

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16074 OF 2001

ORDER:

The petitioner, who worked as a Constable in Central Reserve Police Force (CRPF), filed this writ petition being aggrieved by the dismissal order passed in Proceedings No.P.VIII-9/2000-19-EC-II dated 03.08.2000 by the 1st respondent and confirmation of the said order in the appeal by the 2nd respondent vide Proceedings No.R.XIII-6/2001.Estt.3 dated 07.07.2001, as being illegal and arbitrary and to direct the respondents to reinstate the petitioner into service with all consequential benefits, etc.

2. The case of the petitioner is that he was enlisted in CRPF on 01.09.1994 as a Constable (GD). He was posted to E/19 Battalion, CRPF. He was granted 15 days casual leave from 23.10.1999 to 09.11.1999 with permission to avail 24.10.1999, 31.10.1999 and 07.11.1999 being Sundays and the journey period from 10.11.1999 to 11.11.1999, as his mother stated to have been admitted in the hospital. He was due to report for duty on 12.11.1999, but he failed to report. He was also directed to report for duty by the Officer Commanding, E/19 Battalion, CRPF vide his letter No.L.II.I/99.E, dated 20.11.1999. But he failed to comply with the orders of his Officer Commanding and preferred to remain absent. Since he did not report for duty after

considerable time, Warrant of Arrest for his apprehension was issued to the Superintendent of Police, Mahaboobnagar District, Andhra Pradesh, which was not executed. Thereafter, he was declared as 'deserter' by the Commandant, 19 Battalion, CRPF vide Office Order No.W.II-2/2000.19.EC.II, dated 10.04.2000, after conducting Court of Enquiry as per the instructions contained in Rule 31 of the Central Reserve Police Force Rules, 1955 (for short 'the Rules, 1955'). Later, a departmental enquiry was conducted against him *ex parte* and he has been dismissed from service with effect from 03.08.2000. Against which, he preferred an appeal to the 2nd respondent even though belatedly and the same was considered and rejected vide Proceedings dated 07.07.2001. Being aggrieved by the same, the petitioner preferred this writ petition.

3. Sri J.R.Manohar Rao, learned counsel appearing for the petitioner, would contend that while the petitioner was working as Constable (GD) in 19th Battalion, CRPF, he was granted casual leave from 23.10.1999 to 09.11.1999 with permission to avail 24.10.1999, 31.10.1999 and 07.11.1999 being Sundays and the journey period from 10.11.1999 to 11.11.1999. He reached his native place – Udithyal, Shadnagar Taluq, Mahaboobnagar District. On 09.11.1999, the petitioner joined in the hospital at Shadnagar due to fever and pain in abdomen. He had taken treatment in the Community Health Centre, Shadnagar, Mahaboobnagar

District from 09.11.1999 to 08.12.1999. Thereafter, he was referred to Osmania General Hospital. He was admitted in the Osmania General Hospital on 09.12.1999 and took treatment up to 22.06.2000. While under treatment, he sent a leave letter along with medical certificate to the Commandant, 19th Battalion, CRPF, Manipur, seeking extension of leave for one month on medical grounds. After discharging from the Osmania General Hospital (Government Hospital) on 22.06.2000, immediately he went to the 19th Battalion, CRPF at Manipur and submitted his joining report, but he was not admitted to duty. He was informed that he was declared as deserter by proceedings dated 10.04.2000. He came to know that an enquiry was initiated against him for unauthorised absence from 12.11.1999. Accordingly, an Enquiry Officer was appointed by the disciplinary authority. A notice of enquiry which was sent to the petitioner was returned undelivered and when he went to join duty, he was refused to join duty and he was orally informed that he would be communicated the orders. Later, the petitioner was served with dismissal order dated 03.08.2000. Immediately, he submitted a representation to the Commandant along with medical certificate requesting him to reconsider the whole issue and to reinstate him into service. Even after the receipt of the said representation, no orders have been passed by the Commandant. Having waited for six months, he made a representation to the 2nd respondent – Deputy Inspector

General of Police in the month of March, 2001. The 2nd respondent passed orders dated 07.07.2001 rejecting the representation holding that reasonable opportunity was given to the petitioner while conducting departmental enquiry. During the period of enquiry, the petitioner was under treatment in the hospital and he could not able to participate in the enquiry. Further, the notice of enquiry or any other orders were not received by the petitioner. The 2nd respondent ought to have taken into consideration of the fact that the petitioner had not attended the enquiry as he was sick. The 2nd respondent, by order dated 07.07.2001, erroneously held that the petitioner has not produced any evidence regarding reporting to the Unit after 22.06.2000 till 03.08.2000.

The learned counsel would further contend that no proper enquiry was conducted as required under Section 11(1) of the Central Reserve Police Force Act, 1949 (for short 'the Act, 1949) read with Rule 21 of the Rules, 1955 and no Court of Enquiry was conducted as required under Rule 31 of the Rules, 1955 before declaring him as deserter. Further, no proper notices were sent to the petitioner and *ex parte* enquiry was conducted and even the Enquiry Officer's report along with any show cause notice was not sent to the petitioner to submit his defence as required under Rule 27 of the Rules, 1955. Basing on the Enquiry Officer's report, the disciplinary authority, without any further notice to the

petitioner, has passed the order of dismissal on 03.08.2000. The appellate authority being the quasi-judicial authority, without considering the petitioner's appeal in its proper perspective and without considering the medical certificates and his joining report, dismissed the appeal by erroneously holding that the petitioner has not submitted any evidence in support of his re-joining the duty and held that the petitioner is a habitual overstayer within short spell of service, but his past service was not shown as a charge and without any notice, the past service was considered by the appellate authority and the appeal was rejected by non-speaking order dated 07.07.2001 without assigning any reasons, which is illegal, arbitrary and liable to be set aside. The dismissal order dated 03.08.2000 and the order of the appellate authority dated 07.07.2001 were contrary to the provisions of Section 11(1) of the Act, 1948 read with Rules 27, 28(e) and 31 of the Rules, 1955 and it is in utter violation of principles of natural justice and even if this Court found that overstayal of leave proved, the petitioner could not be dismissed from service as overstayal is not a serious misconduct as held by the Hon'ble Apex Court in *Krushnakant B.Parmar vs. Union of India*¹, wherein it is held thus:

“16. In the case of the appellant referring to unauthorized absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour as unbecoming of a government servant. The question whether “unauthorized absence from duty”

¹ (2012) 3 SCC 178

amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.”

Accordingly, the learned counsel prayed that the impugned orders are liable to be set aside and the petitioner may be reinstated into service with all consequential benefits.

4. Sri K.Lakshman, learned Assistant Solicitor General, while reiterating the averments of the counter would contend that the petitioner was appointed as CRPF Constable (GD) and while he was working at 19th Battalion, CRPF, he was granted casual leave and he overstayed the leave period without prior sanction of extension of leave. The petitioner also not submitted any leave letter for extension of leave, but he simply forwarded the medical certificate for extension of leave which was not considered. Since he did not report for duty after reasonable time, warrant of arrest for his

apprehension was issued to the Superintendent of Police, Mahaboobnagar District and the same was not executed. Thereafter, he was declared as deserter vide order dated 10.04.2000, after conducting Court of Enquiry as per the instructions contained in Rule 31 of the Rules, 1955. The Enquiry Officer was appointed by the disciplinary authority and a memorandum of charge for unauthorized absence was issued to the petitioner under Section 11(1) of the Act and a notice was sent to the petitioner to attend the enquiry and the same was returned unserved and thereby an *ex parte* enquiry was conducted. The petitioner was applied for discharge vide his application dated 26.04.2000, which was not entertained being overstayed on leave. Since the petitioner had not responded to the communication made by the Enquiry Officer, the departmental enquiry was held *ex parte* and declared him as deserter by order dated 10.04.2000. Though sufficient opportunity was given to the petitioner to attend the departmental enquiry, he did not report to the Unit, and therefore, the departmental enquiry was conducted *ex parte*. The disciplinary authority, basing on the Enquiry Officer's report, came to a conclusion that the petitioner overstayed leave with effect from 03.08.2000 i.e. nearly nine months. The appellate authority considered the appeal even though the appeal was submitted with six months delay and without sufficient grounds for appeal. As per the medical certificate, he was discharged on 22.06.2000,

but he did not report to duty even after 22.06.2000 till 03.08.2000, for which he did not produce any evidence. The appellate authority considered the appeal carefully as required under Rule 28(e) of the Rules, 1955 and as per the provisions of the Act, 1949. The petitioner is a Constable (GD) in the uniform service. The CRPF being a para-medical service, the petitioner has to maintain strict discipline and that overstayed on leave without extension of leave is a serious misconduct. For the proved misconduct, the petitioner was dismissed from service. There is no illegality or irregularity in the impugned orders which call for interference of this Court.

5. Having considered the rival contentions of both the learned counsel and having perused the record produced, this Court found that the petitioner was enlisted in CRPF on 01.09.1994 as Constable (GD) and was posted to 19th Battalion, CRPF. He was granted casual leave for 15 days from 23.10.1999 to 09.11.1999, with permission to avail 24.10.1999, 31.10.1999 and 07.11.1999 being Sundays and the journey period from 10.11.1999 to 11.11.1999, as his mother stated to have admitted in the hospital. The petitioner has to report for duty on 12.11.1999. On 09.11.1999, the petitioner admitted in the Community Health Centre, Shadnagar due to fever and pain in abdomen and took treatment till 08.12.1999. Thereafter, he was referred to the Osmania General Hospital. He was joined in the Osmania

General Hospital (Government hospital) on 09.12.1999 and took treatment up to 22.06.2000.

6. The record does not reveal that the petitioner was asked to attend duties and no communication was sent to his address, and service of the same was not available in the record. The petitioner was declared as deserter under Rule 31 of the Rules, 1955 by proceedings dated 10.04.2000, without conducting Court of Enquiry prior to declaration. Thereafter, the Enquiry Officer was appointed to enquire with regard to the charges that whether the petitioner committed a misconduct under Section 11(1) of the Act, 1949 by overstayed leave with effect from 12.11.1999 without sanction/permission from the competent authority; and whether the petitioner failed to comply with the orders of the Officer Commanding, 19th Battalion, directing him to report for duty vide his letter No.L.II.I/99.E dated 20.11.1999. The petitioner was sent a notice to attend the enquiry, but the same was returned unserved and thereafter no notice of enquiry was sent to the petitioner and *ex parte* enquiry was conducted. Basing on such enquiry report, the disciplinary authority dismissed the petitioner from service by order dated 03.08.2000. Before passing the dismissal order, the petitioner was not given any show-cause notice of dismissal along with Enquiry Officer's report to submit his explanation. The disciplinary authority solely basing on the Enquiry Officer's report, without considering the evidence on record

and without application of mind, dismissed the petitioner from service, which is contrary to the procedure contemplated under Section 11(1) of the Act, 1949 read with Rule 27 of the Rules, 1955.

7. This Court, on perusal of the record, found that no proper notice and opportunity was given to the petitioner before passing the dismissal order and that the dismissal order is in utter violation of principles of natural justice and is illegal. Even the appellate authority rejected the appeal without considering the grounds of appeal in proper perspective and without addressing itself as to whether the procedure contemplated under the provisions of Section 11(1) of the Act, 1949 and the Rules 27 and 31 of the Rules, 1955 were scrupulously followed before dismissing the petitioner from service, but the appellate authority without application of mind simply rejected the appeal of the petitioner for reinstatement. This Court found that the petitioner has submitted medical certificates issued by the Community Health Centre, Shadnagar and Osmania General Hospital, Hyderabad – both are Government hospitals and that the genuineness of the medical certificates could not be disputed. It is not the case of the respondents that the medical certificates produced by the petitioner are false. The 1st respondent having received the application for extension of leave along with medical certificates, no decision has been taken and nothing was communicated.

8. This Court and the Hon'ble Apex Court in a catena of decisions held that overstayal of leave for sufficient reasons on medical grounds could not be treated as serious misconduct. Even if the misconduct of unauthorised absence is proved, the petitioner could not be dismissed from service as it is disproportionate to the proved misconduct. Therefore, both the impugned orders are liable to be set aside for the reasons stated above.

9. Accordingly, the Writ Petition is allowed, setting aside the dismissal order dated 03.08.2000 and order in appeal dated 07.07.2001. The respondents are directed to reinstate the petitioner into service subject to medical fitness without continuity of service and monetary benefits for the period for which he is out of service. The respondents are also further directed to complete the said exercise of reinstatement of the petitioner into service within a period of two (2) months from the date of receipt of a copy of this order. No order as to costs.

10. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

10-08-2018
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THE HON'BLE SRI JUSTICE M.GANGA RAO



WRIT PETITION No. 16074 OF 2001

10-08-2018

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