

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1993 of 2013

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SURESH SINGH SON OF LATE THANKU SINGH RESIDENT OF
VILLAGE - MASAHARIYAN, PO - CHAUGAI, PS - MURAR, DISTRICT
- BUXAR

... .. Petitioner/s

Versus

1. THE UNION OF INDIA, THE SECRETARY, HOME GOVERNMENT OF INDIA, NEW DELHI
2. THE DIRECTOR GENERAL, CENTRAL RESERVE POLICE FORCE, NEW DELHI
3. THE INSPECTOR GENERAL, CENTRAL RESERVE POLICE FORCE, ASHIANA DIGHA ROAD, PATNA - 25 (BIHAR)
4. THE DEPUTY INSPECTOR OF POLICE, CENTRAL RESERVE POLICE FORCE, ASHIANA DIGHA ROAD, PATNA - 25 (BIHAR)
5. THE DEPUTY INSPECTOR OF POLICE, CENTRAL RESERVE POLICE FORCE, A/147, BATTALION, GROUP CENTRE, MOKAMA GHAT, PS - MOKAMA, DISTRICT - PATNA (BIHAR)
6. THE COMMANDANT, 147 BATTALION, CENTRAL RESERVE POLICE FORCE, PRIT NAGAR, GANGWAL, JAMMU KASHMIR

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. R.K. Sinha, Adv & Mr. Gajendra Nath Ojha, Adv
For the U.O.I.(CRPF)	:	Mr. Anshuman Singh, C.G.C (U.O.I.)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 08-01-2018

Heard learned counsel for the parties.

2. This petition under article 226 of the Constitution of India has been filed for quashing the order dated 29.03.2007 passed by Commandant, 147 Battalion, Central Reserve Police Force (Disciplinary Authority), by which punishment of compulsory retirement has been imposed on the petitioner as well as order dated 01.07.2010, passed by the Inspector General of Police, by which the appeal filed by the petitioner had been



dismissed.

3. Briefly stated, the facts of the case is that the petitioner was appointed in C.R.P.F at Dumka on 19.04.1986 as constable and remained for two months at Mokama Ghat and thereafter underwent training for 11 months in Kerala and after completion of successful training he was posted in 60th Battalion and performed his duty for 12 years at different places.

4. The services of the petitioner was transferred to A/147 Battalion and he was posted in Jammu & Kashmir. The petitioner proceeded on earned leave from 22.08.2005 to 30.10.2005, and went to his native village in Buxar. It has been contended on behalf of the petitioner that on 02.10.2005, when the petitioner proceeded to join his duty, some miscreants kidnapped him and after receiving ransom of Rs. 2 Lacs from the family of the petitioner, he was released on 11.07.2006. However, no FIR was lodged or any information was given to the authorities.

5. A proceeding was initiated against the petitioner for unauthorized absence and charges were framed on 22.04.2006. The petitioner submitted his joining on 09.08.2006. The petitioner contends that the authorities pressurized him to file an application for compulsory retirement and by order dated



29.03.2007, the petitioner was compulsory retired. It has further been submitted that while returning from Jammu on 31.03.2007 at Buxar station, his brief-case containing cash and clothes were stolen for which he instituted Buxar G.R.P. Case No. 11 of 2007 under Section 379 of the IPC and as such he could not file appeal against the order of disciplinary authority and on request, materials of disciplinary proceeding and the order passed, was supplied to the petitioner on 02.04.2007, and thereafter he filed an appeal on 18.01.2010.

6. A counter affidavit, has been filed on behalf of respondents in which it has been contended that the petitioner was on 43 days of earned leave w.e.f. 22.08.2005 to 03.10.2005 and he was required to report back on 03.10.2005, but he did not report back and overstayed on leave from 04.10.2005, without any information to the authorities. The Company Commander sent two letters on the address of the petitioner directing him to join by letter No. L.II-3/2005 dated 10.10.2005 and 27.10.2005, but the petitioner neither reported nor any information was received from him. Thereafter a complaint dated 07.11.2005 was lodged in the court of C.J.M-cum-Commandant, 147 Bn, CRPF under Section 10(m) of the CRPF Act, 1948 for issuing warrant of arrest against the petitioner, accordingly, the same



was issued against the petitioner on 28.11.2005 and sent to the Superintendent of Police, Buxar to apprehend the petitioner.

7. The Court of Inquiry was also constituted to inquire into the circumstances, under which the petitioner over stayed on leave. The Committee submitted its report on 28.03.2006 agreeing with the finding and opinion of the Court Commandant, 147Bn declaring the petitioner as deserter from the Force w.e.f. 04.10.2005, and the same was sent to the last known address of the petitioner. The petitioner neither reported on duty nor apprehended by Civil Police and memorandum of charge was framed against the petitioner on 22.04.2006, and sent to his home address to submit reply within 15 days against the charges framed against him for initiating a departmental proceeding.

8. The petitioner did not submit any reply upon the charge framed against him by then Sri P.K. Singh, Assistant Commandant, who was detailed as Enquiry Officer vide order dated 03.06.2006, to inquire into the charges framed against the petitioner. Inquiry Officer sent letters dated 19.06.2006 and 17.07.2006. Petitioner on its own reported on 09.08.2006 after 310 days of unauthorized absence and particular of charges were handed over to the petitioner on 10.08.2006. In course of



inquiry petitioner submitted that he was kidnapped on 02.10.2005 and released on 11.07.2006, after paying ransom of Rs. 2 Lacs. The Enquiry Officer got verified the facts from the District Magistrate, Buxar and Superintendent of Police, Buxar vide letter dated 28.12.2006 stated that he conducted inquiry with respect to kidnapping of petitioner and submitted a report that no such incident happened to the petitioner. The Enquiry Officer gave ample opportunity to the petitioner to defend his case and after conclusion of proceeding Enquiry Officer, in his inquiry report, found the charges to be proved against the petitioner as framed by the disciplinary authority.

9. On receipt of inquiry report, the disciplinary authority served a copy to the petitioner on 17.02.2007, by giving him 15 days time for the representation against the finding of Enquiry Officer, holding him guilty of the charges but the petitioner did not submit any representation.

10. The disciplinary authority after going through the Enquiry Report and nature of charges proved against the petitioner found that the petitioner is not fit to be retained in Force, but considering his length of service and family background, a very lenient view was taken by him imposing punishment of compulsory retirement w.e.f. 29.03.2007 with



compensation pension and retirement gratuity. Against the said order of disciplinary authority, the petitioner preferred an appeal dated 18.01.2010 before the appellate authority D.I.G. C.R.P.F, Patna and the same being barred by limitation yet was considered by the appellate authority on merit and was rejected being devoid of any merit by order dated 01.07.2010. Against the order of appellate authority, the petitioner had alternative remedy of filing revision but instead of availing the statutory remedy of revision, he has filed present writ petition.

11. After hearing learned counsel for the parties and going through the materials available on record, I do not find any illegality in the order passed by the disciplinary authority or appellate authority, which requires any interference by this Court. The punishment imposed is commensurate to the proven charges against the petitioner, as such even on quantum of punishment no interference is required. The petitioner being member of a disciplined force overstayed on leave, is a major misconduct and for which he could have been even dismissed from service, but the authorities have taken a very lenient view against the petitioner and had passed the order of compulsory retirement.

12. Reference in this connection may be made to the



judgment of the Apex Court in the case of ***Union of India vs Ghulam Mohd. Bhat reported in (2005) 13 SCC 228***, in which it has been held as follows:-

*"9. This Court had occasion to deal with the cases of overstay by persons belonging to disciplined forces. In ***State of U.P. vs Ashok Kumar Singh reported in (1996) 1 SCC 302***, the employee was a police constable and it was held that an act of indiscipline by such a person needs to be dealt with sternly. It is for the employee concerned to show how that penalty was disproportionate to the proved charges. No mitigating circumstances has been placed by the appellant to show as to how the punishment could be characterised as disproportionate and/or shocking [***See Mithilesh Singh vs Union of India reported in (2003) 3 SCC 309***]. It has been categorically held that in a given case the order of dismissal from service cannot be faulted. In the instant case the period is more than 300 days and that too without any justifiable reason. That being so the order of removal from service suffers from no infirmity. The High Court was not justified in interfering with the same. The order of the High Court is set aside. The appeal is allowed but under the circumstances there shall be no order as to costs."*

13. In the facts and circumstances of the present case, I



do not find any reason to interfere with the impugned orders of
punishment and writ petition is, accordingly, dismissed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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