

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.11404 of 2001

ORDER :

This Writ Petition is filed, questioning the impugned order passed by the 1st respondent vide order No.P.VIII-10/98-78.EC.II dated 28.04.1999 compulsorily retiring the petitioner as illegal and a consequential direction was sought to take the petitioner into duty and to pay all consequential benefits.

2. The brief facts of the case are that the petitioner was selected as Constable in the Central Reserve Police Force (CRPF) on 10.10.1995; he was selected in a Kabbadi team to participate in the Inter Battalion Kabbadi Tournament to be held in Ranga Reddy District; he reported at the ground along with other members on 11.03.1998; the tournament was to be held on 15.03.1998; after he reached the ground on 11.03.1998, he was informed that tournament was cancelled; he applied for ten days casual leave, which was sanctioned by the Commandant; he had to report duty on 25.03.1998, after availing ten days leave; due to the delivery of his wife and to settle the problems between his wife and mother he could not report to duty within the said time; The 1st respondent issued order of arrest and he was taken to the headquarters at Ravalpura, Jammu Kashmir on 02.02.1999 ; Enquiry Officer was appointed ; the enquiry was conducted; the impugned order was passed on 28.04.1999, imposing the penalty of compulsory retirement. with effect from 30.04.1999 under Section 11(1) of CRPF Act 1949 read with

Rule-27 of CRPF rules 1955. Questioning the said compulsory retirement order dated 28.04.1999, the present Writ Petition is filed.

3. Counter Affidavit has been filed by the respondents contending, *inter alia*, that the petitioner was enlisted in CRPF as a Constable on 10.10.1995; after completion of his basic training, he reported to duty on 20th September 1997 and posted to Nagaland; the petitioner was selected as Kabaddi player; during 2nd week of March 1998, the petitioner was sent from Nagaland to Ranga Reddy District to participate in the said Kabaddi tournament; the team arrived at Group Centre, Ranga Reddy district on 15.03.1998, but due to administrative reasons, the said tournament has been cancelled and all the Kabaddi players were directed to report back to the respective units; all the players were also granted 10 days casual leave up to 22.03.1998; they were supposed to report back on 26.03.1998; but the petitioner did not report to duty on the due date and has overstayed the leave with effect from 26.03.1998; the Officer Commandant of E/78 Battalion vide his office letter dated 13.04.1998 and letter dated 02.07.1998, directed the petitioner to report for duty forthwith, but neither he rejoined duty nor sent any communication, either to Officer Commanding, of E/78 Battalion CRPF or Commandant 78 Battalion; in order to take further course of action, the Officer Commanding of E/78 Battalion, CRPF vide his letter dated 19.06.1998, lodged a complaint against the petitioner in the Court of Chief Judicial Magistrate Cum Commandant, 78 Battalion, CRPF to take

cognizance regarding issue of warrant of arrest, Chief Judicial Magistrate issued arrest warrant on 20.07.1998 to be executed by the Superintendent of Police, Nalgonda District; a court of enquiry was ordered under the provision of Rule of 31, CRPF Rules 1955; the enquiry was conducted and the petitioner was declared as deserter with effect from 26.06.1998; in order to proceed further, a departmental enquiry was proposed to be held vide Memorandum dated 18.09.1998; copy of the memorandum was sent to the petitioner to his home address, by Registered Post with Acknowledge Due; no reply has been received to the said memo within the stipulated time from the petitioner; in order to take further course of action, the enquiry officer was appointed on 08.10.1998; enquiry officer proceeded with the enquiry; when the said enquiry was in progress, the petitioner was apprehended by the Civil Police and brought to Srinagar on 02.02.1999 and he was placed under judicial custody and released on 03.02.1999 and was placed under suspension with effect from 03.02.1999; a copy of the memo was served to him on 03.02.1999 and the enquiry officer proceeded with the departmental enquiry; the enquiry officer submitted his report on 20th March, 1999; the said report was examined and it was found that the Departmental Enquiry has been conducted as per procedure; the petitioner was given ample opportunity at every stage to defend his case; the disciplinary authority served copy of the report of the enquiry officer to the petitioner with a direction to submit his defence, if any, within a period of 15 days; the petitioner submitted his representation dated

08.04.1999 and it was found that there was no substance in the said representation; the petitioner was imposed the penalty of the compulsory retirement with effect from 30.04.1999; the petitioner had already admitted guilt at the starting of the Department Enquiry conducted against him; that he over stayed leave from 26.03.1998; there was no communication whatsoever from the petitioner during his absence period of more than 10 months; the subsistence allowance for the period of suspension has been paid to the petitioner.

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

5. The main contention urged by the petitioner is that due to quarrels between his wife and mother and as the wife was pregnant he had to stay back at his native place.

6. The counsel for the petitioner contends that for unauthorised absence, the punishment which was imposed is shockingly disproportionate. He also relied upon the judgment reported in **Shri Bhagwan Lal Arya versus Commissioner of Police, Delhi**¹, for the said proposition. In that case the petitioner therein fell down and was under treatment of Government Doctors. He was absent for two months and eight days. He also sent leave applications on medical grounds, with medical certificates. The employer also sanctioned leave on 16.01.1995 without pay for the period of his illness and in spite of the sanction of the leave, a charge sheet was issued for

¹ (2004) 4 Supreme Court Cases 560

unauthorised absence. Notice of termination was issued and he joined duty after submitting fitness certificate from Government dispensary, where he had taken treatment. But he was removed from service. The Hon'ble Supreme Court held that the disciplinary authority, without caring to examine the medical aspect of the absence, awarded the punishment of removal from service. It was also observed by the Hon'ble Supreme Court that the absence of the appellant on medical grounds with application for leave as well as sanction of leave can under no circumstances, be termed as grave misconduct or continued misconduct rendering him unfit for police service. Therefore the said judgment does not apply to the facts of the present case, as the petitioner therein applied for medical leave and authorities have sanctioned the same and in spite of that he was charged for unauthorised absence. In those circumstances, the Hon'ble Supreme Court directed reinstatement of the petitioner therein.

7. The counsel for the petitioner also relied upon the judgment in **Jagdish Singh Versus Punjab Engineering College**² wherein, the applicant was working as Sweeper in Punjab Engineering College and was unauthorisedly absent for a period of 15 days on four occasions in two months. Departmental enquiry was conducted and he was removed from service. In this case the Hon'ble Supreme Court held that "the instant case is not a case of habitual absenteeism. The appellant seems to have a good track record from the date he joined service as a sweeper. In his long career of service, he

² (2009) 7 Supreme Court Cases 301

remained absent for fifteen days on four occasions in the months of February and March 2004.” Taking the facts and circumstances of that particular case, the punishment of dismissal from service was modified to that of stoppage of two increments. In the above case the petitioner is not a member of the disciplinary force and he is only working as a sweeper in an Engineering College. Apart from that he was having a good track record from the date of his joining as a sweeper and was absent only for 15 days on four different occasions in two months. In those circumstances, the Hon’ble Supreme Court interfered with the order and modified the punishment. The said judgment also does not apply to the facts to the present case.

8. The counsel for the petitioner also relied upon the judgment in **Chairman-cum-Managing Director, Coal India Ltd. Versus Mukul Kumar Choudhuri**,³ wherein the petitioner was a system officer in the 1st respondent Cold Field and when he was transferred, he applied for leave and after expiry of the sanctioned leave, he did not reported to duty. The Hon’ble Supreme Court, basing on the facts of that case held as follows :

“In a case like the present one where the misconduct of the delinquent was unauthorised absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company’s rules and regulations but the reason was purely personal and beyond his control and as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is

³ (2009) 15 SCC 620

not only unduly harsh but grossly in excess to the allegations.”

9. The said judgment also does not apply to the facts of the present case, because in that case the petitioner applied for leave but overstayed. He also sent his resignation, which was not accepted and in those circumstances, it was held that removal cannot be held justified. Apart from that the appellant in that case is only a system officer in Coal Fields and is not a member of a disciplined force.

10. The learned counsel for the respondents submits that the petitioner worked in Central Reserve Police Force, as a Constable and hence his unauthorised absence has to be viewed strictly. He relied upon the judgment in **Ramakrishna Vs. Government of India** in Writ Petition No. 12342/2011 dated 14th June 2017, wherein this Hon’ble Court held as follows:

“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 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.”

11. The learned counsel for the respondents also relied upon the judgment in **Union of India Versus Ghulam Mohd. Bhat**⁴ wherein, the Hon'ble Supreme Court held as follows:

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**⁵ 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**⁶). 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."

12. In the present case, petitioner was a Constable in CRPF and without informing the authorities concerned, he overstayed himself, without any justifiable cause. His explanation for his overstay, without applying for leave and without intimation to the authorities is that his wife is due for delivery and that he overstayed to settle the quarrels between his wife and his mother. The period of his absence is more than ten months, without any sort of intimation, whatsoever, to the authorities concerned. As the petitioner has not responded to the communications sent by the Commandant he was apprehended by the Civil Police and brought to the Ravalpura, Srinagar. In those circumstances, the punishment of compulsory retirement

⁴ (2005) 13 Supreme Court Cases 228

⁵ (1996) 1 SCC 302; 1996 SCC (L & S) 304 : (1996) 32 ATC 239

⁶ (2003) 3 SCC 309; 2003 SCC (L & S) 271

is proportionate to the charge against him. In these circumstances, there is no reason to interfere with the punishment imposed against the petitioner herein. Hence, the Writ Petition is liable to be dismissed.

13. Accordingly, the Writ Petition is dismissed. The Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

KONGARA VIJAYA LAKSHMI,J

Dated: 16th March, 2018.

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HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI



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