

(2009) 04 SC CK 0099

In the Supreme Court Of India

Case No : Civil Appeal No's. 2829 of 2009 (Arising out of SLP (C) No. 11488 of 2007)

Union of India (UOI) and Others

APPELLANT

Vs

G. Annadurai

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 379

Citation : AIR 2009 SC 3049 : (2009) AIRSCW 4892 : (2010) 1 ALLMR 450 : (2009) 122 FLR 468 : (2009) 6 JT 89 : (2009) 6 SCALE 776 : (2009) 13 SCC 469 : (2010) 1 SCC(L&S) 278 : (2009) 8 SCR 97 : (2009) 3 SLJ 230 : (2009) 7 SLR 664 : (2009) 6 UJ 2594

Hon'ble Judges : Asok Kumar Ganguly, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : P.S. Patwalia, Aishwarya Bhati, Sweta Rani and Sushma Suri, for the Appellant;

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Guwahati High Court allowing the writ appeal filed by the respondent questioning correctness of the order passed by learned Single Judge of the High Court. A writ petition was filed assailing the order dated 27.5.1998 passed by the appellants herein directing his dismissal. At the relevant point of time, the respondent was serving as a constable in the CRPF and was posted in Golaghat in the State of Assam. On 26.7.1997 First Information Report (in short the 'FIR') was lodged before the Officer in charge of Golaghat Police Station alleging commission of offence punishable u/s 379 of the Indian Penal Code, 1860 (in short the 'IPC'). P.S. Case No. 257 of 1997 was registered. The respondent was arrested in connection with the case and was released on bail on 14.8.1997. An enquiry was

conducted by CRPF Authorities. The Superintendent of Police by communication dated 27.8.1997 informed the concerned authorities of CRPF that appellant had been released on bail on 14.8.1997. As the respondent did not join duty even after lapse of sufficient time, after lapse of sufficient time after his release on bail, a court of enquiry was held and the respondent was declared as the deserter with effect from 14.8.1997 by order dated 19.12.1997. Thereafter a departmental enquiry was conducted u/s 11(1) of the Central Reserve Police Force Act, 1949 (in short the 'Act') read with Rule 27 of the Rules framed thereunder. A memo of charges dated 23.12.1997 was drawn up, the charge memo was sent to the respondent by registered post at his home address. The respondent did not respond to the charges leveled and the charge memo was sent back undelivered. An enquiry officer was appointed and after issuance of notice to the respondent to appear before him on 26.1.1998 along with his written statement, reminder was sent to him on 10.2.1998. As the respondent did not respond to the notices issued, an order was passed ex parte. Thereafter in course of the enquiry statement of four witnesses was recorded and several documents were proved. Copies of the statements of the witnesses examined and documents exhibited were sent to the respondent by registered post asking him to submit his written statement for defence or appear before the enquiry officer. This was done on 6.3.1998. Again there was no compliance of the order. Enquiry was concluded and it was held that the charges were proved. The report of enquiry was communicated to the disciplinary authority to be forwarded. A copy of the same was sent to the present respondent at his home address. As no response was received within the time stipulated, the disciplinary authority concurred with the findings of the enquiry officer and imposed punishment of dismissal from service. Stand taken in the writ petition was that the writ petitioner was not aware of the disciplinary proceedings initiated. Stand was refuted by the respondents in the writ petition. A learned Single Judge of the High Court on considering the report of the enquiry officer and the order of the disciplinary authority came to hold that the writ petition was without merit. It was held that after an elaborate decision apart from the court of enquiry where the respondent was declared as deserter, in the disciplinary proceeding the decision was taken in respect of a distinct charge. That being so it was held that there was no merit in the writ petition. Accordingly it was dismissed. The order was assailed in the writ appeal which has been allowed by the impugned judgment.

3. The High Court found that there was not sufficient material to show that the statement/notices were served. It was noted that the postal endorsements were to the effect 'not found' and therefore the safeguards provided have not been observed. Accordingly the writ appeal was allowed and the order of the District Court was upheld.

4. Learned Counsel for the appellant submitted as follows;

(i) Firstly it is apparent from the facts of this case that the respondent who was an employee of the CRPF, a disciplined force, has continued to be remained

absent from 14.8.97. When he did not report to his Unit a warrant of arrest was issued on 30.8.97 which was addressed both to his home address in Tamilnadu and to his place of posting at Golaghat, Assam, but remained unexecuted. The respondent was declared a deserter on 19.12.97. He never reported for duty since then, thus in these circumstances the respondent did not deserve any relief in the exercise of equitable jurisdiction by the High Court under Article 226 & 227 of the Constitution of India,

(ii) The facts further show that the following efforts were made to serve him during the course of the departmental proceedings

(a) The Memorandum of charges was sent to him by Regd. Post at his home address in Tamilnadu.

(b) On initiation of inquiry two notices dated 26.1.98 and 10.2.98 were again sent to him by Regd. Post at his home address in Tamilnadu.

(c) On conclusion of the inquiry ex-parte statements of witnesses recorded were again sent to him by Regd. Post on his home address on 3.3.98 and 6.3.98. However, he neither filed any reply nor appeared before the Inquiry Officer.

(d) The inquiry report was also sent to him at his home address. The Division Bench found that the same was served upon him which is clear from the following observations;

As the records reveal by communication dated 25.03.1998, issued by the Commandant of the concerned Battalion, a copy of the inquiry officer's report had been forwarded to the appellant at his home address in Tamilnadu. The records disclose that the same was served on him there. The order of dismissal was passed thereafter on 27.05.1998. In spite of this he failed to file any reply/representation in response to the same.

(e) It may be mentioned that even before this Court respondent did not put in his appearance.

5. It is pointed out that decision in Union of India and Others Vs. Dinanath Shantaram Karekar and Others, on which High Court has placed reliance has no application to the facts of the present case.

6. It is pointed out that on conclusion of enquiry show cause notice was served by a publication in the newspaper and all possible efforts have been taken. Ample opportunity have been granted to the respondent which he failed to avail. It is, therefore, submitted that the decision in Dinanath's case (supra) is not applicable to the facts of the case.

7. There is no appearance on behalf of the respondent when the matter is called in spite of service of notice.

8. The factual scenario shows that ample opportunities have been given to the

respondent in order to enable him to effectively participate in the proceeding. He has failed to avail those opportunities. That being so the Division bench of the High Court ought not to have interfered with the order of learned Single Judge which according to us is irreversible.

9. The appeal is therefore allowed and the impugned judgment is set aside.