

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1760 of 2015

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HC (GD) Nageshwar Ojha, No. 850830315 son of Ram Bachan Ojha resident of village - Niyazipur, P.S. Natwar, District - Rohtas (Bihar)

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Home Department, New Delhi
2. The Director General, C.R.P.F., Lodhi Road, New Delhi
3. The Commandant, 10 Battalion, C.R.P.F. 82 Miles Nalkata, Tripura at Present Barpeta, Assam
4. The Inspector General of Police, C.R.P.F., Durgapur, West Bengal - 713214
5. The Inspector General of Police, Eastern Sector, C.R.P.F., H.C. Block Sector III, Salt Lake, Kolkata 106, West Bengal
6. The Deputy Inspector General of Police, C.R.P.F., Range Guwahati, District - Kamrup (Metro), Assam
7. The IGP, NESHqr. C.R.P.F. Shillong (Meghalaya)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ful Man Singh, Adv.

For the UOI : Mr. Anjani Kr. Sharan, CGC

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 11-03-2015

Heard learned counsel for the parties as with regard to the following prayer made in this writ application:-

- "I(i) *For issuance of writ/order/direction specially a writ in the matter of certiorari setting aside the order of dismissal dated 7.11.2006 passed by the respondent no.3 (Commandant 10 BN C.R.P.F.) in departmental proceeding against the petitioner.*
- (ii) *For issuance of an order holding the punishment awarded to the petitioner through passed Ex-party without compliance of principle of Natural Justice, is excessive in the facts and circumstances of the case.*
- (iii) *For issuance of an order/writ/direction commanding the respondents to consider the matter afresh keeping*

a view the long service of the petitioner as other punishments were also available to be awarded to the petitioner if found guilty of the charges.

- (iv) *For issuance of writ/order/direction to set aside the order dated 27 June, 2014 passed by the respondent no.6 (Annexure-9).*
- (v) *For issuance of writ/order/direction to set aside the order dated 22.11.2014 passed by the respondent no.7 (Annexure-10)."*

2. Learned counsel for the petitioner in support of the aforesaid prayer has straightway relied on an earlier order of this Court dated 20.1.2014 in CWJC No. 11320 of 2011 to contend that even when this Court, while quashing the appellate and revisional order had directed the appellate authority to dispose of the appeal afresh by a reasoned order after taking into consideration the issues raised by the petitioner in the memo of appeal and if necessary also by holding a physical test of the petitioner through a Medical Board, the dismissal of his appeal and revision has been ordered on wholly illegal and unjustified grounds. He has also submitted that as a matter of fact the observations of this Court in its orders dated 20.01.2014 to take lenient view of the matter has also not been at all taken into consideration by either the appellate authority or the revisional authority.

3. Learned counsel for the respondents, on the other hand, has submitted that the impugned appellate order dated 27.6.2014 as

also the revisional order dated 22.11.2014 by themselves would go to show full application of mind while holding that the charges against the petitioner of remaining absent from duty for a period over 2.5 years had been fully established.

4. First of all, this Court must examine as to what was said in the earlier order dated 20.1.2014 in CWJC No. 11320 of 2011. Let it be noted that in the aforesaid writ application, the petitioner had assailed the original order of punishment passed by the disciplinary authority on 7.11.2006 as also the appellate order dated 8.3.2010 and revisional order dated 7.4.2011. This Court, however, did not interfere with the original order of punishment and had only set aside the appellate and revisional order because such order was not only non-speaking but also against the spirit of the order passed by this Court on 27.10.2009 in CWJC No. 13897 of 2009 where the petitioner had assailed the order of punishment dated 7.11.2006 without availing the remedy of appeal. Thus, this Court infact in the order dated 20.1.2014 had not gone into the correctness or otherwise of the original order of punishment and had only remitted the matter back to the appellate authority, while holding as follows:-

"7. I have perused the appellate order which is under challenge. The said appellate order does not discuss the submission of petitioner in his memo of appeal. It vaguely refers the proceeding conducted by the disciplinary authority and the Enquiry Officer. This Court, in its earlier order dated



27.10.2009 had given an indication, taking into account the facts in its entirety, that a lenient view should be taken. There is no discussion in the appellate order or even any revisional order that lenient view in the facts and circumstances of the case could not be possibly taken by the authorities. In my opinion, appellant authority as well as revisional authority were required to be given due regard to the observations made by the Court in the order dated 27.10.2009 passed in C.W.J.C. No. 13897 of 2009. Further, as I have indicated above, I find that the appellate authority had not duly considered the submissions of the petitioner in his memo of appeal, while rejecting the petitioner's appeal, though in revisional order, I find some consideration. In any event, the appellate authority was required to give due regard to the observation made by this Court for taking lenient view in the matter particularly, in view of the stand taken by the petitioner that it was not his deliberate act amounting to misconduct resulting into his overstaying, rather it was because of his unstable state of mind. The authorities were required to consider this aspect.

8. In view of the facts as noted above, I consider it appropriate to remand the matter back to the appellate authority for re-consideration of the petitioner's appeal. It is expected that the appellate authority shall consider the submissions made in the memo of appeal and take a lenient view of the matter as observed by this Court in its previous order dated 27.10.2009. Needless to say that if the said appellate order goes against the petitioner, he shall have the liberty to approach the revisional authority afresh.

9. The petitioner is according remanded back to the appellate authority i.e. the Deputy Inspector General of Police, Central Reserve Police Force, Durgapur, West Bengal. The orders dated 08.03.2010 passed by the Deputy Inspector General of Police, Central Reserve Police Force, Durgapur, West Bengal

and 07.04.2011 passed by the Inspector General of Police (Eastern Sector), Central Reserve Police Force, H.C. Block Sector-III, Salt Lake, Kolkata-106 (West Bengal) are set aside.

10. The Respondent No. 4, the appellate authority is directed to pass an order afresh on petitioner's appeal within three months from the date of receipt / communication of this order. It is clarified that nature of punishment which can be imposed on an employee is absolutely a prerogative of the appointing authority or any superior authority authorized in that behalf. This court ordinarily does not substitute opinion in such matters in exercise of power of judicial review under Article 226 of the Constitution of India. The appellate authority or the revisional authority in the present case, will be at liberty to take proper decision and it will be open to them to get the petitioner examined by appropriate medical board in view of the defence taken by him, which has been noted above in the present order."

(underlining for emphasis)

5. The submission of the learned counsel for the petitioner that the appellate authority had not given due consideration to the aforesaid underlined observation made by this Court in the aforesaid order has to be only noted for its being rejected, inasmuch as, the appellate authority this time has gone into each and every aspect while passing the appellate order, relevant portion whereof reads as follows:-

"AND WHEREAS, in pursuance to the orders of the Hon'ble Court, the appeal dated 25/11/2009, application dated 10/2/2014 preferred by Ex-HC(GD) Nageswarar Ojha of 10 Bn CRPF (here-in-after referred as Appellant) have been examined in detail along

with the orders dated 27/10/2009 of Hon'ble Court pronounced in CWJC No. 13897 of 2009. The appellant requested to reduce the punishment of removal from service to that of voluntary compulsory retirement from service mainly on the following grounds:-

- (a) He has rendered 20 years of uninterrupted satisfactory service.*
- (b) He had suffered from mental disorder and had no control over himself during the period of his absence and as such he could not report for duty.*
- (c) His wife lodged missing report on 12/03/2008 to the Officer-In-Charge of P/S Natwar Police Station when she came to know about his absence from duty.*
- (d) To take a lenient view in his case.*

7. AND WHEREAS, I have gone through the Department Proceedings initiated against the individual and found that the same has been conducted as per the instructions on the subject. Individual was given ample opportunities to defend his case in every stage of the enquiry. I have also gone through the other relevant documents viz. Court of Inquiry proceedings, Service Record, Confidential Card & other relevant documents and found that the averment made above by the petitioner are not tenable due to the following reasons:-

- (a) The appellant was enlisted in CRPF on 18/06/1985 and not done his service uninterruptedly. He were awarded 15 days confinement to line wef 3/9/97 to 17/9/97 and again 14 days confinement to line wef 14/2/98. Further unauthorized over stayed period from 29/4/92 to 10/5/92 (12 days), 6/4/93 to 27.7.93 (113 days) 6/3/96 to 16/3/96 (11 days), 19/7/99 to 9/9/99 (53 days), 12/4/2000 to 13/5/2000 (32 days) and 13/4/2001 to 14/4/2001 (2 days) total 223 days regularized in to Leave Half Pay with no leave salary which has been treated as non qualifying service. He was also dealt with departmentally for his unauthorized absence from duty for 113*

days from 6/4/93 to 27/7/93 and awarded punishment for stoppage of increment for one year by the Comdt. 52 Bn vide his office order No. P.VIII-4/EC-II dated 30/9/93.

(b) He was sanctioned 15 days Leave Kind Due wef 12/9/05 to 26/9/05. Before proceeding on leave he was medically fit i.e. SHAPE-One and there is no history of any kind of diseases nor had taken any treatment from Unit Hospital/M.I.Room. No medical documents about his mental illness submitted before the E.O. during the course of enquiry or sent by him to his Unit. Further, if he had suffered mental disorder and was not in a position to join duty, information to this effect should have been informed to the Unit/E.O. by his NOK/family members of individual, but no such action on the part of his NOK/family members are forthcoming from the records.

(c) No information regarding missing of individual was communicated either by his wife or by other family members to the Unit of individual. However, the contention that wife of appellant had intimated Police that the appellant was missing during relevant point of time and no information with respect to the petition was available even with the family members of the petitioner, is an afterthought action as missing complaint lodged after a gap of more than two and half years from the date of his OSL. Moreover, force personnel avails leave in two to three spells every year. When individual had not jointed his family from 27/09/2005 to 12/03/2008 i.e. from the date of his OSL to the date of lodging of complaint of missing by his wife, this should have been informed to his Unit either by his wife or his family members. Hence contention about missing of individual is simply with intention to cover up inaction on the part of individual and his family.

(d) CRPF is a disciplined force and all the members of this Force have to be abide high level of discipline. Thus, said EX-HC(GD) Nageswar Ojha of F/10 Bn had committed an Act of

misconduct U/S 11(1) of CRPF Act 1949 by overstaying leave without any permission from the competent authority which were prejudicial to the good order and discipline of the Force. At this stage, appellant does not deserve for any lenient view and therefore, action taken against the individual by the disciplinary authority is found to be in accordance with rule of law and relevant provisions of CRPF.

8. NOW, THEREFORE, after meticulous examination of the case and in view of the circumstances and gravity of offence committed by the appellant in the capacity as a member of the disciplined Force, action taken against him by the disciplinary authority is found to be in accordance with rule of law and relevant provision of CRPF Act, 1949 and CRPF Rules 1955. The appellant has utterly failed to prove his innocence in the appeal dated 25/11/2009 & letter dated 10/2/2014 and there is no merit exists in the appeal. I also find that there was no miscarriage of justice on finalization of departmental enquiry by the disciplinary authority i.e. the Commandant-10 Bn CRPF. Since the appellant has committed a grave misconduct in his capacity as a member of the Force, as such the punishment awarded to him by the Commandant-10 Bn vide office order No. P.VIII-2/06-10-EC-11 dated 7/11/2006 is commensurate to the gravity of offence committed by the appellant. Hence, after applying my mind judiciously and taking into consideration all pros and cons of the case, I do not find any cogent reason to interfere with the orders passed by the disciplinary authority. The appeal dated 25/11/2009 & letter dated 10/2/2014 preferred by the appellant (No. 850830315 EX-HC(GD) Nageswar Ojha is therefore, rejected being devoid of merit."

(underlining for emphasis)

6. Let it be noted that the petitioner against the aforesaid appellate order had also moved in revision and the Inspector General

of Police, Shillong had again separately and independently gone into each and every aspect raised by the petitioner in his revision petition and had recorded the following findings:-

"6. Having been dissatisfied with the decision/order dated 26/06/2014 passed by the Appellate Authority i.e. DIGP, CRPF, Range Guwahati, the petitioner has now submitted Revision Petition dated 20/08/2014 addressed to the IGP, NES, CRPF, Shillong requesting to modify the punishment of removal from service to voluntary/compulsory retirement.

7. I have carefully gone through all pros and cons of the revision petition, the proceedings of Departmental Enquiry, the evidences adduced in the enquiry, the order passed by the Appellate Authority and other allied documents related to the case on record judiciously. The petitioner was removed from service w.e.f. 07/11/2006 (AN) vide 10 Bn Office Order No. P.VIII-2/2006-EC.II dated 07/11/2006 after conducting D.E. on the charges of overstaying from leave at his own without any permission/sanction of leave from the competent authority. Action taken against him by the disciplinary authority is found to be in accordance with relevant provisions of CRPF Act, 1949 and CRPF Rules, 1955. From the date of overstayal by the petitioner to the date of his removal all the actions have been initiated by the Disciplinary Authority strictly in accordance with the rules in vogue. The order of removal from service passed by the disciplinary after conducting the departmental enquiry ex-parte in accordance with the rules and after applying the judicious mind is within the ambit of natural justice which is fully commensurate with the gravity of offence. Similarly, appeal of the individual was meticulously gone through and after examining all pros and cons by the appellate authority i.e. DIGP Range Guwahati, his appeal was rejected, being devoid of merit. Thus, the punishment awarded to the petitioner duly upheld by the appellate authority is fair and in order. The core contention

of the petitioner and comments of the undersigned thereupon are as follows:-

a). The petitioner in his Revision Petition has submitted that he was initially appointed on 13/06/1985 as constable in Central Reserve Police Force and was removed from service on 07/11/2006 after completion of service more than 20 years uninterrupted.

The contention of petitioner is not correct. The petitioner was enlisted in CRPF on 18/06/1985 instead of 13/06/1985. He has not done his service uninterrupted. The petitioner was awarded confinement to lines for a period of 15 days wef. 03/09/1997 to 17/09/1997 and 14 days confinement to lines wef. 03/09/1997 to 17/09/1997 and 14 days confinement to lines wef. 14/02/1998 to 28/02/1998. He was also dealt with departmentally for his unauthorized absence from duty for 113 days from 06/04/1993 to 27/07/1993 and awarded punishment for stoppage of increment for one year by Commandant-52 Bn, CRPF vide office order No. P.VIII-4/93-EC.II dated 30/09/1993.

b). The petitioner contended that he was granted leave w.e.f. 12/09/2005 to 26/09/2005 while he was working as Head Constable (GD) under the Commandant-10 Bn, CRPF. After expiry of the term of sanctioned leave from 27/09/2005, he did not report to his concerned office/unit and remained absent due to suffering from mental disorder.

The petitioner was sanctioned 15 days leave of kind due w.e.f. 12/09/2005 to 26/09/2005 with direction to resume his duties on 26/09/2005 evening Roll Call, but he remained overstaying leave w.e.f. 27/09/2005 without permission from the competent

authority. Before proceeding on leave, he was medically fit i.e. SHAPE-One and neither he was having history of any kind of disease not taken any treatment from unit M.I. Room previously. No medical documents about his mental illness were submitted before E.O. during the course of enquiry or sent by him to his unit. Further, if he had suffered from mental disorder and was not in a position to join duty, information to this effect should have been sent to the Unit/E.O. by his NOK/family members, but no such action on the part of his NOK/family members is forthcoming from the records.

c). The Petitioner in his Revision Petition has submitted that, his wife lodged missing report on 12/03/2008 to the officer-In-Charge of Natwar Police Station.

No information regarding his being missing was communicated by his wife or any other members of family to his unit as well as nothing in this regard was received from concerned Police Station. Moreover, the contention that wife of petitioner had intimated the Police about the petitioner being missing during 2008 appears to be an afterthought action as missing complaint lodged after a gap of more than two and half years from the date of his OSL with an intention to cover up the OSL period.

d). The Petitioner has stated that he has not made an desired latches from his own part. He ought to be given sufficient opportunity to be heard.

Averment made in his para is denied. From the date of completion of LKD to the date of issuance of removal order, the petitioner remained absent and silent for a total period of 407 days. During this period, the petitioner was repeatedly directed to



resume duty and attend the DE initiated against him, but neither he reported for duty nor responded to any of the official communicated/letter sent to him. The Department was completely unaware about the intention of the petitioner. The petitioner remained absent or a prolonged period of 407 days which is a gross misconduct and detrimental for a disciplined Force. Overstaying from leave without permission/leave from the competent authority is a grave misconduct and the petitioner neither reported for duty nor informed grievances. He did not respond to the communications during the course of enquiry. The petitioner was given ample opportunity during the course of enquiry as per the procedure laid down in relevant Rules/instructions, but he did not appear before the Enquiry Officer. As a result, the enquiry was held ex-parte. On completion of enquiry, he was awarded the punishment of removal from service w.e.f. 07/11/2006 (AN) which is commensurate with the gravity of offence committed by the petitioner.

e). The Petitioner in his revision Petition has also stated that his disability with regard to mental disorder was not assessed by producing him before the Psychiatric Doctor.

At the time of proceeding on leave neither there was any complaint of mental illness to the petitioner nor there was any record to this effect. Further, during the course of enquiry, no information regarding his mental illness was received from the delinquent/petitioner or from his family members. Accordingly, considering the gravity of offence, the penalty of 'removal from service' was imposed upon the petitioner by the Disciplinary Authority after conducting a proper departmental enquiry. Further,

during the course of enquiry and in the appeal as well as in the Revision Petition, the petitioner has not produced any medical documents/documentary evidence in support of his mental disorder. As such the plea of the petitioner is not tenable/acceptable.

8. In the fresh Revision Petition dated 20/08/2014, the petitioner has not produced any medical documents in support of having undergone treatment of mental ailment. The Court has left it for the revisionary authority to have the petitioner medically examined by the medical board to establish the mental ailment that led to overstay of the petitioner as claimed in revision petition. Mere claim of mental ailment without supportive documents does not constitute a valid ground to have the petitioner examined by the medical board. Overstay from leave without sufficient cause is a punishable offence, being prejudicial to good order and discipline of the Force.

9. Now, therefore, after considering all the above aspects and analyzing the case in its totality, I do not find any cogent reasons to interfere with the orders already passed by the Disciplinary authority and upheld by the Appellate Authority. Further, the petitioner has also not brought out any new facts in his petition. There was neither any material irregularity in conducting the inquiry nor any miscarriage of justice. The punishment of 'removal from service' awarded to the petitioner is just and commensurate with the gravity of offence. Therefore, the instant Revision Petition dated 20/08/2014 preferred by the petitioner i.e. No. 850830315 Ex-HC/GD Nageswar Ojha of 10 Bn. CRPF is hereby rejected, being devoid of merit."

(underlining for emphasis)

7. It is these two orders which along with the original order which have been sought to be assailed primarily on the ground that none of the authorities had taken into account that the petitioner had



become insane during period of his absence from duty and, as such, could not report on duty. The question, however, would be that if that was the defence of the petitioner that he had become insane, whether the onus of proving such defence was on the C.R.P.F. or on the petitioner?

8. Learned counsel for the petitioner however had pointed out that there was a First Information Report lodged by the wife of the petitioner in the year 2008 and it should have been taken to be the sufficient proof of the fact that the petitioner had become insane in the period of absence. In the considered opinion of this Court no prudent person can come to such a conclusion on the basis of First Information Report made by an interested person that the petitioner had become insane. As a matter of fact, the appellate authority is correct in reaching to its conclusion that such First Information Report lodged after two years was only manufactured by way of defence of the petitioner for explaining his absence.

9. The next submission that the petitioner had worked for twenty years and would not have become absent unless for a valid cause namely his becoming insane has to be again noted for its being rejected. The fact remains that the petitioner had a chequered service history as has been noted by the appellate authority in paragraph no.7(a) of the appellate order. The petitioner right from 1985 was



having serious allegations against him for which he was also inflicted minor punishment from time to time. Thus, it cannot be said that the petitioner had a very good and glorious service record in the twenty years of service.

10. The next question, therefore, would be as to whether such a person who does not care to even inform the employer of his illness while remaining absent from duty either by himself or through his family member for a period over two and half years, can he be allowed to be retained in disciplined police force? An answer obviously will be in negative. The disciplined police force cannot brook such people who would take leave initially for fifteen days and remain absent for a period of two and half years.

11. In that view of the matter, this Court does not find any error has been committed by the appellate authority or the revisional authority. The petitioner has now remained out of service for almost ten years and, therefore, this Court also does not feel any necessity to issue a direction for holding a fresh medical test of the petitioner for restoring his service on the post of Head Constable.

12. At this stage, learned counsel for the petitioner has produced a copy of the judgment of the Armed Forces Tribunal, Kolkata Bench dated 15.6.2012. This Court fails to understand as to how the said order of the Tribunal first of all can be a precedent for



this Court. The Tribunal can follow the judgment of this Court but the Tribunal's order cannot be a precedent for the High Court. Secondly, in that case, before the Tribunal, one Anil Kumar Choudhary had assailed certain orders but during pendency of the proceeding, he was allowed to join on 9.6.2012 and, therefore, all that the Tribunal had gone to say was that the authorities should regularize the intermittent period of his absence but, nothing was decided by the Tribunal which can become a precedent for the petitioner of the present case.

13. Finally, an office order of the Deputy Inspector General of Police, R.K. Puram, New Delhi dated 5.11.2013 with regard to an office order of departmental enquiry as against one Praveen Kumar can never be looked into by this Court for examining the correctness or otherwise of the impugned appellate and revisional order. It was for the petitioner to rely on the aforesaid order while pressing his appeal or revision and, if he did not do so, he cannot expect this Court to now exercise its power of judicial review as to why another authority of the C.R.P.F. had taken a different view in the matter of absence from duty of another person. Infact whatever was held therein by the DIG in the case of Parveen Kumar is even otherwise distinguishable on facts as would be apparent from the relevant extract of the order dated 5.11.2013, which reads as follows:-

"(ix) From the documents, submitted by the appellant,

it appears that he was ill and also facing his domestic problems, however he should have informed to his unit Commandant either through telephone or through letter, but he did not do so for which he is accused.

4. From the above facts it is established that the appellant had remained absent from duty w.e.f. 07/01/2013 to 05.02.2013 (total 30 days) without prior permission of competent authority which is an act of grave misconduct U/S 11(1) of CRPF Act-1949 for which he is liable to be punished severely. Besides above, as per Service Book of appellant has remained OSL 06 times earlier during his 07 years of short service, which clearly shows that he was habitual of being OSL. The plea of appellant that he could not report for duty on due date due to his illness and family problems has not found justified on the basis of document produced by him. If the appellant was actually ill, he should have informed this aspect to his unit commandant or company commander through letter/telephone, but he failed to do so for which he is liable to be punished. Hence, a stern disciplinary action is to be taken against such indisciplined personnel for maintaining good order and discipline of the force so that other personnel may also take a lesson from this. However, considering the length of his short service, age and other responsibilities of his family, the punishment of Removal from Service awarded by the disciplinary authority does not commensurate with the offence committed by him."

14. It is thus clearly visible that not only the period of

absence of duty of Praveen Kumar was only 30 days unlike two and half years in the case of the petitioner but he had also produced the authentic and reliable documentary evidence in his defence whereas the petitioner had miserably failed to do so, an aspect which has been also gone into at length in both the impugned appellate and revisional orders of the petitioner.

15. Thus, for the reasons indicated above, this Court does not find any merit in this writ application and the same is hereby dismissed.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 11th March 2015
A.F.R./Rishi/-

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