

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.12342 OF 2011

Date: 14.06.2017

Between:

Ramakrishna T.N. S/o late T.R.Nagaraj,
(Force No.971380284), Aged about 34 years,
Occu:Ex-CRPF Constable, R/o Tholahunase
Village and Post, Davangere District,
Karnataka State.

.....Petitioner

and

The Government of India, rep.by its Secretary,
Home Department, South Block, New Delhi
and others.

.....Respondents



The Court made the following:

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ORDER:

Heard Sri Mr.Narinder Pal Singh, learned counsel for petitioner and Mrs. M.Indrani, learned standing counsel for Central Government for respondents 1 to 5.

2. Petitioner joined service as Constable in Central Reserve Police Force (CRPF) in October, 1997. In the year, 2005, he applied for 15 days casual leave, which leave expired on 15.09.2005. Petitioner was to report to duty on 16.09.2005. As petitioner did not report to duty, he was declared Deserter vide Office Order dated 27.02.2006 (it appears, year was wrongly typed as 2005) by invoking provision in Rule 31(c) of the Central Reserve Police Force Rules, 1955 (Rules, 1955).

3. On the allegation that petitioner was unauthorisedly absent for a long period, disciplinary proceedings were initiated. Petitioner was served with charge memo dated 04.03.2006 containing two charges. The sum and substance of the first charge is, petitioner committed an act of negligent in duty/remissness of his duty in his capacity as a member of the force and is overstayed from leave w.e.f. 16.09.2005 till the date of issuance of charge memos. Sum and substance of the second charge is, in spite of directions of the competent authority to re-join duty, he failed to comply with the orders and absented himself from duty continuously.

4. Domestic enquiry was ordered to prove charge leveled against petitioner. Petitioner joined duty on 21.05.2006 and

participated in the enquiry. The enquiry report and record of the departmental action produced by the learned standing counsel would show that though opportunity was given to him, he declined to cross-examine the witnesses. As pointed out by the learned standing counsel from the record of disciplinary proceedings, when enquiry officer asked petitioner, "do you still pleaded not guilty", he relied, "I pleaded guilty against the charges and it was happened due to mistake". He has not produced defence witnesses, but produced only defence documents. The plea raised by the petitioner for his long absence was that he was suffering with 'Jaundice'. The documents produced by the petitioner in support of his contention were considered by the enquiry officer and was not satisfied with the plea raised by the petitioner. The enquiry officer also noticed that in spite of issuance of several notices to the petitioner to report to duty, he failed to report. Having considered the material on record and on analysis of the evidence of witnesses, enquiry officer recorded the finding of guilt against petitioner.

5. The findings of the enquiry officer were furnished to the petitioner calling for his explanation. Petitioner submitted his explanation. Not satisfied with the explanation submitted, the order of dismissal from service was passed on 25.06.2006. Appeal dated 19.10.2006 preferred by petitioner was rejected by order dated 20.01.2007 and revision was rejected by order dated 24.06.2010. Petitioner did not choose to challenge the appeal and revision orders, but only challenges the original order. Though it was specifically pointed out, counsel for petitioner proceeded to argue the case.

6. Counsel for petitioner contended that in taking disciplinary action, respondents have violated Section 10 of the Central Reserve Police Force Act, 1949 (Act, 1949). He further contended that Section 11 ought to have been invoked and only minor punishment could have been imposed. Learned counsel contended that on the allegation of absence, it can only result in minor punishment, but not a major punishment of dismissal from service. Learned counsel further contended that Rule 27 of the Rules 1955 prescribe detailed procedure to take disciplinary action and impose punishments, whereas in the instant case, the procedure indicated in Rule 27 was violated. Petitioner was not given reasonable opportunity to defend his case and, therefore, the disciplinary proceedings are vitiated on that ground. He further submits that order of dismissal from service, impugned in the writ petition, does not mention the desertion order and warrant of arrest, which are relevant issues to be considered in imposing appropriate punishment and that the order of dismissal is not a speaking order and, therefore, is liable to be set aside on that ground.

7. In response, learned standing counsel, by placing reliance on the record, submits that reasonable opportunity was afforded to the petitioner; petitioner on his own omission did not cross-examine the witnesses and in fact, he pleaded guilty; he has not let-in any defence witness in support of his contention. The documents placed on record by him do not support the disease with which he was suffering. Petitioner refused to answer the notices issued to him to report to duty. Police Constable working in Central Reserve Police Force remaining absent from duty for a

long period of 248 days has to be viewed as grave misconduct. She, therefore, submits that procedure as required in law was followed and after affording due opportunity and on considering the material on record, punishment was imposed.

8. The basic fact of absence of petitioner from duty for a long time, till the charge memo was drawn, is not in dispute. He was absent from duty for 248 days and joined duty only on 21.05.2006. It is not in dispute that petitioner participated in the enquiry. The record produced by the learned standing counsel would disclose that petitioner accepted his guilt on the charges leveled against him.

9. Having regard to the fact that petitioner absented from duty for a period of 248 days, which fact is admitted by the petitioner, the only question remains is whether such absence was on genuine grounds, warranting taking lenient view as against the punishment imposed on him.

10. Before going into this aspect, it is necessary to clear the submissions made by the learned counsel for petitioner. As petitioner did not report to duty after availing 15 days casual leave, in accordance with Rule 31 of the Rules, 1955, petitioner was declared as Deserter by the Court of enquiry. In accordance with the decision of the Court of Enquiry, office order was passed declaring him as Deserter. Even after he was declared as Deserter, he did not report to duty. Disciplinary proceedings were initiated leveling two charges, as noted above. Rule 27 of the Rules, 1955, prescribe the procedure to conduct enquiry. As recorded in paragraph-4 of the order of disciplinary authority and as seen from

the record produced by the learned standing counsel, whole gamut of enquiry was observed in accordance with the rules governing the service before holding petitioner guilty and imposing punishment. Court do not see any error in conducting departmental proceeding, leading to issuance of punishment order.

11. Learned counsel for petitioner sought to contend that Section 10 deals with lesser offences and as per the entry against Section 10(m), if a Constable absents from duty without leave or without sufficient cause overstay leave granted to him, it can only result in punishment of imprisonment for a term which may extend to one year or with fine. As what is alleged against petitioner is only of less severe offence, according to the learned counsel, Section 11(1) ought to have been invoked and only minor punishment ought to have been imposed.

12. To appreciate said contention what it is required to be noticed is, Sections 9 to 11 are listed under the heading of 'offences and punishments'. Section 9 deals with major heinous offences. If prosecution results in establishing the guilt, it would result in punishment of transportation for life for a term of not less than seven years or with imprisonment for a term which may extend to fourteen years or with fine. Section 10 deals with less severe offences, which can result in imposing punishment for a term which may extend to one year or with fine. Thus, offences indicated in Sections 9 & 10 are criminal in nature. Section 11 deals with punishments that can be imposed in the form of disciplinary action. Section 11 prescribes various punishments in addition to punishment of dismissal and removal that require following due procedure before imposing appropriate punishment.

Thus, in addition to criminal prosecution, which may result in conviction and appropriate punishment that can be meted out under Sections 9 and 10, it may also result in taking disciplinary action, together or independent of prosecution for committing crime. Furthermore, a closure look at Section 9(f) would indicate, desertion of force is treated as grave offence. Be that as it may, in the instant case, criminal prosecution was not taken against petitioner either under Section 9 or Section 10, but only disciplinary action was initiated that resulted in imposing punishment of dismissal. Having regard to the language employed in Sections 9 to 11 of the Act, I see no error in the disciplinary action taken and the contention of the learned counsel for petitioner that only a minor punishment ought to have been imposed and not a major punishment has no merit.

13. The decision relied by the learned counsel for petitioner in the case of **Allahabad Bank & Others v. Krishna Narayan Tewari**¹ do not come to the aid of the petitioner.

14. Coming back to the issue, admittedly petitioner deserted the force and was absent for 248 days. The Central Reserve Police Force is required to deal with any contingency on security of the country and Force has to be attentive and alert to respond to any threat to grave law and order and security. It must keep its personnel alert and ready to respond to any emergency. The Force makes its assessment of readiness by counting on number of personnel on duty. Thus, if a Constable of the Force remains absent for a long time, it would certainly cause grave

¹ 2017 (2) SLR 605 (S.C.)

inconvenience on its alertness and may have deleterious effect in overall readiness of Force for maintenance of peace in the country. Therefore, absence from duty of a Constable from the Central Reserve Police Force and more so, when such absence was for a very long time has to be viewed seriously and cannot be treated as minor misconduct.

15. In **State of Punjab v Dr. P.L.Singla**², Supreme Court held as under:

“14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorised absence (unless the rules require otherwise). Where the punishment awarded for the unauthorised absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorised absence remains unaccounted it will result in break in service, thereby affecting the seniority, pension, pay, etc. of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or supersede the order imposing punishment.”

16. Central Reserve Police Force provides medical facilities to its members. Even assuming that petitioner was affected by ‘Jaundice’ and could not have returned to his unit where he was working, he ought to have informed his unit and got admitted to authorized

² (2008) 8 SCC 469

hospital to take treatment. Thus, on the plea of suffering with Jaundice, petitioner could not have remained absent from duty for such a long time without informing the competent authority the reason of his absence. It is also appropriate to note from the record that several reminders were sent to the petitioner to report to duty, but he did not respond. This entire issue was assessed by the enquiry officer and has not accepted the plea sought to be raised by the petitioner on his absence on the ground that he was hospitalized for taking treatment of jaundice.

17. I see no reason to upset the finding of fact recorded by the enquiry officer and accepted by the disciplinary authority. No case is made out for interference. Writ petition deserves to be dismissed and is accordingly dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

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