



Writ Petition No.30661 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.30661 of 2018

E.Balasubramanian
Ex.No.015033586
No.40, Palla Street
Ninnai Kattur, Kattankolathur
Kancheepuram District-603 203.

... Petitioner

Vs.

1. The Union of India
Rep. by its Secretary to Government
Ministry of Home Affairs
New Delhi - 110 001.
2. The Director General
Central Reserve Police Force
CGO Complex
Lodhi Road, New Delhi - 110 003.
3. The Inspector General of Police
Central Reserve Police Force
Southern Sector
Hyderabad, Telangana.
4. The Deputy Inspector General of Police



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Central Reserve Police Force
Group Centre
Avadi, Chennai-600 065.

5. The Commandant
42, Bn, Central Reserve Police Force
Keshogiri
Hyderabad - 500 005.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 4th respondent in his order No.R.XIII-12/2011-Estt-III dated 29.06.2012 confirming the order passed by the 5th respondent in his order No.P.VIII-3/2011-42-EC-II (E.B) dated 01.01.2012 and quash the same and to direct the respondents to take the petitioner into the strength of CRPF as a constable to pay with all monetary benefits and seniority.

For Petitioner : Mr.A.S.Mujibur Rahman
For Respondents : Mr.T.L.Thirumalaisamy
Central Government Standing Counsel

ORDER



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This writ petition has been filed seeking to quash the impugned order dated 29.06.2012 bearing reference No.R.XIII-12/2011-Estt-III passed by the 4th respondent confirming the order dated 01.01.2012 bearing reference No.P.VIII-3/2011-42-EC-II (E.B) passed by the 5th respondent and direct the respondents to take the petitioner into the strength of CRPF as a constable and pay all monetary benefits and seniority.

2. The case of the petitioner is as follows:

2.1. The petitioner was joined as a Constable in the Central Reserve Police Force in the year 2001 and after having completed the basic training, the petitioner was posted at 42 Battalion under the 5th respondent. The petitioner was granted 60 days Earned Leave with effect from 14.07.2010 to 11.09.2010 and he was supposed to report duty under the 5th respondent on 12.09.2010 but due to some family problems, he was not able to report for duty on 12.09.2010 and reported duty only on 07.07.2011. Accordingly, the fifth respondent issued a charge memo on 14.05.2011 under Section 11(1) of 'the Central Reserve Police Force Act' [hereinafter 'CRPF Act'] with the



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following Article of Charges:-

ARTICLE OF CHARGE-1

That the said No.015033586 CT/GD E.Balasubramanian of B/42 Bn.CRPF while functioning as CT/GD of B/42 Bn, CRPF, committed an act of misconduct in his capacity as a member of the force under Section 11(1) of CRPF Act 1949 in that he was granted 60 days E/L w.e.f. 14.07.2010 to 11.09.2010 with permission to avail on 12.09.2010 being Sunday and was due to report on 12.09.2010 in evening roll call at B/42 Coy Location. But he failed to do so and overstayed from leave without sufficient reasons / cause w.e.f. 13.09.2010 (FN) to till date without any permission of the competent authority.

ARTICLE OF CHARGE-II

That the said No.015033586 CT/GD E.Balasubramanian of B/42 Bn. CRPF while functioning as CT/GD of B/42 Bn, CRPF, committed an act of disobedience of orders under



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Section 11(1) of CRPF Act 1949 in that he was directed to rejoin duty immediately by OC B/42 vide his letters No.L.II-2/10-B/42 dated 15.09.2010 and 27.09.2010 but he did not comply with the orders and instead, continued to remain absent without permission of the competent authority w.e.f. 13.09.2010 (FN) to till date.

ARTICLE OF CHARGE-III

That the said No.015033586 CT/GD E.Balasubramanian of B/42 Bn.CRPF while functioning as CT/GD of B/42 Bn, CRPF, committed an act of indiscipline under Section 11(1) of CRPF Act, 1949 in that he is a habitual offender and earlier also deserted while he was undergoing Dog Handler training at GC, CRPF, Rangareddy on 07.10.2009 at 18.00 hrs and remained absent form duty unauthorised for 89 days w.e.f 08.10.2009 to 04.01.2010 for which he was awarded punishment vide this office order No.P.VIII-2/2010-42-EC-II dated 29.06.2010. Now again he is overstaying from leave



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w.e.f. 13.09.2010 to till date without any permission from the competent authority.

2.2. An Enquiry Officer was appointed by the fifth respondent to conduct the Departmental Enquiry. The enquiry was conducted in a biased manner and without following the procedure contemplated under Rule 27 of CRPF Rules. The report was submitted by the Enquiry Officer holding that the Article of Charges framed against the petitioner have been proved. The fifth respondent, without properly considering the representation submitted by the petitioner to the Enquiry Officer, has passed the order on 01.02.2012 awarding the punishment of dismissal from service. Against the dismissal order, an appeal was filed before the fourth respondent on 05.03.2012 and the same came to be rejected on 29.12.2012 as devoid of merit. Hence, the present writ petition was filed after the delay of 5 years and 10 months due to the financial problem and the delay is neither wilful nor wanton.

3. The learned counsel for petitioner submitted that due to the family



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problems of the petitioner, he was not able to join duty after availing the Earned Leave. He further submitted that despite sufficient medical investigation reports produced by the petitioner in respect of the miscarriage of the petitioner's wife and the treatment given to the petitioner's sister in the hospital as she has attempted for suicide, the Enquiry Officer and Disciplinary Authority ignored the same and imposed the major penalty of dismissal from service. He further submitted that no independent witness was examined by the Enquiry Officer and only the official witnesses have been examined. It is pertinent to mention that the order of dismissal from service is a non-speaking order and the same suffers from non-application of mind. The learned counsel prays to allow the writ petition by setting aside the impugned order dated 29.06.2012 dismissing the petitioner from service.

4. The Central Government Standing Counsel for respondents submits as follows:

4.1. The petitioner has joined as a Constable in CRPF on 29.08.2001 and reported in 42 Battalion, CRPF on 01.01.2003, after completion of basic



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training. The petitioner applied for earned leave from 14.07.2010 to 11.09.2010 and he should have reported for duty on 12.09.2010 evening roll call but he failed to do so. Accordingly, the petitioner was directed to report for duties immediately vide letters dated 15.09.2010 and 27.09.2010 but he did not comply with the orders and continue to remain absent without prior permission from the competent authority with effect from 13.09.2010. Despite repeated directions, the petitioner did not report for duty and hence, the Officer Commanding had lodged a complaint before the Chief Metropolitan Magistrate-cum-Commandant vide letter dated 13.10.2010. On receipt of the complaint, a warrant of arrest was issued to the Superintendent of Police, Kanchipuram District, Tamil Nadu to apprehend the petitioner by Chief Metropolitan Magistrate-cum-Commandant but the petitioner neither apprehended by the civil police nor reported to Unit / Coy location or nearby CRPF establishment. Accordingly, a Board of Officers were appointed to conduct COI (Court of Inquiry) to enquire about the petitioner's over staying from earned leave with effect from 13.09.2010. Based on the recommendation of Board of COI, the competent authority



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passed final order dated 19.03.2011 declaring the petitioner as 'Deserter from the Force w.e.f. 13.09.2010'. After declaring the petitioner as Deserter from Force, the disciplinary proceedings were initiated against the petitioner as per Standing Order No.20/2011 and accordingly, the charges were framed against the petitioner.

4.2. The petitioner neither made any communication nor submitted any representation for the charges leveled against him. The Enquiry Officer was appointed to conduct departmental enquiry for the charges framed against the petitioner. Before starting the departmental enquiry, the Enquiry Officer had also directed the petitioner to report in person or submit any representation in his defence, if he is unable to report before the Enquiry Officer. The petitioner reported to duty on 07.07.2011 (FN). Thereafter, warrant of arrest issued against him was cancelled and permitted him to report for duties.

4.3. The Enquiry Officer had conducted departmental proceedings as



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per rules and instructions by providing all statements of copies and giving ample opportunities to the delinquent to cross examine the prosecution witnesses. During the departmental proceedings, the Enquiry Officer recorded the statements of 5 prosecution witnesses and examined 16 exhibits. After recording all statements and examining of 16 exhibits, the Enquiry Officer had again given an opportunity to the petitioner vide letter dated 11.11.2011 by directing him to submit any representation to defend his case within 15 days. In response, the petitioner submitted his defense statements on 18.11.2011, in which, he has stated as follows:

'During September 2009, his marriage was solemnized with strong opposition of his parents due to love marriage. His sister was divorced during May 2006. The petitioner got married without consent of his parents while divorced sister was staying at his home. Accordingly, the parents made unwanted quarrel with him as well as with his wife and separated out him from his family. Therefore, he settled with his wife at a rented house and reported for duty timely at that time. But his parents again made unwanted quarrel / problems with his wife, who is staying in a separated house. At that time i.e., during March 2010 he proceeded on 7 days casual leave and brought his wife with him to Unit / Battalion



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and accordingly, he was granted outliving permission to keep his wife at Battalion Hqr for 4 months and at that time, his wife become pregnant. On medical checkup, treating Doctor told that the condition of growing child is in bad condition and advised for abortion. The petitioner brought the matter to the knowledge of the Commandant 42 Battalion. Thereafter he went to his home on 14.07.2010 and arranged abortion of his wife. After known about abortion, his parents again started fighting with his wife and his family problems again increased more. His divorced sister consumed poison at the edge of his leave period on the plea that she is responsible for his family problems and become serious. She was immediately brought to nearby SRM Hospital where she was under hospitalization for 45 days and again admitted in A.G. Hospital for another 12 days. Still his sister is in Hypoxe Ischemic Encephalopathy condition and Doctor visited his house daily for her treatment and treating Doctor told that her mind was effected due to consuming poison and she will behave just like a child forever, thus proper care is required. Being only responsible person in his family to look after his divorced sister and sick wife, he overstayed from leave. In view of the above critical family problems, he was also mentally disturbed and not given any intimation to Battalion Hqr about his overstaying from leave / extension of leave.'



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4.4. The Enquiry Officer concluded the Departmental proceedings by giving due consideration on written statement submitted by the petitioner and accordingly, submitted the same to the Disciplinary Authority by proving all charges leveled against the petitioner vide Memo dated 20.11.2011 and on receipt of the same, the petitioner was served with the copy of report of the Enquiry Officer and directed him to submit representation in writing within 15 days. The petitioner submitted a written reply, in which, he has stated the same facts which he submitted before the Enquiry Officer and tendered apology for his over staying from leave by accepting his guilt. After going through the statements of prosecution witnesses, exhibits and all the documentary evidence on records, the Disciplinary Authority awarded the punishment of "Dismissal from Service" with effect from 01.02.2012 vide order dated 01.02.2012. The petitioner's unauthorized desertion / absence period of 297 days with effect from 13.09.2010 to 06.07.2011 was regularized as 'Dies Non for all purposes' and concluded that he will not be entitled for any pay and allowances or any



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service benefits for the above period under the provision of Section 13 of CRPF Act. Aggrieved against the order, the petitioner submitted an appeal dated 05.03.2012 after a lapse of 30 days before the Appellate Authority. Even though the appeal preferred by the petitioner was time barred, the same was considered and rejected by the Appellate Authority vide order dated 29.06.2012.

4.5. The learned Central Government Standing Counsel placed reliance on various judgments of Hon'ble Supreme Court. In the case of ***Mithilesh Singh Vs. UOI & Others*** reported in ***2003 (3) SCC 309***, the Hon'ble Supreme Court has categorically held that the order of removal from service cannot be faulted and there is no reason to interfere with the orders of the Division Bench of the High Court. He has also relied upon the case of ***Vijay Singh Vs UOI and others*** reported in ***2007 (2) SCC (L&S) 664*** wherein, it was held that a member of the Force, who goes on leave and never report for duties, thereafter, cannot be said to be one merely overstaying his leave and he must be treated as a deserter. He further



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submitted that in cases of this nature, dismissal from the Force is a justified disciplinary action and it cannot be described as disproportionate to the misconduct alleged.

5. The learned counsel for petitioner submitted that the punishment should be a minor punishment under Section 11 read with Section 10(m) of the CRPF Act which read as follows:

'11. Minor punishments. (1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act award in lieu of or in addition to, suspension or dismissal any one or more of the following punishments to any member of the force whom he considered to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the force, that is to say :- '

'10. Less Heinous Offences - Every member of the Force who

(a)

(b)

(c)

(d)



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(e)

(f)

(g)

(h)

(i)

(j)

(k)

(l)

(m) *absents himself without leave, or without sufficient cause overstay leave granted to him;'*

6. It is seen that the petitioner was willfully overstayed for 297 days without any intimation or correspondence. Such indiscipline and lackadaisical attitude are dealt seriously in the Disciplined Armed Forces like CRPF. The petitioner cannot choose the punishment applicable for his misconduct, rather it is to be decided by the competent authority after necessary enquiries, examining the evidences, facts etc., Besides, unauthorized absence in the uniformed services like CRPF is treated as deserter, which is lawful and within the Rules. The petitioner remained absent for 297 days without any prior permission from the competent



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authority is not acceptable in the Disciplined Paramilitary Force. Hence, the petitioner is not a fit person to be retained in this Disciplined Force and the punishment awarded to the petitioner is within the ambit of law and fully commensurate with the gravity of offence committed by him. As such there is no violation of principles of natural justice, the case on hand is squarely covered under the judgment of *Vijay Singh* case.

7. On scrutiny of the medical documents and discharge slip produced by the petitioner in connection with the treatment of his sister, who attempted to suicide by consuming poison, issued by the SRM Medical College Hospital and Research Centre, Kancheepuram District, Tamil Nadu held in Departmental Enquiry Proceedings, the patient was discharged from hospital and treatment was completed by 22.11.2010 and thereafter, no indication regarding hospitalization and continuance of treatment is forthcoming. Even though the genuineness of said documents are accepted, the petitioner should have reported back to duty latest by 25th November 2010 as treatment of his sister was completed on 22.11.2010 itself. The



petitioner also failed to extend his leave or at least to inform his position to the Unit even after discharging his sister from hospital.

8. In order to appreciate the rival submissions, it is necessary to note a few provisions. Rule 147 deals with offences relatable to duties of enrolled members and Rule 156 deals with imposition of punishment of dismissal, etc. They read as follows:

'147. Offences relatable to duties of enrolled members:

Commission of any of the following act or acts by an enrolled member of the Force-

(i) violation of any duty:

(ii) wilful breach or neglect of any provisions of this Act or any rule or of. Directives or of any other lawful orders which he is bound to observe or obey;

(iii) disobeying lawful command of superior officers;

(iv) withdrawing from duty of his office without permission;

(v) quitting his guard, picket, party or patrol without being duly relieved or without leave;

(vi) absenting himself without proper intimation to his controlling authority or without sufficient cause overstaying leave granted to



him of failing without reasonable cause to report himself for duty on the expiry of such leave;

(vii) engaging himself without authority for any employment other than his duty as an enrolled member of the Force;

(viii) being guilty of cowardies;

(ix) being in a state of intoxication while on duty or after having been alerted for any duty;

(x) malingering or feigning or voluntarily causing hurt or infirmity to himself or intentionally delaying his cure or aggravating his disease or infirmity with the intention to render himself unfit of any duty or for the service;

(xi) resisting his lawful arrest or being under arrest or in confinement leaving his arrest or confinement before he is set at liberty by lawful authority;

(xii) assaulting or otherwise ill-treating any enrolled member of the Force subordinate to him in rank or position;

(xiii) being grossly insubordinate or insolvent his higher officer or using or attempting to use criminal force against his colleague or higher officer whether on or off duty, knowing or having reason to believe him to be such;

(xiv) designedly or through neglect injuries, or losing or fraudulently disposing of or unlawful lending his arms, clothes, tools, equipments, ammunition or accoutrements, or any such



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articles entrusted to him or belonging to any other member of the Force;

(xv) taking part in procession, gherao, demonstration, shouting slogans or resorting to pamphleteering or otherwise indulging in any intimidating or coercive act, or dharma, hunger strike for forcing under duress or threats any supervisory- authorized to concede anything or striking work;

(xvi) being guilty of using insulting or threatening language in the case of Security Court or causing any interruption or disturbance in the proceedings of such court;

(xvii) offering unwarrantable personal violence to any person in custody;

(xviii) entering or searching without lawful such authority or reasonable cause any building or place;

(xix) seizing vexatiously and unnecessarily the property of any person;

(xx) detaining, searching or arresting any person vexatiously and without reasonable suspicion or cause;

(xxi) holding out any threat inducement or promise not warranted by law; or (xxii) aiding or abetting or attempting to commit any of the offences under this Act or these rules or doing any act towards the commission of such offence;

shall render him liable for punishment under Section 9 or Section 17 or both.



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156: Imposing of punishment of dismissal, etc.;

Before coming to any lower punishment, the disciplinary authority with a view to ensuring the maintenance of integrity in the Force shall consider the award of punishment of dismissal or removal from service to any member of the Force in the following cases, namely:-

(a) Dismissal:

(i) conviction by a criminal court;

(ii) serious misconduct or indulging in committing or attempting or abetting an offence against railway property;

(iii) discreditable conduct affecting the image and reputation of the Force;

(iv) neglect of duty resulting in or likely to result in loss to the railway or danger to the lives of persons using the railways;

(v) insolvency or habitual indebtedness; and

(vi) obtaining employment by concealment of his antecedents which would ordinarily have debarred him from such employment.

(b) Removal from service:

(i) any of the misconduct for which he may be dismissed under clause (a) above;

(ii) repeated minor misconducts;



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(iii) absence from duty without proper intimation or overstay beyond sanctioned leave without sufficient cause.

9. Rule 147(vi) deals with the case of absence without proper intimation. Absence from duty without proper intimation is indicated to be a grave offence warranting removal from service. As has been observed in a series of cases, the scope of interference with punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the Court cannot interfere with the same. The act of indiscipline by such a person needs to be dealt with sternly. The penalty of removal of service is statutorily prescribed. It is for the employee concerned to show that how the penalty was disproportionate to the proved charges. No mitigating circumstance has been placed by the petitioner to show, as to how the punishment could be characterized as disproportionate and/or shocking. Therefore, the order of removal from service cannot be faulted and hence, there is no reason to interfere with the impugned order.



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Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

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Index : Yes/No

Speaking order: Yes/No

Neutral citation: Yes/No

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