



W.A.(MD)No.832 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.832 of 2020

and

C.M.P.(MD)Nos.4195 of 2021 & 4612 of 2020

1. Inspector General of Police,
Southern Sector, C.R.P.F.,
Road No.10C, Jubilee Hills,
Gayathri Hills, Hyderabad-05.

2. Deputy Inspector General of Police,
Group Centre, C.R.P.F., Yalahanka, Bangalore-560064.

3. The Commandant,
110, Battalion C.R.P.F. Head Quarters,
C/o.56 APO, at Modern Rice Mill,
Lethapora, Pulwama District,
Jammu and Kashmir State.

... Appellants

Vs.

S.Sarin Singh

... Respondent



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PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 06.02.2020 made in W.P.(MD)No.6383 of 2012 on the file of this Court.

For Appellants : Mr.S.Jeyasingh

For Respondent : Mr.S.Sarin Singh,

Party-in-Person

JUDGMENT

(Judgment of the Court was delivered by ***R.SURESH KUMAR, J.***)

This Writ Appeal is directed against the order dated 06.02.2020 made in W.P.(MD)No.6383 of 2012.

2.The respondent joined service in Central Reserve Police Force (hereinafter referred to as 'CRPF') as Constable on 27.05.1994 at Avadi Training Centre, Chennai and after successful completion of training, he was posted at Durgapur in West Bengal, subsequently, at Aligarh in Uttar Pradesh and claimed to have put in unblemished service for 8 years.

3.On 10.11.2002 the respondent was posted at Manipur State, where the army and other security forces were fighting insurgency. The respondent reported to the Head Quarters at Loktak on 11.11.2002 and



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joined in “F Company” on camp at Leematak from 14.11.2002, which is about 25 kms., from Loktak.

4. On 19.11.2002 at evening hours, the respondent was assigned duty in the “Road Opening Party” on 20.11.2002 to provide security and protection to the officers of National Hydro Electric Power Corporation from the armed insurgency operating in that area.

5. Accordingly, on 20.11.2002 at 07.10 a.m., the respondent claimed to have reported to duty in the Road Opening Party and was in the 2nd Section. When the party had covered about 1 ½ km., at about 07.45 a.m., the 1st Section, which was moving in front of the 2nd Section, where the respondent was a party, was ambushed by underground militants / terrorists and they fired from all sides. The 2nd Section took position to retaliate, but it is the claim of the respondent that before he was taking position, unfortunately, he fell into a 12 feet deep ditch on the side and lost consciousness.



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6. With the result in the said ambush made by the militants against CRPF personnels, nearly about 7 persons were killed and larger quantity of arms and ammunitions were looted by the militants. It was considered to be a great set back to the CRPF forces in that area. Therefore, because of the inaction on the part of the respondent, while he was in 2nd Section instead of opening fire on the militants, who are just 20 to 25 yards away from the respondent, despite the command in this regard given by the Commandant concerned, since he has not acted upon and opened fire, the said mischief was happened, where seven persons were killed and larger quantity of arms and ammunitions were looted by the militants. Therefore, considering the gravity of such inaction or dereliction of duty on the part of the respondent, the appellants Department placed him under suspension and thereafter, after asking for explanation, which was not a satisfied explanation, they wanted to conduct an enquiry. The enquiry officer before whom the enquiry was conducted, by giving an opportunity to the respondent, ultimately, framed charge against the respondent and the same had been proved. Based on which, the disciplinary authority, namely, Commandant, 3rd respondent herein by an order dated 16.05.2003 inflicted the maximum punishment of removal from service against the respondent on 16.05.2003. Against which,



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the respondent preferred an appeal to the 2nd respondent, who in turn considered the said appeal and passed orders on 28.08.2003, confirming the order of the disciplinary authority and further an appeal was also filed to the 1st respondent, who also having considered the said appeal, confirmed the order of the disciplinary authority as well as the appellate authority, by his order dated 09.01.2004.

7.Challenging all these orders, the respondent filed Writ Petition before this Writ Court in W.P.(MD)No.6383 of 2012, where the learned Single Judge having heard the said matter, was of the view that since the petitioner was alive on the spot, it cannot be stated that he did not retaliate. The learned Single Judge also further held that it is also not in dispute that the petitioner became unconscious on the date of occurrence and he had taken treatment due to the injury in his left shoulder and there is no reason by the authorities to show that the injury sustained by the petitioner was not on account of the alleged attack of the militants and terrorists and the petitioner has sought for medical leave and 15 days of medical leave has been granted by the authorities. These are all the findings given by the learned Single Judge, which had influenced to take a decision in favour of



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the respondent / writ petitioner and ultimately, the learned Single Judge has come to the conclusion that the respondent / writ petitioner had put in 8 years of service in the force. In the considered opinion of the learned Single Judge, the findings itself were based on the surmises without any evidence and therefore, the learned Single Judge was inclined to interfere with the orders.

8. Accordingly, the orders passed by the disciplinary authority, the first Appellate Authority and the second Appellate Authority having been quashed, a direction as a sequel has been given to reinstate the respondent / writ petitioner into service from the date of removal with all consequential benefits, that is the order impugned in this Writ Appeal.

9. We have heard the learned counsel appearing for the appellants, who has pointed out that insofar as the operation that has been taken place on that date, where there were two Sections of CRPF Personnels and the first section already started firing with militants as there were no great arms and ammunitions on the side of the militants and the second section also was directed and commanded to open fire, the respondent as one of the



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members of the second section, did not open fire, even though he was very close to the extent of 20 to 25 yards to the militants. Therefore, the militants taking advantage of the same, killed seven CRPF personnels ie., colleagues of the respondent, ultimately took and looted the arms belong to the CRPF. Therefore, it was considered to be a great set back for the security force in that locality. Pursuant to which, enquiry was conducted and opportunities were given to the respondent and charge framed against the respondent since was proved beyond the doubt, the disciplinary authority had inflicted the maximum punishment of removal from service, as the service of this kind of coward persons was no more required in the CRPF force, as it is a disciplined security force and almost every day they were facing militancy in the northern side and other required area. Therefore, when such incident was taken place since he had not acted upon as commanded by the Commandant concerned, absolutely, his service was not required for the CRPF force and therefore, such maximum punishment of removal of service was inflicted against him, which was confirmed by the first Appellate Authority and second Appellate Authority. However, the learned Single Judge has taken a different view, of course erroneously and interfered with the said orders by setting aside the same. The learned



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counsel for the appellants therefore seeks indulgence of this Court to sustain those orders, which were passed by the CRPF authorities as stated supra.

10. We have heard the learned counsel appearing for the respondent and he made detailed submission on 15.03.2023. Almost the case was heard and though we were about to pass orders, for want of time we adjourned the matter. When the matter is taken up for hearing today, the learned counsel for the respondent has submitted that the respondent wanted to revoke the vakalat and the vakalat has been handed over to the respondent and he himself wanted to argue the case, who is also present before this Court. Therefore, we asked the respondent, who appeared before this Court as party-in-person to argue. He made submissions stating that the moment, when the militants attacked, he claimed to have fell into 12 feet deep ditch and with the result, he became unconscious and after he became conscious, some of the colleagues stated that 7 of our colleagues were killed and arms were looted by the militants. Thereafter, he requested for medical treatment which he wanted that was denied by the authorities concerned. After long time only, ie., about a month after, he was permitted to go on medical leave, since he suffered pain in the right shoulder because of the



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injury he sustained at the time of fallen into the ditch. Therefore, this aspect since had not been taken into account by the appellants during the enquiry as well as subsequently when it was considered by the first appeal and the second appeal, the respondent, who appeared party-in-person, submits that the learned Single Judge having considered the said aspect allowed the Writ Petition. Therefore, such order passed, which is impugned in this Writ Appeal, does not require any interference from this Court.

11.We have given our anxious consideration to the said submissions made by the parties, including the submissions made by the respondent, who appeared before this Court as party-in-person.

12.Insofar as the job nature of the respondent is concerned, he is the member of the armed force like CRPF and insofar as the place, where he was working at the time of the incident taken place is concerned, it is a very sensitive place that is Manipur State, where it is an admitted fact as averred in Paragraph No.4 of the affidavit filed by the respondent in the Writ Petition that the army and other security forces were fighting insurgency.



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13.It was also an admitted case on the part of the respondent in paragraph No.5 of the affidavit filed in support of the Writ Petition that on 20.11.2002, he reported duty in the Road Opening Party and he was in 2nd section. When the party had covered about 1 ½ km at about 7.45 a.m., the 1st section, which was moving in front of the 2nd section, where the respondent was a member, was ambushed by the underground militants / terrorists and they fired from all sides.

14.Therefore, these are all the admitted facts on behalf of the respondent that they started fire on the CRPF Battalion, which had two sections out of which, the first batch had taken front position, the second batch, where the respondent is also a member has followed and taken the second position, when there has been a fire from all sides by the militants and weapons were already given to all the members of both the first batch as well as the second batch to open fire in all the directions towards the militants and it was also recorded in the evidence that the militants were just near to 20 to 25 yards in front of the 2nd section people, including the respondent herein. However, the respondent did not open fire, despite the command had been given by the commandant to open fire. This has been



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recorded in the evidence of other personnels including the 'F' company Commandant, namely, one Narayanan. Therefore, the situation can very well be visualized that at the time when his service was required as the militants already started firing from all directions, the members of the force should have been acted upon swiftly and quickly to open fire towards militants.

15.However, it is the evidence on the part of the appellants department, who conducted enquiry that the respondent did not open fire.

16.The respondent has claimed that he had fallen in the ditch and become unconscious, for which, he had taken treatment only after one month, this has not been taken note of by the appellants department.

17.Moreover, insofar as the duty cast upon the members of the CRPF, especially, when they were in the border area is concerned, they must be more vigilant and more conscious. When such incident had already been started, where the fire was taken place from all sides from the militants, the force should have acted upon with utmost sincerity and all efforts should have been taken to protect the force, as well as the militants also should have been dealt with severely.



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18. In this context, though the respondent was having weapon, he did not open fire and has not used the same towards the militants. This has been recorded in the enquiry report and based on which, charge framed against the respondent since has been proved beyond the doubt, as there has been direct evidence in this regard, the disciplinary authority had decided to inflict maximum punishment as provided under Section 9 of the Central Reserve Police Force Act, 1949. What are all the heinous offences that have been enumerated under Section 9 and the same reads thus:

“9. More heinous offences - Every member of the Force who-

(a) begins, excites, causes or conspires to cause or joins in any mutiny, or, being present at any mutiny, does not use his utmost endeavour to suppress it, or knowing, or having reason to believe in, the existence of any mutiny, or of any intention or conspiracy to mutiny or of any conspiracy against the State does not, without delay, give information thereof to his superior officer; or

(b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having reason to believe him to be such; or

(c) shamefully abandons or delivers up any post or guard which is committed to his charge or which it is his duty to defend;



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or

(d) directly or indirectly holds correspondence with, or assists or relieves any person in arms against the State or omits to discover immediately to his superior officer any such correspondence coming to his knowledge; or who, while on active duty,—

(e) disobeys the lawful command of his superior officer;

or

(f) deserts the Force; or

(g) being a sentry, sleeps upon his post or quits it without being regularly relieved or without leave; or

(h) leaves his commanding officer, or his post or party, to go in search of plunder; or

(i) quits his guard, picquet, party or patrol without being regularly relieved or without leave; or

(j) uses criminal force to, or commits an assault on any person bringing provisions or other necessities to camp or quarters, or forces a safeguard or breaks into any house or other place for plunder, or plunders, destroys or damages property of any kind; or

(k) intentionally causes or spreads a false alarm in action or in camp, garrison or quarters; or

(l) displays cowardice in the execution of his duty, shall be punishable with transportation for life for a term of not less than seven years or with imprisonment for a term which may extend



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to fourteen years or with fine which may extend to three months' pay or with fine to that extent in addition to such sentence of transportation or imprisonment."

19. Such more heinous offences being committed by the member of the force deserve maximum punishment of removal of service that is also possible to be inflicted against the member of the force, if they committed any such offence as provided under Section 9 of the said Act.

20. When that being the case, the learned Single Judge has dealt with the matter and has given a reason in Paragraph No.10, which reads thus:-

"10. Perusal of record shows that the petitioner was available on the spot and whether he had taken effort to retaliate cannot be decided by the authorities. Since the petitioner was alive on the spot, it cannot be treated that he did not retaliate. It is also not in dispute that the petitioner became unconscious on the date of occurrence and he had taken treatment due to the injury in his left shoulder and there is no reason by the authorities to show that the injury sustained by the petitioner was not on account of the alleged attack of the militants and terrorists and the petitioner has sought for medical leave and 15 days of medical leave has been granted by the authorities. The



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petitioner has put 8 years of service in the Force. In my considered opinion, the findings itself are based on surmise without any evidence and therefore, I am inclined to interfere with the impugned orders.”

21.The learned Single Judge has observed that since the petitioner was alive on the spot, it cannot be stated that he did not retaliate and there is absolutely no evidence to give such conclusion that he has retaliated or he has not retaliated. It is the admitted case of the respondent / writ petitioner as averred in the affidavit itself. The only reason stated by the respondent for not retaliating is that before he was taking position he fell into the deep ditch. But there is no evidence to that effect as if he really fell into the ditch and he became unconscious, but the learned Single Judge has observed that since the petitioner was alive, it cannot be stated that he did not retaliate.

22.The learned Single Judge also stated that there is no reason by the authorities to show that the injuries sustained by the respondent was not on account of the alleged attack of the militants / terrorists.

23.There was no attack directly on the respondent by the militants / terrorists. In fact the attack made by the militants / terrorists was



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taken only by the other members, who are the colleagues of the respondent.

With a result 7 of them were killed and they have given their valuable life during the fight and therefore, insofar as this respondent is concerned, he has never taken any of such militant attack as he had also not stated that there was a fire on him and he got any injury out of the fire made by the militants / terrorists.

24.It is also an admitted fact on the part of the respondent that the militants already opened fire from all directions. When that being so, the 1st section as well as the 2nd section of the CRPF should have opened fire retaliating the attack given by the militants, when a command was also given by the Commandant, with utmost sincerity that should have been obeyed and no excuse can be taken by any member of the force like the respondent by relying the excuse that is before I take position I fell into a ditch etc.. This kind of excuses if is accepted, then the force cannot be effective in acting upon the terrorism, especially in border states of this Country.

25.Moreover, such coward persons if is permitted to continue in the force that may not be useful to the force to discharge their duty in such a



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difficult situation. Hence, there was enough justification on the part of the appellant department to take such conclusion of course on the basis of the proven charge in the enquiry to inflict the maximum punishment of removal of service.

26.All these aspects since have not been considered in proper perspective by the learned Single Judge, we feel that the reason given in Paragraph No.10 of the impugned order is based on the erroneous assumption and not based on the evidence that has been recorded in the enquiry against the respondent. Therefore, we have no hesitation to hold that we can very well interfere with the said order. Accordingly, the said order is liable to be interfered with. In the result, the order passed by the learned Single Judge, which is impugned herein, is hereby set aside and this Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) & (K.K.R.K, J.)

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