

(2012) 07 DEL CK 0283
In the Delhi High Court
Case No : Writ Petition (C) 3407 of 1999

Vinod Kumar

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 11, 9

Citation : (2012) 07 DEL CK 0283

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : R.K. Saini with Mr. Virender Singh and Mr. Arvind Kumar, for the Appellant; Ankur Chhiber, Advocate with Mr. Vijaya Kumar Raut, Pairavi Officer, CRPF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The petitioner was charged for the offence of having deserted the Unit lines while attached as a Constable to the 1st Bn. CRPF on June 29, 1996 and that he reported back for duty on January 05, 1997 i.e. after 190 days. To put it plain, the charge was of deserting duty and remaining unauthorizedly absent for 190 days. We note at the outset that in paragraph 2 of the writ petition the petitioner has himself pleaded that the Unit to which he was attached was posted at Kistward, District Doda, J&K but had been transferred to Delhi and that the petitioner had reached Delhi with the advance party.

2. We highlight that at Delhi, the Unit was stationed at CRPF Camp, Mayur Vihar, Phase-III, a colony which is hardly 3 km. from Ghaziabad in the State of Uttar Pradesh.

3. In response to the charge-sheet issued, petitioner submitted a reply in which he pleaded that he had to leave the Camp on account of compelling domestic problem i.e. his wife being seriously sick and he not being sanctioned the necessary leave. He also took a stand that the very next day when he left the

Camp i.e. on June 30, 1996, he was admitted to the clinic of one Dr. V.K. Garg, MBBS, where he remained under treatment till July 04, 1996. He pleaded that thereafter he was admitted in Daulana Hospital on August 17, 1996 where he remained under treatment till November 15, 1996. He claimed that thereafter he remained under treatment till December 31, 1996 and when his condition improved, he reported at the Camp on January 05, 1997. He further claimed to have obtained a Fitness Certificate on January 04, 1997.

4. Suffice would it be to state that the petitioner admitted not being sanctioned any leave when he left the Camp at Mayur Vihar, Phase-III.

5. At the enquiry proceedings, four witnesses were examined by the prosecution and suffice would it be to state that the testimony of the witnesses would evidence that no application whatsoever was submitted by the petitioner seeking leave. None was found in the Unit lines. Evidence surfaced that the Department had to approach the Court of a Judicial Magistrate to issue Warrants of Arrest to secure the presence of the petitioner. What happened to those warrants is not known, but apparently the same were not executed, for the reason the petitioner was never apprehended. What were the reasons for the warrants not being executed are not known. Be that as it may, the fact of the matter remains that there is no application submitted by the petitioner seeking leave. There is no evidence that during 190 days period for which petitioner remained absconding/absent he sent any communications or the medical certificates on which the petitioner now seeks to place reliance i.e. at the inquiry.

6. The medical certificates relied upon by the petitioner have been adversely commented upon by the Inquiry Officer, on the reasoning that they are emanating from private hospitals or from primary health centers established by the Government. The Inquiry Officer has wondered as to why petitioner could not report to the CRPF Camp at Mayur Vihar, Phase-III, if he was having a medical problem, where better medical facilities were probably available; noting that the petitioner is a resident of Modi Nagar and as per the certificates produced by the petitioner he was visiting the primary health center at Ghaziabad. The logic is that if petitioner could travel a distance of 20 km. from Modi Nagar to Ghaziabad he could cover additional 3 km. to reach his Camp where better medical facilities were available.

7. With respect to the medical certificates relied upon by the petitioner, we find that the certificates dated 15.5.1996 and 05.6.1996, pertain to his wife Rajbala and have been issued by a private clinic without any address. The address of the clinic discloses in the certificates is "Opposite Shayam Palace, Modi Nagar".

8. Pertaining to himself, the petitioner has relied upon a medical certificate dated July 07, 1996 issued by one Dr. V.K. Garg. The residential address stated in the certificate is "Meerut Road". The certificate does not evidence that Dr. V.K. Garg having a clinic at any other place and thus it is apparent that the clinic would be on Meerut Road where Dr. V.K. Garg resides. There is then a certificate dated July

20, 1996 statedly issued by the Chief Medical Superintendent, MMO Hospital, Ghaziabad. There is another certificate dated August 01, 1996 issued by a doctor working at Palliwal Surgical Clinic, Modi Nagar. An OPD card pertaining to the primary health centre, Ghaziabad bearing the dated July 19, 1996 has been relied upon. A certificate dated August 17, 1996 issued by a hospital at Daulana District, Ghaziabad, probably a Government hospital is relied upon. Another certificate issued from the same hospital dated November 16, 1996 is relied upon.

9. Now, the petitioner has no answer to give as to why would he be getting himself treated from private doctors and at primary health centers in Ghaziabad, Meerut Road or Daulana when his Camp was at Mayur Vihar, Phase-III, which is at a distance of hardly 3 km. from Ghaziabad. Petitioner claims to be a resident of P.O Modi Nagar, District Ghaziabad. The distance between Modi Nagar and Ghaziabad is about 20 km. If petitioner would proceed from Modi Nagar to Ghaziabad, we see no reason he could not reach his Camp at Mayur Vihar, Phase-III. Before the Inquiry Officer, the petitioner did not summon the doctors who had statedly issued the medical certificates. In Government hospitals and especially in the primary health centers, it is very easy to pick up letterheads and contrive certificates thereon. It is equally easy to procure fake and false medical certificates from private practitioners.

10. We are not analyzing the evidence as a court of appeal. We concur with the opinion rendered by the Inquiry Officer that there is firstly no evidence of the petitioner applying for leave and that that the certificates relied upon by the petitioner could possibly be contrived and obtained documents.

11. We would also like to highlight at this stage that the medical certificate dated July 20, 1996 issued by the Chief Medical Superintendent of MMO Hospital, Ghaziabad records that the petitioner was a out-door patient from July 19, 1996 and that he has been advised rest upto August 15, 1996. If this be so, we find it strange that on August 01, 1996 the petitioner started availing treatment from a private clinic i.e. Palliwal Surgical Clinic. It is also interesting to note that the petitioner realized upon an OPD card which records that he was statedly being treated at the primary health center, Ghaziabad from July 19, 1996 till July 24, 1996. The certificate dated August 17, 1996 issued by the "Karyalaya Prabhari Chikitsaadhikari", District Dhaulana, proceeds to note that the petitioner is under treatment of the doctor, who has issued the certificates and that the doctor concerned has advised the petitioner to avail rest upto 15.11.1996. Being confronted as to how come the petitioner was simultaneously being treated by different doctors at different places at the same time i.e. the same period, realizing that it is apparently a case of the petitioner procuring all and sundry certificates from all and sundry doctors, learned counsel for the petitioner changes tracks.

12. Learned counsel urges that Section 10 of the CRPF Act, 1949 lists less heinous offence and brings home that vide Clause (m) thereof, absence without leave or over-staying leave is treated as a minor offence. With reference to

Clause (f) of Section 9, counsel states that deserting the force is a heinous offence. Counsel cites Capt. Virendra Kumar through his wife Vs. Chief of The Army Staff, New Delhi, to bring home the difference between desertion and absents from duty without leave.

13. We need not deal with the decision of the Supreme Court, which is pertaining to an Army Officer and relates to issues arising under the Army Act. The Supreme Court has noted that the expression "desertion" was not defined under the Army Act and has thus proceeded to consider jurisprudence as to what would be desertion and absence without leave. The decision brings out that *animus deserendi* is an essential ingredient to determine whether it is a case of absence or desertion. We are not analyzing in detail the decision of the Supreme Court for the reason, if it is a case of desertion and if the department chooses to proceed u/s 9 of the CRPF Act, 1949, the magisterial trial has to be held, inasmuch as the said Section contemplates the penalty of imprisonment for 7 years and above and upto life. u/s 10 the maximum contemplates is imprisonment for one year.

14. Section 11 contemplates administrative penalties i.e. civil penalties which may be imposed, and suffice would it be to state that penalties of censure, fine, reduction of the rank etc. including removal and dismissal from service is to be found mentioned in the Section if it is found that a force personnel is guilty of disobedience, remiss or is guilty of any other misconduct, as explained by the Supreme Court in the decision reported as (2005) 12 SCC 228 UOI & Ors. vs. Ghulan Mohd. Bhat. The administrative power akin to a civil power is contemplated by Section 11 and the domain of Sections 9 and 10 is distinct vis-à-vis the domain of Section 11. The Supreme Court was considering a case of a force personnel who had over-stayed leave and was absents from duty. Leave being sanctioned but the force personnel over-staying the same by 315 days the penalty of removal from service was upheld.

15. Now, whether it be a case of desertion or unlawfully absents himself from duty, a distinction has to be made where a force personnel abandons the Camp without intimation and without leave being sanctioned vis-à-vis a case where a force personnel is sanctioned leave but over-stays the leave.

16. In the former, the act is akin to one of desertion. Leaving the Camp without intimation would mean that the absence is detected when the force personnel has to report for duty assigned on the day in question. Replacements to be found would be difficult. It would be a panic situation for the reason whether the force personnel was issued arms or not would have to be found out, if he has run away with arms, it would be of utmost importance to apprehend him. This alarm is not raised when a person is on leave but over-stays the leave. This is the qualitative difference in the two situations.

17. Counsel then seeks to urge that the penalty of dismissal from service is disproportionate to the gravity of the offence and for which learned counsel relies upon a decision of this Court reported as Sunil Kumar Vs. Union of India (UOI)

and Others, incidentally which has been authored by one of us :

Pradeep Nandrajog, J.

18. A perusal of the decision in Sunil Kumar's case (supra) would reveal that Sunil Kumar had led evidence of his wife being in a critical condition at the fag end of her pregnancy. He led evidence that she had to undergo a caesarian operation at which a second girl child was born. There was evidence that he had verbally informed the Company Havaladar Major when he left. In the decision it was specifically noted that Sunil Kumar came under a situation of conflict : on the one hand was the call of duty, on the other hand was the compulsion to rush to his house, inasmuch as he had information of his wife being in a critical condition. It was noted in the decision that Sunil Kumar left the Unit on March 17, 2008 but after informing the Company Havaladar Major. There was evidence that he reported back for duty on April 17, 2008 i.e. he absented for 30 days.

19. In the instant case, there is evidence of petitioner obtaining contrived medical certificates. We highlight once again that the Unit of the petitioner from where he was absenting was stationed at Mayur Vihar, Phase-III which is at a distance of hardly 3 km. from Ghaziabad, in which town petitioner claims to have been visiting hospitals and availing treatment. The question remains unanswered as to why he could not report to the Unit at Mayur Vihar, Phage-III where better medical facilities were available. The facts of case of the Sunil Kumar are entirely different than the facts of the instant case. We do not find the penalty to be disproportionate to the gravity of the offence. Not only did the petitioner abscond without information, he has procured false certificates to justify his absence. Whereas Sunil Kumar came out with the truth, the petitioner has lied. The writ petition is dismissed but we refrain from imposing any costs since the petitioner is without a job.