

GAHC010064682021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2611/2021

RANJAN KUMAR SINGHA
S/O- LT. LAKHI KANTA SINGHA, R/O- NITAYNANDAPUR, DIST.-
HAILAKANDI, ASSAM, PIN- 788168

VERSUS

THE UNION OF INDIA AND 6 ORS
MINISTRY OF HOME AFFAIRS, NEW DELHI, PIN- 110001

2:INSPECTOR GENERAL OF POLICE
RAJASTHAN SECTOR
CRPF
JAIPUR
RAJASTHAN
PIN- 754133

3:THE DIGP
RANGE HQ
CRPF
GOLF COURSE ROAD
AJMER
RAJASTHAN
PIN- 305001

4:THE DIGP
GROUP CENTRE-I
CRPF
AJMER
RAJASTHAN
PIN- 305001

5:THE COMMANDANT

147 BATATLION
CRPF
KASHIPUR
SILCHAR
PIN- 788009

6:THE COMMANDANT
03 BATATLION
CRPF
C/O- 56 A.P.O.
INDRA NAGAR
SRINAGAR
JAMMU AND KASHMIR
PIN- 190004

7:THE ASSTT. COMMANDANT
03 BATATLION
CRPF
C/O- 56 A.P.O.
INDRA NAGAR
SRINAGAR
JAMMU AND KASHMIR
PIN- 19000

Advocate for the Petitioner : MR. P K DEKA

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

JUDGMENT AND ORDER (CAV)

Date : 15-12-2023

Heard Mr. I. H. Laskar, learned counsel appearing for the petitioner. Also heard Mr. S. S. Roy, learned CGC appearing for the respondents.

2. The present writ petition is filed by the petitioner assailing the order dated 22.01.2020 passed by the disciplinary authority imposing the punishment of

removal from service of the petitioner, as well as the order dated 12.06.2020 passed by the appellate authority affirming the order of removal from service. The petitioner has further prayed for reinstatement in service withholds back wages and other benefits.

3. The writ petitioner was appointed as Constable (GD) in the Central Reserved Police Force (CRPF) in the year 2006. He was allotted in the Central Reserved Police Force (CRPF) being Force No.065093679. After completion of his Basic Training, the petitioner was transferred to 147th Battalion of the Central Reserved Police Force (CRPF) at Kashipur, Silchar, Assam. Thereafter, petitioner was posted to the 3rd Battalion Head Quarter at Srinagar, Jammu and Kashmir on transfer. While being posted at Srinagar, petitioner submitted an application on 11.03.2019 through proper channel for grant of leave for 15 (fifteen) days to attend the marriage of his sister. The petitioner applied for leave with effect from 14.03.2019 to 02.04.2019. It is pleaded that the petitioner has been suffering from Psychiatric disease from a long period of time and was undergoing treatment as per advice of the doctor. The marriage of the sister of the petitioner was postponed due to illness of the father of the groom. This made the petitioner depressed and ultimately he lost his mental balance. Since his condition became serious, the wife of the petitioner took him to the

Psychiatric OPD of Silchar Medical College and Hospital, Silchar. Since his condition did not improve, his wife took him to NEIHGRIMS, Meghalaya, Shillong. Under the treatment of the doctor consulted at NEIHGRIMS, Meghalaya, the petitioner gradually started improving. Although he was not fully cured and was not in a condition to join in his services at the 3rd Battalion, at Srinagar, Jammu & Kashmir, since his period of leave had expired, the wife of the petitioner represented before the competent authority seeking his extension of leave. After some improvement of his health, the petitioner had joined in his service and thereby reported to the Battalion Head Quarter on 04.09.2019.

4. Thereafter, the petitioner had again went for check-up at the OPD of Departmental Hospital at New Delhi on 14.09.2019. He was advised to carrying his duties without fire arms and was also advised for regular check-up once every week. Considering the mental health condition of the petitioner, his wife made a representation on 18.06.2019 before the competent authority for extension of leave. However, the respondent No. 6, namely, the Commandant 3rd Battalion Central Reserved Police Force (CRPF) stationed in Srinagar, Jammu & Kashmir issued the impugned Notice dated 18.09.2019 initiating departmental proceedings against the petitioner with as many as 3 (three) charges. All the 3 (three) charges brought against the petitioner are in respect of absence from

his duties on various dates without obtaining permission from any competent officer. By the said memorandum dated 18.09.2019, the commandant recommended departmental enquiry under the provisions of Rule 27 of the CRPF Rules, 1955 against the petitioner on the charges of misconduct and negligence in discharging duties while being a member of the Force. Along with said memorandum, the statement of allegations, articles of charges, list of documents in support of the charges and the list of witnesses were enclosed.

5. Petitioner submitted his reply on 27.09.2019 in response to the show-cause notice/ Memorandum dated 18.09.2019. Thereafter, the Enquiry Report dated 09.12.2019 was submitted by the Enquiry Officer holding all the charges to be proved against the petitioner. The respondent No.6, the Commandant accepted the Enquiry Report and upon due consideration of the Enquiry Report along with the statements of the petitioner and the witnesses, the impugned order dated 22.01.2020 imposing the penalty of removal from service w.e.f 23.01.2020. Pursuant to the impugned order of removal dated 22.01.2020 passed by the respondent No.6, an appeal was preferred by the petitioner, which also came to be dismissed by order dated 12.06.2020 rejecting the prayer of the petitioner.

6. The learned counsel for the petitioner submits that the allegations against

the petitioner could not have been held to be proved in view of the sufficient materials, which disclosed that the petitioner was suffering from mental illness, which require consistent medical treatment and regular medical check-up. The learned counsel for the petitioner submits that his absence from duty was not intentional but for reasons beyond his control and for undergoing medical treatment for the mental illness that he had suffered. The Enquiry Officer did not consider the relevant medical prescription and advice rendered, which clearly revealed that the petitioner suffered from mental illness and requires consistent treatment and medical supervision. As such the imposition of penalty of removal from service imposed by the disciplinary authority is too harsh a penalty and therefore, the department ought to have taken a lenient view in the matter instead of imposing such extreme punishment, keeping in view the illness that he had suffered and the medical treatment that he has required to undertake regularly. The learned counsel for the petitioner submits that he is the sole bread earner of the family and because of being removed from service, his family comprising of his wife, one (1) daughter and widowed mother will face starvation. Alternatively, the learned counsel for the petitioner has a limited prayer before the Court seeking a direction from the court for modification of the punishment imposed to a lesser punishment as prescribed under the Rules.

7. Learned counsel for the petitioner submits that the entire enquiry

conducted was not as per the procedure prescribed. He submits that under the CRPF Rules before the commencement of the enquiry the petitioner is to be put to the question whether he pleads guilty or not, that is the mandate of the Rules, which has not been followed. The further submission of the learned counsel for the petitioner is that although the Presenting Officer was appointed, it was only an eye wash. Presenting Officer had no role to play and it is the Enquiry Officer who functioned both as a Presenting Officer and that the Enquiry Officer. The same is contrary to the provisions of the law, more particularly, the law laid down by the Apex Court in *Union of India and Ors Vs Ram Lakhan Sharma* reported in *AIR 2018 SUPREME COURT 4860*.

8. Learned counsel for the petitioner submits that in that view of the matter the enquiry conducted being contrary to the provisions of law and the enquiry proceedings are vitiated. Learned counsel for the petitioner submits that once the enquiry held against the petitioner is contrary to the provisions of law and stands vitiated, the consequential order dated 22.01.2020 imposing the penalty of removal will also be non est in law. It is submitted that the appellate authority ought to have taken into considerations all these relevant factors. However, the same was not done and therefore, the impugned order dated 12.06.2020 passed by the Appellate authority is also bad in law and needs to be interfered with and set aside.

9. The learned counsel appearing for the respondent disputes the contentions raised by the learned counsel for the petitioner. He submits that the entire enquiry proceedings were conducted as per the provisions prescribed under the Act read with the Rules. It is submitted that the petitioner was a habitual offender and had disobeyed or neglected to follow the orders issued by his superior officers. He overstayed his period of leave on several occasions in the past. It is submitted that all opportunity to present his case was offered to the petitioner during the enquiry. It is submitted that at the commencement of the enquiry, the petitioner was explained the procedures in detail intimating him that he could submit any or all the evidences in support of his defence or take help of any other person to defend his case. It was at the request of the petitioner that the enquiry be conducted in Hindi language. Specific query as required under Rule 27 (5) of the Central Reserved Police Force (CRPF) that as to whether the petitioner pleaded 'guilty or not' was put to the petitioner, to which he pleaded 'not guilty' and thereafter the enquiry commenced. The Enquiry Report was furnished to the petitioner and he was also asked to submit any new evidence in his favour, if any, within 15 days from the date of receipt of the said letter dated 11.12.2019. As per the record, this communication was received by the petitioner on 02.01.2020. However, no such document or proof of evidence was furnished. It is submitted by the learned counsel for the

respondent that there is no infirmity in the enquiry proceedings conducted. Consequently, the order of penalty was imposed as per the prescribed provisions under the statement on the basis of the findings of the Enquiry Officer and upon due consideration of all relevant materials.

10. Learned counsel for the respondent therefore submits that the prayers made in the writ petition cannot be entertained and the same should therefore be rejected and the writ petition be dismissed.

11. Rival submissions of the parties have been duly considered. Pleadings on record have been carefully perused. The disciplinary proceedings records as placed before the Court by the respondents have also been carefully perused. The procedure for award or punishment is described in detail under Rule 27 of the Rules, 1955. Under the said Rules the Authorities who can impose the various punishments are also described. The procedure for conducting the departmental enquiry is also prescribed under Rule 27 (c) and the same is extracted herein below:

“27 (c) The procedure for conducting a departmental enquiry shall be as follows:-

(1) The substance of the accusation shall be reduced to the form of a written charge, which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs. before the commencement of the enquiry.

(2) At the commencement of the enquiry the accused shall be asked to enter a plea of "Guilty" or "Not Guilty" after which evidence necessary to establish the charge shall be let

in. The evidence shall be material to the charge and may either be oral or documentary; if oral;

(i) it shall be direct;

(ii) it shall be recorded by the Officer conducting the enquiry himself in the presence of the accused;

(iii) the accused shall be allowed to cross examine the witnesses.

(3) When documents are relied upon in support of the charge, they shall be put in evidence as exhibits and the accused shall, before he is called upon to make his defence, be allowed to inspect such exhibits.

(4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry. If the accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall closed for orders If he pleads "Not guilty" he shall be required to file written statement and a list of such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the officer conducting the enquiry on the expiry of the period allowed.

(5) If the accused refused to cite any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case, he may refuse to call such witness or to allow such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on record, the proceedings shall be closed for order.

(6) If the Commandant has himself held the enquiry, he shall record his findings and pass orders where he has power to do so. If the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together

with the proceedings to the Commandant, who shall record his findings and pass orders, where he has power to do so.”

12. Under the said Rule, the manner in which the proceedings are to be conducted have been elaborately prescribed. Upon perusal of the records of the enquiry proceedings, it is seen that the petitioner was given an opportunity as prescribed under Rule 27 (c) (4) either to plead ‘guilty’ or ‘not guilty’. As per the departmental proceeding records available, it is seen that the petitioner in response to the query by the Enquiry Officer under Rule 27 (c) (4), did not accept the charges brought against him and which will have to be construed that the petitioner had pleaded not guilty. The Presenting Officer has been appointed by the competent authority to present the case of the prosecution in the enquiry proceedings. Statements of the witnesses have been found to be duly recorded and examined. Opportunity to cross- examine has not been availed of by the petitioner. It is also seen that the petitioner declined to take any assistance for his defence. Perusal of the records revealed that there are two prescriptions available the 1st prescription is dated 10.04.2019 which was issued in the OPD of the Silchar Medical College and Hospital. From the said record, it is seen that the treating doctor had recorded that ‘*he is on medication irregularly and had last visited SMCH Psychiatric OPD on 23.07.2018*’. His primary complaint is ‘*disinterest in work*’. It is also recorded that ‘*alcohol intake*

on and off still present 3 (three) medicines are prescribed, which he was advised to take for 2 (two) months. He was also advised for light duty without arms and ammunitions. The OPD Records of NEIHGRIMS, Meghalaya, Shillong dated 11.05.2019 indicates '*habit of suicidality in the past*' and thereafter medications are found to be prescribed. The medical advice is that the patient (the petitioner) is not to be employed with fire arms in view of suicidality in past and stressful situations and only under supervision. Follow up was advised after 1 (one) month or on SOS.

13. The charges against the petitioner as is evident from the Memorandum of charges and the records are extracted below:-

"Charge-1

While serving in the capacity of CT/GD in B/03 Battalion, CRPF, and while being a member of the Force as per the provision of Section 11(1) of CRPF Act, 1949, Force No. 065093679 CT/GD Ranjan Kumar Singha defied order/neglected his duties/showed laxity in discharging his duties/committed misconduct. Urgent/sudden leave for 15 days from 14/03/2019 to 02/04/2019 including the Sunday on 17/03/2019, 24/03/2019 and 31/03/2019 was granted to him. Accordingly the official was Supposed to report to TC, Jammu, in the night of 02/04/2019 but the official did not come to his duties and remained absent for

155 days from 03/04/2019 to 04/09/2019 from his leave without obtaining permission from any competent officer and reported to the Battalion HQ at 2030 hrs on 04/09/2019.

Charge-2

While serving in the capacity of CT/GD in B/03 Battalion, CRPF, and while being a member of the Force as per the provision of Section 11(1) of CRPF Act, 1949, Force No. 065093679 CT/GD Ranjan Kumar Singha defied orders including that he remained absent from his duties for 155 days from 03/04/2019 to 04/09/2019 since the time of his leave without obtaining permission from any competent officer. Since he remained absent for his duties, the Company Commander, vide letter. No, L.02/2019-B/03 dated 08/04/2019, 21/04/2019 and 04/05/2019 of his office, directed him to join his duties immediate orders of higher officer.

Charge-3

While serving in the capacity of CT/GD in B/03 Battalion, CRPF, and while being a member of the Force as per the provision of Section 11(1) of CRPF Act, 1949, Force No. 065093679 CT/GD Ranjan Kumar Singha, has become habituated to remaining absent from leave and also remained absent from duties earlier.

Sd/Illegible

(ARVIND KUMAR)

Commandant, 03 Battalion”.

14. All the 3 (three) charges are in respect of the absence from his duties on the dates mentioned under each head of charge. On the other hand, the medical documents, which are available in the pleadings as well as reflected in the records show that the petitioner required treatment under the psychiatric department. It is also seen from the Enquiry Report that the medical documents were also taken into consideration. In both the OPD records, there is no medical advice that the petitioner is not fit for reporting to duty. Both these OPD reports render medical advice that the petitioner should be given light duty without arms and under supervision. Under such circumstances, it has to be accepted that the petitioner was fit for duty but under supervision and without fire arms. From the OPD report, there are 2 (two) other aspects, which are evident namely, that the petitioner has expressed disinterest in work and the petitioner is also on and off alcohol. The charges, which are brought against the petitioner are specifically with regard to absence / neglect from discharging his duties. With regard to the dates mentioned under the various charge heads, no material is furnished by the petitioner to suggest that he was under

conservative medical treatment or that there was medical advice that the petitioner was not found to be fit for duty.

15. Under such circumstances, merely because of the petitioner was prescribed medicines by the psychiatric OPD or that he required medical follow ups cannot be accepted to be a ground, to condone his absence from duty without permission. In the absence of proper medical documents to suggest that the petitioner was not in a position to discharge his duties on the dates/periods mentioned under the charges, it cannot be concluded that the petitioner was prevented from attending to his duties due to medical reasons or treatment. The challenge made to the enquiry proceedings and the consequential orders passed that they were conducted in violation of the procedure prescribed cannot also be accepted to be correct as the records produced by the Department belie the contentions of the petitioner. From the records it is seen that the enquiry was conducted as per the procedure prescribed as also the impugned order passed by the disciplinary authority. The Judgments referred to by the learned counsel for the petitioner does not come to his aid in the facts and circumstances of the case. On the contrary, in respect of dismissal from service for unauthorized absence, a Division Bench of this Court upon due consideration of the materials available upheld such a penalty imposed. Reference may be made to *Irfan Ali* reported in *2012 (1) GLT 542* .

16. Consequently, the writ petition is found to be devoid of merit and the same is therefore dismissed. No order as to cost.

17. Interim orders, if any, stands vacated.

18. Pending Interlocutory Application, if any, is also dismissed and the records of the proceedings are returned back to the departmental counsel.

JUDGE

Comparing Assistant