

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.17481 OF 2010

Dated:24.01.2018

Between:

T. Rajan Kutty, s/o. Late Raghavan,
Aged: 44 years, Occu: No.872310548,
Ex-Constable,
R/o.Palavila Pandinija Thethi Veedu
Kadam Panad Post, Via Adoor,
District Pathanamthitha, Kerala state

.. Petitioner

And

1. Union of India rep. by its Secretary
and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.17481 OF 2010****ORDER:**

Heard Sri K.Jagadishwar Reddy, learned counsel for the petitioner, and Sri P.Devender, learned counsel for the respondents.

2. In this writ petition, petitioner challenges the order of compulsory retirement from service dated 25.01.2008 passed by respondent No.4 and affirmed by the appellate and revisional authorities.

3. Background facts to the extent relevant are as under:

3.1. Petitioner joined in the Central Industrial Security Force (CISF) as Constable in the year 1987. While so, he applied casual leave for five days from 16.01.2007 to 20.01.2007 to go to his native place during Pongal period. The said leave was granted on 12.01.2007. Petitioner was required to report to duty on 24.01.2007. Instead of reporting to duty, petitioner telephonically informed the competent authority that while he was about to start his journey back to duty, he met with accident and sustained fracture on his hand and leg and requested for extension of leave. Since petitioner did not report to duty on the due date, on 24.01.2007 entry was made on his overstay from leave in the general diary. It appears, the Unit Commander submitted report to competent authority informing overstay of leave by petitioner.

3.2. On 30.01.2007, call up notice was sent to petitioner to his leave address with direction to report to duty immediately.

Petitioner did not report and on the contrary, application dated 03.02.2007 was made requesting to grant earned leave for 35 days. The said request was rejected and he was directed to report to duty immediately vide call up notice dated 17.02.2007. As neither petitioner reported to duty nor any intimation was received from him, another call up notice dated 26.02.2007 was issued informing that if he did not report to duty, suitable disciplinary action would be taken against him. On 11.06.2007, petitioner reported to duty.

3.3. Disciplinary proceedings were initiated against petitioner by serving Charge Memo dated 08.09.2007. containing three charges. The sum and substance of allegation in the first charge is overstaying from leave by 138 days despite direction to report to duty amounts to gross misconduct, indiscipline and unbecoming conduct by member of the Force. The sum and substance of the allegation in the second charge is not responding to the call up notices would amount to gross misconduct and indiscipline. The sum and substance of the allegation in the third charge is he was served with one major and seven minor punishments during his past service and was found to be incorrigible and not likely to mend himself to become a good member of Armed Force as is evident from the past bad record of service.

3.4. Petitioner submitted his representation denying the allegations leveled against him. Petitioner was placed before the enquiry officer appointed to enquire into the allegations. On conducting enquiry, enquiry officer submitted his report holding all the three charges as proved. By following due procedure, by order dated 25.1.2008, disciplinary authority awarded punishment of

compulsory retirement. The same was affirmed by appellate and reviewing authorities.

4.1. Learned counsel for the petitioner would submit that absence of petitioner for long period was because of ill-health. During the leave period, petitioner suffered from severe back pain and therefore, he could not move out of his house in the native place where he was taking Ayurvedic treatment. He would submit that he applied for extension of leave and therefore, it cannot be said his absence was unauthorized and that such absence was not deliberate and willful. He would further submit that to find out his health status, HC/Driver of CISF Unit NTPC Kayamkulam was deputed to petitioner house. He had conducted physical inspection on 6.6.2007 and reported that petitioner was bedridden and that his family members reported that petitioner was suffering from severe back pain due to long journey undertaken by him, and because of job stress and absence from duty was on health grounds only. This report supports the stand of petitioner that his absence was not deliberate and willful.

4.2. Learned counsel for the petitioner further submitted that assuming competent authority was not accepting plea of petitioner about his health status, the respondents ought to have subjected petitioner to medical examination and could not have sue moto assumed that petitioner was unauthorizedly absent without any justification and to impose punishment of compulsory retirement from service.

5.1. Learned Standing Counsel submitted that in spite of issuance of three call up notices, petitioner did not report to duty; that Visakhapatnam unit of CISF has good medical facilities and petitioner could have taken treatment there; that petitioner did not complain of such back pain earlier and even the leave application was to go to native place to celebrate festival; that no proper medical record was produced to justify his claim; that medical report submitted by the petitioner and the report of the Head Constable were considered and having found several discrepancies in both the reports and having regard to the past conduct of the petitioner, the disciplinary action was taken.

5.2. Learned Standing Counsel further submitted that having regard to the facts of the case, though the absence of petitioner was for a very long time, a lenient view was taken and he was only ordered to retire from service, which would enable him to get pension for the service rendered by him and that no case is made out for interference by this Court.

6. The facts, as noted above, would disclose that petitioner applied for casual leave for five days and thereafter he did not report to duty. Initially, petitioner seems to have informed the competent authority that he met with accident while returning to duty where he sustained fracture on his hand and leg. This story was later converted into back pain. As a Constable in a Disciplined Force, it was necessary for him to report to duty after expiry of leave, or at least petitioner ought to have reported to the recognized hospital, undergo medical examination as required and submitted medical record to seek medical leave. In the instant

case, petitioner did not respond to the three call up notices and only once he applied for leave asking to grant earned leave for 35 days. Be that as it may, in the disciplinary proceedings, all the pleas raised in this writ petition were considered and on a thorough analysis, the enquiry officer held the charges proved. Disciplinary authority also considered elaborately the contentions of the petitioner and each of the contentions was considered and a decision was made on those contentions. Thus, it is neither a case of denial of reasonable opportunity nor a case of non-application of mind.

7. Main plank of petitioner on his absence from duty was that he was suffering from back pain and report of Head Constable clinches the issue. It is seen from the averments of respondents in their counter affidavit and order of the disciplinary authority that report of Head Constable was thoroughly analyzed. Competent authority noticed that petitioner misguided earlier by informing competent authority about accident and injuries caused to him. Petitioner has also misguided the Head Constable by telling him that all medical documents in support of ailment were already submitted to the Commandant whereas no documents were submitted but only an application was made for grant of 35 days earned leave. Disciplinary authority noted that in the absence of medical record, Head Constable could not have made assessment of health condition of petitioner by physical appearance. The disciplinary authority has not given credence to the stand of petitioner that he was sick. There was thorough analysis of the issue by looking into the medical record.

8. The disciplinary authority noticed shortcomings/ discrepancies in the medical reports. The disciplinary authority also noticed that there were over writings and corrections in the medical reports without authentication. He has also noticed that in one of the reports, on 20.1.2007 the Doctor of Government Ayurveda Hospital has advised petitioner to take rest with effect from 20.11.2007, which was absurd. The disciplinary authority also noticed that on the very first day of reporting to the Doctor, the Doctor could not have advised rest for a long period even before conducting any tests. On such analysis of medical report, disciplinary authority opined that those are all subsequently invented only to cover up unauthorized absence. It cannot be said that there was no application of mind and arbitrary or whimsical decision was taken brushing aside genuine claim of petitioner.

9. As noticed by the disciplinary authority and as incorporated in Charge No.3, this was not solitary instance of long absence from duty by petitioner. Earlier, disciplinary action resulted in imposing punishments on eight occasions. Out of these eight punishments, four punishments, one was a major punishment, were for overstay from sanctioned leave and on two occasions for unauthorized absence without leave. Thus, the petitioner was in the habit of overstaying from leave/ absents from duties. Specific averments of respondents in their counter affidavit are not controverted.

10. Having regard to facts noted above, it cannot be said that there was no application of mind by the disciplinary authority and the decision of the disciplinary authority was vitiated by procedural impropriety, warranting interference by this Court.

11. In the disciplined force, even absence from duty for 10 to 12 days is viewed as grave misconduct. In fact, in the case on hand, though petitioner was absent for a very long period and there were previous instances of absence/ over stay of leave, disciplinary authority has taken a lenient view in imposing punishment of compulsory retirement, as this enabled petitioner to get pension for the service rendered by him. As the punishment was appropriate to proven misconduct, the appellate and revisional authorities have not interfered. Thus, no case is made out warranting interference by this Court.

12. Writ Petition is accordingly dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, filed in this Writ Petition shall stand dismissed.

Date:24.01.2018

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P. NAVEEN RAO, J



THE HON'BLE SRI JUSTICE P. NAVEEN RAO



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