

(2023) 10 GAU CK 0034
In the Gauhati High Court
Case No : Writ Appeal No. 368 Of 2023

Union Of India 5 Ors

APPELLANT

Vs

Mukul Das. F

RESPONDENT

Date of Decision : 19-10-2023

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 27, 27(C)(1)
Central Reserve Police Force Act, 1949 — Section 11(1)
Evidence Act, 1872 — Section 73

Citation : (2023) 10 GAU CK 0034

Hon'ble Judges : Sandeep Mehta, CJ;Kardak Ete, J

Bench : Division Bench

Advocate : A K Dutta, K N Choudhury

Final Decision : Dismissed

Judgement

1. Heard Mr. A.K. Dutta, learned CGC representing the appellants. Also heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. N. Gautam, learned counsel for the sole respondent/writ petitioner.

2. This intra court writ appeal is directed against the judgment and order dated 20.06.2022 passed by the learned Single Judge in WP(C) No. 5843/2010, whereby the learned Single Judge has allowed the writ petition of the respondent/writ petitioner by setting aside the order of dismissal from service dated 15.01.2010 and the appellate order dated 27.08.2010 and remanded the matter back to the Disciplinary Authority with a liberty to proceed against the respondent/writ petitioner by following the due procedure of law.

3. The respondent/writ petitioner was appointed as constable in the 39Bn. Central Reserve Police Force (in short CRPF) pursuant to the selection process held in the year 2004. He has served in different places of posting and his last place of posting was at Faizabad in the State of Uttar Pradesh and thereafter he moved to Narayanpur in the State of Chattisgarh on office of 39Bn. CRPF being shifted to Narayanpur, Chattisgarh. While serving at Narayanpur in the State of

Chattisgarh, the respondent/writ petitioner applied for paternity leave and was granted leave from 29.11.2008 to 13.12.2008 as his wife was suffering from severe gynecological problem and other ailments and was under treatment in the Civil Hospital at North Lakhimpur w.e.f.11.03.2009 to 26.04.2009. During that period of time, the respondent/writ petitioner was also suffering from tuberculosis and was under treatment till 17.05.2010. The respondent/writ petitioner was advised for complete rest and his medical condition had prevented him from rejoining his duty on time. Due to his deteriorated health condition and as because no other family members were available, so the respondent/writ petitioner could not send the message to the authority concerned informing about his ailments. Since house of the petitioner is located in a remote village in the district of Lakhimpur, Assam and for sending any communication he has to travel the distance to North Lakhimpur town which was not possible because of his ill health. However, on 07.07.2009 the respondent/writ petitioner sent a telegram to the Commandant of the 39Bn. CRPF informing about the unfortunate death of his mother and his ailments and sought for an extension of his leave which was duly received by the authority on 09.07.2009.

4. The Commandant 39Bn. CRPF, Narayanpur vide Memorandum dated 22.05.2009 had proposed to hold an enquiry against the respondent/writ petitioner under Rule 27 of the Central Reserve Police Force Rules, 1955. Memorandum with Article of Charge and statements of imputation of misconduct was issued. The charge leveled against the respondent/ writ petitioner is that the petitioner has committed an offence of serious misconduct in his capacity as a member of a Force under section 11(1) of CRPF Act, 1949 in that the petitioner proceeded on 15 days paternity leave w.e.f. 29.11.2008 to 13.12.2008 but he did not rejoin duty on due date and remained absent without any intimation and without permission from the competent authority.

5. The contention of the respondent/writ petitioner is that he did not receive the Memorandum of Article of charge nor any other communication from competent authority and for that reason, he could not submit any reply to the charges leveled against him. Further contention of the respondent/writ petitioner was that though the enquiry report was given to the respondent/writ petitioner same was in Hindi language which he is not conversant with. Therefore, no effective representation could be filed by the petitioner.

6. Enquiry was conducted behind the back of the petitioner by the Enquiry Officer. On the basis of the enquiry report dated 10.12.2009 the Disciplinary Authority passed an order dated 15.01.2010 in exercise of power under section 11 (1) of the Central Reserve Police Force Act, 1949 read with Rule 27 of the Central Reserve Police Force Rules, 1955 and imposed a major punishment of dismissal from the service with effect from 15.01.2010.

7. The respondent/writ petitioner, being aggrieved of the order of dismissal from service, filed a Statutory Appeal on 18.06.2010 before the Deputy Inspector General of Police (Range), Central Reserve Police Force, against the said order of

the dismissal dated 15.01.2010 and the same was rejected vide order dated 27.08.2010 by the Deputy Inspector General, CRPF.

8. Being aggrieved of the order of dismissal dated 15.01.2010 as well as the appellate order dated 27.08.2010, the respondent/writ petitioner approached this Court by filing a writ petition (supra). The learned Single Judge vide impugned judgment and order dated 20.06.2022, allowed the writ petition by setting aside the order of dismissal dated 15.01.2010 and appellate order dated 27.08.2010 and remanded the matter to the Disciplinary Authority by giving liberty to proceed against the writ petitioner by following the due procedure of law. Hence, this present appeal by the appellants.

9. Mr. A.K. Dutta, learned CGC for the appellants submits that the Hon'ble Single Judge has failed to go by the Order dated 26.04.2022 and thereby proceeded to by exercising the power of the Hon'ble Court provided under Section 73 of the Evidence Act, 1872 and has come to a wrong conclusion in passing the impugned Judgment and Order dated 20.06.2022 and allowed the writ petition. He submits that the Hon'ble Single Judge has failed to appreciate the fact that the petitioner was enrolled in a disciplined Force of the Nation and he ought to know the Rules and Regulations of the Force and overstayed much beyond the leave period without any intimation to or permission from the competent Authority, which is an offence punishable under relevant provisions of CRPF Act, 1949 and CRPF Rules, 1955. He submits that the Hon'ble Single Judge has also failed to appreciate that the signatures of respondent/writ petitioner appearing in the Appeal filed before the Deputy Inspector General of Police (Range), HQ CRP, Bhubaneswar (which has been annexed in the writ petition) are more or less dissimilar to each other and some letters of the said signatures has similarity with the signature of the respondent/writ petitioner appearing in the acknowledgement which has been taken by the Hon'ble Single Judge for comparison and has come to the wrong conclusion that the respondents have failed to follow the due procedure mandated by the provisions under Rule 27(C) (1) of the CRPF Rules, 1955, therefore, the Departmental Proceeding against the petitioner so initiated has got no sanction in the eyes of law and the follow up action taken on the same would have no legal value and hence set aside the same, which is unsustainable.

10. Mr. Dutta, Learned CGC has submitted that the Hon'ble Single Judge has without any justification accepted the submission/ statement of the respondent/writ petitioner that he has received the enquiry report in Hindi language as he is not conversant with Hindi and therefore, he could not submit his reply to the competent authority in time and by not properly appreciating the same aspect in the impugned Judgment and Order dated 20.06.2022, the Hon'ble Single Judge has come to a wrong conclusion. He contends that the respondent/writ petitioner has submitted two leave applications through telegraphic message stating his illness and about the death of his mother and for allowing him to join in his duty after recovery from illness but he has not made any whisper with regard to the

registered communications dated 19.08.2009 and dated 10.09.2009 issued by the Enquiry Officer requiring him to submit all relevant medical documents in support of his illness etc. The petitioner has not reported for duty nor made any communication with the Enquiry Officer thereafter.

11. Mr. Dutta, learned CGC submits that the respondent/writ petitioner was serving in the disciplined Force and he ought to maintain high level discipline and cannot remain absent from duty on frivolous grounds. The Hon'ble Single Judge has ignored the gravity of the offence in accordance with specific conditions of Force as well as in accordance with the prevailing rules, wherein absence of even one hour is considered to be a serious misconduct and cannot be ignored. The Hon'ble Single Judge has failed to consider that the charges have been proved beyond all manner of doubt and consequently punishment of dismissal from service has been awarded which is well within the purview the disciplinary authority and the writ Court is not supposed to act as an appellate authority. The learned Single Judge has also failed to appreciate that the standard of discipline expected from an Armed Force personnel has always been higher and ordinarily an act of indiscipline from such person who is the member of the Armed Force, or who is a part of the Defence Force can not be condoned. Therefore, learned CGC submits that the impugned Judgment and Order dated 20.06.2022, passed by the learned Single Judge of this High Court is not sustainable and as such is liable to be set aside and quashed.

12. On the other hand, Mr. K. N. Choudhury, learned Sr. Counsel submits that it is indisputable that the respondent authority did not furnish Memorandum of Article of charges/documents to the respondent/writ petitioner. He submits that no documents have been furnished in respect of charges framed against the respondent/writ petitioner. While referring to the Para 13 of the writ petition he submits that all the documents which are vital in framing the charges against the petitioner were not supplied to the petitioner. Therefore, the petitioner could not defend his case before the Enquiry Officer as well as before the disciplinary authority. As such, the whole process of such proceeding is vitiated. He also submits that non supply of documents violates the cardinal principles of Natural Justice and as such, the enquiry report dated 16.12.2009 and the order of dismissal dated 15.01.2010 as well as the appellant order dated 27.08.2010 are not sustainable.

13. Mr. K.N. Choudhury, learned Sr. Counsel while referring to the statutory appeal of the respondent/writ petitioner particularly, ground No. (v), submits that the Disciplinary Authority has failed to consider that the whole proceeding was conducted ex parte against the respondent/writ petitioner without giving him an opportunity to access the documents relating to framing of the charges against him. He submits that the enquiry officer as well as Disciplinary Authority did not serve the relevant documents relied on while preparing Articles of charges against the writ petitioner/respondent. He further submits that the appellant authority did not address the grounds of appeal by the respondent/writ

petitioner while rejecting the appeal of the writ petitioner. Therefore, the learned Single Judge has rightly set aside the order of dismissal dated 15.01.2010 and appellate order dated 27.08.2010 and remanded back the matter to the Disciplinary Authority by giving liberty to the disciplinary authority to proceed against the petitioner by following due procedure of law and as such, no interference is called for and the writ appeal is liable to be dismissed.

14. We have considered the submissions of learned counsel for the parties and the materials available on record.

15. The respondent/ writ petitioner was dismissed from service vide order dated 15.01.2010 by virtue of power conferred under section 11 (1) of the Central Reserve Police Force Act, 1949 read with Rule 27 of Central Reserve Police Force Rules, 1955 after having ex parte disciplinary proceedings.

16. Vide Memorandum dated 22.05.2009 the Commandant 39Bn. CRPF had proposed to hold an enquiry against the respondent/writ petitioner under Rule 27 of the CRPF Rules, 1955. Memorandum with Articles of Charges and statement of imputation of misconduct in support of Articles of charges framed against the respondent/writ petitioner was issued. The charge leveled against the respondent/writ petitioner is that he has committed an offence of serious misconduct in his capacity as a member of discipline Force and in that he proceeded for 15 days paternity leave, but thereafter, he did not rejoin his duty on due date and overstayed without intimation/permission of competent authority which is prejudicial to the discipline required from every employee in Para Military Forces. Thereafter, enquiry was conducted whereby the charges leveled against the respondent/writ petitioner have been stated to be proved.

17. The enquiry report was submitted to the Disciplinary Authority on 17.12.2009. The Disciplinary Authority had imposed the penalty of dismissal from service vide order dated 15.01.2010 w.e.f. 15.01.2010 against the respondent/writ petitioner on the basis of the enquiry report. The respondent/writ petitioner filed statutory appeal against the order of dismissal dated 15.01.2010 before the appellate authority which was rejected vide order dated 20.08.2010.

18. We have noticed from the documents available on record and the pleadings of the parties that the respondent/writ petitioner has categorically stated that he did not receive the documents which were relied on in preparing the charges leveled against the petitioner and for that reason, he could not take his proper defence before the authority. In the grounds of the appeal of the respondent/writ petitioner a specific stand has been taken by the respondent/writ petitioner that the enquiry officer and the disciplinary authority failed to consider the case of the respondent/writ petitioner and whole proceeding was conducted one sided against the petitioner by not giving him an opportunity to verify the documents relied on while framing charges against him and without giving an opportunity to cross-examine the witnesses. It is contended by the respondent/writ petitioner

that the enquiry officer as well as the Disciplinary Authority did not serve the relevant documents which have been relied on in the disciplinary proceedings.

19. We also take note that the respondent/writ petitioner has made categorical averments in his writ petition that the respondent authority did not furnish Memorandum of Article of charges to the petitioner as well as the relevant documents to the petitioner in respect of charges framed against him. The petitioner has stated that all the documents are vital documents for establishing the charges against the petitioner. Moreover, the statement of witnesses and the Extract copy of the register book in respect of unauthorized absence of the petitioner for which the major punishment imposed on him were not supplied to the petitioner for which reason the respondent/writ petitioner could not defend his case before the enquiring Officer as well as before the Disciplinary Authority.

20. In response to the said categorical statements, the learned counsel for the appellant has referred to the paragraph 13 of the affidavit-in-opposition filed on behalf of the appellants and submits that the petitioner has neither requested to the Disciplinary Authority nor the enquiry officer to provide relevant documents of the case, to which in our considered view is not the requirement of law. Such stand of the appellants clearly goes to show that the documents were not served to the respondents/writ petitioner at all.

21. We are of the view that such non-supply of documents is a clear violation of cardinal Principle of Natural Justice and thus, the whole process of disciplinary proceeding is vitiated as per the law laid down and for that reason the impugned order dated 16.12.2009 passed by the Enquiring Officer of the aforementioned case as well as order dated 15.01.2010 passed by the Commandant, 39 Battalion, Central Reserve Police Force, Narayanpur (Chattisgarh) by which the petitioner was dismissed from the service as Constable of Central Reserve Police Force, cannot be sustained.

22. We have also noticed that though the respondent/writ petitioner has taken a ground for non-supply of documents in his appeal before the appellate authority while filing his Statutory Appeal, the appellate authority vide his rejection order dated 27.08.2010 failed to address the same. On pointed query by this Court the learned CGC for the appellants could not offer any plausible explanation to that effect except by submitting that since the respondent/writ petitioner is a member of disciplined Force, his over staying the paternity leave amounts to grave misconduct.

23. It is trite that the documents relied on by the enquiry officer and the Disciplinary Authority must be served on the delinquent before holding a disciplinary proceeding. It is also trite that no order of punishment ought to be passed without supplying the copies of documents to the delinquent in a Departmental Proceedings.

24. On careful examination of the materials available on record as well as on consideration of the submissions of the learned counsel for the parties, we find

that no documents have been furnished/served to the respondent/ writ petitioner before passing the order of dismissal dated 15.01.2010 in clear violation of cardinal Principles of Natural Justice which has caused immense prejudice to the respondent/writ petitioner and such grave omission on part of the disciplinary authority vitiates the disciplinary proceeding.

25. In view of the above discussion and conclusions, we do not find any infirmity in the impugned Judgment and Order dated 20.06.2022, passed by the learned Single Judge and thus, the same is affirmed.

26. In the result, this writ appeal stands dismissed.

No order as to costs.