

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 389 of 2014

Sanjay s/o. Babulal Wagh,
Age : 34 years,
Occupation : Nil,
R/o. Upkhed,
Taluka : Chalisgaon,
District : Jalgaon.

.. Petitioner.

versus

1. Union of India,
Through its Secretary,
Home Department,
New Delhi.
2. Inspector General of Police,
NES, C.R.P.F., Stony Heaven,
Bishop Cotton Road,
Shilong (Meghalay).
3. Deputy Inspector General of Police,
Range C.R.P.F.,
Guwahati (Assam) - 781 023.
4. Commandant,
120 BN, C.R.P.F.,
Bandwar Udaypur (South Tripura),
Tripura State.

.. Respondents.

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Mr. S.B. Gastgar, Advocate, for the petitioner.

*Mr. S.B. Deshpande, Assistant Solicitor General,
for respondent nos.1 to 4.*

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**CORAM : S.S. SHINDE &
A.M. BADAR, JJ.**

DATE : 31ST AUGUST 2015

ORAL ORDER (Per S.S. Shinde, J.) :

1. This petition is filed with following prayer clause :-

“ By issuing writ of certiorari or any other appropriate writ, order like in nature to quash and set aside the impugned order dated 3-5-2013, passed by respondent No.2 thereby rejected the revision petition confirming the order dated 16-11-2012 passed by respondent No.3 arising out of "Removal from service order for the reason of overstay leave for total period of 109 days" upon No. 001375865 CT/GD Sanjay Babulal Wagh of 120-BN, C.R.P.F., w.e.f. 28-01-2008 vide order dated 28-1-2008 passed by respondent No.4 ”

2. The learned Counsel appearing for the petitioner has taken us through the grounds in the petition and submits, that for unauthorized absence of the petitioner, he was already punished. It is submitted that once such punishment was given, on the same count, no subsequent action ought to have been taken against the petitioner. In support of this contention, the learned Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court, in the case of *Kanailal Bera Vs. Union of India &*

others, reported in *(2007) 11 SCALE 656*. He, therefore, submits that the petition deserves to be allowed.

3. On the other hand, learned Assistant Solicitor General appearing for the respondents invited our attention to the affidavit in reply filed on behalf of the respondents and in particular, para 2 of the reply. It is submitted that on as many as four occasions, the petitioner remained unauthorizedly absent and, therefore, taking into consideration the service record of the petitioner, the respondents have taken appropriate decision which confirmed by the appellate authority as well as revisional authority. He, therefore, submits that there is no merit in the petition and the same deserves to be dismissed.

4. We have heard the learned Counsel appearing for the petitioner, and the learned ASGI appearing for the respondents. Perused the pleadings in the petition, grounds taken therein and reply affidavit filed by the respondents. The relevant averments in the reply mentioned in para 2 reads thus :

“ I say and submit that the petitioner bearing No. 001375865 CT/GD Sanjay Babulal Wagh has been sanctioned 60 days of Earned Leave w.e.f. 16-03-2007 to 14-05-2007. Thus, the petitioner was supposed to report to his unit on 14-05-2007. However, he failed to rejoin duties and continued to overstay without permission w.e.f. 15-05-2007 (FN). The petitioner had been directed several times to report duty

forthwith vide letter Commandant-120 Bn. No. L.II-1/2007-F/120, dated 29-05-2007, 22-06-2007 & 09-07-2007. Thus, when he did not report back for his duties a Arrest Warrant had been issued on 23-07-2007. The petitioner after overstaying for 99 days had reported at 120 Bn. on 21-08-2007. this act of the petitioner was not acceptable and hence, memorandum of charges were framed. The departmental enquiry was conducted which ultimately lead to his dismissal. It is submitted that the petitioner was a habitual offender and had overstayed on earlier occasion as under :

a) The period from 01-07-2003 to 01-08-2003 = 32 days OSL was regularized as LHP with no leave salary and also awarded the punishment of 10 days confinement to lines with 02 hrs. Pack drill.

b) 05-03-2004 to 02-05-2004 = 59 days OSL was regularized as LHP with no leave salary and was also awarded 15 days confinement to lines.

c) 12-06-2005 to 03-08-2005 = 53 days OSL was regularized as LHP with no leave salary.

Thus, there is no merit in the petition, the same deserves to be dismissed as not maintainable. "

5. The contention of the learned Counsel for the petitioner, is only confined to the argument, that the petitioner should not have been punished on second occasion though he was earlier punished for remaining unauthorized absence. The reliance placed by the learned Counsel appearing for the petitioner, in the case of ***Kanailal Bera Vs. Union of India & others (supra)*** is wholly misplaced in the facts of the present case, inasmuch as, Hon'ble Apex Court in the facts of that case, has taken a view that the enquiry itself was vitiated on account of non-compliance of statutory rules.

6. Upon considering the material placed on record and in particular, reply filed by the respondents, wherein there is no dispute to the position stated in para 2 with clauses (a), (b) and (c), reproduced herein above, in our considered view, there is no case for interference in writ jurisdiction.

7. In the result, the petition sans merits and the same is dismissed.

(A.M. BADAR)
JUDGE

(S.S. SHINDE)
JUDGE

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