

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3139 of 2010

Harish Chandra Gupta (died and deleted)

1. Smt. Poonam Gupta, W/o Late Harish Chand Gupta, aged about 29 years
2. Ku Anshika Gupta, D/o Late Harish Chand Gupta, aged about 07 years, represented through her Guardian namely Smt. Poonam Gupta (mother);
3. Ansh Gupta, S/o Late Harish Chand Gupta, aged about 05 years, represented through her Guardian namely Smt. Poonam Gupta (mother);
4. Pari Gupta, D/o Late Harish Chand Gupta, aged about 03 years, represented through her Guardian namely Smt. Poonam Gupta (mother)

All of R/o Harisenganj, P.S. Mauaima, Distt. Allahabad (U.P.) at present R/o Shantipuram, Labour Chaouraha, Phaphamau, P.S. Suran, Distt. Allahabad

---- Petitioners

Versus

1. Central Reserve Police Force, through Inspector General of Police, Eastern Sector, C.R.P.F., H.C. Block, Sector – IIT, Kolkata – 106.
2. Dy. Inspector General of Police, Central Reserve Police Force, Siligudi, West Bengal.
3. Commandant, Office of Commandant 169 Battalion, Central Reserve Police Force, Ambikapur, Distt. Sarguja (C.G.)
4. Commandant, Office of Commandant 169 Battalion, Central Reserve Police Force, G.C., C.R.P.F., Bhuvneshwar (Orissa)

---- Respondents

For Petitioners	:	Shri Vinod Deshmukh, Advocate
For Respondents	:	None appears.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Order on Board

15.01.2019

1. The original Petitioner is dead. He has been substituted by his wife now. The occasion for him to file the writ application arose when an order of removal was passed by way of punishment on 14.04.2009, on finding of guilt by the Enquiry Officer on charges of unauthorized absence and he being found to be a habitual offender. The order passed by Disciplinary Authority (Annexure P/1) is under challenge.
2. The effort made by the erstwhile employee by moving the Appellate Authorities also failed because the appeal was rejected vide order dated 18.09.2009. A

copy of which is Annexure P/2. Even the Revisional Authority did not find merit in the said application and the order of rejection of the Revision is dated 18.03.2010 (Annexure P/3). All these orders are under challenge in the present writ application.

3. Husband of the present Petitioner, late Harish Chandra Gupta was appointed as a Constable under Central Reserve Police Force (CRPF) way back in the year 2001. He was last posted with CRPF Battalion No.169 at Ambikapur. On March, 2008, he applied for two days leave which was granted to him. It is said that he went to his home town, but since he suffered from Jaundice, he did not report back in time, though he made prayers telephonically or otherwise for extension of leave as he was suffering from Hepatitis. It is his prayer that on the basis of the medical ground he was sanctioned 45 days of leave between 26.03.2008 to 09.05.2008. It is stand in the writ application that he was allowed to join duty after the overstay of 50 days. The period of absence was regularized and half pay leave was allowed. On 06.10.2018, the erstwhile Constable was directed to appear in the orderly room where he was awarded punishment of 5 days confinement in line with one hour back pack drill with forfeiture of pay and allowances under purported exercise of power under Section 11(3) of the CRPF Act, 1949. It is said that since he did not accept the irrational punishment, a charge-sheet was issued against his so-called absence without leave and regular departmental enquiry was initiated and held. Two charges were brought up which primarily related to his unauthorized absence for various periods with some regularity between 08.09.2005 to 28.06.2008. There was a common pattern that the Constable used to go on either authorised leave for a few days, but always overstayed without the authority of law and that he used to be in defiance about the punishment imposed upon him for such acts of indiscretion.

4. The Enquiry Officer examined large number of persons as witnesses. The erstwhile Constable was given opportunity not only to participate, but also to cross-examine. But from record, it is evident that except for one or two witnesses, he chose not to cross-examine any and nothing significant by way of defence except pleading not guilty was taken during the course of enquiry.
5. Based on the evidence, the charges stood proved and on the basis of the finding given by the Enquiry Officer, the Disciplinary Authorities passed the order of removal which stood affirmed by the Appellate Authority as well as Revisional Authority.
6. The main thrust of the argument of learned counsel for the employee is that the medical certificate was not considered in the right perspective. He had tendered evidence thereof, but despite the same which could have established that it was not a case of wilful absence, the punishment of removal from service came to be passed.
7. The two charges which were brought against the erstwhile Constable basically related to repeated instances of unauthorized absence. From reading of the order of the Disciplinary Authority culled out from the enquiry report, it is evident that a full fledged enquiry was held. Large number of witnesses and evidence were pressed into service on behalf of the Disciplinary Authority and having failed to be satisfied with the defence in face of overwhelming evidence, the Disciplinary Authority found not only the charges proved, but also found that the ex-Constable was also indisciplined in addition to being unauthorizedly absent regularly. He opined that his continuance in the Force would be detrimental to the discipline of the Force and the moral of the Force.

8. Having examined the material and the impugned orders and in absence of any material to show that there was any violation of principles of natural justice or that the enquiry was not held in accordance with the rules, this Court cannot sit in appeal over the findings and interfere with the order of punishment.
9. Even otherwise, if it was a case of single aberration, the Court may have interfered with the order of punishment of removal on the principle of disproportionality. However, since it is a repeated case of absence without authority, obviously a disciplined Force like the CRPF in the larger interest of maintenance of discipline could not have ignored such misconduct in the interest of the Force.
10. The Court, therefore, in the given facts & circumstances is not inclined to interfere with the impugned order.
11. Writ has no merit. It is dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice