

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2324 OF 2014

[Bhojraj s/o Malgu Maraskolhe .vs. The Union of India and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.M. Sudame, counsel for the petitioner,
Shri Rohit Deo, ASGI for the respondents.

CORAM : SMT. VASANTI A. NAIK AND
PRASANNA B. VARALE, JJ.

DATED : JUNE 19, 2015.

By this petition, the petitioner challenges the order of the Commandant, 196 Battalion, Central Reserve Police Force, Dumni Saraikala (Jharkhand) dated 31.8.2012 terminating the services of the petitioner as a C.R.P.F. Constable. The petitioner also challenges the order of the appellate and the revisional authorities confirming the order of the Commandant.

The petitioner was appointed as a Constable in the Central Reserve Police Force in the year 2007. According to the petitioner, the petitioner suffered mental problem in the year 2011 and was admitted at Guwahati Hospital for a period of 87 days. Thereafter, according to the petitioner, he sought a leave of 60 days and went to his native place at Gondia. The petitioner unauthorizedly remained absent after the completion of 60 days of leave and overstayed at Gondia. The respondent authorities asked the petitioner to join his duties, however, the petitioner did not join. An inquiry was conducted against the petitioner in which he did not participate. The petitioner's services were terminated by the impugned order of the Commandant. The petitioner challenged the order of the Commandant before the appellate authority without success. The order of the appellate authority as also the order of the Commandant was challenged before the revisional authority, but the revision was also dismissed. The

petitioner has filed the instant petition challenging the three aforesaid orders.

Shri Sudame, the learned counsel for the petitioner, submitted that the services of the petitioner have been terminated on the ground that the petitioner had intentionally remained absent from duty after the completion of leave period of 60 days. According to the learned counsel, the respondents were aware about the mental sickness of the petitioner and hence the termination of the services of the petitioner on the ground that he intentionally remained absent from duty is bad in law. It is submitted that the orders of the authorities may be quashed and set aside and the authorities may be directed to conduct a fresh inquiry. The learned counsel has relied on the judgment of the Hon'ble Supreme Court reported in (2012) 3 SCC 178 (Krushnakant B. Parmar .vs. Union of India and another) to substantiate his submission that absence due to compelling circumstances under which it was not possible for an employee to report or perform his duty, cannot be considered to be wilful.

Shri Rohit Deo, the learned ASGI appearing on behalf of the respondents, supported the orders of the authorities. It is submitted that before a departmental inquiry was conducted against the petitioner, a statutory court of inquiry was held and it was found in the said inquiry that the petitioner was a 'deserter'. It is stated that the battalian, in which the petitioner was included, was posted in the naxalite area in Chattisgarh and it was found that the petitioner has seriously misconducted himself by deserting the battalian. It is stated that the petitioner had not participated in the departmental inquiry conducted against the petitioner and the petitioner therefore cannot be heard to say that the termination of his services on the ground of intentionally remaining absent from duty is bad in law.

It appears on hearing the learned counsel for the parties and on a perusal of the documents annexed to the petition as also the affidavit-in-reply filed on behalf of the respondents that the orders of the authorities are just and proper and they cannot be interfered with. The petitioner had overstayed at Gondia, after the expiry period of 60 days of sanctioned leave. When the petitioner was asked to join his

duties, the petitioner issued a communication dated 19.9.2011 to the respondents stating therein that he was not desirous of joining his duties and wished to stay at Gondia along with his parents and his wife. The petitioner stated in the communication that he would come to the office, but only for the purpose of receiving the documents after securing a job at Gondia. The documents annexed to the petition including the communication dated 19.9.2011 clearly show that the petitioner had no intention whatsoever to join his duties, after the leave period of 60 days. In the inquiry conducted by the respondents, the petitioner had failed to participate. It appears that, at the relevant time, the petitioner was not interested in performing his duties as a Constable in the C.R.P.F. and desired to abandon the job, with a view to secure some other job at Gondia, where he wanted to reside with his parents and his wife. The petition is filed on 28.4.2014, probably after a change of mind. Also, as stated on behalf of the respondents, before initiating a fresh inquiry against the petitioner, a statutory court of inquiry was held against him and the petitioner was branded as a 'deserter' in a force like the C.R.P.F. Unauthorized absence from duty even for a couple of days can be considered to be a grave or serious misconduct in services of the C.R.P.F. where utmost discipline is expected. In the instant case, the petitioner had absented from duty from 6.7.2011 till his services were terminated on 31.8.2012. In the aforesaid circumstances, there is no scope for interference with the impugned orders. The judgment reported in (2012)3 SCC 178 cannot be made applicable to the facts of this case. In the said case, the employee - the appellant therein had participated in the inquiry and certain evidence tendered by him for substantiating his claim in regard to the compelling circumstances under which it was not possible to perform his duties, was not considered. Such is not the case here.

In view of the aforesaid, the writ petition is dismissed, with no order as to costs.

JUDGE

JUDGE