

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4594 of 2011

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Ranjit Kumar Jha [Force No.913183207 (G D)] S/O Sri Harendra Jha, resident of Vill.-Fatehabad, P.S. Senduary, Distt.-Vaishali.

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.
2. The Director General, Central Reserve Police Force, C.G.O. Complex, Lodhi Road, New Delhi.
3. The Inspector General, Central Reserve Police Force, Bihar Sector, Patna.
4. The Inspector General, Central Reserve Police Force, Srinagar.
5. The Deputy Inspector General, Central Reserve Police Force, Bihar Sector, Patna.
6. The Deputy Inspector General, Central Reserve Police Force, Srinagar.
7. The Commandant, 21 Battalion, CRPF, C/O 56 APO, Srinagar.
8. The Assistant Commandant, 21 Battalion, CRPF, C/O 56 APO, Srinagar.

.... Respondents

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Appearance:

For the Petitioner : Mr. Mahesh Narayan Parbat, Sr. Advocate.
Mr. Sanjay Kr. Jha, Advocate.

For the Respondents : Mr. Anshuman Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 15-03-2018

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed for the
following reliefs:

“(a) To issue a writ of certiorari for quashing the office order as contained in letter no. P. VIII-2/2009-21-Est.II dated 06.04.2010 (Annexure-16) issued by the Commandant, 21 Battalion, CRPF, through which the petitioner has been awarded the punishment of compulsory retirement from service from the date of order, de hors, the Rules, in wholly illegal and arbitrary manner without following the procedure of departmental proceeding with



further direction that he would be entitled only for 2/3rd of his pension and gratuity and further his suspension has been revoked from the date of order with direction that the period of his suspension in between 23.10.2009 to the date of order would be treated as NON DUTY and he would not be entitled for any amount except the amount of subsistence allowance which has been received by him during said period and his period of alleged absconding in between 04.10.2009 to 22.10.2009 would be treated as dies non.

(b) To issue a further writ of certiorari for quashing the office order as contained in letter no. P.VIII. RKJ (21)/10 Est.-I dated 20.08.2010 (Annexure-17) issued by the Deputy Inspector General, CRPF, Bihar Sector, Patna, through which the appeal filed by the petitioner has been dismissed on extraneous consideration in arbitrary manner.

(c) To issue a further writ of certiorari for quashing the office order as contained in letter no. R.XIII. (RKJ)/2010 - VS-Est.-III dated 11.12.2010 (Annexure-18) issued by the Inspector General, CRPF, Bihar, Sector, Patna, through which the revision filed by the petitioner has been dismissed on non application of mind in illegal and arbitrary manner.

(d) To issue a writ of mandamus commanding the respondents to discharge the petitioner from the charges leveled against him, which are based on non existent grounds and to reinstate the petitioner in service.

(e) To any other relief or reliefs for which the petitioner may be found entitled to."

3. The short facts of the case according to the petitioner are that on 09.11.2004 he was posted on deputation with 21 Battalion, CRPF, Sri Nagar after transfer from Mokama Ghat, where he was working as constable at the time of award of punishment in the year 2010. Earlier in 2007, he had proceeded on leave with permission of



the authorities and had sought extension of leave by letter dated 19.09.2007 from his village home for one month on the ground of high flood in the area in which his entire family was stuck. The petitioner had about 180 days unutilized leave available in his leave account at the time. However in absence of any information from the authorities regarding extension of leave, the petitioner joined his duty and filed several representations between 31.10.2007 and 12.12.2007 before the Commandant, 21 Battalion, CRPF, Sri Nagar (respondent no. 7) requesting for 30 days leave in order to settle his family and get his wife treated for illness to which however there was no response. The petitioner therefore met the Assistant Commandant, Sri Nagar (respondent no. 8) but was ill-treated and humiliated by him. The petitioner's wife by her representation dated 12.12.2007 brought these facts to the notice of the Director General, CRPF, New Delhi (respondent no. 2) which however aggravated matters. A departmental proceeding was initiated against the petitioner consequent upon which he was awarded punishment of reduction of two stages of his pay for a period of three years by order dated 02.08.2008 which is also the subject matter of challenge in C.W.J.C. No. 13322 of 2008. Thereafter, in August 2009 the petitioner suffered from hypertension but his immediate superiors were not sending him to hospital for treatment despite being referred by the Chief Medical Officer and for which an F.I.R. was instituted at his instance. Ultimately, he was sent to the Composite Hospital on 13.09.2009. After some initial treatment, the petitioner was discharged on 03.10.2010 prematurely under pressure



of the respondents. He was thus forced to go to Delhi on 04.10.2009 for treatment at Safdarjang Hospital. Attempts by the petitioner to inform the unit through his attendant in the evening of 05.10.2009 failed as no one was receiving report. On regaining his health, the petitioner came to join his duty and reported to T. C. Jammu in the morning of 21.10.2009 and the next day he proceeded to Sri Nagar where he reported to Headquarters on 23.10.2009. He was however arrested and confined, learning later on that he had been declared absconder. The petitioner was suspended the same day by order dated 23.10.2009 and a departmental proceeding initiated against him. Ultimately, the impugned order dated 06.04.2010 was passed against the petitioner, awarding the punishment of compulsory retirement from service and with certain directions enumerated therein. Such punishment was upheld in appeal as well as in revision.

4. Learned counsel for the petitioner submits that the decision making process was vitiated and the provisions of Rule 27 (c)(1) of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as 'the Rules') were not followed as the requisite 48 hours notice was not afforded to the petitioner. It is submitted that the petitioner had remained on sick report and was declared fit for duty by the doctors on 26.08.2009 whereupon he was required to attend on 27.08.2009. On that day, he demanded a copy of the charge sheet which was handed over to him with a direction to appear on 28.08.2009. It is therefore submitted that the requirement of 48 hours notice has not been complied with. In any event, it is submitted that the punishment



of compulsory retirement is exorbitant and unduly harsh in comparison to the charge such as direct communication with higher authorities, using undignified language against the authorities, etc. Reliance is placed on a decision of the Hon'ble Delhi High Court in *W.P. (C) 520/2011 (Dharmendra Singh vs. Union of India & Ors.)*.

5. Learned counsel for the respondents appears and vehemently opposes the writ petition, pointing out that the petitioner had been a habitually indisciplined person against whom departmental proceedings had been initiated in the past as well and he had already been inflicted with the punishment of stoppage of increments and also with warning. As a matter of fact, the petitioner was liable to be dismissed but taking a compassionate view, the punishment of only compulsory retirement has been awarded to the petitioner. It is submitted that the charge memo was handed over to the petitioner as far back as on 08.06.2009 itself and on his refusal to receive the same along with the enclosure, the same was read over to him in presence of witnesses. The petitioner has consistently been refusing to receive the charge memo dated 05.06.2009. The charge memo with enclosure was once again sent to the petitioner along with a letter from the National Human Rights Commission which, upon refusal, was read over to him in presence of witnesses on 13.06.2009. Yet again on 19.06.2009, the charge memo with enclosures was sent to the petitioner through the Composite Hospital, Jammu but again the same was refused to be received and was read over to him in presence of witnesses. It is submitted that the petitioner subsequently refused to receive the letter



dated 25.10.2009 requiring him to appear before the Enquiry Officer on 26.10.2009 and failed to appear as required. The petitioner's departmental enquiry started on 26.10.2009 but the petitioner refused to receive the copy of the statement of the prosecution witnesses and exhibits. The petitioner yet again refused to receive the letters dated 11.01.2010 and 15.01.2010 requiring him to submit his list of defence witnesses, exhibits and whether any assistance was required. It was clear that the petitioner had misrepresented before the authorities while applying for extension of leave in the year 2007 on grounds of flood in his home area whereas his wife in her complaint letter wanted his leave to be extended on the ground of her illness. It is submitted that there is no violation of the Rules inasmuch as the charge memo along with enclosures was duly read out to the petitioner and the requirement of 48 hours' prior notice had duly been complied with on 08.06.2009 itself upon the petitioner's refusal to receive the same.

6. Having heard the parties and on a consideration of the materials on record, this Court is not inclined to interfere in the matter. The issue relating to violation of Rules involves a disputed question of fact as the categorical statement of the respondents that the charge memo dated 05.06.2009 along with its enclosures was duly read out to the petitioner has been seriously disputed by the petitioner. If the charge memo had been read out on 08.06.2009 as claimed on behalf of the respondents, the requirement of the Rules would stand satisfied and there would be no error in the decision making process. This foundational fact however itself is in dispute and this Court cannot



enter into the arena of disputed questions of fact in writ jurisdiction.

7. As regards the submission of the petitioner that the punishment as awarded is exorbitant and unduly harsh, this Court is again not inclined to grant relief to the petitioner on this aspect of the matter. The charges against the petitioner, if viewed in the entirety of the facts and circumstances of the case and in the background of his non-cooperative attitude during the enquiry and the disciplinary proceedings in refusing to appear before the Enquiry Officer or to receive the various communications including charge memo, are serious in nature. The petitioner has been visited with punishment and warning in the past as well. In a recent decision reported in *Central Industrial Security Force v. Abrar Ali*, (2017) 4 SCC 507 the Hon'ble Supreme Court held that "*In any event, past conduct of a delinquent employee can be taken into consideration while imposing penalty.*" It took note of the observation in its earlier decision in *Union of India v. Bishamber Das Dogra*, (2009) 13 SCC 102, to the effect that "*in the case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment if the facts of the case so require.*" Considering that the petitioner is a member of a disciplined Armed Force, the disciplinary authority in awarding the punishment of compulsory retirement cannot therefore be said to have acted in an unduly harsh manner. For the same reasons, the appellate order and the revisional order are also not liable to be interfered with. This Court



is also of the view that the decision in Dharmendra Singh’s case (*supra*) does not come to the aid of the petitioner as the delinquent therein was not shown to have any history of misconduct or that any punishment had been meted out to him earlier. The facts of that case are thus distinguishable from the case of the present petitioner who is said to be in the habit of committing indiscipline and disorderliness and did not improve in spite of being punished earlier.

8. In the result, the writ petition stands dismissed. The I.A. No. 2852 of 2016 filed for fixing an early date of hearing of the writ petition stands disposed of.

(Vikash Jain, J)

Md. Ibrarul/Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	16.03.2018
Transmission Date	N.A.

