

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6437 OF 2016

Mr. Jagdish S/o Manik Garje ..PETITIONER

VERSUS

The Union of India & Anr. ..RESPONDENTS

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Mr. N. P. Bangar, Advocates for the Petitioners.
Mr. Bhushan B. Kulkarni, Standing Counsel for
Respondent Nos.1 and 2.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

Closed for Orders on : 08.02.2019.

Order Pronounced on : 15.02.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioner had joined service of Army/Central Reserve Police Force on or about 31.12.2005. The petitioner sought leave for a period of 8 days between 29.03.2014 to 05.04.2014. The petitioner did not join. On or about 17.07.2014 the chargesheet was issued to the petitioner. The enquiry was initiated. According to the petitioner, the petitioner on 17.09.2014 reported at Battalion, but was not allowed to enter as the authorities concerned declined to issue gate pass in his favour. The petitioner was issued with the show cause notice of the enquiry. The petitioner remained absent before the enquiry. The petitioner is dismissed from the service. He is also declared Deserter.

2. Mr. Bangar, learned counsel for the petitioner submits that the enquiry is conducted without permitting the petitioner to put forth his grievance. The enquiry was not conducted in free and fair manner. No proper opportunity was given to the petitioner. The petitioner was not served with the notice of the enquiry. The enquiry was held ex-parte. On this count itself the enquiry deserves to be vitiated.

3. Mr. Bangar, learned counsel further submits that the enquiry conducted was against the mandate of Rule 31 of the Central Reserve Police Force Rules, 1955. Rule 31 of Rules 1955 mandates that the enquiry be held by a committee of three members. But in the present matter, the enquiry was conducted by a single member. The outcome of the enquiry is nullity in the eye of law. On this count also the enquiry stands vitiated. The learned counsel submits that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the legal procedure. The aforesaid settled legal proposition is based on a legal maxim "*Expressio unius est exclusio alterius*". The learned counsel submits that prior to the alleged incident there was no such act of absence on the part of the petitioner. The respondents have made farce of enquiry. The petitioner was not allowed to participate and arbitrarily the orders of dismissal are passed.

The Appeal filed by the petitioner has been turned down without considering the same on merits and only on the ground of delay.

4. The learned counsel for the petitioner relying on the judgment of the Apex Court in a case of **Badrinath Vs. State of Tamil Nadu & Ors.** reported in **AIR 2000 SC 3243** contends that once the basis of a proceeding is gone, all consequential acts, actions and orders would fall to the ground automatically and this principle is also equally applicable to administrative orders. The learned counsel relies on the judgment of the Apex Court in a case of **Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai & Anr.** reported in **AIR 2004 SC 1815** and submits that if the principles of natural justice are violated, so also the statutory provisions the Court would interfere. The learned counsel also relies on the judgment of the Apex Court in a case of **Union of India and Others Vs. Ram Lakhan Sharma** reported in **(2018) 7 SCC 670**. The learned counsel submits that the petitioner was also not served with any notice of an enquiry under Section 27 of the CRPF Rule, 1955, the same is also illegal.

5. Mr. Kulkarni, learned counsel for respondents submits that the enquiry under Rule 31 of CRPF Rules, 1955 has been conducted by three member committee. The petitioner was sanctioned 8 days earned leave with effect from 29.03.2014 to

05.04.2014. He was due to report on 06.04.2014, but absented himself from 07.04.2014 without permission of competent authority. Notice was issued to the petitioner on 14.04.2014 and 28.04.2014 at his home address directing him to report for duty immediately, but the petitioner did not respond. The complaint was also lodged in the Court of Chief Judicial Magistrate-Cum-Commandant-190-Bn, CRPF, who took cognizance in the case and issued a warrant of arrest for apprehension of the petitioner. The petitioner did not report on his own. The Court of enquiry was ordered by the Commandant-190-Bn, CRPF to find out the circumstances under which the petitioner was over staying the leave without permission. The Presiding Officer was appointed to conduct the Court of enquiry. The competent authority declared the petitioner as a Deserter with effect from 07.04.2014. The departmental enquiry was ordered and the memorandum of charges were issued to him. The enquiry officer also sent a letter through the registered post at his home address and directed to report him before preliminary hearing on three occasions. Ample opportunities were given to the petitioner, but the petitioner did not remain present and hence the ex-parte enquiry was conducted on the basis of the documents available. In spite of the several communications the petitioner did not participate in the enquiry. The petitioner was unauthorizedly absent from

07.04.2014 to 01.11.2014 total 209 days. The said absence was regularized into '*Dies Non*' and a copy of dismissal order was also sent to the home address of the petitioner through registered post. The contention of the petitioner that he reported on 17.09.2014 at Battalion Headquarter is false. The principles of natural justice were followed. The punishment awarded to him by the Disciplinary Authority is as per Rule 27 of the CRPF Rule, 1955. As per Rule 31 of the CRPF Rules, 1955, a Court of enquiry was constituted of one Gazetted Officer Shri. Navin Kumar as Presiding Officer and two subordinate officers Insp/GD Vinod Kumar and SI/GD Om Prakash as Member-I & II respectively. The entire procedure has been followed.

6. We have considered the submissions canvassed by the learned counsel for the respective parties. We have also gone through the record produced by the learned counsel for respondents.

7. The petitioner is appointed on 31.12.2005 as a Constable. The petitioner was granted earned leave for a period of 8 days between 29.03.2014 to 05.04.2014. The petitioner ought to have joined on 06.04.2014, however, the petitioner over stayed the leave and did not join thereafter. The show cause notice was issued to the petitioner. The Officer Commanding-F/190-Bn, CRPF, under the letters dated 14.04.2014 and 28.04.2014 directed petitioner to report for duty. The said letters were issued at

the home address of the petitioner. The petitioner did not respond to the communication. Thereafter, on 08.05.2014, the Officer Commanding-F/190-Bn, CRPF under his letter dated 08.05.2014 lodged a complaint in Court of Chief Judicial Magistrate-Cum-Commandant-190-Bn, CRPF, he took cognizance of the case and issued a warrant of arrest to apprehend the petitioner vide office letter dated 16.05.2014. The petitioner neither reported at his own nor was apprehended by the civil police. The Court of enquiry was ordered by the Commandant-190 Bn, CRPF under the office order dated 28.05.2014 to find out the circumstances under which the petitioner was over staying leave without permission / sanction of leave. It appears from the record that, as per Rule 31 of CRPF Rules, 1955, the Court of enquiry was constituted consisting of one Gazetted Officer Shri. Navin Kumar, Assistant Commandant as Presiding Officer and two subordinate officers Insp/GD Vinod Kumar and SI/GD Om Prakash as Member-I & II respectively. The Court of enquiry conducted an enquiry and thereafter declared the petitioner Deserter. The departmental enquiry under Section 11(1) of CRPF Act 1949 read with Rule 27 of CRPF Rules, 1955 was ordered against the petitioner under letter dated 17.7.2014 by the Commandant-190 Bn to enquire into the charges leveled against him, but the petitioner did not respond. The enquiry officer completed the departmental enquiry ex-parte. The petitioner was

issued with the letters time and again to participate in the enquiry at his home address, but the petitioner did not respond. Eventually, the enquiry was required to be completed ex-parte. After conclusion of the enquiry, again show cause notice was issued to the petitioner to make submissions in his defence under letter dated 23.09.2014, but the petitioner did not reply nor communicated with the Disciplinary Authority. Thereafter, Disciplinary Authority under office order dated 01.11.2014 imposed punishment of "Dismissal from service" upon the petitioner. Perusal of the record it is manifests that ample opportunities were given to the petitioner in an enquiry under Rule 31 of CRPF Rules, 1955, so also under Rule 27 of CRPF Rules, 1955. The petitioner consistently remained absent. From the record it is clear that the various letters were issued to the petitioner through the registered post. The said letters are the part of the record of the disciplinary proceedings, which are produced by the counsel for respondents.

8. Perusal of the record it appears that, respondents had time to time issued letter / notices to the petitioner in the course of enquiry, however, the petitioner did not respond. The petitioner has not disputed the fact of over staying the leave. No explanation is given by the petitioner for over staying the leave period and not joining the Battalion for a long time, except

the reason that because of his family problem. No such family problem is also detailed even in the present writ petition. The fact is not disputed that the petitioner over stayed the leave.

9. The judgment of the Apex Court in a case of **Union of India and Others Vs. Ram Lakhan Sharma** (supra) relied by the petitioner would not be of any help to the petitioner. The Apex Court in para 34 observed thus:

"We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in fact situation of a particular case. There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent. When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited."

10. The petitioner was serving in Central Reserve Police Force. Discipline is *sine qua non* in service with the Central Reserve Police Force. Indiscipline cannot be tolerated. The petitioner without any plausible reason had not joined duties after the lapse of 8 days leave.

11. The principles of natural justice have been adhered to. The petitioner on his own volition did not participate in the departmental

enquiry, though was issued with the notices / letters from time to time. The petitioner as on his own volition did not participate in the departmental proceedings cannot turn around and complain of non-adherence to the principles of natural justice. It is not the case that the respondents did not take efforts to serve the notice of enquiry upon the petitioner. Various letters are issued by the authorities to the petitioner from time to time. The petitioner was issued with the following letters during the course of enquiry and even the postal receipts are matter of record:

Sr. No.	Particulars
1.	Letter dated 21.07.2014 for appearance before D.E. Committee.
2.	Letter dated 06.08.2014 for appearance before D.E. Committee.
3.	Letter dated 22.08.2014 for appearance before D.E. Committee.
4.	Letter dated 08.09.2014 for appearance before D.E. Committee.
5.	Letter dated 14.04.2014, whereby directions were given to petitioner to attend duty.
6.	Letter dated 28.04.2014 to attend duty.

12. The scope of interference in the writ jurisdiction of this Court in departmental enquiry is minimal. This Court has to consider adherence to the decision making process and that the action is not arbitrary or malafide. Considering the facts on record as discussed supra, the respondents have not committed any error in conduct of disciplinary proceeding. The petitioner has not

given any explanation for over staying his leave and not joining the duty after lapse of his sanctioned leave. The act of indiscipline cannot be tolerated in such an employment. No plausible explanation has been given by the petitioner for not joining the duty after sanctioned leave period.

13. In view of the above, no case for interference is made out. Writ Petition is dismissed. No costs.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/February-19