

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

WRIT PETITION NO. 250 OF 2014

(K. Somasundaram vs. Union of India & Ors.)

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

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Court's or Judge's orders.

Shri C.M. Jaykumar & S.S. Chauhan, counsel for the
petitioner.

Shri Rohit Deo, ASGI for the respondents.

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**CORAM : SMT. VASANTI A. NAIK &
A.M. BADAR, JJ.
AUGUST 06, 2015.**

By this petition, the petitioner challenges the order of the Respondent No. 4 – the Commandant of the 64th CRPF, Hahchara, North Lakhimpur, Assam, dated 31.05.2008, imposing the penalty of removal from service, on the petitioner and striking off his name from the strength of the unit. The petitioner also challenges the order of the appellate authority, dismissing the Appeal filed by the petitioner against the order of removal.

The petitioner was in the services of the respondents as a Constable in the CRPF and a Departmental Inquiry was conducted against the petitioner in the year 2007 under Rule 27 of the Central Reserve Police Force Rules, 1955, on three charges.

According to the first charge, the petitioner was involved in an instance of theft dated 22.08.2007. According to the second charge, the petitioner was unauthorizedly absent and had overstayed from 27.08.2007 to 30.11.2007. According to the third charge of overstay, the petitioner had unauthorizedly absented himself from duty from 01.02.2008 to 12.03.2008. At the time of conclusion of the Departmental Inquiry, the criminal case against the petitioner for the offence punishable under Section 406 of the Indian Penal Code was pending. The respondents decided to wait till the culmination of the criminal case, though the respondents found that the petitioner was guilty of theft. In the Departmental Inquiry, the second and the third charge in respect of overstaying was proved against the petitioner. It was found that the petitioner had unauthorizedly absented himself from duty from 27.08.2007 to 30.11.2007 and from 01.02.2008 to 12.03.2008. Since the petitioner was a Member of the Disciplined force, the respondents decided to remove the petitioner from service and the respondent No. 4, by the impugned order dated 31.05.2008 removed the petitioner from service. The appeal filed by the petitioner against the order of removal was dismissed on 17.12.2008. Both the orders are impugned in the instant petition.

Shri Jaykumar, the learned counsel for the petitioner submitted that the petitioner could not have been removed from service when the entire period during which the petitioner had absented himself and for which

he was charged, was regularized by the Disciplinary Authority. It is submitted by placing reliance on the impugned order dated 31.05.2008 that a part of the absence was regularized as Earned leave (EL), a part of it as 'Dies Non' and the remaining part as Extra Ordinary Leave (EOL). It is submitted that after the unauthorized absence of the petitioner was regularized, the respondents were not entitled to hold that the second and the third charge was proved against the petitioner and that he was liable to be removed from service. It is submitted that in view of the regularization of the unauthorized absence, the respondents were not entitled to remove the petitioner.

Shri Deo, the learned ASGI, appearing on behalf of the respondents, submitted that the petition suffers from laches and is liable to be dismissed as such. It is submitted that the impugned orders are passed on 31.05.2008, 17.12.2008 and the petition is filed on 24.12.2013. It is submitted that even after the revisional order of April 2010, the petitioner has waited for 3½ years for filing the petition. It is submitted that the submission of the petitioner that the petitioner could not have been removed from services after the regularization of his absence, stands already answered against the petitioner by the judgments rendered by the Hon'ble Supreme Court from time to time. It is submitted that the Hon'ble Supreme Court has held in the judgment in the case of Om Prakash vs. State of Punjab & Ors., reported in (2011) 14 SCC 682, by referring to the earlier judgments

of the Hon'ble Supreme Court that mere regularization of unauthorized absence for the purposes of maintaining a correct record would not mean that the unauthorized absence of the employee is condoned. It is submitted that the period of unauthorized absence of the petitioner was regularized for maintaining correct service record and the respondents have not condoned the absence. It is submitted that in the aforesaid decision, the Hon'ble Supreme Court had held that the appellant therein did not deserve any sympathy and the punishment of dismissal was upheld.

On hearing the learned counsel for the parties, it appears that the writ petition is liable to be dismissed on the ground of laches and also on merits. By the instant petition, the petitioner has challenged the orders dated 31.05.2008, 17.12.2008 and April 2010. The petition is filed on 24.12.2013. The petitioner has tried to explain the delay in paragraph 24 of the writ petition. It is stated in paragraph 24 that after the petitioner was removed from service, the petitioner lost faith in life, more so as his wife had deserted him and taken away the child along with her. It is averred in paragraph 24 that the petitioner became lonely and was undergoing mental stress and the writ petition was filed only due to the insistence of his brother, who was working in Delhi and was able to seek legal assistance. We do not find that the inordinate delay has been satisfactorily explained by the aforesaid averments. The learned ASGI appearing on behalf of the respondents has rightly relied on the

judgment of the Hon'ble Supreme Court in the case of Chennai M.W. Supply and Sewerage Board vs. T.T. Murali Babu, reported in AIR 2014 SC 1141, to point out that in a case where the employee has been dismissed or removed on the ground of unauthorized absence, then the delay in approaching the court assumes more importance. The Hon'ble Supreme Court has held in the aforesaid reported judgment that the delay reflected inactivity and inaction on the part of the litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and i.e. law does not permit one to sleep and rise like a phoenix”. The facts of the case before the Hon'ble Supreme Court and the facts of the present case are similar. The dismissal of the employee before the Hon'ble Supreme Court and the removal of the petitioner in this case is on the same charge, the charge of unauthorized absence. The judgment reported in the case of Assam Sanmilita Mahasangha vs. Union of India & Ors., reported in (2015) 3 SCC 1 and relied on by the counsel for the petitioner, cannot be applied to the case in hand for condoning the delay. We find that the petition suffers from laches and is liable to be dismissed.

We also do not find any merit in the submission made on behalf of the petitioner that the order of removal is liable to be set aside as the same could not have been passed after the unauthorized absence of the petitioner was regularized. The submission made on behalf of the petitioner stands answered against

the petitioner in view of the judgment of the Hon'ble Supreme Court in the case of *Om Prakash vs. State of Punjab & Ors.*, (supra) and relied on by the learned ASGI. The Hon'ble Supreme Court had while upholding the order of the State and dismissing the appeal filed by the appellant – employee had relied on the judgments of the Hon'ble Supreme Court in the case of *State of M.P. vs. Harihar Gopal*, reported in 1969 SLR 274 and *Maan Singh vs. Union of India*, reported in (2003) 3 SCC 464. It is held by the Hon'ble Supreme Court in the aforesaid reported decisions that when the period of unauthorized absence is not condoned but simply shown as regularized for maintaining correct record, the charge of remaining absent from duty without obtaining leave could be considered against the employee and if proved, the order of punishment could be passed. It is rightly submitted on behalf of the respondents that in this case also the Disciplinary authority had regularized the unauthorized absence of the petitioner for the purposes of maintaining correct record and had on the proof of the charge of unauthorized absence, removed the petitioner from service. Once the charge of unauthorized absence of a Constable in CRPF for a period from 27.08.2007 to 30.11.2007 and 01.02.2008 to 12.03.2008 is proved, it cannot be said that the petitioner could not have been removed from service, specially when the petitioner is a Member of disciplined force. The judgment in the case of *Assam Sanmilita Mahasangha & Ors. vs. Union of India & Ors.*, (supra) relied on by the learned counsel for the

petitioner cannot be made applicable to the case in hand. The said judgment is not relevant for deciding the issue involved in the petition.

Hence, for the reasons aforesaid, the writ petition is dismissed with no order as to costs.

JUDGE

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