

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.25997 of 2003

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Date:18.03.2016

Between:

S. J. Rama Reddy

... Petitioner.

AND

The Govt. of India
rep by its Secretary,
Ministry of Home Affairs,
New Delhi and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.25997 of 2003

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ORDER:

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This writ petition is filed seeking direction more particularly one in the nature of Writ of Mandamus by declaring the action of third respondent and fourth respondent in dismissing the petitioner from service as illegal, arbitrary, against principles of natural justice, against the rules of Service Law and violative of Articles 14, 16, 19 & 21 of the Constitution of India, consequently to set aside the order dated 21-05-2003 of third respondent, which was confirmed by the fourth respondent through order dated 30-08-2003 and pass such other order or orders that are deem fit and proper in the

circumstances of the case.

2. The case of the petitioner as detailed in his affidavit is as follows:-

He was selected and jointed in Central Reserve Police Force (CRPF) as Constable (GD) on 04-04-1991 and posted in 119th Battalion (BN), Hyderabad. After completion of his training in the year 1992, he was transferred to 31st BN, CRPF, Kohima, Nagaland and his Force Number is 913193907. In the month of January 2001, he was granted 15 days causal leave from 24-01-2001 to 13-02-2001 with permission to avail Sundays i.e.,

22-01-2001, 04-02-2001, 11-02-2001 and General Holiday on 26-01-2001 and restricted holiday on 29-01-2001 and 08-02-2001. He came to his native place during leave period and spent with his family members and on 12-02-2001 in order to join duties to go to Delhi, he went to Kodada to go to Hyderabad and while he was going to bus stand on a scooter, he met with an accident and somebody joined him in a private hospital at Kodada and from there he was shifted to Osmania General Hospital, Hyderabad for better treatment and that he immediately sent a message to second respondent about the incident with a request to extend his leave and thereafter, from time to time basing on the advice of the doctors, he sent messages to the second respondent along with medical certificates and prayed for extension of leave period. On 24-02-2002, he reported before second respondent and joined duties. A Departmental Enquiry was ordered for his absence on 13-02-2001 and Sri Harish Kumar Varma, Assistant Commandant was appointed as an Enquiry Officer vide office order dated 19-03-2002 to conduct departmental enquiry as per rules. Enquiry Officer conducted enquiry thoroughly and considering his statement, medical certificates and other documents, the enquiry officer submitted report holding that charge against petitioner was not proved. On 18-11-2002, second respondent, after receipt of the

enquiry report, passed order on 18-11-2002 imposing punishment of 28 days confinement to Quarter Guard with two hours pack drill daily and extra fatigue and forfeiture of all pay and allowances for the said period from 18-11-2002 to 15-12-2002, besides the said punishment, the causal leave period from 24-01-2001 to 13-02-2001 was cancelled and it was converted into earned leave and the remaining period from 14-02-2001 to 24-02-2002 was treated as Extra Ordinary Leave (without pay) and as the petitioner was a Constable in CRPF by respecting the order of the second respondent, though he was not guilty of the charge, did not file any appeal or revision to the authorities concerned. It is further contended that four months after serving the punishment, the petitioner received a show cause notice from third respondent giving 15 days time to reply to show why the punishment should not be enhanced. Petitioner received the said notice on 20-03-2003 and third respondent passed orders on 21-05-2003 informing the petitioner that he was dismissed from service. The petitioner was relieved from service on 31-05-2003. Aggrieved by the order of the third respondent, he filed a petition before the fourth respondent on 11-06-2003 and the fourth respondent passed orders on 30-08-2003 modifying the punishment of dismissal into punishment of removal. According to petitioner, orders passed by both third respondent and fourth respondent are against the principles of natural justice and also against rules of Service Law.

He contended that as he was already punished by second respondent and he served the punishment, the order passed by the third and fourth respondents would amount to case of double jeopardy, which is violative of Article 20 (2) of the Constitution of India. He further stated that he served with CRPF for more than 11 years without any remark and the third respondent, without any power, revised the order of the second respondent and the enhancement of punishment is illegal. It is further contended that according to Rule 29 of CRPF, third respondent is not empowered to take action *suo-motu* and

enhance the punishment and such power is only when a revision is filed before him. The petitioner contended that he has not filed any revision, but the third respondent, without any authority, enhanced the punishment. He further stated that when the Enquiry Officer gave a finding that the charges are not proved and given a clean chit to him, imposing punishment is illegal. He stated that he has no other alternative except to invoke jurisdiction of this Court under Article 226 of the Constitution of India to get appropriate relief and that he is entitled for the relief claimed.

3. Additional Deputy Inspector General of CRPF filed counter affidavit on behalf of all the respondents disputing the affidavit averments of the petitioner and the case of the respondents as per counter affidavit in brief as follows:-

Enquiry Officer's Report was considered by Commandant, who is the Disciplinary Authority and disagreed with the report and imposed punishment for the charge of unauthorized absence and the Deputy Inspector General of CRPF, having found that the punishment given by the second respondent is not in commensurate with the gravity of the offence, served a show cause notice proposing enhancement of punishment by exercising the power under Rule 29 (d) of CRPF Rules. Petitioner submitted reply to the show cause notice and the reviewing authority found that the petitioner failed to produce authenticate document supporting his unauthorized absence for 259 days and by examining the statement of the petitioner, prosecution witnesses and documents produced during the course of enquiry and also the explanation of the petitioner to the show cause notice the reviewing authority enhanced the punishment and ordered for dismissal and that was reduced to that of removal by the fourth respondent on the appeal preferred by the petitioner. It is contended that the petitioner failed to produce any medical certificate for his alleged treatment for the period from 12-06-2001 to 24-02-2002 and

the enquiry officer did not notice it and the disciplinary authority has considered the same and not accepted the report of the enquiry officer. It is contended that the petitioner with a malafide intention willfully abstained and the reviewing authority rightly reviewed the punishment and passed order which is in accordance with the power vested under 29 Rule (d) of CRPF Rules, therefore, the writ is liable to be dismissed.

4. Heard both sides.

5 Both side Advocates submitted their arguments supporting respective contentions of their clients as pleaded in the respective affidavits of the parties.

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

7. **Point:-** As already referred above, this writ petition is filed questioning the punishment imposed against the petitioner for the charge of unauthorized absence. Admittedly, an enquiry officer was appointed to enquire into the allegation of unauthorized absence. The petitioner herein took leave from

24-01-2001 to 13-02-2001 and he has to report duty on 14-02-2001.

According to petitioner, he left the house on 12-02-2001 and on his way to bus stand, he met with an accident and that somebody admitted him in the hospital at Kodada and thereafter, he was shifted to Osmania Hospital, Hyderabad.

The petitioner stated that he intimated his employer all these facts and finally reported for duty after complete cure on 24-02-2002. The very same explanation was given to the charge of unauthorized absence and the Enquiry Officer i.e., Assistant Commandant accepted the explanation of the delinquent, which was supported and

corroborated with documentary evidence produced by the employee, recorded that the charge of unauthorized absence is not proved. Commandant who is the Disciplinary Authority has to take action in pursuance of the enquiry report and who held that he has not satisfied with the findings of the enquiry officer, thereby imposed punishment of 28 days confinement to Quarter Guard with two hours Pack Drill daily with extra fatigue and forfeiture of all pay and allowances for that period of 28 days by canceling the earlier granted leave from 24-01-2001 to 13-02-2001 and treating that period as Earned Leave and the other period from 14-02-2001 to 24-02-2002 as Extra Ordinary Leave (without pay). This punishment was not challenged and the petitioner accepted the same and served the punishment. But the Deputy Inspector General of Police CRPF issued a show cause notice proposing enhancement of punishment on the ground that the punishment given is not in commensurate with gravity of the offence. According to respondents, this third respondent i.e., Deputy Inspector General of Police is vested with such power under Rule 29 (d) of CRPF Rules 1955. It may be relevant to read the said rule which reads as follows:-

“29. Revision._

(a) xxxxx

(b) xxxxx

(c) xxxxx

(d) The Director-General of Special Director General or the Additional Director-General heading the Zone or the Inspector General or the Deputy Inspector-General may call for the records of award of any punishment and confirm, enhance, modify or annul the same, or make or direct further investigation to be made before passing such orders:

Provided that in a case in which it is proposed to enhance punishment, the accused shall be given an opportunity to show cause either orally or in writing as to why his punishment should not be enhanced.”

8. The above rule deals with the revisional power and sub- rule 'd' is the power given to the Director General or Special Director General or Additional Director General heading the zone or the Inspector General or the Deputy Inspector General to call for the records of the award of any punishment and confirm, enhance, modify or annul the same, or make or direct further investigation to be made before passing such orders.

9. The impugned order of the third respondent dated 21-05-2003 is as follows:-

**"OFFICE OF THE DY.INSPECTOR GENERAL OF POLICE,
C.R.P.F., KHATKHATI RANGE (ASSAM)**

No.R.XIII-6/02-DA-2

Dated, the 21 May, 2003

OFFICE ORDER

As a result of Departmental Enquiry conducted against No.91319307 Ct/GD S.J. Rama Reddy of 31 Bn, CRPF under Section 11 (1) of CRPF Act, 1949 read with rule-27 of confinement to quarter Guard with two hours pack drill daily and extra fatigue and forfeiture of all pay and allowances w.e.f., 18/11/02 by the disciplinary authority (i.e., Commandant 31 Bn CRPF) vide Order No.P.VIII-2/2002-31-EC-II dated 18/11/2002:-

ARTICLE-1

"That the said No.913193907 Ct/GD S.J Rama Reddy of F/31 Bn CRPF was sanctioned 15 days Casual Leave from 24/01/2001 to 13/02/2001 with permission to avail on 28/01/01, 04/02/01, 11/02/01 being Sundays and 26/01/01, 29/01/01 and 08/02/01 being GH and RH. Accordingly he was due to report for duty on 13/02/2001 in evening rollcall at Bn HQrs, New Delhi. But he failed to do so and remained absent from duty, without prior permission of the competent authority up 24/02/2002. Thus, he has committed an act of misconduct and remissness in discharge of his duty in his capacity as a member of the Force under Section 11 (1) of CRPF Act, 1949 read with rule-27 of CRPF Rules, 1955."

2. *No.91319307 Ct/GD S. J . Rama Reddy of 31 Bn CRPF remained OSL for 376 days wef 14/02/01 to 24/02/02. Further he failed to produce authentic documents or the valid reasons in support of his unauthorized absence for 259 days w.e..f 12/06/2001 to 24/02/2002, despite giving him ample opportunities during the course of Department Enquiry. The punishment awarded to No.913193907 Ct/GD S.J. Rama Reddy by the disciplinary authority i.e., Commandant 31 Bn CRPF vide O/O.No.P.VIII-2/2002-31-ED-II dated 18/11/2002 is therefore not commensurate to the gravity of offence*

committed by him.

3. In order to review the punishment for the sake of natural justice under rule-29 of CCS(CCA) Rules, 1965 and rule-29(d) of CRPF Rules, 1955 read with relevant instruction issued vide DG, CRPF DO letter No.P.VIII-1/2002-Pers-II(I) dated 06/07/2001, I being the Reviewing Authority proposed to enhance the punishment to Dismissal from service of No.913193907 Ct/GD S.J. Rama Reddy vide letter No.R.XIII-3/03-DA-2 dated 20/03/03. He submitted representation dated 08/04/2003 received in this HQ vide Commandant, 31 Bn, CRPF letter No.P.VIII-2/2002-31-EC-II dated 22/04/03 has been duly examined. The points raised by the delinquent in his reply are discussed below:-

Para-1 The plea of the said Ct is untenable because as per rule-29(d) of CRPF Rules, 1955 read with DG CRPF DO letter No.P.VIII-1-Pers-II(I) dated 06/07/2001, the DIGP in his capacity being the reviewing authority, has the power to review the punishment awarded by the disciplinary authority.

Para-2 Under the provision of para-1 (v) and (vi) (b) of rule-29 of CCS (CCA) Rules 1965, the penalty awarded by the disciplinary authority can be revised, enhanced or set aside by the reviewing authority. Hence, the allegation of the delinquent that the proposed punishment is with pre-determination is incorrect.

Para-3 The plea of the Ct/GD S.J Rama Reddy is far from the truth. The punishment awarded to him by the disciplinary authority does not commensurate with the gravity of the offence committed by him. During his 11 years of service he over-stayed from leave thrice i.e., for 14 days during 1994, for 137 days during 1998 and for 376 days during 2001-02. This itself speaks about the conduct of the delinquent. The reviewing authority has the power to enhance the penalty under the existing rules.

Para-4 As discussed in para-1 and 2 above, review of the punishment awarded to the delinquent is very much within the ambits of existing rules/instructions.

Para-5 The plea of delinquent is far from truth. The disciplinary authority did not agree with the findings of the E.O. He remained OSL for 376 days from 14/02/01 to 24/02 but could produce medical documents in support of his absence on for 117 days despite giving him ample opportunities.

4. Apart from what has been discussed above, the delinquent in his reply has not brought out any other convincing/extenuating evidences in his favour and thus failed to justify his over-stayal for 259 days w.e.f.12/06/01 to 24/02/02. Therefore, the charges leveled against him stand fully established beyond any reasonable doubt. After careful examination of COI file, DE file and his representation dated 08/04/03, I find that the punishment awarded to No.913193907 Ct/GD S.J. Rama Reddy by Commandant 31 Bn vide Order No.P.VIII-2/2002-31-EC-II dated 18/11/02 is not commensurate with the gravity of offence committed by him.

5. In view of the foregoing, I, in the capacity of reviewing authority in accordance with rule-29 of CCS (CCA) Rules 1965 and

Rule 29 (d) of CRPF Rules 1955, read with rule 11 (ix) of CCS (CCA) Rules-1965, enhance the penalty to “**DISMISSAL FROM SERVICE**” upon the said No.913193907 Ct/GD S.J. Rama Reddy of 31 Bn CRPF with effect from the date of handing over of this order to him. His particulars are as under:-

Force No.	:	913193907
Rank	:	Constable (GD)
Name	:	S.J. Rama Reddy
Father's Name	:	Shri Narsi Reddy
Village	:	Jerripothoula Gudem
Post Office	:	Bethavole
Police Station	:	Chilkoor
District	:	Nalgonda
State	:	Andhra Pradesh
Date of Birth	:	20/03/1970
Date of enlistment	:	04/04/1991
Identification Marks	:	1) A black mole of left shoulder 2) A black mole over chest

left

6. All the medals and decorations, if any earned by him during the service in the Force are also orders to be forfeited under Section 12 (1) of CRPF Act 1949. Dues if any outstanding against him shall be recovered from the dues payable to him and be credited into Govt Treasury.

(MOHINDER SINGH)
DIGP, CRPF, KHATKHATI

To

-
No.913193907 Ct/GD,
S.J. Rama Reddy, 31 Bn, CRPF,
(through Commandant, 31 Bn, CRPF)

No.R.XIII-6/02-DA-2
2003

Dated, the May,

Copy forwarded to :-

1. The DIG, CID, Distt-nalgonda (Andhra Pradesh).
2. The Superintendent of Police, Distt-Nalgonda (Andhra Pradesh).
3. The District Employment Officer, Distt-nalgonda (Andhra Pradesh).
4. The Addl. DIGP, GC, CRPF, Kakhati (Assam) along with S/Book.
Encl : S/Book.
5. The Commandant, 31 Bn, CRPF in triplicate along with DE/COI files and C/Cards for necessary action. Original copy of the Order may be handed over to the individual and second copy duly receipted by him with date be returned to this office.
Encl : DE/COI file and C/Cards.

(MOHINDER SINGH)
DIGP, CRPF, KHATKHATI

10. From a reading of the above order, there is no whisper anywhere as to when the Deputy Inspector General of Police has called for the records relating to the enquiry conducted against the petitioner herein and the reasons for calling for such record. A reading of the above order would indicate that as if the Deputy Inspector General of Police was dealing with a revision preferred before him, but not as a revision that was taken on *suo-motu* by exercising the powers under Rule 29 (d) of CRPF Rules. When the Enquiry Officer, on material evidence, found that the charge of unauthorized absence is not proved and recorded a finding without setting aside such finding with valid and cogent reasons, in my view the Disciplinary Authority or the Revisional Authority cannot exercise any powers further to deal with the subject. If really, the Disciplinary Authority or the revisional authority was of the view that the enquiry officer has not properly examined the material on record, they have to first set aside that finding and may appoint another enquiry officer or before passing any order should give opportunity to the petitioner to meet the objections, which were lingering in the minds of Disciplinary Authority or the Reviewing Authority. But here, the Disciplinary Authority simply recorded that he is not satisfied with the finding of the enquiry officer as the petitioner failed to produce any medical certificates for his treatment from 12-06-2001 to 24-2-2002 and as the deceases mentioned in the medical certificate are not serious deceases, he felt that petitioner overstayed from the leave and overstay is a willful act and there are no merits therefore, he do not agree with the enquiry officer. Having recorded his dissatisfaction, he imposed punishment of 28 days confinement to Quarter Guard with two hours Pack Drill daily with extra fatigue and forfeiture of all pay and allowances.

11. When the Disciplinary Authority has imposed the above referred

punishment, nothing is whispered in the order of the third respondent as to how that punishment was not in commensurate with the gravity of the offence. Here the third respondent and the fourth respondent have lost sight that the charge is not proved against the petitioner and in spite of that, the Disciplinary Authority awarded punishment and that was served by the delinquent officer. If really the third respondent felt that the punishment is not in commensurate with the gravity of the charge, he should have taken steps even before the delinquent officer served the punishment. As rightly pointed out by Advocate for petitioner the enhancement of punishment would definitely amount to double jeopardy, which is not permissible under the Constitution and principles of natural justice. The delinquent officer has lost 21 days of earn leave and the earlier casual leave granted to him was cancelled and the absence period was treated as Extra Ordinary Leave without any allowances and he undergone the punishment of confinement to Quarter Guard with two hours Pack Drill daily with extra fatigue and forfeiture of all pay and allowances for that period of 28 days is definitely a severe punishment. When the revision petitioner preferred appeal to the fourth respondent challenging the order of third respondent, without considering all these aspects, the order of dismissal was modified into that of removal.

12. Rule 27 of the CRPF Rules, 1955 deals with punishment and a separate table is given, according to which, the punishment indicated under Sl.Nos.1 to 6 have to be inflicted after formal departmental enquiry, whereas punishment under Sl.Nos.7 to 11 can be inflicted without a formal departmental enquiry. If this table is categorized into two parts, the punishment of Sl.Nos.1 to 6 can be taken as major punishments since they have to be imposed only on formal departmental enquiry, whereas punishment under Sl.Nos.7 to 11 can be treated as minor punishment, which can be inflicted even without

departmental enquiry. The punishment given to petitioner by the Commandant i.e, Disciplinary Authority is the punishment reflected at Sl.No.6. If we go to Sl.No.5, the punishment of fine of any amount not exceeding one month's pay and allowances is other category of minor punishment. Here the disciplinary authority not only given punishment of confinement in Quarter Guard for 28 days with daily two hours drill, it also imposed punishment of denying pay and allowances for this period. So the punishments under Sl.Nos.5 & 6 were given to the petitioner besides cancelling the casual leave treating that as earned leave and absence period as Extra Ordinary Leave without pay and allowances. So sufficient punishments were given to the petitioner for the alleged misconduct, but the third respondent, without examining these aspects, unilaterally held that this punishment is not in commensurate with gravity of offence. As already referred above, the petitioner has not challenged the punishment inflicted on him by the Disciplinary Authority though the Enquiry Officer given him a clean chit holding that the charge is not proved. For the sin of not challenging the punishment out of respect towards his superiors, the reward given to him is the enhancement of punishment one by third respondent passing dismissal order and the other by fourth respondent modifying it into order of removal. In my view both third and fourth respondents have used the weapon of power on a helpless constable, who intimated the employer about the injuries he sustained in the accident and his inability to report for duty after expiry of the leave granted to him. Though enquiry officer considered explanation of petitioner and accepted it, the Disciplinary Authority has not agreed with the findings of enquiry officer on the ground that petitioner did not produce medical certificate for a particular period.

13. On a scrutiny of the entire material, I have no hesitation in my mind in holding that the order of the third respondent is highly

arbitrary and unilateral and is not in accordance with the powers conferred under Rule 29 (d) of CRPF Rules 1955. Third respondent exercised the *suo-motu* power without any valid reasons and unilaterally. The forth respondent, without examining these aspects, simply accepted the order of the third respondent by just modifying it from dismissal to removal. Therefore, both these orders are liable to be set aside and the petitioner is entitled for reinstatement with continuity of service with all other antecedent benefits. As a normal rule principle is no work no pay. But here there is no fault on the part of petitioner, therefore considering the facts of the case, I am of the view petitioner shall be entitled for 50% of back wages for the injustice he suffered. Therefore, it is held that he is not entitled for the full back wages but he is entitled for 50% of the back wages.

14. Writ Petition is ordered accordingly. No costs.

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

JUSTICE S. RAVI KUMAR

Date:18.03.2016

mrh