of the Central Reserve Police Force Act, 1949.

5. A perusal of the charge-sheet reveals that the actual charge is the 1st article of the charge and that the 2nd article of the charge merely informs the petitioner that his past conduct, of overstaying leave, will be taken into account once the first charge is proved. We have repeatedly highlighted in various judgments that past conduct for which punishment has been levied should not be listed as an Article of Charge as it unnecessarily gives birth to an argument: "that having been penalized in the past for a wrong, the rule against double jeopardy would

be violated if for the same wrong another penalty is imposed.? Where the department wants to bring to the notice of the delinquent that on the issue of penalty, his past conduct would be looked into, the relevant stage is when the inquiry report is submitted and it indicts the delinquent. At that stage, while forwarding the inquiry report the Disciplinary Authority should bring to the notice of the delinquent that his past conduct would be considered on the issue of penalty.

6. Thus, for purposes of our present decision we would take into account only the 1st article of charge and would note the 2nd on the issue of proportionality of the penalty if we find that article 1 of the charge stands proved.

7. Asst.Comdt. Kalyan Singh was detailed as the inquiry officer before whom the petitioner pleaded guilty to the charges levied but keeping in view the seriousness of charge No.1, the Inquiry Officer, in our opinion rightly, decided that evidence should be recorded.

8. 6 witnesses were examined by the department who proved petitioner absconding from the New Delhi Railway Station when, under the command of Hav.G.T.Mark, the petitioner and a few others were proceeding by train from Dimapur to Gund Srinagar. The witnesses proved letters sent to the petitioner directing him to return, the warrant of arrest obtained from the Chief Judicial Magistrate to apprehend and produce the petitioner; the non-execution thereof. To expand upon the evidence, the witnesses proved that after availing 30 days earned leave and 15 days paternity leave in continuous succession, petitioner reported at the Battalion Headquarters at Dimapur on 05.02.04 but by then the Battalion to which the petitioner was attached had moved to Gund Srinagar and he was thus sent along with a party, under the command of Havaladar GT Mark, going to Gund Srinagar. That the party reached New Delhi Railway Station in the afternoon of 10.02.2004 where the petitioner asked party Commander Havaladar GT Mark to permit him to go home. Upon the request being refused, he parted company with the party on the pretext of taking tea. When the petitioner did not return, the party carried out an extensive search both inside and outside the station but could not find the petitioner. The party took the train to Jammu and on reaching the Headquarter at Gund Srinagar the party Commander submitted the written report Ex.5 to the Coy Commander regarding petitioner's desertion. Upon request by the Coy Commander, arrest warrants Ex.10 in the name of the petitioner were issued by the Chief Judicial Magistrate addressed to the Police Superintendent at Alwar Rajasthan. Letters dated 10.07.2004 Ex.8 and 29.07.2004 Ex.9 were sent by the Coy Commander at the residential address of the petitioner directing him to report for duty at the earliest. But the petitioner neither replied nor obeyed any of the orders passed and finally surrendered on 09.08.2004 after 182 days of overstay. Petitioner was arrested on 10.08.2004 and brought before the Chief Judicial Magistrate where the arrest warrant was cancelled.

9. Given an opportunity to lead evidence in defence and make a statement, the

petitioner once again pleaded guilty and sought mercy and on 15.12.2004 made a statement in defence stating that on reaching New Delhi Railway Station on 10.02.2004, he requested the party Commander to permit him to go home to get his quilt but the request was rejected upon which taking permission from the Commander to get some tea and breakfast he went outside the station and took tea at a stall. After taking tea he became unconscious and somehow reached his home. That he did not recollect what happened when he took the tea and also did not recollect how he reached home. He stated that after reaching home he became mentally ill for a long time and took treatment at various government hospitals.

10. Relevant would it be to note that before the Inquiry Officer the petitioner did not produce any medical document pertaining to his stated mental condition.

11. On being questioned by the Inquiry Officer the petitioner stated that he did not remember the location of the shop where he had the intoxicating tea and that he was told by his family members that a person from his village found him at the station on 10.02.2004 and brought him home. That the department was not informed about his poor health as his family members are illiterate and because they were not aware of the new address of the Battalion Headquarters. That he remained mentally ill till 03.08.2004 and was treated at the primary health centre at his village as an outdoor patient. That he submitted the medical certificates regarding his treatment to the battalion headquarters.

12. It is thus apparent that the petitioner admitted reaching his house from the New Delhi Railway Station and remaining absent for 182 days, but justified the same as afore-noted.

13. The proceedings were adjourned to 31.12.2004 on which date the Inquiry Officer asked the petitioner whether he wished to produce any medical documents pertaining to the stated treatment he had taken from the government dispensaries in his village and the petitioner said that he does not want to produce any.

14. In his report dated 06.01.2005 the Inquiry Officer disbelieved the defence taken by the petitioner on the reason that the defence was concocted and implausible. The Inquiry Officer highlighted that from the prosecution evidence it emerged that when the train in which the party under the command of Hav.G.T.Mark reached New Delhi Railway Station and onward journey to Jammu had to be undertaken, the petitioner requested to be permitted to go to his village in District Alwar, Rajasthan. When permission to go to the village was refused, the petitioner took permission from Hav.G.T.Mark to take tea and breakfast and permitted to go to the tea stall to take breakfast and tea, the petitioner absconded. Even in his statement made on 15.12.2004 before the Inquiry Officer the petitioner admitted having sought permission to go to his village to bring a quilt and the same being refused was followed by the petitioner being permitted by Hav.G.T.Mark to go to a tea stall and take breakfast. The

Inquiry Officer opined that this showed the determination of the petitioner to go to his village in District Alwar, Rajasthan. The Inquiry Officer specifically noted that in spite of opportunity granted the petitioner did not produce any document in the form of a medical certificate, consultancy slips or bills evidencing purchase of medicine and thus negated the alibi of mental sickness. The Inquiry Officer highlighted that while travelling from Dimapur to Gund Srinagar as a part of the party under the command of Hav.G.T.Mark, the petitioner was in uniform and reasoned that if, as claimed by the petitioner, when he became unconscious after taking tea at the tea stall, he would obviously have fallen down and the place being the New Delhi Railway Station it was not believable that the police personnel at the Police Chowki at the Railway Station would not have noticed the same.

15. As we understand the reasoning, the Inquiry Officer has highlighted that a common man in civil dress falling unconscious within or near the precincts of a railway station may not attract the attention of the police but a person in CRPF dress falling unconscious would certainly attract the attention of the police stationed at the railway station.

16. As noted above, the petitioner in his statement had stated that he had submitted certain medical documents at the battalion headquarter. Notwithstanding none being filed before the Inquiry Officer, the Disciplinary Authority, while considering the report of the Inquiry Officer, notwithstanding petitioner having not filed any reply thereto in spite of the report being furnished to him, called for the record at the battalion headquarter and considered the veracity of 18 medical certificates submitted by the petitioner having signatures of 6 different doctors thereon, which medical certificates purportedly emanated from a government dispensary.

17. We note in brief, what these medical certificates are all about. At the outset it strikes that the first medical certificate is dated 09.02.2004 and this is obviously a procured certificate for the reason the petitioner had reported for duty at Dimapur on 04.02.2004 and since his Unit had moved to Gund Srinagar he was required to move to Gund Srinagar and was on the way to Gund Srinagar in a train as a part of a party under the command of Hav.G.T.Mark and the train in which they were travelling had reached New Delhi Railway Station on 10.02.2004. Obviously, the petitioner could not be in his village in District Alwar on 09.02.2004. As per the claim of the petitioner he fell unconscious after somebody gave him intoxicated tea at the New Delhi Railway Station on 10.02.2004. The petitioner feigns ignorance of what happened thereafter but claims somebody taking him to the village and thereafter blurs his memory under the pretext of mental illness. The certificate dated 09.02.2004 is obviously a procured certificate. We then have 2 more certificates both dated 17.03.2004 and beneath one we find the medical officer who purportedly signed the same has penned the date 09.02.2004. One certificate recommends rest for a period of 15 days commencing from 09.02.2004. It is obvious that this certificate is a

procured certificate. The other certificates dated 24.02.2004, 10.03.2004, 08.04.2004, 22.04.2004, 23.04.2004, 27.04.2004, 12.05.2004, 19.05.2004, 17.6.2004, 31.06.2004, 05.07.2004, 20.07.2004, 01.08.2004 and 31.08.2004 are all using identical language and the words are that the petitioner: "is suffering from mental depression and I think that for his health it is very much essential to abstain from duty for a period?. We may only highlight that the month of June has only 30 days and there cannot be a certificate dated 31.06.2004.

18. It is but evident that the petitioner has contrived to obtain false certificates recording incorrect facts.

19. Vide order dated 02.05.2005, considering the past service record which shows that in a service spanning 8 years the petitioner had been punished 3 times, the Disciplinary Authority levied penalty of dismissal from service against which appeal and revision petition filed were rejected vide orders dated 27.10.2005 and 16.03.2010 respectively.

20. Thus the instant writ petition lays a challenge to the orders dated 02.05.2005, 27.10.2005 and 16.03.2010.

21. At the hearing of the writ petition, learned counsel for the petitioner urged that the Inquiry Officer arrived at conclusions ignoring the medical certificates and thus urged that the report of the Inquiry Officer had to be rejected.

22. We have noted herein above the relevant facts which show that before the Inquiry Officer the petitioner did not file or produce any medical certificate. Thus, the report of the Inquiry Officer cannot be faulted.

23. That apart, as noted herein above, since the petitioner had submitted 18 medical certificates at the Battalion headquarter, the Disciplinary Authority called for the same and took them into account while considering the report of the Inquiry Officer. It is settled law that it is not the report of the Inquiry Officer which alone matters. The report is for the benefit of the Disciplinary Authority and what matters is the application of mind by the Disciplinary Authority. We have reflected herein above on the quality of the medical certificates produced by the petitioner and we concur with the reasoning of the Disciplinary Authority that contrivance to obtain medical certificates which certify false facts is writ large.

24. We need to highlight that faced with the obvious contrivance of one medical certificate being dated 09.02.2004 and one though dated 17.03.2004 but beneath the signature of the doctor issuing the same recording the date 09.02.2004 and the evidence showing that the petitioner disappeared from New Delhi Railway Station on 10.02.2004, an attempt has been made in the writ petition to cover up the obvious mismatch by pleading that the train had reached New Delhi Railway Station on 09.02.2004 and hence the plea that the certificates could have been issued on 09.02.2004.

25. We need not dilate much save and except to record that it is a desperate

attempt to wriggle out of a situation from which the petitioner has no escape. No suggestion was given to any prosecution witness that the train had reached New Delhi Railway Station on 09.02.2004 and not 10.02.2004.

26. Assuming the train had reached New Delhi Railway Station on 09.02.2004 let us then consider the veracity of the two certificates. Assuming that somebody gave intoxicating tea to the petitioner and after consuming the same he became unconscious and further assuming that somebody known to the petitioner saw him and took him to his village in Alwar, we would note that the journey time to travel by road or by train from New Delhi to Alwar is about 5 hours in the least. Now, the petitioner does not claim to be mentally sick prior to 09.02.2004 and we find it strange that on said date certificates certifying to mental sickness of the petitioner could be issued with the recommendation that the petitioner is unfit to do duty.

27. The grievance raised that the appellate and the revisional authority have ignored the medical certificates is noted and rejected by us for the reason the said authorities considered the appeal and the revision with reference to the record of the Inquiry Officer before whom no medical certificates were filed. Secondly for the reason we have independently looked into the certificates and indeed we find the same smacking of contrivance and falsehood oozing out of the same. We concur with the opinion of the Disciplinary Authority that the certificates do not inspire any confidence. We would highlight that the Revisional Authority, just as the Disciplinary Authority did, has looked into the medical certificates and has rightly opined the same to be not inspiring any confidence.

28. We hold that there is sufficient evidence to bring home the guilt of the petitioner of having absconded. The defence taken is palpably false.

29. On the issue of penalty we need to highlight that it is not a case of a person overstaying leave. As noted above, after availing 45 days leave the petitioner reported at Dimapur and was sent to Gund Srinagar under the command of Hav.G.T.Mark. While travelling by train from Dimapur to Jammu, en route when the train was at New Delhi Railway Station, the petitioner absconded when he was refused permission to go to his village in District Alwar. For a Force personnel to abscond is indeed a serious matter. It affects the discipline of the Force. Keeping in view the past conduct of the petitioner we do not find the penalty to be disproportionate and hence we dismiss the writ petition but refrain from imposing any costs.