

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.351 of 2015

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Arun Kumar Prasad Son of Sri Rajendra Prasad Resident of village - Goudee, P.S.
Bihia, District - Bhojpur

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi
2. The Inspector General of Police, Western Sector, CRPF 3rd Floor C.G.O. Complex, C.B.D. Belapur, Navi Mumbai (M.S.) 400614
3. The Director General of Central Reserve Police Force, New Delhi
4. The Deputy Inspector General of Police - Cum - Appellate Authority, Group Centre, Central Reserve Police Force, Nagpur Range - 440019 (M.S.)
5. The Commandant - 64 BN, Central Reserve Police Force, Dharnidhar Sports Complex, Shankarpur, Keonjhar, Odisha

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mr. Sanjay Kumar(ASG)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 05-02-2015

Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads

as follows:-

- "1. That this is an application for issuance of a writ in the nature of certiorari to quash the order dated 2608.2013 issued by the Respondent no.2 (Revisional Authority) whereby the Revision petition filed by the petitioner has been rejected and also to quash the order dated 17.8.2012, as contained in No. R.XIII-3/2012-EC-I, issued under signature of the Deputy Inspector General of Police, Central Reserve Police Force (hereinafter referred to as 'the C.R.P.F.') whereby the appeal filed by the petitioner has been rejected and also to quash the order dated 27.02.2012 whereby the petitioner has been



dismissed from service and further prayed for issuance of consequential writ in the nature of mandamus commanding and directing the respondent authorities to reinstate the petitioner in service with all consequential benefits and/or for issuance of such other order or direction for which the petitioner may be found legally entitled to in the facts and circumstances of the matter as stated hereinafter."

Learned counsel for the petitioner in support of the aforementioned prayer has only concentrated on the aspect of disproportionate punishment by taking a plea that the petitioner's absence being more than 270 days even by way of unauthorized leave could not have led to the most harsh punishment of being dismissed from service of Central Reserve Police Force (hereinafter to be referred to as 'the CRPF'). In this regard, he has not only tried to make out a case of non-consideration of the defence of the petitioner as with regard to the justification of the petitioner not joining the duty and remaining absent from duty without being given leave but has also relied on a judgment of the Apex Court in the case of ***Union of India & Ors. Vs. Giriraj Sharma*** reported in ***AIR 1994 SC 215***.

Learned counsel for the respondents, on the other hand, while defending the impugned order, has submitted that first of all the plea of the petitioner of there being any justification for remaining absent from duty without leave for sanction to him has been gone carefully by all the authorities and it has been recorded that the



petitioner could not adduce any evidence to support his plea of justification. He has also submitted that the plea of disproportionate punishment will differ from service to service and where a person is working in police force, he cannot have the same liberty to remain absent from duty without obtaining sanction leave alike in civil service because in the duty of the police force, there can be hardly any place for indiscipline. In this regard, he has also relied on the judgment of the Apex Court in the case of *Union of India & Ors. Vs. Ghulam Mohd. Bhat* reported in (2005)13 SCC 228 as also yet in the judgment of Apex Court in the case of *Union of India & Ors. Vs. Datta Linga Toshawad* reported in (2005) 13 SCC 709.

First of all, this Court must take into consideration the plea of non-consideration of the defence of the petitioner as with regard to his absence from duty. This aspect has been gone into at length by the Revisional authority on the basis of materials on record. Let it be noted that the revision application was entertained in view of the observation made by this Court in the earlier round of writ application filed by the petitioner and, therefore, the Revisional Authority was also very cautious in examining this fact. The Revisional order in this regard reads as follows:-

"4. Thereafter, petitioner now submitted the revision petition before the revisionary authority and filed CWJC No. 1139/2013 in the Hon'ble High Court



of Patna in connection with awarding the penalty of "Removal from Service", which was heard in the Hon'ble Court on 31.10.2013 and case was disposed off as individual withdrawn and liberty has been granted to the said individual to approach revisionary authority for appropriate relief Aggrieved with the penalty of **REMOVAL FROM SERVICE** and confirming the penalty awarded to him by the DIG Nagpur Range, the petitioner has now preferred a revision petition, dated 26 April 2013 along with court orders, without producing any authentic and specific grounds, except superficial reasons. The petitioner has prayed to set aside the orders of punishment, awarded by Commandant 64 Bn. CRPF and orders on his appeal passed by DIG, Nagpur Range and to reinstate him into service with all consequential benefits. Though, the Revision Petition has become time barred, yet the same has been considered by condoning the delay, as per instructions contained in Rule 29 of CRPF Rules 1955.

5. On examination of the revision petition, along with the DE file, preferred by the petitionr and para wise commends submitted by DIGP, CRPF, Nagpur Range, it is found that, the petitioner was sanctioned 30 days E/L w.e.f. 13.09.2010 to 12.10.2010. As such, he was due to report to duty on 2 October 2010 (AN), but he did not report back for duty and overstayed from sanctioned leave willfully w.e.f. 13 October 2010 (FN) without permission or sanction of leave by the competent authority. Thereafter, he was



directed by OC 'F' Coy of 64 Bn. CRPF vide letter No. L-II 1/10-F/64 dated 22 October 2010 and letter no. L-II-2/10-11-F/64 dated 02 November 2010 to re-join duties immediately failing which disciplinary action will be initiated against him. But the failed to report for duty and confirmed on unauthorized and willful overstayal inspite of repeated direction issued by O.C. F/64 Bn.

An application dated 11/10/2010 was received from Shri Rajendra Prasad, father of the petitioner on dated 11/10/10, wherein it was mentioned that his son reached home in ill health and he was under treatment and stated that he needs 30 days extension of leave. The competent authority with reference to the letter of his father, informed to the petitioner vide 64 Bn. CRPF letter no. L-II-6/10-64-EC-II dated 07.11.2010 that no extension of leave was granted to him by the competent authority. The petitioner plea at para 6, stating that his miserable condition was not considered is untenable, whereas after taking into consideration of his health condition, he was transferred to GC Nagpur. It was also informed to him that he was under orders of transfer to GC CRPF, Nagpur on medical grounds and hence he was directed to report back for duty immediately, so that he could be relieved on transfer to GC CRPF, Nagpur for better treatment. Subsequently, a reminder was also issued on 24/11/2010 but petitioner did not comply with the directions given to him by the unit authorities and continued to overstay from leave at his

own w.e.f. 13/10/2010 (FN).

06. During the court of enquiry, the petitioner did not plead guilty of charges leveled against him under Article-I to III and contended that it was due to his mental illness, he was unable to report on duty in unit on due date and remained OSI. Inquiry Officer recorded the statement of the witnesses and petitioner was also given ample opportunities to cross-examine the PWs during every stage of enquiry but he failed to avail all these opportunities and accepted the statement of the PWs during the course of inquiry. The petitioner had submitted a representation in which he had stated that, he remained absent due to mental illness and only produced some old medical documents of his previous treatment. He had not produced any medical documents in his defence in support of treatment taken/medical illness during his OSL period except medical bills of having purchased "Tab-Sizodone plus" 5 times in his long absence period of 276 days, which does not justify his long absence period. During DE proceeding, article of charge leveled against the petitioner have been PROVED beyond doubt. Thereafter, the Enquiry Officer completed the departmental proceedings and submitted it to the disciplinary authority.

07. The petitioner plea at para 11 that the authorities of the CRPF completed the empty formalities and took decision of removal of the petitioner without issue notice to the petitioner along with report of conducting officer and also not given



proper and reasonable time to defend his case, whereas before passing the orders on the DE proceedings, a copy of enquiry report was duly handed over to the petitioner, by the Commandant 64 Bn. CRPF vide their letter No. P-VIII-04/2011-64-EC-II dated 29 November 2011 with direction to submit representation/reply on the Enquiry Officer's report before the disciplinary authority if any, in his defence, by giving him 15 days time from the date of receipt of the letter.

The petitioner reiterated that he went on leave for treatment of his wife but on the other hand he pleaded that he was mentally ill and hence he overstayed from 13/11/2010 to 15/07/2011. He further pleaded to regularise his entire OSL period on the ground of his mental illness which is contradictory and can not be accepted.

08. As per last medical certificate dated 06/05/2010 issued by the IG (Medical), CH, CRPF Guwahati Medical Category of the petitioner is SHAPE-2(T-24) without fire arms, but the petitioner failed to produce medical documents, i.e. prescription slips/Cash Memos of medicine in support of his illness/treatment from 13 October 2010 to 15 July 11 (total 276 days). The medical documents produced by the petitioner are not sufficient and the nature of his illness/treatment was also not of serious nature which prevented him to join his duties.

09. The justification of his OSL for such a longer duration i.e. 276 days on the pretext of



medication against old prescriptions without any medical certificate from authorized Medical attendant to extent of his medical treatment which he had undergone in his over stayed period, clearly stipulates the intentions as that of his act could not support convincingly and produce any evidences for his overstayed. Moreover the health condition of the individual which requires lifelong drug dependence does not mean that he is at liberty to go on unauthorized overstayed at his will without any permission/sanction from the competent authority.

10. I have gone through the past record of the petitioner to see, if there are any extenuating circumstances to sympathize with him. I could find none. In fact, he is a habitual offender in his short service and had overstayed/un-authorizedly absented from duty previously, as follows:-

1. 27 days 20/09/07 to 16/10/07
2. 56 days unauthorized absence from

line

25/12/08 to 18/02/09 for which awarded punishment of 15 days confinement to lines with forfeiture of pay and allowances.

3. 23 days 10/02/10 to 04/03/10

11. It is obvious, that he did not learn from his past minor punishment awarded to him for being repeatedly on unauthorized absence/OSL. The petitioner has not brought any new fact in his revision



petition which were not considered in D.E. as well as in his Appeal by the Appellate authority for further consideration. The penalty of '**Removal from Service**', imposed by Commandant 64 Bn. CRPF, is in order to meet justice, as during the course of enquiry it has been established, beyond doubt that he had committed an offence of disobedience/misconduct, in his capacity as a member of the force u/s 11(1) of CRPF Act, 1949, read with Rule 27 of CRPF Rules, 1955... Therefore, I find no cogent reason for interference with the final orders passed, on the DE, by the Disciplinary Authority, i.e. Commandant 64 Bn. CRPF and Appellate Authority, i.e. DIG, CRPF, Nagpur Range, against the quantum of punishment."

From reading of the aforesaid findings correctness whereof is not being assailed at least by way of its being an error of record, will leave nothing for speculation that the petitioner himself did not produce any cogent evidence for justifying the absence from duty without getting leave. The period of 270 days of absence from duty of a member of force cannot be treated lightly keeping in view that for such a misconduct under the CRPF Rules, there is also a provision for inflicting punishment of jail custody apart from dismissal from service. In that view of the matter, this Court will not find that the consideration made by the authority with regard to the defence of the petitioner is in any way deficient or improper.



The next question would be as to whether the punishment of dismissal from service for his absence of duty for more than 270 days is disproportionate. This aspect of the matter has been gone into by the Apex Court in the case of Ghulam Mohd. Bhat (supra) wherein after discussing the whole scheme of inflicting punishment apart from also criminal trial for absence of duty, the Apex Court had gone to hold that an indiscipline of a person working in a police force has to be dealt with sternly. In that case, the Apex Court, having found the period of absence of more than 300 days, had approved the order of dismissal by recording as follows:-

- "8. *It is fairly well-settled position in law that removal is a form of dismissal. This Court in Dattatraya Mahadev Nadkarni (Dr.) V. Municipal Corpn. of Greater Bombay [(1992)2 SCC 547] explained that removal and dismissal from service stand on the same footing and both bring about termination of service though every termination of service does not amount to removal or dismissal. The only difference between the two is that in the case of dismissal the employee is disqualified from future employment while in the case of removal he is not debarred from getting future employment. Therefore, dismissal has more serious consequences in comparison to removal. In any event, Section 11(1) refers to the Rules made under the Act under which action can be taken. Rule 27 is part of the Rules made under the Act. Rule 27 clearly permits removal by the competent authority. In the instant case the Commandant who had passed the order of removal was the competent authority to pass the order.*

9. *This Court had occasion to deal with the cases of overstay by persons belonging to disciplined forces. In State of U.P. v. Ashok Kumar Singh [(1996) 1 SCC 302] the employee was a police constable and it was held that an act of indiscipline by such a person needs to be dealt with sternly. It is for the employee concerned to show how that penalty was disproportionate to the proved charges. No mitigating circumstance has been placed by the appellant to show as to how the punishment could be characterized as disproportionate and/or shocking. (See Mithilesh Singh v. Union of India [(2003) 3 SCC 309.] It has been categorically held that in a given cases the order of dismissal from service cannot be faulted. In the instant case the period is more than 300 days and that too without any justifiable reason. That being so the order of removal from service suffers from no infirmity. The High Court was not justified in interfering with the same. The order of the High Court is set aside. The appeal is allowed but under the circumstance there shall be no order as to costs."*

The aforesaid view of the Apex Court, therefore, would leave nothing for this Court to now say as with regard, to punishment of dismissal of the service of the petitioner for his absence from duty for more than 300 days, to be disproportionate.

The reliance placed by the learned counsel for the petitioner on the judgment of the Giriraj Sharma (supra) is again wholly misplaced firstly because there the absence was only for a period of twelve days and the High Court had interfered with such

order of dismissal on the ground of its being disproportionate. When the appeal was carried to the Apex Court by the Union of India, all that was said that dismissal from service on account of unauthorized absence for a period of 12 days could not be held to be disproportionate. The fact of that case being entirely different, there would be no question of applying the ratio in the case of Giriraj Sharma (supra) to this case.

Thus, for the reasons recorded above, this writ application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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