

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10516 of 2015

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Mukesh Kumar, son of Shri Sive Kumar Singh, resident of village Daulatpur, P.O.
Athmalgola, P.S. Athmalgola, district Patna Petitioner

Versus

1. The Union of India through the Secretary, Department of Home, North Block,
Cabinet Secretariat, New Delhi
 2. Commandant 91Bn, Central Reserve Police Force, G.C., Lucknow Campus,
Bijnore, Lucknow, Uttar Pradesh
 3. Inspector General, Central Reserve Police Force, Hyderabad
 4. Deputy Inspector General, Central Reserve Police, Force, Bangalore
- Respondents

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Appearance :

For the Petitioner : M/S Siya Ram Sahi & Ajit Kumar Sinha, Advs.
For the Respondents : Mr. S.D SANJAY, Addl.Soc.Gen. with
Mr. A.B. Mathur, AC to Addl.Soc.Gen

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 06-09-2017

Prabha Kumar Jha, J. Heard Mr. Siya Ram Sahi, learned counsel appearing for the petitioner, and Mr. S.D. Sanjay, learned Additional Solicitor General of Union of India, assisted by Mr. A.B. Mathur, Additional Counsel.

2. The petitioner has filed this writ application for quashing the order, dated 21st March, 2014, by which the petitioner has been removed from service by the Commandant and the appellate order, dated 2nd June, 2015, passed by the Inspector General, Southern Sector, CRPF, Road No. 10-C, Near New MLA/MP's Colony, Gayathri Hills, Jubilee Hills, Hyderabad – 500 033 (Telangana State) by which the appeal of the petitioner has been dismissed.

3. The petitioner was appointed as GD Central Reserve Police force on 26.05.2003. While the petitioner was posted in Cobra Commandant in 265 Battalion, he was proceeded on three charges. Firstly, the petitioner remained unauthorizedly absent from 05.06.2013 to 14.06.2013, ten days, secondly, the petitioner, again, remained absent unauthorizedly since 19.07.2013 to 08.08.2013, twenty-one days, thirdly, the petitioner did not obey the order of the Commanding Officer on 25.07.2013 and fourthly, the petitioner while functioning as Constable



(GD) have committed different acts of disobedience and acts of the petitioner amount to gross misconduct.

4. The Enquiry Officer submitted enquiry report. The disciplinary authority also issued notice, serving a copy of the enquiry report to the delinquent (the petitioner) and the petitioner gave his reply, but, the disciplinary authority held that the petitioner is habitual to remain on unauthorized leave. Besides the fact the petitioner was punished for different offences on, at least, five occasions. The disciplinary authority upon receipt of enquiry report, ordered for removal of the petitioner from service with effect from 21.03.2014.

5. The petitioner preferred appeal before the Inspector General, Southern Sector, CRPF, Road No. 10-C, Near New MLA/MP's Colony, Gayathri Hills, Jubilee Hills, Hyderabad – 500 033 (Telangana State) and the appellate authority, also, after considering the facts available on record, dismissed appeal.

6. Mr. Siya Ram Sahi, learned counsel appearing for the petitioner, submits that enquiry was held ex parte. The disciplinary authority sent notice along with the enquiry report to the petitioner and the petitioner also gave reply, but, the disciplinary authority did not take into consideration the reply of the petitioner and the petitioner was inflicted with the punishment of removal from service. The appellate authority also, without considering the defense of the petitioner and the grounds taken by him, dismissed the appeal. The learned counsel for the petitioner, further, submits that the petitioner remained absent for ten days and forty-one days and for that the punishment of removal from service is disproportionate to the charge.

7. The learned counsel placed his reliance on the judgments of the Supreme Court, reported in **A.I.R. 1996 SC, 255 (Ram Kishan Vrs. Union of India)** and **A.I.R. 1992 SC, 407 (Ashok Kumar Singh Vrs. The State of Bihar & Ors.)**. In both the cases it has been held that the punishment of dismissal/removal is disproportionate to the charge.

8. On the contrary, Mr. S.D. Sanjay, the learned



Additional Solicitor General, has submitted that it is not a solitary incidence, but, during the period of eleven years of service, the petitioner on five occasions was punished for confinement for fifteen days or for more, and the petitioner, from the year 2004 till the year 2011, remained absent unauthorizedly for different periods. The authorities has already taken lenient view in regularizing the unauthorized absence of the petitioner, but, the petitioner did not mend himself and, again, in the year 2013, the petitioner remained authorizedly absent for ten days and forty-one days. During the years 2010, 2011 and 2012, the petitioner remained absent for thirty-two days, thirty-eight days, ninety days, eighty-seven days and onwards.

9. The learned counsel appearing for the Union of India, in support of his contention, placed reliance on judgment of the Supreme Court reported in **(2005) 13 SCC, 228 (Union of India & Ors. Vrs. Gulam Mhd. Bat)** in which the Supreme Court has held that authorized absence of a Constable of Para Military Force amounts to gross misconduct and liable to be dismissed.

10. Having considered submissions of both the sides and on perusal of record I find no force in the submission of the learned counsel for the petitioner. Admittedly, the petitioner entered into service of Central Reserve Police Force as Constable in the year 2003 and after completion of training he was confirmed in service in the year 2004. In the present case, the petitioner was departmentally proceeded for remaining on authorized leave for ten days, from 05.06.2013 to 14.06.2013. The petitioner remained absent unauthorizedly from 19.07.2013 to 28.08.2013, for 21 days, besides the fact that the petitioner disobeyed the order of the superior authority. The enquiry officer found the charge, made against the petitioner, proved. The petitioner did not participate in the departmental proceeding. I do not find that the finding of the disciplinary authority is vitiated on any grounds. Even the submission of the learned counsel for the petitioner is not acceptable that the punishment is disproportionate to the charge as I find from the Memo of Charge, Annexure 1, itself, that the petitioner was thrice punished for



confinement for 15 days and twice punished for 7 days confinement for his misconduct and disobedience. The petitioner remained in service for nine years, but, he remained absent for 17 times. In the year 2007, the petitioner remained on unauthorized leave on four occasions, for 2 days, 9 days, 20 days and 24 days. The petitioner remained on authorized leave on two occasions in the year 2008. The petitioner also remained absent unauthorizedly on two occasions in the year 2010. The petitioner remained absent unauthorizedly in the year 2011 on four occasions, for 32 days, 90 days, 87 days and 3 days. The petitioner also remained absent unauthorizedly in the year 2012, for 5 days and 42 days. Almost on every occasion the disciplinary authority took very lenient view and passed orders inflicting minor punishment and regularized the unauthorized absence of the petitioner as leave without salary or break of service. The petitioner is a member of para military disciplined force and such frequent over-stayal of the petitioner in each and every year amounts to gross misconduct on which the petitioner is liable to be dismissed from service. The disciplinary authority has already shown unexplained leniency on previous occasions when the petitioner remained absent unauthorizedly.

11. Having considered the fact, aforesaid, and discussions, made above, I do not find any merit in this writ application. Accordingly, the writ application is **dismissed**.

(Prabhat Kumar Jha, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

