

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.378 of 2011

Priya Ranjan Kumar, son of Sri Surya Deo Pandey, resident of Village- Barahrup,
P.O.- Warishpur, Police Station- Bhagwanpur, District- Vaishali.

.... Petitioner/s

Versus

1. The Union of India through the Director General, C.R.P.F., New Delhi.
2. Inspector General of C.R.P.F. Sector Bihar, Ashiana Digha, Patna.
3. D.I.G., C.R.P.F., Group Centre, C.R.P.F. Range Head Quarter, Muzaffarpur, Bihar.
4. The Commandant 133 Battalion, C.R.P.F., HEC Sector-2, Dhurwa Ranchi, Jharkhand.

.... Respondent/s

Appearance :

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

For the Respondent/s : Mr. Anjani Kumar Sharan, CGC

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-09-2016

The petitioner, an Ex-Constable in the Central Reserve Police Force (hereinafter referred to as the 'CRPF') is aggrieved by his order of dismissal passed by the respondent-Commandant dated 7.5.2010 impugned at Annexure-1 as well as the order dated 31.7.2010 of the Appellate Authority rejecting his appeal impugned at Annexure-2 to the writ petition. The petitioner is also aggrieved by the rejection of his revision application by the Revisional Authority vide order passed on 14.11.2010 impugned at Annexure-3.

Facts of the case briefly stated is that the petitioner was appointed as a Constable in the 'CRPF' on 5.9.1994. The petitioner on gathering news of his mother's death made a request and was



granted leave from 19.1.2009 to 17.2.2009. While on leave, the petitioner suffered back problem and visited the Command Hospital at Muzaffarpur but was referred to Shri Krishna Medical College and Hospital, Muzaffarpur (hereinafter referred to as the 'SKMCH'). The petitioner while undergoing treatment requested for extension of his leave from time to time which continued until October, 2010 when the petitioner was served with a memo of charge dated 22.10.2009 annexed as Annexure- 10 to the writ petition. The petitioner represented before the Director General, 'CRPF' complaining of bias against the Commandant on 4.11.2009 vide Annexure-11. The petitioner again vide letter dated 7.1.2010 present at Annexure-12, renewed his prayer before the Director General, 'CRPF' of dropping the proceedings. The petitioner however, did not choose to respond to the charges to the Commandant. The petitioner also did not choose to participate in the enquiry which was held ex parte. An enquiry report was prepared by the Enquiry Officer on 22.10.2009 and which was served on the petitioner through letter dated 3.4.2010 of the Commandant –cum- Disciplinary Authority requiring the petitioner to respond to the enquiry report which upheld all the charges, within 15 days of receipt of the letter. According to the petitioner, the letter was served on the petitioner only on 3.5.2010 and though he filed his reply on 11.5.2010 but the final order was already

passed imposing penalty of dismissal on 7.5.2010 impugned at Annexure-1 and which order of dismissal has been affirmed by the Appellate Authority as well as the Revisional Authority vide orders dated 31.7.2010 and 14.11.2010 impugned at Annexure- 2 and 3 respectively to the writ petition. The petitioner feeling aggrieved is before this Court.

Mr. Satyabir Bharti, learned counsel has appeared for the petitioner while the respondent-‘CRPF’ is represented by Mr. Anjani Kumar Sharan, learned Central Government Counsel.

Mr. Bharti while questioning the order of dismissal on merits as well as on the quantum of punishment and has taken this Court through the medical prescriptions relatable to the petitioner, copies of which are placed on record vide Annexure-18 series to the second supplementary affidavit filed on 10.8.2016. He submits that the petitioner is a chronic patient of back pain and he suffered an attack while on leave which was sanctioned for the period 19.1.2009 to 17.2.2009. It is in reference to the medical prescriptions enclosed with the second supplementary affidavit at Annexure-18 series that it was sought to be canvassed that the petitioner on reference by the Command Hospital, was being treated in ‘SKMCH’ and was put on bed rest under the advice of the Doctor as manifest from the prescriptions dated 25.3.2009 which bed rest was further extended on 27.4.2009. He submits that it is in



these circumstances that the petitioner requested for extension of leave on 29.4.2009 which again forms part of Annexure-18 series. It is stated that the trouble of the petitioner increased further as he developed hepatitis and was again put on bed rest on 3.7.2009 for three weeks which position continued even on the next date of check up on 24.7.2009. He submits that the petitioner again requested the Commandant to extend his leave vide letter dated 25.7.2009. It is stated that the bed rest continued further under medical advice dated 10.8.2009 for further four weeks and which was duly communicated to the Commandant by the petitioner on 13.8.2009. It is stated that while undergoing treatment for hepatitis that his back problem again recurred and for which he now obtained Homeopathic treatment at the Government Hospital at Muzaffarpur as confirmed from the prescription dated 14.9.2009. It is submitted that while this position continued that the charge-sheet was served on the petitioner on 22.10.2009 and which was duly responded to by the petitioner through his representation addressed to the Director General, 'CRPF' annexed at Annexure-11. The petitioner while complaining against the Commandant who happened to be the Disciplinary Authority he explained the position and prayed for dropping the proceedings. He submits that the enquiry report was served on him through letter dated 13.4.2010 and which was received on 3.5.2010 granting 15 days time for reply but the order



of dismissal was passed even prior to the expiry of 15 days from the date of receipt which was passed on 7.5.2010. According to Mr. Bharti, basically it is the long duration of leave sought by the petitioner which is the foundation for the disciplinary proceedings and since the petitioner had raised his grievance against the Commandant before the superior authorities that additional charges have also accompanied this charge. According to Mr. Bharti, the petitioner is a chronic patient of back pain and thus has requested the Commandant and the other authority for giving him light work which was not accepted leading to the present situation where even when the petitioner was on leave in connection with the death in the family, he suffered an attack of back pain and had to undergo treatment with 'SKMCH'.

The sum and substance of the argument of Mr. Bharti is that for the charges set up against the petitioner of having overstayed on leave by assigning medical grounds, a penalty of dismissal is disproportionate especially where the ailment is supported by medical prescriptions. Learned counsel in support of his submission has referred to a judgment of the Supreme Court reported in **AIR 2004 SC 2131 (Bhagwan Lal Arya vs. Commission of Police, Delhi)** to submit that as in the said case, even in the present case there are medical prescriptions available on record at Annexure-18 series and fully justifies the leave sought by

the petitioner on medical grounds. Learned counsel has thus questioned the punishment of dismissal not only on merits but also on the quantum.

The argument of Mr. Bharti has been contested by Mr. Sharan, learned counsel Central Government Counsel and who in reference to the counter affidavit filed in the present case has submitted that the conduct of the petitioner is such that neither the order passed by the Disciplinary Authority warrants interference on merits nor on quantum. It is the argument of Mr. Sharan that even though the petitioner making a complaint of back pain was given R.P. duty without arms which is the lightest form of work which can be assigned to any member of the force but even this did not satisfy the petitioner and who after seeking leave on account of death in the family, resorted to writing letters against the Commandant, of pressurizing him to do loaded work despite his back problem and along side kept seeking extension of leave on medical grounds. It is submitted that since after obtaining leave with effect from 19.1.2009 until the passing of the impugned order of dismissal on 31.7.2010, the petitioner never returned to the Unit which by itself demonstrates his conduct. He submits that not only the petitioner made complaint against the Commandant before the Director General of 'CRPF' of being biased towards him, he also made allegations against the Enquiry Officer. It is submitted that



although not less than 8 letters were served on the petitioner to participate in the enquiry but he refused to do so and left with no option, the enquiry was held ex parte. It is submitted that the opinion of the Enquiry Officer is based on materials on record and which has been accepted by the Disciplinary Authority to pass a reasoned order of dismissal impugned at Annexure-1 to the writ petition which has been affirmed by the Appellate Authority as well as the Revisional Authority and requires no interference. Learned counsel in support of his submission has relied upon the two judgments of the Supreme Court, both reported in **(2005)13 SCC at page 228 (Union of India vs. Ghulam Mohd. Bhat)** and at **page 709 (Union of India vs. Datta Linga Toshawad)** to submit that the Supreme Court has come down heavily against such members of uniformed service who have overstayed on leave without valid reason. According to Mr. Sharan, the very fact that the petitioner since after going on leave on 19.1.2009 continued to be in such position despite knowledge about the departmental proceedings, this by itself would answer all the issues raised by Mr. Bharti on behalf of the petitioner.

I have heard learned counsel for the parties and I have perused the materials on record.

It is not in dispute that the petitioner went on sanctioned leave with effect from 19.1.2009 to 17.2.2009 but never returned



back on duty. Though Mr. Bharti has made a passionate plea to defend the case of the petitioner on the cause present at Annexure-18 series to the supplementary affidavit filed on 10.8.2016, but it would yet not justify the disassociation of the petitioner from the disciplinary proceedings. Even when the petitioner complains of being a chronic patient of back pain, the prescription on record is merely suggesting symptomatic treatment and nothing beyond. It is not a case where the petitioner had to undergo any surgical operation to set right the problem rather the prescriptions suggest a rest period for the petitioner which also ended on 28.6.2009 since the observation of the consulting Doctor present at page 5 of the supplementary affidavit dated 29.5.2009 suggest that the patient was feeling better, though in mild pain. The petitioner was again advised rest for four weeks, but this would suggest a recovery for the petitioner for his joining duty on or before 26.6.2009 but he did not do so rather the prescriptions on record shows that the petitioner was undergoing treatment for hepatitis since 3.7.2009. The time lag in between is unexplained. Even this treatment of hepatitis continued until 8.9.2009 as manifest from the medical advice dated 10.8.2009 present at page 11 but again the petitioner did not join duty rather waited for the back pain to resurface for obtaining fresh treatment, this time from the Homoeopathic Medical College and Hospital at Muzaffarpur with effect from 14.9.2009.



The discussion above is one aspect of the matter. The second aspect of the matter is that even though vide letter dated 1.10.2009 the petitioner was directed to report before the Medical Board constituted for the purpose on 7.10.2009 but the petitioner failed to comply with the order and did not report before the Medical Board rather filed an application on 9.10.2009 mentioning that he received the letter of the Commandant only on 8.10.2009 at 3.30 PM and thus it was not possible for him to appear before the Medical Board. This statement of the petitioner is a false statement because the acknowledgment card of service of the letter which was received by his wife shows a receipt in advance on 5.10.2009 itself. It is thus clear that the petitioner was lying and misrepresenting before the Commandant to avoid an examination by the Medical Board. The letter dated 1.10.2009 of the Commandant directing the petitioner to appear before the Medical board on 7.10.2009 together with the acknowledgment receipt given by his wife Smt. Seema Rani on 5.10.2009 are part of the records of the departmental proceeding produced by Mr. Sharan learned Central Government Counsel for perusal by this Court and leave no confusion that the petitioner was indulging in false statement.

A medical condition can be faced by any one and none remains untouched, be it any stage of life. The case of the petitioner seeking leave on medical grounds may be one of such condition but

it is not the medical state of the petitioner which has invited the penalty of dismissal rather it is his conduct which does not support the cause advanced by him.

The supplementary counter affidavit on record filed on behalf of the respondents gives a very poor reflection of the conduct of the petitioner. The petitioner joined the post on 15.9.1994 as informed by Mr. Bharti and the pleadings on record would reflect that as until the year 2008, there is no complaint against his functioning. The petitioner joined the present Unit i.e. G/133 BN of the 'CRPF' on receiving a transfer order dated 4.1.2006 from Group Centre, 'CRPF', Muzaffarpur. The petitioner reported to the Unit on 29.6.2006 and after being posted at the headquarters of the Battalion he was posted at the present posting at G/133 BN after one month. On 11.9.2008 the petitioner complained of back pain and was advised light duty by the Medical Officer. It is hereafter that the petitioner started seeking leave attributing back pain as the cause. Since the petitioner had exhausted his earned leave, he was granted 45 days LKD leave with effect from 21.11.2008 to 4.1.2009 with direction to submit medical documents for regularization of the period. The petitioner though reported but did not submit any medical documents supporting his ailment. Soon after reporting his duty he again complained of back pain and was advised light duty for three months on 5.1.2009. The petitioner was deputed for R.P.



duty without arms at Gate No.2 and thereafter he did not make any complain of back pain. On 18.1.2009 the petitioner applied for 30 days leave on grounds of his mother's death and was granted with effect from 19.1.2009 to 17.2.2009. It is while on leave that the petitioner made complaint to the Director General, 'CRPF' on 5.2.2009 complaining against the duties assigned to him by the Commandant despite the medical advice of light duty. This conduct of the petitioner, in my opinion, was a first case of misconduct because there is nothing on record which would show that since after his posting on R.P. Duty without arms with effect from 5.1.2009, the petitioner suffered any back pain. In fact his application for leave on grounds of mother's death on 18.1.2009 again makes no such reference. In such circumstances there was no occasion for the petitioner, a member of the disciplined service to lodge complaint against his Commandant with the superiors. The act reflected insubordination and a decreasing interest of the petitioner towards his duty. The petitioner thereafter started filing applications for extension of medical leave, as already discussed hereinabove and ultimately the memorandum of charges dated 22.10.2009 was served on the petitioner at his home address. The petitioner instead of responding to the charges and participating in the proceeding again chose to complain before the Director General, 'CRPF' vide his representation dated 4.11.2009 present at

Annexure-11 and again vide letter dated 7.1.2010 present at Annexure-12. The petitioner while making wild allegations against the Commandant, has taken refuge in his ailment to pray that the Enquiry Officer as well as the Disciplinary Authority be changed.

As I have mentioned earlier, no reply to the charges were filed by the petitioner before the Enquiry Officer. The Enquiry Officer vide letter dated 24.11.2009 directed the petitioner to appear on 7.12.2009 and which was responded to by the petitioner vide letter dated 1.12.2009 to the Enquiry Officer expressing lack of confidence in him on allegation of being influenced by the Commandant. Thereafter the Enquiry Officer has vide letter dated 17.2.2010, 19.2.2010, 5.3.2010 and 10.3.2010 supplied the petitioner the oral and documentary evidence led in the proceedings but there was no improvement in situation. The enquiry thus was held and concluded ex parte resulting in the impugned order.

The following instances cast serious aspersion on the conduct of the petitioner:

- (a) Though the petitioner admits that the death in the family was not of his mother but his grandmother and he prayed for leave on grounds of mother's death as per information received, with effect from 19.1.2009 to 17.2.2009 but even this statement of the petitioner stands falsified from the report submitted by the Superintendent of Police,

Muzaffarpur, in which it was mentioned that the grandmother of the petitioner expired on 19.1.2009. Meaning thereby she was yet alive when the petitioner proceeded on leave citing grounds of her death on 18.1.2009.

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- (b) Despite the orders dated 1.3.2009, 4.3.2009, 23.4.2009, 29.4.2009, 1.8.2009, 8.10.2009, 20.10.2009, 22.12.2009 and 6.1.2010 the petitioner was instructed to report in the Unit MI room or the Command Hospital at Muzaffarpur but he did not comply with the directions rather avoided an investigation by the medical team of the C.R.P.F.
- (c) In response to the letter dated 1.10.2009 requiring the petitioner to report before the Medical Board on 7.10.2009, although the petitioner vide letter dated 9.10.2009 present at page 62 of the writ proceedings mentions that the letter was received only on 8.10.2009 but the records of the departmental proceedings shows a receipt given by his wife Seema Rani on 5.10.2009 itself i.e. before the date fixed for appearing before the Medical Board on 7.10.2009. Meaning thereby the petitioner avoided the Medical Board by making false statement.
- (d) The prescriptions on record at Annexure-18 series of the supplementary affidavit though contains medical advice

of bed rest but there are sufficient period available during which the petitioner should have reported back to his unit but he avoided to do so.

- (e) The conduct of the petitioner to complain against the Commandant before his superiors despite the Commandant having assigned him with R.P. duty without arms considering his back problem, reflects in subordination, indiscipline and complete avoidance to duty.

The judgment relied upon by Mrr. Bharti rendered in the case of **Bhagwan Lal Arya** (supra) is clearly distinguishable because in the said case the leave was supported with medical papers and the period of absence was two months and 8 days. The Supreme Court in consideration of the documents on record of the proceeding was of the opinion that the medical papers on record justified the absence of the said petitioner and thus interfered with the punishment. Such is not the case here rather in the present case the petitioner sought leave on a false pretext and after going on leave he initially started complaining against his Commandant which was followed by taking refuge under his medical ailment and which according to the petitioner, was of such magnitude that he never reported for duty thereafter.

The judgment relied upon by Mr. Sharan, learned Central



Government Counsel to contest the plea advanced by Mr. Bharti to question the order of dismissal on merits as well as on quantum are cases of overstay on leave by members of the 'CRPF' and the Supreme Court has taken very serious note in the matter of unauthorized absence. Paragraphs 6 and 8 of the judgment rendered in the case of **Datta Linga Toshatwad** (supra) would squarely apply to the case in hand which are reproduced hereinbelow:

“6. One cannot ignore the large number of cases which come to this Court of members of uniformed forces remaining absent from duty without any reasonable explanation. Whenever action is taken, the usual plea taken is of having been ill or some such false pretext, and even fake or false medical certificates are produced in support of such a plea. We would not have taken a serious view of the matter had it not been a case of a constable belonging to CRPF remaining absent for an indefinite period. Even if we assume that the respondent was suffering from depression and was being treated as an outdoor patient, the medical certificates produced by him show that he was restored to normalcy on 4-4-1998 yet the respondent did not choose to report for duty. The order of dismissal was passed seven months later i.e. on 2.11.1998. This itself discloses the hollowness of the claim of the respondent regarding mental depression and imbalance which he claims to have suffered.”

“8. The present case is not a case of a constable merely overstaying his leave by 12 days. The respondent took leave from 16.6.1997 and never reported for duty thereafter. Instead he filed a writ petition before the High Court in which the impugned order has been passed. Members of the uniformed forces cannot absent themselves on frivolous pleas, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if it goes unpunished, will greatly affect the discipline of the forces. In such forces desertion is a serious matter. Cases of this nature, in whatever manner described, are cases of desertion particularly when there is apprehension of



the member of the force being called upon to perform onerous duties in difficult terrains or an order of deputation which he finds inconvenient, is passed. We cannot take such matters lightly, particularly when it relates to uniformed forces of this country. A member of a uniformed force who overstays his leave by a few days must be able to give a satisfactory explanation. However, a member of the force who goes on leave and never reports for duties thereafter, cannot be said to be one merely overstaying his leave. He must be treated as a deserter. He appears on the scene for the first time when he files a writ petition before the High Court, rather than reporting to his Commanding Officer. We are satisfied that in cases of this nature, dismissal from the force is a justified disciplinary action and cannot be described as disproportionate to the misconduct alleged.”

A similar view has been taken at paragraph 9 of the judgment rendered by the Supreme Court in **Ghulam Mohd Bhat** (supra) in which the Supreme Court has with reference to a judgment reported in (1996)1 SCC 302 (**State of U.P. vs. Ashok Kumar Singh**) and another judgment reported in (2003) 3 SCC 309 (**Mithilesh Singh vs. Union of India**) observed that overstay by the members of the disciplined force are act of indiscipline and needs to be dealt sternly unless mitigating circumstances are placed on record by the delinquent concerned as to how the punishment imposed can be held disproportionate. The Supreme Court has held that an order of removal for absence from duty for more than 300 days without justifiable reasons, would suffer no infirmity.

Considering the case of the petitioner on the facts on record and in the surrounding circumstances as well as the opinion

of the Supreme Court on the issue of continued absence, my opinion is that the order of punishment is not capable for being interfered with either on merits or on quantum.

In result, the writ petition is dismissed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20-09-2016
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