

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 924 OF 2015

Shri R. A. Hingole ... Petitioner

Versus

Union of India & Ors. ... Respondents

Mr. Subhash B. Desai for the Petitioner.

Mr. Rajiv Chavan, Senior Advocate a/w Ms. Priyanka Chavan a/w Shri
Upendra Lokegaonkar I/by Mr. N. R. Prajapati for Union of India.

**CORAM : R. M. SAVANT AND
NITIN W. SAMBRE, JJ.**

DATE : 8th OCTOBER 2018.

P.C.

. The order dated 25th September 2012 passed by the Additional
Director General of Police, South Zone, CRPF, Chandrayangutta,
Hyderabad is taken in exception to by way of the above Writ Petition.

2. The said order is the last in the hierarchy of orders passed by
the Authorities. The first order is the order passed by the Disciplinary
Authority i.e. the Commandant of the Central Reserve Police Force (for
short, 'CRPF' for the sake of convenience). Against the said order, the
Petitioner had filed an Appeal. The Appeal came to be dismissed by the

Inspector General of the CRPF against which the Petitioner filed a Revision before the Additional Director General of Police, CRPF which Revision has been dismissed by the impugned order.

3. The Petitioner was a Constable working in the CRPF. The gravamen of the allegations against the Petitioner is his unauthorized absence between the period from 16th July 2004 to 15th June 2005 i.e. the period of about 335 days. The disciplinary proceedings were held against the Petitioner. The Petitioner was given an opportunity to defend himself. The Petitioner to justify his leave had produced a medical certificate, wherein the Petitioner was shown as suffering from PIDC Ch UTI.

4. In the departmental enquiry it seems the Petitioner admitted to the charge. Though the Petitioner had admitted to the charge, the Enquiry Officer in compliance with the principles of natural justice gave an opportunity to the Petitioner to defend himself. The Disciplinary Authority ultimately on the basis of the material on record and especially the report of the Enquiry Officer deemed it appropriate to impose the punishment of removal from service in exercise of the powers conferred by Section 11 (i) of the Central Reserve Police Force Act 1949 read with Rule 27 of the Rules.

5. The Petitioner being aggrieved by the order passed by the Disciplinary Authority, challenged the same by way of an Appeal which is a remedy provided under the Act. The Appeal filed by the Petitioner came to be dismissed by the Appellate Authority, as the Appellate Authority came to a conclusion that the order passed by the Disciplinary Authority did not merit any interference. The Petitioner thereafter carried out the matter by way of a Revision to the Revisionary Authority i.e. the Additional Director General of Police, CRPF. The Revisionary Authority has by the impugned order dismissed the Revision.

6. As indicated above, it is the order passed by the Revisionary Authority confirming the orders passed by the Appellate Authority as well as the Disciplinary Authority which is taken in exception by way of the above Writ Petition.

7. The learned Counsel appearing on behalf of the Petitioner would contend that the punishment (removal from service) being not one of the punishments contemplated under Section 11 of the CRPF Act, the said punishment is therefore *ultra vires* the provisions of the said Act. The learned Counsel would by seeking to draw our attention to an observation made in the order passed by the Disciplinary Authority, wherein it is mentioned that the Petitioner remained present in the office on a particular

day would contend that the charge was required to be modified as the Petitioner had presented himself in the office of the CRPF and the charge not having been modified, the disciplinary proceedings are vitiated. The learned Counsel would therefore contend that interference is called for in the orders passed by the Authorities below.

8. *Per contra*, the learned Senior Counsel Mr. Rajiv Chavan appearing for the Respondent would support the impugned order. The learned Counsel would draw our attention to the fact that the charge against the Petitioner was as regards unauthorized absence for a period of 335 days. The learned Counsel would also contend that the medical certificate produced by the Petitioner was not free from doubt.

9. We have heard the learned Counsel for the parties and have considered the rival contentions.

10. In the instant case, it is required to be noted that the allegation against the Petitioner of remaining unauthorizedly absent for 335 days can be said to be grave in the context of the fact that the CRPF is a disciplined force. It is after going through the gamut of holding a departmental enquiry that the Disciplinary Authority has come to a conclusion that the charge levelled against the Petitioner has been proved.

11. Now coming to the submissions urged on behalf of the Petitioner by the learned Counsel Mr. Desai. Insofar as the first submission is concerned, it is required to be noted that Section 11 (i) contemplates the punishment of suspension or dismissal which can be imposed on a delinquent. The punishments which are appearing in clauses – (a) to (d) of the said provision are in addition to the punishment which can be imposed namely that of suspension or dismissal.

12. In the instant case, the punishment is of removal from service. The said punishment can be said to be a lenient punishment than the punishment of dismissal which can be imposed. The punishment of removal from service therefore can be said to be a species of the punishment of dismissal from service, as the said punishment also results in the cessation of the employment. In our view, therefore, there is no merit in the first contention of the learned Counsel for the Petitioner.

13. Insofar as the second contention is concerned, as indicated in the earlier part of this order, the Petitioner had admitted to the charge in the enquiry proceedings. Notwithstanding the same, the Enquiry Officer with a view to give adequate opportunity to the Petitioner had proceeded with the enquiry proceedings. The said fact therefore impinges upon the contention which is sought to be raised on behalf of the Petitioner namely

that the Petitioner had presented himself in the CRPF on a particular day. In our view, therefore, there is no merit in the said contention of the learned Counsel for the Petitioner.

14. Insofar as the departmental proceedings are concerned, it is trite that there has to be some evidence which has come on record in respect of the charge, as the standard of proof is one of preponderance of probabilities. In the instant case, it cannot be said that there is absolutely no evidence on record to bring home the charge, hence the said charge can be said to have been proved. This order would not be complete without referring to the medical certificate produced by the Petitioner. The said medical certificate has been adversely commented upon by the Enquiry officer as well as the Revisionary Authority. In the absence of any other corroborative material to justify what has been stated in the medical certificate the authorities are right in not giving any credence to the same. In our view, therefore, no case for interdiction in the writ jurisdiction of this Court made out. The Writ Petition is accordingly dismissed.

15. Insofar as the prayer for compassionate allowance is concerned, we do not deem it appropriate to consider the said prayer in the instant petition. However, the Petitioner would be at liberty to make an application to the concerned authority for the same. If any such application

is filed, needless to state that the same would be considered on its own merits and in accordance with law.

(NITIN W. SAMBRE, J.)

(R. M. SAVANT, J.)