

GAHC040002182018



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

Case No. : WP(C)/28/2018

SHRI JAI PRAKASH MISHRA
S/O RAM KINKAR MISHRA, RESIDENT OF DANGARBAD POST OFFICE
PUDRIPUR, DIST. BALIA, UTTAR PRADESH, PHONE NO. 09936806467

VERSUS

THE UNION OF INDIA AND 2 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, JAISALMER HOUSE, 26-MANSINGH ROAD, NEW
DELHI. 2:THE JUDICIAL MAGISTRATE

Age: 0

Occupation :

FIRST CLASS/ASSISTANT COMMANDANT 30 B
N. CENTRAL RESERVE POLICE FORCE CHARIDUAR
ASSAM.

3:THE COMMANDANT

Age: 0

Occupation :

30 B.N. CENTRAL RESERVE POLICE FORCE CHARIDUAR
ASSAM

Advocate for the Petitioner : MrG Riba, MrT Don,MrG Kato,Mr.T J Dogum,MR.H Gyati,MrK
Tari,P Kayi

Advocate for the Respondent : , ,CGC,,MrM Kato,

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of Hearing : 06.12.2024, 09.12.2024

Date of Judgment: 11.12.2024

Judgment & Order (CAV)

Heard Mr. K. Tari, learned counsel for the petitioner. Also heard Mr. M. Kato, learned CGC appearing for the respondents.

2. The petitioner in the present proceedings, has presented a challenge to an order dated 30.05.2017, passed by the Judicial Magistrate First Class-cum-Assistant Commander 30Bn, Central Reserve Police Force, Chariduar, Assam in Case No. 02/90, under Section 10(m) of the CRPF Act, 1949 with a further prayer for extending to the petitioner all his service benefits by disposing of his representation as per law.

3. At the outset, it is to be noted that the present writ petition was so filed by the petitioner on 30.01.2018. Notices were issued in the matter on 31.01.2018. Thereafter, it is seen that on all dates of listing of the matter, the respondents had prayed for time for filing its response. As the affidavits were not filed in the matter, this Court had, vide order dated 08.04.2024 required the learned counsel for the respondents to produce the records of the matter. The records not being produced, this Court had again vide its order dated 06.06.2024, reiterated its earlier direction for production of the records. Thereafter, this Court, vide order dated 19.07.2024, had required the learned counsel for the respondents to apprise this Court as to the steps taken in the matter by the respondent authorities in pursuance to the judgment dated 30.05.2017, passed in Case No. 02/90, under Section 10(m) of the CRPF Act, 1949. Thereafter, on the subsequent dates of listing, although adjournments were taken, the records were not produced. Accordingly, this Court, on 05.12.2024 had fixed the matter on 06.12.2024 for hearing.

4. On 06.12.2024, when the matter was taken up for final hearing, the records were not so produced and the learned counsel for the respondents has fairly submitted that in spite of repeated communication made by him with the respondents, no instruction came to be furnished to him in the matter. It was further submitted that the respondents has not informed him as to whether any order were so passed by the respondents, invoking the provisions of Section 12(1) of the CRPF Act, 1949, against the petitioner in pursuance to his conviction vide order dated 30.05.2017, impugned in the present proceeding.

5. The learned counsel for the petitioner has made a submission to the effect that he would be satisfied if the petitioner is deemed to be in service, till 06.12.2024 and his pension and pensionary benefits be so directed to be computed and release to him. It was submitted that the period w.e.f. when the petitioner was terminated from his services till 06.12.2024, be treated as qualifying service for pension and pensionary benefits.

6. Mr. Kato, learned CGC appearing for the respondents, in view of the fact that no instructions were received by him, had made a submission that the Court may proceed to accept the contention so advanced by the learned counsel for the petitioner. Accordingly, the Judgment in the case came to be reserved on 06.12.2024.

7. The petitioner was appointed as a Constable in the Central Reserve Police Force (*hereinafter referred to as CRPF*) on 27.06.1976. The petitioner was thereafter, in the month of July 1990, transferred to Aalong, West Siang District in the State of Arunachal Pradesh and accordingly, he reported for his duties at his transferred place of posting. It is projected in the writ petition that in the month of September, 1990, the petitioner, on receiving a Telegram pertaining to the serious health condition of his mother, had submitted an application before the authorities, requesting for grant of leave w.e.f. 15.09.1990 to 08.10.1990. The leave so prayed

for came to be granted and the petitioner left his unit. On completion of the leave so granted to the petitioner, the petitioner admittedly did not rejoin his services. The petitioner contends that he was under treatment at that relevant point of time and the said aspect of the matter was informed to the respondents by way of Telegram. It is further projected that the petitioner, after completion of his treatment, had joined his unit on 26.12.1990 and on his such joining, he had produced medical certificates issued by the Doctor attending on him. It is further projected that the authorities of his unit did not consider the medical certificates so produced by him and he came to be placed under arrest, on account of over stay of leave. A proceeding was instituted against the petitioner under the provisions of Section 10(m) of the CRPF Act, 1949; by instituting Case No. 02/90.

8. The Court of Judicial Magistrate-cum-Assistant Commandant 30Bn CRPF, Along, vide his order dated 02.02.1991, proceeded to hold the petitioner guilty of the offence punishable under Section 10(m) of the CRPF Act and sentenced him of Simple Imprisonment, till rising of the Court.

9. In view of the conviction of the petitioner and the provisions of Section 10(m) of the CRPF Act, 1949, the Commandant 30 Bn CRPF, Along, vide his order dated 02.02.1991, proceeded to dismiss the petitioner from his services by invoking the provisions of Section 12(1) of the CRPF Act, 1949, and the petitioner's name was struck off from the unit strength from the date of his conviction.

10. Being aggrieved, the petitioner had approached the Allahabad High Court by way of instituting a writ petition, being WP(C)/14098/1991. The said writ petition came to be dismissed on 20.03.2012, on the ground that the said Court did not have the jurisdiction to entertain the writ petition so filed before it by the petitioner. Liberty was granted to the petitioner to approach the appropriate Court. Accordingly, the petitioner approached this Court by way of instituting a writ petition being WP(C)/192(AP)/2012.

11. This Court, upon considering the issues arising in the matter was pleased vide judgment dated 27.02.2017, to interfere with the judgment passed by the respondent no. 2, herein, in Case No. 02/90. This Court was also pleased to interfere with the order dated 02.02.1991, passed by the respondent no. 3, herein, dismissing the petitioner from his services w.e.f. 02.02.1991. Upon interfering with the orders so imposed in the said writ petition, this Court vide judgment and order dated 27.02.2017 was pleased to refrain from issuing any directions for reinstatement of the petitioner in service. This Court, required the respondent no. 2, herein, on the basis of the evidence already recorded by him, to consider the matter afresh and pass afresh order in Case No. 02/90 in accordance with law on/or before 31.05.2017. It was further provided that the respondent no. 3, herein, if need arises, may pass appropriate orders under Section 12(1) of the CRPF Act, 1949, in accordance with law.

12. It is seen that the respondent no. 2, herein, thereafter, reconsidered the evidences available on record in Case No. 02/90 and vide his Judgment dated 30.05.2017, reiterated his earlier order and the petitioner herein, was held to be guilty of the offence punishable under Section 10(m) of the CRPF Act, 1949 and sentenced for Simple Imprisonment till rising of the Court.

13. It is seen that after the passing of the said judgment and order dated 30.05.2017, by the respondent no. 2, in terms of the directions passed by this Court in WP(C)192(AP)/2012, the petitioner approached the respondent no. 3 praying for his reinstatement in service and for release of his service benefits.

14. The representation submitted by the petitioner not having been considered, he has instituted the present proceedings before this Court with the reliefs as noticed herein above.

15. Before proceeding to consider the issue arising in the present proceeding, it is required to notice that the petitioner was initially recruited on 27.06.1986 and

had discharged his duties to the units at which he was so posted till 14.09.1990. Thereafter, w.e.f. 15.09.1990 to 08.10.1990, the petitioner was on leave so granted by the respondent authorities. After 08.10.1990, the petitioner although had rejoined his services on 26.12.1990, in view of his conviction in Case No. 02/90, the petitioner was dismissed from his services w.e.f. 02.02.1991.

16. As noticed, herein above, the petitioner w.e.f. 02.02.1991 had not discharged his duties in any capacity in the force and was pursuing the matter before Courts of law.

17. It is also an admitted position that this Court vide the Judgment dated 27.02.2017 passed in WP(C)/192(AP)/2012, had interfered with the Judgment of the respondent no. 2, passed in Case No. 02/90 and the order dated 02.02.1991, passed by the respondent no. 3 herein, invoking the provisions of Section 12(1) of the CRPF Act, 1949. The respondent no. 2 thereafter, in terms of the directions passed by this Court, had reconsidered the evidence available on record in Case No. 02/90 and thereafter, vide judgment and order dated 30.05.2017, proceeded to hold that the petitioner was guilty of offence punishable under Section 10(m) of the CRPF Act and accordingly, sentenced him to Simple Imprisonment till rising of the Court.

18. As noticed herein above, the steps consequential to the said Judgment and order dated 30.05.2017, passed by the respondent no. 2, required to be so taken by the respondent authorities in the matter, if so passed, has not been brought on record, although the present case was pending in the files of this Court since 2018 and was being listed at regular intervals.

19. The above position with regard to the period for which the petitioner had actually discharged his duties and this Court, in the earlier round of litigation having not passed any direction for reinstatement of the petitioner, even after interfering with the order passed by the respondent no. 3, dismissing him from his

service having come to the notice of this Court, the case was again listed on 09.12.2024 and the parties were again heard on this issue. On conclusion, the Judgment of the case was again reserved on 09.12.2024.

20. Although an order under Section 12(1) of the said Act, is mandated to be issued for the purpose of terminating the services of a subject of the CRPF Act, 1949, and admittedly, no such order was brought on record in the present matter. In view of this position, it is to be considered by this Court as to what relief the petitioner can be granted in the present proceedings.

21. Having noticed the above position and before proceeding to consider the relief that can be granted to the petitioner in the present proceedings, the Judgment and Order dated 30.05.2017, passed by the respondent no. 2 herein, in Case No. 02/1990 is required to be examined. On a close examination of the Judgment and Order dated 30.05.2017, it is seen that the respondent no. 2 has based his conclusions therein, after having examined all the relevant materials available on record. The petitioner, in the present proceedings has also not brought on record any material to dispute the conclusions recorded by the respondent no. 2 in the said judgment. The respondent no. 2 in his said Judgment, had noticed that the petitioner had rendered service of around 04 years and it is on record that the petitioner had also earlier over stayed his leave for 36 days and on another occasion, he had over stayed leave granted, which were however, subsequently regularized. The respondent no. 2, in its Judgment and Order dated 30.05.2017, had also recorded a finding to the effect that the conduct of the petitioner during his service tenure reveals incorrigible attitude and such a conduct would not be conducive for the discipline of the force.

22. In view of the above position, this Court finds that the Judgment dated 30.05.2017, passed by the respondent no. 2 would not call for any interference.

23. Accordingly, considering the facts and circumstances as existing in the matter

and noticed herein above, this Court is of the considered view that the petitioner cannot be reinstated in his service with all consequential service benefits. This Court however, proceeds to direct the respondent authorities, more particularly, the respondent no. 3, herein, to pass consequential order(s), in pursuance to the Judgment and Order dated 30.05.2017, so passed by the respondent no. 2, herein, in Case No. 02/90, convicting the petitioner of an offence punishable under Section 10(m) of the CRPF Act, 1949. The said consequential direction(s) would be passed by the respondent no. 3 within a period of 45 days from the date of receipt of a certified copy of this order, either from the petitioner and/or from Mr. M. Kato, learned Dy. SGI appearing for the respondents in the matter.

24. The respondent no. 3 shall while passing the consequential order(s) so called for in pursuance to the said Judgment and Order dated 30.05.2017, passed by the respondent no. 2 shall pass the same strictly, in accordance with the provisions of the CRPF Act and Rules therein and for the said purpose, it would be permissible to the respondent no 3 to invoke his powers under Section 12(1) of the said Act of 1949.

25. In the event the respondent no. 3 is of the view that the petitioner is required to be retained in his service, he shall pass consequential order(s) with regard to the manner in which the period of absence of the petitioner w.e.f. 02.02.1991 till the date of passing of consequential orders, in terms of directions passed by this Court, herein above, shall be so treated.

26. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant