



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

Case No. : WP(C)/2/2020

TEYONG DONG NOK
165 BN. CRPF, CT/GD NO.005150455, S/O SHRI TAKUM PUBA OF
MOLUNG KIMONG, P.O. TULI(LUYONG) AND P.S. TULI,
MOKOKCHUNG, NAGALAND

VERSUS

THE UNION OF INDIA AND 5 ORS
THROUGH THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT.
OF INDIA, SHASTRI BHAWAN, NEW DELHI

2:THE DIRECTOR GENERAL OF POLICE
CRPF HEADQUARTER
CGO COMPLEX NEW DELHI

3:THE IGP
KKS.CRPF BANGALORE

4:THE INSPECTOR GENERAL OF POLICE
M AND N SECTOR
CRPF LANGJING IMPHAL MANIPUR

5:THE DEPUTY INSPECTOR GENERAL OF POLICE
RANGEN HQR CRPF BANGALORE-64

6:THE COMMANDANT
165 BN CRPF
WEST MEDINIPUR
WEST BENGAL

Advocate for the Petitioner : PFOSEKHO PFOTTE

Advocate for the Respondent : CGSC

::B E F O R E::

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 13.02.2024

Date of Judgment : 13.02.2024

JUDGMENT & ORDER

Heard Mr. T.B Jamir, learned counsel for the petitioner and Mr. Yangerwati, learned CGC for all the respondents.

[2.] Facts the case essential for disposal of the instant writ petition may be noticed at the outset. The respondent authority concerned vide Memorandum dated 15.02.2012 proposed to imposed an enquiry against the petitioner, a Constable (GD) in F/165 Bn of the CRPF under Rule 27 of the Central Reserve Police Force Rules, 1955 (CRPF Rules). Along with the Memorandum, Article of Charge was framed against the petitioner alleging that the petitioner has committed an act of misconduct in his capacity as a member of the Force under Section 11 (1) of the Central Reserve Police Force Act, 1949 (CRPF Act) to the effect that despite the fact that he was sanctioned 15 days of Earned Leave with effect from 01.09.2011 to 15.09.2011, he did not report back from duty and overstayed leave with effect from 15.09.2011 (A/N) without permission and sanction by the

competent authority. Along with the Memorandum, Statement of Imputation of Misconduct or Misbehavior in support of the Article of Charge framed and list of documents by which the article of charge framed was proposed to be substantiated were prepared.

[3.] Following the issuance of the Memorandum of Charge, a departmental proceeding was initiated and finalized by holding the petitioner to be guilty of the charge. Accordingly, the petitioner was removed from service vide the impugned Office order dated 20.10.2012 as already stated herein above. The appeal filed by the petitioner also being rejected vide order dated NIL February, 2016, the petitioner is before this Court.

[4.] Mr. T.B. Jamir, learned counsel for the petitioner submits that the grounds of challenge to the impugned orders taken by the petitioner can be broadly divided into six (6) grounds. Firstly, charge under Section 11(1) of the CRPF Act was wrongly framed. Secondly, the respondent authority concerned failed to appoint a Presenting Officer and for which reason, the penalty inflicted upon the petitioner is vitiated. Thirdly, the Disciplinary Authority as well as the Appellate Authority took into account the past conduct of the petitioner to punish him through the impugned Order of Removal from service. Fourthly, the charge against the petitioner having been wrongly framed, the penalty imposed upon him under Section (11)(1)

is also not tenable. Fifthly, the learned counsel submits that the penalty imposed upon the petitioner is highly disproportionate to the misconduct alleged to have been committed by him and lastly, the order passed by the Appellate Authority cannot be sustained in view of the fact that the said Authority has failed to apply an independent mind to the appeal submitted by the petitioner and instead simply relied upon what was stated by the Discipline Authority. In support of his submissions made, Mr. T.B. Jamir has relied upon the following authorities:-

- (1) Mohd. Ashraf Shah -Vs- Union of India & Ors. 2023 SCC OnLine J&K 224.*
- (2) Sudhanshu Shekhar Deo -Vs- Union of India & Ors. 2013 SCC OnLine Pat 360.*
- (3) Lalit Kishore -Vs- Union of India & Ors. 2023 (6) GLT (MN) 730.*
- (4) Krushnakant B. Parmer -Vs- Union of India & Anr. (2012) 3 SCC 178.*
- (5) Director (Marketing), Indian Oil Corpn. Ltd. & Anr. -Vs- Santosh Kumar (2006) 11 SCC 147*
- (6) Union of India & Ors. -Vs- Giriraj Sharma 1994 Supp (3) SCC 755.*
- (7) Pradip J. Mehta -Vs- Commissioner of Income Tax, Ahmedabad (2008) 14 SCC 283.*

[5.] The learned counsel referring to the Memorandum of Charge framed against the petitioner submits that the charge has been wrongly framed under Section 11 (1) of the CRPF Act. Referring to the said provision, the learned counsel submits that Section 11 (1) comes under the head 'Minor Punishment'. Section 11(1) provides that the Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act award or 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 considers 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. However, the allegation against the petitioner is for having overstayed leave for 141 days without permission and sanction of the competent authority. The learned counsel submits that the charge against the petitioner probably should have been under Section 10(m) of the CRPF Act and under no circumstance, the same can be under Section 11(1) of the said Act. In view of the departmental proceeding having proceeded under the wrong Section of law, the impugned orders are liable to be set aside and quashed. The learned counsel submits that in the case of *Mohd. Ashraf Shah* (supra) the High Court of Jammu & Kashmir under similar circumstance held that charge framed under Section 11(1) of the CRPF Act instead of Section 10(m) of the same Act was bad in law and therefore

interfered with the impugned order passed against the petitioner in that case.

[6.] The learned counsel further submits that no doubt Rule 27 of the CRPF Rules provides for procedure for conducting departmental proceeding but there is no provision for appointing a Presenting Officer. However, having regard to Rule 102 of the same Rules, it is clear that the Rules applicable to Central Government Servants in absence of anything provided in the CRPF Rules should apply to those covered by CRPF Rules. Therefore, appointment of a Presenting Officer by the respondent authority concerned is a must. Failure to do so has vitiated the impugned orders. The learned counsel in support of his submission relies upon the case of *Sudhanshu Shekhar Deo* (supra) wherein, the Patna High Court held that in case of imposing of major punishments/penalties in a departmental proceeding, appointment of Presenting Officer is a must in terms of the CCS Rules and that in view of Rule 102 of the CRPF Rules, appointment of Presenting Officer for disciplinary proceeding under CRPF Act and Rules is also necessary.

[7.] The learned counsel similarly relies upon the case of *Lalit Kishore* (supra) wherein, the High Court of Manipur after taking into consideration the various judgments rendered by the Apex Court as well as this Court came to a conclusion that non-appointment of Presenting Officer for a

proceeding conducted under the CRPF Act and Rules was bad in law.

[8.] The learned counsel further submits that the respondent authorities failed to establish the fact that the unauthorized absence of the petitioner from duty was willful. In absence of such a finding, the penalty imposed upon him cannot be justified. Support has been drawn by the learned counsel from the case of *Krushnakant B. Parmer* (supra) wherein, the Apex Court in the given facts of that case held that if the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. The learned counsel submits that in the instant case, the petitioner due to the illness and demise of his brother could not report for duty and that despite all attempts, the petitioner could not produce the Death Certificate before the Disciplinary Authority since his deceased brother being an employee of the Forest Department, all the documents relating to his service and his death had been submitted to the said Department. Although the Death Certificate was made available at a subsequent stage and produced before the Appellate Authority, the same was not taken into consideration by the Appellate Authority and instead the Appellate Authority rejected the appeal of the petitioner summarily. As such, the impugned orders are liable to be interfered with even on this count. The learned counsel also submits that the number of

days for overstaying leave may not be the main concern but the reason why the employee had overstayed leave would be the crucial determination for the Authority concerned. Since the petitioner's brother had been taken ill and later expired, the same can be considered sufficient cause for being absent without authorization. The learned counsel draws support of his submission from the case of *Union of India & Ors. -Vs- Giriraj Sharma* (supra).

[9.] The learned counsel by referring to the case of *Santosh Kumar* (supra) submits that the Apex Court in the given facts of that case held that Appellate Authority did not apply its independent mind in passing the impugned order and therefore, not only set aside the order of the appellate authority but remanded the matter back to the Disciplinary Authority for consideration afresh. In the present case, the learned counsel submits that despite the fact that the petitioner had submitted the Death Certificate of his late brother, the Appellate Authority did take the same into consideration and mechanically passed the order of rejection. As such, the order passed by the Appellate Authority is not sustainable and the same should be set aside.

[10.] The learned counsel submits that although some of the cases relied upon by him are the judgments passed by other High Courts, the same although may not have a binding effect but the same can surely have a persuasive value to the instant case and therefore this Court may consider

the authorities relied upon by him. In this connection, the learned counsel refers to the case of *Pradip J. Mehta* (supra). The learned counsel Mr. T.B. Jamir thus submits that under the facts and circumstances, the impugned orders passed are not sustainable in law and the same should be set aside and the petitioner be reinstated into service with all consequential benefits.

[11.] Mr. Yangerwati, learned counsel by referring to the affidavit-in-opposition filed by the respondents on 10.04.2023 submits that before filing the instant writ petition, the petitioner has not exhausted the remedy available to him. Referring to Rule 29 of the CRPF Rules, the learned counsel submits that there is a provision for filing revision petition. The Appellate Authority also in its order indicated that the petitioner may file revision petition against the rejection of his appeal within a period of 30 days. However, for reasons best known to the petitioner, he failed to avail the remedy and therefore, in view of the provision of Rule 29, the writ petition is not maintainable.

[12.] The learned CGC further submits that the petitioner was given sufficient time for producing any document in support of his case. Initially, 15 days was granted and thereafter, on his prayer, further 15 days time was granted, 30 days in all, but however the petitioner failed to produce any document in support of his claim that his brother had expired. Therefore, the

petitioner cannot have any grievance that sufficient opportunity was not given to him.

[13.] The learned CGC submits that during the preliminary hearing, the petitioner had also admitted to his guilt that he was unauthorizedly absent for 141 days without permission from the competent authority. Despite this, the respondent authority decided to proceed with the inquiry wherein, the petitioner was given all the opportunity to defend his case. Despite the same, the petitioner failed to justify the reason for his absence from duty. Accordingly, the Disciplinary Authority after finding him guilty of the charge, issued the impugned penalty of removal from service. The learned CGC also submits that the petitioner in fact is a habitual absentee which can be clearly seen from the Memorandum of Charge and the documents enclosed along with it. The petitioner belongs to a disciplined force and for his misconduct, the impugned orders has rightly been issued. He thus submits that the writ petition should be dismissed.

[14.] I have heard the submissions made by the learned counsels for the parties and I have perused the materials available on record. The reason that disciplinary proceeding was drawn up against the petitioner was because of his overstaying the Earned Leave granted to him. The petitioner was granted 15 days Earned Leave but he remained absent for 141 days after the expiry

of his Earned Leave. Section 10(m) of the CRPF Act provides that every member of the Force who absents himself without leave or without sufficient cause overstays leave granted to him shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to three months' pay or with both. In the instant case, the petitioner has been proceeded against by charging him under Section 11(1) of the CRPF Act. Section 11 as already stated earlier provides for minor punishment. Section 11(3) of the CRPF Act provides for three (3) types of punishment and none of the punishment prescribes removal from service. Therefore, there is substance in the submission made by the learned counsel for the petitioner that the petitioner has been proceeded against under the wrong section of law and that he could not have been punished under Section 11(1) of the CRPF Act, by removing him from service.

[15.] Under similar facts and circumstances, the High Court of Jammu & Kashmir had the occasion to deal with a case wherein the CRPF personnel who ought to have been charged under Section 10(m) of the CRPF Act amongst others was charged under Section 11(1) of the CRPF Act. The High Court therefore concluded that the impugned order of termination imposed upon the petitioner concerned was not sustainable and set the same aside. The High Court further dealt with the issue as to whether the powers of a

Writ Court under Article 226 of the Constitution of India cannot be availed of when there was an alternative statutory remedy. Answering the question in the affirmative, the High Court by relying upon the case of *Whirpool Corporation –Vs- Registrar of Trademarks, Mumbai (1998) 8 SCC 1* and the case of *Harbanslal Sahnia –Vs- Indian Oil Corn. Ltd (2003) 2 SCC 107* came to the conclusion that as was already decided by the Apex Court, a Writ petition cannot be rejected solely on the ground that an alternative statutory remedy was available when the petitioner concerned seeks the enforcement of any of his Fundamental Rights or where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. This Court is also in respectfully agreement with the decision rendered by the said High Court and in fact, the law laid down by the Apex Court would be binding upon all other Courts in view of Article 141 of the Constitution of India.

[16.] The next important question raised by the learned counsel for the petitioner is that the Presenting Officer having not been appointed, the entire Disciplinary proceeding stands vitiated requires the attention of this Court. It is not in dispute that the CRPF Act and Rules does not provide for a provision for appointing a Presenting Officer. It may be seen that the High Court of Manipur in *Lalit Kishore* (supra) had the occasion to deal with the issue at

hand and a reference to the judgment of the Apex Court as well as this Court was also made. The High Court by referring to the case of *Union of India & Ors. -Vs- Ram Lakhan Sharma (2018) 7 SCC 670* held that non-appointment of Presenting Officer would vitiate the enquiry proceedings under Rule 27 of the CRPF Rules. In the said judgment, one circular i.e., Circular Order No. 07/2018 dated 23.05.2018 issued by the Director General of CRPF was also referred to wherein it was provided that after evidence on behalf of the prosecution and defense is completed, the Enquiry Officer shall hear the Presenting Officer or permit him/her to submitted written brief within a period not exceeding 10 days. The Enquiry Officer will thereafter forward copy of the same to the Charge Officer for submitting his defense brief, if any, within a period not exceeding 10 days. It may further be noticed that the High Court of Patna in *Sudhanshu Shekhar Deo (supra)* had also referred to a decision of this Court in Writ Petition (Civil) No. 297/2002 wherein, it was held that although Rule 27 of the CRPF Act is silent about the appointment of Presenting Officer, Rule 102 of the CRPF Act provides that one can take the aid of CCS Rule for compliance of the principles of natural justice. Rule 102 of the CRPF may be reproduced hereunder for ready perusal:-

“102. *Other conditions of Service:*

The conditions of service of members of the Force in respect of matter for which no provision is made in these rules shall be the same as are for the time being applicable to other officers of the Government of India of corresponding status."

[17.] In view of the above provision, it goes without saying that even in the absence of any provision for appointment of Presenting Officer, it would be necessary for the authority concerned to appoint a Presenting Officer to present the case on behalf of the department/organization for compliance of the principles of natural justice.

[18.] In view of what has been stated, this Court finds that the respondent authorities could not have proceeded against the writ petitioner under Section 11(1) of the CRPF Act, muchless, impose upon him a major penalty of removal from service. In other words, the impugned orders passed by the Disciplinary Authority as well as the Appellate Authority are found to be not sustainable in law. Having come to such conclusion, it may not be necessary to examine the other arguments made by the learned counsel for the petitioner. In the result, the impugned orders dated 20.10.2012 (Annexure- A3) and the Order dated NIL February, 2015 (Annexure – A5) are hereby set aside.

[19.] This Court keeping in mind the fact the petitioner belongs to a

disciplined Force and therefore liberty is given to the respondents to proceed against the petitioner afresh strictly as per law within a period of three (3) months from the date of receipt of a certified copy of this Order. It is made clear that if the respondent authorities decide to proceed in the manner as directed herein above, the petitioner shall be treated to be as under suspension and would be entitled to the remuneration of a suspended employee. In case the liberty granted is not availed of within the period prescribed, the petitioner shall be reinstated into service. The respondents would be at liberty to decide the entitlement of the petitioner on his reinstatement as per law.

[20.] With the above observations and directions, the writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant