

IN THE HIGH COURT OF JUDICATURE AT PATNA**Civil Writ Jurisdiction Case No.19293 of 2012**

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1. Md. Shahzad Hussain S/O Md. Mohsin Ali R/O Village- Mokhdumpur, P.O.-
Sirnea, District- Katihar

.... **Petitioner**

Versus

1. The Union Of India Through Secretary, Home Department, New Delhi
2. The I.G. Police, Bihar Sector, Central Reserve Police Force, Patna, Bihar
3. The D.I.G. Police, C.R.P.F., Ranchi (Jharkhand)
4. The Commandant, 159-Battalion, C.R.P.F., Gaya (Bihar)
5. The Departmental Enquiry Office - 159 Battalion C.R.P.F., Gaya (Bihar)

.... **Respondents**

Appearance :

For the Petitioner/s : Mr. Shailesh Kumar Singh, Advocate

For the Respondents : Mr. Anshuman Singh, Addl. CGC

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

C.A.V. JUDGMENT

Date: 08-04-2016

The petitioner, a Constable in 159 battalion of CRPF posted at Gaya, was departmentally proceeded vide Gyapan, dated 13.10.2009 for being absent from duty without permission from 20.4.2009. On conclusion of the enquiry, the Enquiry Officer held him guilty of charge, in his report, dated 19.6.2010 (Annexure-11). He was awarded five punishments, including punishment of compulsory retirement by respondent No.4, the Commandant, 159 Battalion, CRPF, Gaya vide order, dated 14.10.2009. An appeal and memorial filed by the petitioner, too were rejected by respondent No.3, D.I.G. Police, CRPF, Ranchi and respondent No.2, I.G., C.R.P.F., Bihar sector.

2. The petitioner has challenged the proceedings as well as order of punishment awarded by respondent No.4 as well as appellate

order and memorial affirming the same. The petitioner was awarded the following punishments:

(a) Compulsory retirement from service

(b) Declared absconder, as he was absent from duty continuously for 344 days i.e. 19.4.2009 to 28.3.2010.

(c) All Medals if provided been seized under section 12(1) of the C.R.P.F. Rules, 1949.

(d) All dues be adjusted from payable amount

(e) Identity card was to seized.

3. Before I proceed to examine the grounds on which the impugned orders have been assailed, it would be relevant to notice the facts of the case:

4. The petitioner was posted as Constable, Battalion 159, CRPF Gaya in 2009. He was permitted to avail one day 'station leave' on account of serious illness of his wife with condition that he would return on duty timely while deployed at Imamganj, Gaya for election duty. However, he did not report for duty on the next day and overstayed his leave without permission of competent authority. The petitioner informed the Commandant about his ailment through telegram on 21.4.2009 and requested for extension of leave. The Doctor's certificate is annexed as Annexure-3 to the writ petition. On 24.4.2009, he made an application to the Commandant through registered post for extension of leave as the Doctor had advised him



further rest. A copy of the application, dated 24.4.2009 seeking extension of leave. is at Annexure-4. As the petitioner had remained absent without permission, a warrant of arrest was procured against him from the Court of Chief Judicial Magistrate on 29.4.2009. A Court of enquiry was ordered vide order, dated 9.6.2009 as per rule 31(a) of the CRPF Rules, 1955 read with Standing Order No.19 of 2001. He was declared 'deserter' for having overstayed his leave w.e.f. 20.4.2009 without any permission. The Article of Charge was framed on 13.10.2009 and one Shri Chotelal, Second Command Officer of the Unit was appointed as Enquiry Officer.

5. The respondent authorities by order dated 16.11.2009 appointed one Chotelal, 2nd Commandant Officer as Enquiry Officer for conducting the enquiry under rule 27 of the CRPF Rules, 1955 (Annexure-8). The petitioner returned to his unit only on 28.3.2010 and his statement was obtained by the Enquiry Officer in the departmental proceeding. The Enquiry Officer vide notice, dated 5.5.2009 provided him an opportunity to file his defence and produce his documents and witnesses. On conclusion of the enquiry, the Enquiry Officer held him guilty of the charge vide enquiry report, dated 27.5.2010. A copy of the enquiry report was supplied to him only on 19.6.2010 along with second show notice. He filed his reply on 29.7.2010 denying the charge. He stated that because of illness, he could not join his duty and had regularly represented for leave. A

copy of second show cause reply, dated 29.7.2010 is at Annexure-12. However, the Commandant, 159 battalion, Gaya not being satisfied with his explanations, awarded punishment of compulsory retirement as well as declared him deserter and ordered seizure of all medals as well as identity card.

6. Assailing the enquiry report as well as order of punishment, the petitioner submits that the disciplinary proceeding was conducted in breach of principle of natural justice. He was not provided adequate opportunity to defend himself either in the Court of enquiry, which declared him deserter on 9.6.2009. The petitioner submits that he could not have been declared deserter as he had sent applications for extension of leave on 21.4.2009, 24.4.2009 and 15.5.2009. Even the Enquiry Officer in his report noted that the petitioner had made number of representations for extension of leave. The petitioner further submits that the Enquiry Officer and the Disciplinary authority failed to consider the medical certificate produced by him. The Enquiry Officer and the disciplinary authority had no cogent reasons to disbelieve the medical certificates produced by him. The petitioner submits that in his entire service career, he never absented himself from duty. Even P.W. 4 examined on behalf of the prosecution, too supported the petitioner's contentions that he never earlier absented from duty.

7. The petitioner alternatively argued that in the facts and



circumstances of the case, the punishment of compulsory retirement as deserter is too harsh and excessive and is not commensurate to the offence alleged to be committed by him. In support of his submission, the petitioner has relied upon decisions in the case of *Shree Bhagwan Lal Arya vs. Commissioner of Police, Delhi & Ors*, reported in (2004) 4 SCC 56; *State of Punjab vs Dr. P.L. Singla*, reported in (2008) 8 SCC 469 and *Chairman-cum-Managing Director, Coal India limited & anr vs. Mukul Kumar Choudhuri and Ors*, reported in (2009) 15 SCC 620.

8. The respondents have justified the impugned action. They submit that the petitioner was permitted only one day station leave on 19.4.2009 on account of illness of his wife with the condition that he would return on duty timely as he was deployed at Imamganj for election duty. Instead of reporting to duty, he forwarded an application made on 24.4.2009 for extension of leave on the ground that he has been advised bed rest at home. On receipt of the said application, the then Commandant in order to verify the facts, immediately contacted the petitioner on phone, who stated that he was at his relative home. The Deputy Commandant soon proceeded to his residence only to learn that petitioner had already left his place. As claim of petitioner was not found substantive, the plea for extension of leave was rejected. Further more, since the petitioner absented from duty without permission and remained elusive, the Court of enquiry

held him 'deserter' on 9.6.2009 under Rule 31(c) of CRPF Rules, 1965 read with Standing Order 19 of 2001.

9. Learned counsel for the respondents further submits that one wonder as to why the petitioner took treatment at a private clinic though as per Medical Attendance Rules, he was required to undergo treatment at a Government hospital or at a medical Unit duly authorized by the Force. The medical certificate did not mention the ailment from which the petitioner was suffering and as such no reliance could be placed on any such certificate. According to the respondents, the petitioner feigned illness in order to avoid deployment in election duty. The conduct of the petitioner is unbecoming of a member of the Unit. The petitioner remained absent without permission from 20.4.2009 to 28.3.2010. He further submits that the misconduct in a case of disciplined force has to be viewed more strictly in comparison to employees who are in civil services and no leniency can be adopted in the matter of punishment. Learned counsel in support of his submission, has placed reliance upon judgments of Hon'ble Apex Court in the case of *Union of India & anr vs. B.C. Chaturvedi*, reported in (1995)6 SCC 750; *R.S. Saini vs. State of Punjab & Ors*, reported in (1999) 8 SCC 90 (Para-16); *Union of India & anr vs. K.G. Soni*, reported in (2006) 6 SCC 794 (para-12) and *State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya*, reported in (2011) 4 SCC 584 (paras 7 and

8).

10. I have heard learned counsel for the parties.

11. I find that the petitioner has assailed the findings of the Enquiry Officer on the ground that he failed to consider the representations made for extension of leave. It is further case of the petitioner that the Enquiry Officer failed to consider medical documents including Doctor's certificates. The respondents could not have declared him deserter as it was not a case that he remained absent without any information.

12. I find that the prosecution witnesses in their evidence have stated that in spite of letter, dated 25.5.2009 and 29.7.2009, the petitioner did not report to duty. Again a reminder to return to duty was reiterated in letters dated 29.9.2009, 1.12.2009 and 18.3.2010. P.W. 4 in his evidence stated that it is not clear from the documents produced by the petitioner as to from which disease, he was suffering. Further more, the petitioner at no time tried to approach the senior authorities even once either in person or tried to contact any one of them telephonically to apprise them of his situation. He even once did not show himself before Government Doctor as per Medical Attendance Rules.

13. In view of the attending circumstances, it is difficult to hold that the report of the Enquiry Officer was not based on sufficient evidence because as many as 11 P.Ws were examined by



the respondents in support of their case that the petitioner absented without permission and letters were written to him to report to duty. It is well settled that the scope of judicial review in a disciplinary proceeding is limited to correction of procedure and error of law. It is still surprising as to why the petitioner did not seek treatment in a government hospital or in an authorized unit meant for CRPF employees. The petitioner was given sufficient opportunity to make his defence, produce documents and witnesses. In fact, the petitioner produced four defence witnesses in support of his case. The Court would not delve into the sufficiency or otherwise of the materials on the basis of which an Enquiry Officer or the disciplinary authority has recorded its findings, unless and until the same is perverse based on no evidence or suffers from glaring illegality. As such, I do not find any infirmity either in the departmental proceeding or the findings recorded by the Enquiry Officer.

14. However, the alternative argument of the petitioner that the punishment awarded is not commensurate with the offence committed by him, requires due consideration. The petitioner argued that in case where an employee is proceeded only for unauthorized absence, punishment of dismissal, removal or compulsory retirement is too harsh and excessive.

15. Opposing the submission, learned counsel for the Union of India submits that the petitioner belongs to a discipline force and

any act of misconduct or subordination cannot be construed lightly.

16. I find that the respondents too in their counter affidavit have not denied that the petitioner has submitted some representations for extension of leave. The Enquiry Officer too in his report stated that the petitioner regularly submitted his representation with respect to his ailment, treatment and extension of leave, though he has not mentioned about the ailments in those applications. P.W. 4, too in his statement before the Enquiry Officer stated that there is no past complaint against the petitioner of having absented himself from duty.

17. Thus, I find that it is not a case where petitioner totally absented himself from duty without at least any information to his superiors. In such circumstances, in my view, the punishment of compulsory retirement and declaring him 'deserter' is excessive and harsh. The Hon'ble Apex Court in the case of **Shri Bhagwan Lal Arya (supra)** observed that punishment ought to be imposed in tune with magnitude or degree of misconduct gravity of offence. Absence of more than two months on medical grounds cannot be regarded as a grave misconduct so as to warrant punishment of removal. The relevant extract of paragraph 11 of the judgment is quoted hereinbelow for easy reference:

"11..... It is not the case of the respondents that the appellant is a habitual absentee. He had to



proceed on leave under compulsion because of his grave condition of health and, therefore, the punishment of removal from service is excessive and disproportionate. We are of the view that the punishment of dismissal/removal from service can be awarded only for acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility or complete unfitness for police service. Merely one incident or absence and that too because of bad health and valid and justified grounds/reasons cannot become the basis for awarding such a punishment.....”.

18. In the case of State of Tripura & Ors vs. Naresh Chandra Das, reported in (2007)15 SCC 759, which involved a member of a disciplined force, the Apex Court did not interfere with the order of the High Court setting aside the punishment for removal from service on the ground of unauthorized absence, being excessive and disproportionate.

19. In the case of CMD, Coal India Limited & Ors vs. Mukul Kumar Choudhary & Ors, reported in (2009)15 SCC 620, the appellant moved the Apex Court against the order of High Court setting aside the punishment of removal from service for charge of proven unauthorized absent by delinquent Mukul Kumar Choudhary, respondent No.1. The Enquiry Officer held the respondent guilty of remaining unauthorizedly absent for more than six months. The

disciplinary authority awarded punishment of removal of service. The High Court quashed the order of removal from service observing that it was not only unduly harsh, but grossly in excess of allegation. The Hon'ble Apex Court dismissed the appeal of Coal India Limited observing that a reasonable employer is expected to take into consideration the magnitude or degree of misconduct and all other relevant circumstances before imposing punishment.

20. In the instant case, I find that there is no previous allegation of any misconduct against the petitioner. This was a solitary incident of having remained on unauthorized absence. In view of the findings of Enquiry Officer that the petitioner made representations from time to time for extension of leave on medical ground, I find the punishment of compulsory retirement and declaring him 'deserter' to be harsh and excessive in the circumstances. As such, the aforesaid two punishments are accordingly set aside and the matter is remitted to respondent No.1, the I.G. Police, Bihar Sector, Central Reserve Police Force, Patna for awarding any other punishment other than dismissal/removal/compulsory retirement.

21. In the result, this writ application is partly allowed to the extent mentioned above.

(Samarendra Pratap Singh, J)

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