

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15424 of 2007

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Ravindra Mishra, son of Ram Nath Mishra, resident of village- Barhauli,
P.O.+ P.S. Sonhan, District-Kaimur

.... Petitioner

Versus

1. The Union of India through the Director General of Police, C.R.P.F.
New Delhi
2. The Inspector General of Police, C.R.P.F., Bailey Road, Patna
3. The Additional Deputy Inspector General of Police, Group Centre,
C.R.P.F. Mokama Ghat, District- Patna
4. The Commanding Officer B/105 Batalian, R.A.F. C.R.P.F. Egmore,
Kerla

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Singh
Mr. Shashi Bhushan Kumar
Mr. Alok Kumar Singh, and
Mr. Mrityunjay Kumar

For the Respondent/s : Mr. Sanjay Kumar, ASG
Mr. R.K.Sharma, CGC

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

11 06-04-2017 Heard Sri Rajeev Kumar Singh, learned counsel for

the petitioner and Sri Sanjay Kumar, learned Assistant Solicitor

General, assisted by Sri R.K.Sharma, learned Central Government

Counsel.

The present writ petition was filed in the month of
November, 2007 with a prayer to direct the Respondents to accept
his joining on the post of constable and further to direct the
Respondents to pay arrear of salary as well as medical expenditure
incurred in his treatment with current salary.

Short fact of the case as disclosed in the writ



petition is that the petitioner was appointed as constable/GD in C.R.P.F. and was discharging his duty at different places. Finally, he was transferred from Punjab to Pallipuram, Kerla 105RAF (CRPF) Batalian. While in Kerla, he received an information regarding ailment of his wife and, thereafter, he applied for Casual Leave, which was granted on 07.12.1998 for fifteen days. Thereafter, again the period of leave was extended for further 30 days, so total 45 days of Leave was sanctioned in favour of the petitioner. A plea has been taken that during the leave period, some subsequent development had taken place and the petitioner was also hospitalized and finally he was discharged in the year 2007 and he approached the authority concerned for allowing him to join the post, which was refused and, thereafter, the petitioner was constrained to approach this Court by way of filing the present writ petition.

Primarily, since acceptance of joining, as claimed by the petitioner, was refused in Kerla, for such cause of action, the present writ petition was not at all maintainable within the territorial jurisdiction of this High Court. However, in this case a detailed counter affidavit has been filed. Sri Rajeev Kumar Singh, learned counsel for the petitioner submits that after receiving of the counter affidavit, the fact has come to the notice of the



petitioner that in an illegal manner, the petitioner was shown dismissed from service, whereas such dismissal order was never communicated to this petitioner. It was argued that the petitioner was not in a position to avail remedy under the C.R.P.F. Act i.e. appeal, revision etc. He further submits that even on perusal of the counter affidavit, it is evident that a departmental proceeding was initiated against the petitioner under the provision of Section 11 of the C.R.P.F. Act, 1949 (hereinafter referred to as the “Act”). He submits that Section 11 of the Act deals with the ‘minor punishments’. He further submits that in the counter affidavit, it has been indicated that the petitioner was shown as deserter and absconder. He submits that once the petitioner was declared as deserter or absconder, in view of Rule 31(c) of C.R.P.F. Rules 1955(herein after referred to as the “Rules”), on the basis of being declared as deserter , the petitioner shall not be automatically ceased to be member of the Force. On both counts, it has been argued that the Respondents are required to allow the petitioner to join his post.

Sri Sanjay Kumar, learned Assistant Solicitor General has vehemently opposed the prayer of the petitioner. By way of referring to the statement made in paragraph-3 of the counter affidavit, he submits that since after expiry of leave



period, he did not join, the petitioner was reminded by the authority concerned. Notice and show cause notices were issued at the residential address of the petitioner. Despite best efforts, the petitioner avoided to receive any notice and, thereafter, he was declared as deserter and ex parte departmental proceeding was initiated against the petitioner and finally, a dismissal order was issued in the year 1999. Prior to issuance of dismissal order, a warrant of arrest was also issued against him, which was referred to the Superintendent of Police, Bhabhua, district-Kaimur, Bihar. Sri Kumar, learned Assistant Solicitor General has specifically placed paragraph-3 of the counter affidavit, which is as follows:

“3 That the petitioner was sanctioned 15 days Casual Leave with effect from 8.12.1998 to 27.12.1998. He was due to join duty on 28.12.1998 but he had requested for extension of leave for 30 days on medical ground from 28.12.1998 to 26.1.1999. The petitioner was then due for rejoining duty on expiry of extended period of leave on 27.1.1999. The petitioner did not rejoin duty on 27.1.1999 and remained over stay of leave without permission from the competent authority. As a result, Court of Inquiry was conducted against the individual and he was declared deserter from the Force with effect from 27.1.1999 forenoon i.e. from the date of over stay of leave vide Commandant 105 Bn. Office order no.IX.7/199-105-EC-2 dated



21.5.1999. A warrant of arrest was also issued against the petitioner to Superintendent of Police, Bhabua District Bihar on 21.9.1999. Even after issuance of warrant of arrest petitioner could not be apprehended nor did he report back for duty at his own. As a result an ex parte departmental enquiry was initiated against him. Copy of the memo of charge was duly sent to him by registered post at his home address as per record available in this office. However the same was received back as undelivered from postal authorities. The Enquiry Officer also repeatedly made request to the said Constable through registered letter to appear before him in the departmental enquiry. But the petitioner neither reported nor sent any reply to the letters. Day to day progress of the departmental enquiry was also intimated to the petitioner through letter. On completion of the departmental enquiry the report of Enquiry Officer was also sent to the petitioner asking him to submit representation. If any, in his defence. However no reply was received. Consequently, the Commandant 105 Bn. RAF, being the disciplinary authority vide order No. P.VIII.7/99-105-EC-II dated 20th September, 1999 dismissed him from service with effect from 20.9.1999 forenoon.”

On perusal of specific statement made in paragraph-3 of the counter affidavit, at least this fact is evident



that the petitioner was dismissed from service in the year 1999. Even though counter affidavit was filed long back on 21st January, 2009 after serving a copy of the same on learned counsel for the petitioner, till date no rejoinder to the counter affidavit has been filed nor the petitioner has made any prayer for quashing of the order of dismissal. So far submission of Rajeev Kumar Singh, learned counsel for the petitioner regarding Section 11 of the Act which, according to him, only deals with the 'Minor punishments' is concerned, the Court proposes to incorporate Section 11 of the C.R.P.F Act, which is as follows:

“11. Minor punishments:--(1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal anyone or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say,--

(a) reduction in rank;

(b) fine of any amount not exceeding one month's pay and allowances;

(c) confinement to quarters, lines or camp for a term not exceeding one month;

(d) confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other duty; and

(e) removal from any office of distinction or special emolument in the Force.

(2) Any punishment specified in clause (c) or clause (d)



of sub-section (1) may be awarded by any Gazetted Officer when in command of any detachment of the Force away from headquarters, provided he is specially authorized in this behalf by the Commandant.

(3) The Assistant Commandant , a company officer or a subordinate officer, not being below the rank of subedar or inspector, commanding a separate detachment or an outpost, or in temporary command at the headquarters of the Force, may, without a formal trial, award to any member of the Force who is for the time being subject to his authority anyone or more of the following punishments for the commission of any petty offence against discipline which is not otherwise provided for in this Act, or which is not of a sufficiently serious nature to require prosecution before a Criminal Court, that is to say,--

(a) confinement for not more than seven days in the quarter-guard or such other place as may be considered suitable, with forfeiture of all pay and allowances during its continuance;

(b) punishment drill, or extra guard, fatigue or other duty, for not more than thirty days with or without confinement to quarters, lines or camp;

(c) censure or severe censure:

Provided that this punishment may be awarded to a subordinate officer only by the Commandant.

(4) A jemadar or sub-inspector who is temporarily in command of a detachment or an outpost may, in like manner and for the commission of any like offence, award to any member of the Force for the time being subject to his authority any of the punishments specified in clause(b) of sub-section(3) for not more than fifteen days.”

On perusal of aforesaid provision, it is evident that even in addition to suspension or dismissal any other punishment as detailed in this Section can be imposed to a



delinquent.

Sri Rajeev Kumar Singh, learned counsel for the petitioner has referred to Sections 9 and 10 of the Act to show that the proceeding against the petitioner was illegal. On going through the said provision, the Court is of the opinion that such submission is only required to be noticed for its outright rejection.

So far the plea of learned counsel for the petitioner regarding the fact that since the petitioner was declared as deserter, he will continue to be a member of the Force, is concerned, the Court is of the opinion that Rule 31(c) of the Rules does not say that once a member of force was declared as deserter he may not be proceeded departmentally. In the present case, as stated in paragraph-3 of the counter affidavit as referred to herein above, it is evident that the departmental proceeding was initiated against the petitioner and only thereafter long back in the year 1999, the petitioner was dismissed from service. Surprisingly, neither the petitioner has prayed for quashing of his dismissal order nor there is any rejoinder to the counter affidavit. Meaning thereby that the fact regarding dismissal has been accepted by the petitioner. Of course, it is not very much relevant to notice at this very juncture, but it is reiterated that the law on the point of unauthorized absence of Armed Forces personnel has already



been set at rest , which shows that unauthorized absence of Armed Force personnel is treated as serious misconduct, which warrants dismissal also. In the present case, admittedly, the petitioner was granted casual leave in the year 1998 for total 45 days, save and except vague explanation, nothing has been stated in the petition to persuade the Court the reason for approaching this Court in the year 2007 i.e. almost after nine years from the date of expiry of sanctioned leave. In absence of assailment to the order of dismissal, the prayer of the petitioner for directing the Respondents to allow his joining is insignificant and as such, in view of facts and circumstances, there is no reason to pass any favourable order.

The writ petition stands dismissed.

(Rakesh Kumar, J)

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