
(2015) 03 OHC CK 0014
In the Orissa High Court
Case No : Writ Petition(C) No. 4275 of 2012

Susanta Dalei

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1), 9(f)
Constitution of India, 1950 — Article 226, 227

Citation : (2015) 120 CLT 894 : (2015) 2 ILR Ori 113 : (2015) LabIC 2067

Hon'ble Judges : Akshaya Kumar Rath, J.

Bench : Single Bench

Advocate : S. Mohapatra, T.P. Tripathy and L.P. Dwivedy, for the Appellant; S.K. Das, Central Govt. Counsel, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dr. Akshaya Kumar Rath, J.—In this writ petition under Article 226 of the Constitution, the petitioner, who was a Constable, assails the order of punishment dated 24.06.2011 removing him from service, imposed by the Commandant, 52-BN, CRPF, Rangreth, Budgaon, Srinagar, opposite party no.4 as well as the order dated 24.10.2011 passed by the D.I.G. of Police, CRPF, Bhubaneswar, under Annexures-4 and 6 respectively.

2. The case of the petitioner is that he was appointed as a Constable (Driver) in the CRPF Group Center, Bhubaneswar in the year 2006. After completion of training, he was posted at Srinagar, Rangreth, Budgaon. He applied for leave in the month of August 2010 before opposite party no.4 on the ground of illness of his wife. The opposite party no.4 allowed the application for leave, whereafter he left the camp on 02.10.2010. Due to his illness, he could not join on duty and intimated the opposite party no.4 along with relevant medical papers and certificates. He over stayed for a period of 223 days. A departmental proceeding was initiated against him. After conduct an enquiry, the Enquiry Officer submitted report, whereafter the opposite party no.4 removed the petitioner from service.

He unsuccessfully challenged the same before the D.I.G. opposite party no.3. The appellate authority confirmed the order passed by the disciplinary authority.

3. Pursuant to issuance of notice, a counter affidavit has been filed by opposite parties. The sum and substance of the case of the opposite parties is that the petitioner was appointed as a Driver on 30.04.2007 in CRPF. He had reported in this Unit on 07.10.2008. On 02.10.2010 he had deserted from Headquarters/52 Bn. Rangreth (J and K) without any permission/sanction of leave from the competent authority. An F.I.R. was lodged against him in Sadar P.S., Srinagar, Budgam (J and K) on 02.10.2010. He was directed to report on duty immediately vide Office letter dated 02.10.2010 but he did not pay any heed. Consequently, the OC Headquarter had filed a complaint under Section 9(f) of the CRPF Act 1949 in the court of learned Chief Judicial Magistrate on 04.10.2010. A warrant of arrest was issued against him on 04.10.2010. He could not be apprehended by the police. Subsequently as per the provisions of the CRPF Rules, 1955, an enquiry was ordered vide office order dated 22.11.2010. On the recommendation of the COI, he was declared deserter from Force with effect from 02.10.2010 vide office order dated 28.12.2010. Accordingly he was charge-sheeted on 29.01.2011 on the following charges :-

"That the said No. 075040041 CT/DVR Susanta Dalai of Hqr @ Bn. CRPF, while functioning as CT/Dvr as Rangreth, Budgam, Srinagar (JandK) has committed an act or disobedience of orders/neglect of duty/remissness in the discharge of his duty/other misconduct or misbehaviour in his capacity as a member of the force under Section 11(1) of CRPF Act, 1949 in that he deserted from highly sensitive operational area of HQR/52 Bn, CRPF Camp, Rangreth, Budgam, Srinagar (JandK) without any prior permission of competent authority w.e.f. 02.10.2010 (A/N) which is prejudicial to the good order and discipline of the Force". 4. While the departmental enquiry was going on, he reported at Battalion headquarter on 13.05.2011. After remain absent for 223 days, he pleaded the guilty of charge. After recording the statement of the witnesses and affording opportunity of hearing, the Enquiry Officer submitted a report holding there charge was proved. A copy of the enquiry report was served to the petitioner on 27.05.2011. It is further stated that during the short span of 3 1/2 years of service, the petitioner had overstayed from leave for two occasions without any sanction of leave from the competent authority. Considering the gravity of offence, the disciplinary authority awarded the punishment of removal from service which commensurate the gravity of the offence. It is further stated that the petitioner managed some medical documents to conceal his misconduct. Further the appellate authority did not find any extenuating circumstances to differ with the findings of the disciplinary authority and accordingly the appeal was dismissed.

5. Heard Miss S. Mohapatra, learned counsel for the petitioner and Mr. S.K. Das, learned counsel for the opposite parties.

6. In B.C. Chaturvedi Vs. Union of India and others, , the apex Court in paragraph-18 of the report held that the disciplinary authority, and on appeal the

appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

7. It is a settled principle of law that scanning of evidence is beyond the purview of writ court, unless the same is precise. Further, the High Court under Article 227 of the Constitution of India does not sit as an appellate authority. It is a fact that in course of enquiry, the petitioner had admitted his guilt. But then the material record shows that he was ill suffering from Vertigo. He had filed number of medical certificates to that effect from different doctors. The same cannot be brush aside by the disciplinary authority. The punishment of removal from service awarded by the disciplinary authority and confirmed by the appellate authority is disproportionate to the charge and shocks to the conscience of the court.

8. In view of the same, the orders dated 26.06.2011 and 24.10.2011 respectively passed by the Commandant, 52-BN, CRPF, Rangreth, Budgaon, Srinagar (J and K), vide Annexure-4 and Dy. Inspector General of Police, CRPF, Bhubaneswar Range, vide Annexure-6 are hereby quashed. The matter is remitted back to the Commandant, 52-BN, CRPF, Rangreth, Budgaon, Srinagar (J and K), opposite party no.4 to pass an order afresh on the question of punishment keeping in view the ailment of the petitioner.

9. The writ petition is accordingly disposed of.