

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.16104 of 2003

Date:02.03.2016

Between:

K. Ravinder

... Petitioner.

AND

The Deputy Inspector General of Police,
Central Reserve Police Force,
Group Centre, Chennai and another.

...Respondents.

The Court made the following :

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ORDER:

This writ petition is filed to issue direction more particularly in the nature of Writ of Certiorari that the order dated 9-4-2003 bearing No.R.XIII.22/2002-Estt-III on the file of first respondent as illegal, arbitrary, disproportionate and violative of Article 21 of the Constitution of India and consequently set aside the order and grant relief or reliefs to the petitioner that deem fit and proper in the circumstances of the case.

2. Petitioner filed his affidavit and according to which, he was appointed as a Constable after due selection in the year 1994 and

thereafter, undergone training successfully. He stated that he was posted to work at different places of Central Reserve Police Force and lastly at Thura, Meghalaya State before he was removed by impugned order dated 06-11-2002. He contended that he discharged his duties to the utmost satisfaction of his superior authorities and that there was no occasion of any complaint against discharge of his duties. He stated that he availed casual leaves for 15 days during month of September 2001 at his native place in Ranga Reddy District of Andhra Pradesh State and due to unavoidable domestic circumstances, he overstayed for about 136 days and reported to join duty on 06-03-2002 before the second respondent, but he was admitted to duty at that time and while working at Thura, an enquiry was ordered against him on the charge of overstay.

He submitted a detailed explanation to the enquiry officer explaining the reasons for his overstay, but without considering his explanation, the second respondent passed impugned order dated 06-11-2002 holding that the charges of misconduct and disobedience are duly proved. He contended that he filed appeal challenging orders of the first respondent on 18-01-2003 for reconsideration of his case for ordering reinstatement into service on humanitarian grounds explaining the hardship that he would be facing on account of punishment.

He contended that when first respondent did not take any steps in his appeal, he filed W.P.No.3395/2003 and this Court by order dated 27-02-2003 disposed of the said writ petition directing the first respondent to dispose of the appeal, within a period of six weeks and on receipt of said orders, the first respondent passed impugned order dated 09-4-2003 rejecting the appeal and that the said order is liable to be set aside since imposing capital punishment effecting his livelihood on the charges of overstay is illegal arbitrary.

3. Respondents filed counter disputing the affidavit averments of

the petitioner and according to counter affidavit, the allegation that petitioner worked to the satisfaction of his superiors and that he has no occasion of any complaint is incorrect. They contended that during the year 2000, the petitioner overstayed for 65 days and he was awarded punishment of seven days confinement and also forfeiture of pay and allowances and in spite of such punishment, he again committed offence of overstay for 136 days and he was removed after conducting proper departmental enquiry. They contended that the petitioner was sanctioned 20 days enhanced casual leave from 26-09-2001 to 20-10-2001 with permission to avail Sundays, Restricted Holiday (RH) & General Holiday (GH) due to illness of his wife. They contended that petitioner was due to report for duty on 21-10-2001, but he remained absent and immediately, the Commanding Officer directed him to report for duty through letters dated 25-10-2001 & 18-11-2001, but the petitioner neither reported to duty nor sent any communication for extension of leave and a complaint was also lodged against the petitioner on which, a Court of Inquiry was ordered for his overstay and that the petitioner reported to duty on 06-3-2002 after overstaying for 136 days and thereafter, charges for overstay and disobedience of orders were framed and enquiry was ordered and in enquiry, he was found guilty and on the basis of enquiry report, the punishment was imposed.

They contended that the appeal preferred by him was also rejected as devoid of merits and contended by overstaying for 136 days without any valid reasons and without intimating to the authorities, the petitioner committed grave misconduct and the disciplinary authority rightly imposed punishment and therefore, the writ petition is liable to be dismissed.

4. Heard both sides.

5. Advocate for writ petitioner submitted that the petitioner submitted his explanation to the charge memo explaining that he

stayed back at his native place due to unavoidable circumstances i.e., due to illness of his wife and also certain family disputes occurred in his family, which was beyond his control, which necessitated his presence at his native place, but these aspects were not considered by the enquiry officer and recorded that the delinquent admitted the guilt and on that, recorded major punishment of removal. He submitted that the punishment of removal is disproportionate to the charges of misconduct and the disciplinary authority, instead of imposing minor penalty, given major penalty of removal, which is against principles of natural justice and this Court has to interfere with such arbitrary action.

6. On the other hand, Advocate for respondents submitted the petitioner on earlier occasion also overstayed and at that time, a minor punishment was given by showing sympathy and in spite of that, the writ petitioner committed similar mistake therefore, the disciplinary authority was right in awarding capital punishment and that there is no violation of principles of natural justice and that the writ petition is liable to be dismissed.

7. In reply to this, Advocate for petitioner submitted that Hon'ble Supreme Court in **UNION OF INDIA vs. GIRIRAJ SHARMA**^[1] in a similar set of facts, where a Constable overstayed for 12 days, has set aside the dismissal order passed by the disciplinary authority and ordered for reinstatement.

He further submitted that in **SATENDER PAL SINGH vs. UNION OF INDIA**^[2] (WP (C) No.5226/2005 dated 31-08-2007) Delhi High Court, in a case where a Constable overstayed for 17 days who was earlier overstayed for 13 times, held that each time, the case has to be judged on facts and circumstances and set aside the punishment of removal and directed reinstatement giving liberty to the department to impose minor punishment and these two cases squarely applies to

the present case.

8. Now the point that would arise for my consideration in this writ petition is whether orders of the respondents are legal, proper and correct?

9. **Point:-** Most of the facts are not in dispute. The petitioner joined as a Constable in the year 1994 after selection in A.P. State and he underwent training and thereafter, he was given posting. He worked at different places in the Central Reserve Police Force and at the time of passing the impugned order of removal, he was discharging his duties at Thura in Meghalaya State. Petitioner was granted casual leaves for 15 days (exclusive of Restricted Holiday (RH) & General Holiday (GH) during the month of September 2001 to go to his native place. It is not in dispute that he took that leave on the ground of wife's ill-health. It is also not in dispute that petitioner overstayed in continuation of that leave for 136 days and only reported to duty on 06-03-2002. After he reported on 6-3-2002, he was admitted to duty and thereafter he was served with charge memo,

in which, two articles of charges were framed against him.

The first charge is that he overstayed in continuation of casual leave without any sanction of leave from competent authority and continued till 06-3-2002. The second article of charge is that he committed an act of disobedience to orders of his superiors by not reporting to duty in spite of direction given under letters dated 25-10-2001 & 18-11-2001. No doubt, the petitioner has not sent any reply to these two letters dated

25-10-2001 & 18-11-2001. It is the specific case of the petitioner that he overstayed due to the ill-health of his wife and certain family disputes that occurred in his family, which were beyond his control, which necessitated his presence at his native place for the said

overstay. A departmental enquiry was conducted and after enquiry, he was imposed punishment of removal. One of the objections of the writ petitioner is that though he has offered explanation for his overstay, the enquiry officer, without referring to his explanation, recorded that he has admitted the guilt and on that score, awarded punishment of removal. The other grievance of the writ petitioner is even his appeal was summarily rejected without examining the correctness of his explanation and the reasons for his overstay.

10. On the other hand, it is the contention of the respondents that there was no response from the writ petitioner for the letters dated 25-10-2001 & 18-11-2001 wherein he was directed to report for duty and if really some circumstances necessitated the petitioner to overstay, nothing prevented him to inform the authorities as a reply to these two letters and that the explanation is only an after thought. The other contention of the respondents is that earlier also on one occasion, the petitioner overstayed, but at that time, a sympathetic view was taken and punishment of seven days confinement with forfeiture of pay and allowances were given, but in spite of that, he did not felt any responsibility to reply to the letters of his superiors, therefore, the punishment imposed by the disciplinary authority is proportionate to the misconduct.

11. In **UNION OF INDIA vs. GIRIRAJ SHARMA**¹ Hon'ble Supreme Court affirmed the order of the High Court directing reinstatement with some modifications. In that case, a constable was granted 10 days leave and he has sent a telegram for extension of 12 days more, but it was rejected, but he availed the leave and joined after overstay for 12 days and the department terminated services of Giriraj Sharma and that termination order was challenged before the High Court by way of a writ and High Court allowed the writ and directed for reinstatement with all monetary benefits and other

service benefits and when the department approached the Hon'ble Supreme Court, Hon'ble Supreme Court, while affirming the order of the High Court, modified the reinstatement order by holding that it will be open to the department to give a minor punishment to the delinquent and with that modification, the case was disposed of.

12. In **SATENDER PAL SINGH vs. UNION OF INDIA**² Delhi High Court ordered reinstatement by setting aside the compulsory retirement given to petitioner therein. In that case, Satender Pal Singh was a Constable in CISF and he was removed from service on the charge of unauthorized absence of 17 days and the removal order was confirmed by the appellate authority, he approached High Court, and the High Court while referring to its earlier decision in *B. C. Chaturvedi v. Union of India (1995) 6 SCC 749* wherein it was observed that “*the High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute their own conclusion of penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reason in support thereof.*”, and held that “*doctrine of proportionality as part of the concept of the judicial review*”.

13. In that case, the constable overstayed for 17 days and as per the record, earlier also he overstayed on several occasions and he was punished earlier 13 times and taking those facts into consideration, the Delhi High Court observed that “*If a person allowed to remain absent from duty for which he has no explanation much less cogent explanation, there would be more people enjoying the comforts of their home and the company of their families than serving*

on the borders or keeping vigil in disturbed areas where they are supposed to be posted. Discipline is the very foundation of any armed force. At the same time, we cannot ignore the need for humanizing the treatment which ought to be given to those serving in armed and para-military forces. Anyone serving in such forces may like any other public functionary be prevented by circumstances beyond his control from resuming duties. There may be cases where resumption of duties may not be an impossibility but given regard to what human life and affairs are, circumstances may sufficiently justify a delayed joining back for duties. This all depend on the facts and circumstances of each case whether the overstaying of leave or unauthorized absence was or was not justified. No strait jacket formula can be formulated or applied in such cases nor can any norms be prescribed for a uniform application to all situations. What is to be kept in mind by the disciplinary authority and those hearing appeals against the orders of punishment is whether absence from duties was for such a long period and so unjustified that the same smacked of indiscipline, defiance or desertion. Whether the justification advanced for late resumption of duty was, factually false or wholly unacceptable being moonshine and whether the person concerned was a habitual offender in the sense that he was incorrigible in his conduct and disrespect for the rules regulating his service conditions. It is only where the authorities find the case to be hopeless on all these fronts that they may be justified in getting rid of the man by removing him from service. In other cases, a lesser punishment ought to be sufficient to meet the ends of justice.”. This was observed in a case where the constable was earlier punished 13 times for overstaying. In that case, Delhi High Court observed that the punishment of compulsory retirement inflicted upon employee therein is totally harsh and disproportionate to the gravity of the misconduct alleged against him. In that case, while ordering reinstatement, Delhi High Court observed that it will be open to the

disciplinary authority to decide about the lesser punishment that may be imposed against the petitioner therein and held that he is not entitled for back wages for the period from the date of his compulsory retirement till the date of his reinstatement.

14. By relying on the decisions of Hon'ble Supreme Court in *Bhagat Ram v. State of Himachal Pradesh* ((AIR 1983 SC 454), *Ranjit Thakur v. Union of India* ((1987) 4 SCC 611) and in *B.C. Chaturvedi v. Union of India* ((1995) 6 SCC 749), Delhi High Court passed the above said order. Other side has not produced any decision of High Court, which has taken contrary view.

15. As rightly pointed out by the Advocate for writ petitioner in the above decisions of Hon'ble Supreme Court and High Court of Delhi, order of removal passed against the writ petitioners therein was held as totally harsh and disproportionate to the nature of misconduct proved against them. Hence when the petitioner specifically contended that due to ill-health of his wife and certain family disputes, which were beyond the control of the petitioner which necessitated his presence at his native place made him to overstay, the Disciplinary Authority ought to have verified the said reasons assigned by the petitioner were correct or not and ought to have recorded whether that reasons can be accepted, or it is only a ruse invented to explain the overstay. Considering the facts of the case and by applying the above two referred decisions to the facts of the case, I am of the view that the punishment of removal in this case is definitely harsh and disproportionate to the nature of misconduct and therefore, the same is liable to be set aside. Since the removal was long back, I am of the view that the petitioner is not entitled for the back wages on the principle no work no pay, but however he shall be entitled for continuity of service for the purpose of terminal benefits. It is also made clear that it is open for the disciplinary authority to decide about the minor punishment for the proved misconduct.

16. Writ Petition is accordingly allowed. No costs.

17. As a sequel, miscellaneous petitions, if any, pending in this writ petition, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:02.03.2016

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[\[1\]](#) 1994-AIR (SC)-0-215

[\[2\]](#) (WP(C) No.5226/2005 dated 31-08-2007)