



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

WRIT APPEAL NOS.244 AND 245 OF 2020
AND
WRIT PETITION NO.14251 OF 2020

Writ Appeal Nos.244 and 245 of 2020:

D.Latha

... Appellant/Petitioner in both
Writ Appeals

.vs.

1. The Director General of Police,
Directorate General CRPF,
CGO Complex, Lodhi Road,
New Delhi 110 003.
2. The Inspector General of Police (TRAINING),
Training Directorate CRPF,
Sector-I, R.K.Puram,
New Delhi.
3. The Inspector General of Police,
Southern Sector, CRPF,
Road No.10C, Jubilee Mills,
Near MLA/MPS Colony,
Gayathri Hills,
Hyderabad 500 033.
4. The Deputy Inspector General of Police,
Central Training College CRPF,
Coimbatore District - 17.

Tamil Nadu.

... Respondents in both Writ Appeals

Writ Appeals filed under Clause 15 of Letters Patent against
the common order dated 29.01.2020 passed by this Court in
W.P.No.4550 of 2018 and W.P.No.39513 of 2016.



Prayer in W.P.No.4550 of 2018:-

Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the order passed by the 5th respondent in Proceeding No.P.VIII-03/2017-EC-1 dated 02.11.2017 quash the same

Prayer in W.P.No.39513 of 2016:-

Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to consider and pass order on the petitioner's application dated 17.10.2016 seeking permission to retire from service under VRS Scheme on Medical Ground

For Appellant in both W.As. : Mr.M.Elango

For Respondents in both W.As.: Mr.K.Srinivasa Murthy,
Senior Panel Counsel for
Central Government

Writ Petition No.14251 of 2020:

D.Latha

... Petitioner

vs.

1. The Director General of Police,
Directorate General CRPF,
CGO Complex, Lodhi Road,
New Delhi 110 003.
 2. The Inspector General of Police (TRAINING),
Training Directorate CRPF,
Sector-I, R.K.Puram, New Delhi.
 3. The Inspector General of Police,
Southern Sector, CRPF,
Road No.10C, Jubilee Mills,
Near MLA/MPS Colony,
Gayathri Hills, Hyderabad 500 033.
 4. The Deputy Inspector General of Police,
Central Training College CRPF,
Coimbatore District - 17,
Tamil Nadu.
 5. The Commandant,
O/o. IGP, Principal Central Training College,
CRPF, Coimbatore 17.
- ... Respondents



Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, calling for the records relating to the order dated 06.03.2018 passed by the 4th Respondent in proceedings No.P.VIII-3/2017-FC-1, and quash the same.

For Petitioner : Mr.M.Elango
For Respondents : Mr.K.Srinivasa Murthy,
Senior Panel Counsel for
Central Government

C O M M O N J U D G M E N T
(Judgment of the Court delivered by S.VAIDYANATHAN, J.)

Aggrieved by the common order dated 29.01.2020 passed by the learned Single Judge in W.P.No.4550 of 2018 and W.P.No.39513 of 2016, the Writ Petitioner viz. D.Latha, has come up with the above Writ Appeals. She has also filed W.P.No.15251 of 2020 seeking to quash the order dated 06.03.2018 passed by the 4th Respondent vide proceedings No.P.VIII-3/2017-FC-1.

2. As the issue involved in the Writ Appeals and the Writ Petition is one and the same, all the cases are taken up for disposal by a common judgment.

3. According to the Appellant/Writ Petitioner, she joined the Central Reserve Police Force (CRPF) as a Constable on 28.03.1995 and posted at Central Training College, CRPF, Coimbatore. In the year 2009, she sustained an injury in her right ankle and underwent treatment. Subsequently, the Appellant/Writ Petitioner was transferred to 213 (Mahila) Bn vide DIGP (Estt) Dte Genl Signal No.T.IX.15 (ACO)/2016-Estt, dated 19.02.2016. Challenging the said order of transfer, the Appellant/Writ Petitioner filed W.P.No.13403 of 2016 before this Court. However, the same was dismissed by an order dated 07.08.2017.

4. In the meantime, in view of her medical condition, the Appellant/Writ Petitioner submitted an Application on 17.10.2016 to the fourth Respondent herein, seeking permission to retire under Voluntary Retirement Scheme (VRS) and the same was received by the fourth Respondent on 18.10.2016. It is the case of the Appellant/Writ Petitioner, that, she is entitled to apply under Voluntary Retirement Scheme as per Rule 43(d)(i) of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as 'CRPF Rules'). As the said Application under Voluntary Retirement Scheme was rejected by the Respondents, the Appellant/Writ Petitioner filed W.P.No.39513 of 2016 to accept



her Application dated 17.10.2016 for Voluntary Retirement.

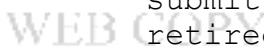
5. Thereafter, Disciplinary proceedings were initiated against the Appellant/Writ Petitioner by the Commandant, Central Training College, CRPF, Coimbatore, by issuing a Charge Memo dated 21.11.2016. As the Respondents were unable to serve notice on the Writ Petitioner, the inquiry was conducted ex-parte. Ultimately, Disciplinary proceedings ended with a punishment of dismissal of the Writ Petitioner from service by the proceedings dated 02.11.2017 of the Commandant, Central Training College, CRPF, Coimbatore. Challenging the said order of dismissal, the Writ Petitioner filed W.P.No.4550 of 2018.

6. Both Writ Petitions in W.P.No.39513 of 2016 and W.P.No.4550 of 2018 filed by the Appellant/Writ Petitioner were taken up for disposal together by the learned Single Judge.

7. Before the learned Single Judge, learned counsel for the Writ Petitioner submitted that, the Writ Petitioner's Application dated 17.10.2016 under Voluntary Retirement Scheme was filed as per Rule 43(d)(i) of CRPF Rules and that, if no orders are passed after 90 days from the date of such Application, voluntary retirement submitted by the Writ Petitioner is deemed to take effect on the expiry of three months' Notice period.

8. It was stated by the learned counsel appearing for the Respondents before the learned Single Judge that, the Writ Petitioner reported before the Commandant, Central Training College, CRPF, Coimbatore on 29.08.2016, after remaining unauthorizedly absent for a period of 138 days from 13.04.2016 to 28.08.2016 without prior permission from the competent Authority and he produced a Fitness Certificate, dated 28.08.2016 issued by Dharmapuri Medical College. Since, the Fitness Certificate issued by Dharmapuri Medical College was not clear, the Writ Petitioner was referred to Composite Hospital, CRPF, Avadi. But, the Writ Petitioner deserted the campus on 22.09.2016 on her own, without obtaining permission from the competent Authority.

9. On hearing both sides, the learned Single Judge observed that, the Disciplinary proceedings against the Writ Petitioner were initiated on the ground of unauthorised absence and there is no question of applying the deemed provision of acceptance of the Writ Petitioner's voluntary retirement with effect from 16.01.2017, on which date, three months' notice period came to an end. The learned Single Judge dismissed the Writ Petitions in W.P.No.4550 of 2018 and W.P.No.39513 of 2016, by a common order dated 29.01.2020, with liberty to the Writ Petitioner to file a Revision Petition before the next superior



10. Learned counsel for the Appellant/Writ Petitioner submitted that, the Appellant/Writ Petitioner is deemed to have retired from service on 16.01.2017, on which date, the notice period of three months' came to an end as per Rule 43(d)(vi) of CRPF Rules. He went on to contend that, an employee has the right to opt voluntary retirement and that, the approval of the superior Officer under Rule 43(d)(vi)(a) of CRPF Rules, is necessary to proceed against the Appellant and in the absence of the same, Respondents ought not to have initiated Disciplinary proceedings against the Appellant.

12. Heard the learned counsel on either side and perused the material documents available on record.

14. The Appellant/Writ Petitioner submitted an Application for Voluntary Retirement on 17.10.2016 in terms of Rule 43(d)(i) of CRPF Rules. The said Rule contains a deeming provision that, on completion of three months from the date of making an Application for Voluntary Retirement, the retirement will take



effect. According to the Respondents herein, when the Commandant, Central Training College, CRPF, Coimbatore has issued a Charge Memo dated 21.11.2016 against the Appellant/Writ Petitioner, the said deeming provision of Voluntary Retirement Scheme will not be applicable to her. The contention of the Appellant that, the Respondents cannot issue a Charge Memo without the approval required under Rule 43(d)(vi)(a) of the CRPF Rules, moreso, when she had already submitted an Application for Voluntary Retirement, may not hold water as Charge Memo is issued by the competent Authority and once a Charge Memo is issued, Application for Voluntary Retirement cannot be effective. However, subsequently, on 02.11.2017, Respondents have imposed the punishment of dismissal from service.

15. On the other hand, it is stated by the Respondents that, the Commandant, Central Training College, CRPF, Coimbatore has issued a Charge Memo to the Appellant/Writ Petitioner, and in view of the same, the question of obtaining prior permission to proceed with the departmental enquiry may not arise. Hence, according to the Respondents, the provision quoted by the Appellant/Writ Petitioner that, on the expiry of the notice period under Voluntary Retirement Scheme, the employer-employee relationship ceases, cannot be accepted.

16. Further, learned counsel appearing for the Respondents contended that, the averment of the Appellant/Writ Petitioner that, she suffered an injury in her right ankle in the year 2009 and underwent treatment for the same, is not correct. Had she actually sustained injuries, there would have been some evidence on record to that effect and she is unnecessarily trying to project that, she had sustained injuries and it has nothing to do with the issue on hand. In any event, the Writ Petitioner was transferred to 213 Mahila Battalion on 19.02.2016 and the Writ Petition filed by her in W.P.No.13403 of 2016 questioning the said order of transfer, stood dismissed.

17. In the case on hand, the Commandant, Central Training College, CRPF, Coimbatore is the Authority competent to issue Charge Memo to the Appellant/Writ Petitioner, which would mean that the Application for Voluntary Retirement submitted by the Appellant/Writ Petitioner has not been accepted by the Respondents. Hence, as stated supra, the question of deeming provision of Voluntary Retirement Scheme attracting the present set of facts, may not be applicable.

18. For the sake of convenience, Rule 43(d)(i) and Rule 43(d)(vi)(a) of the CRPF Rules, 1955, are extracted below:



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43. Superannuation -

(d)(i) any member of the Force who has put in not less than 20 years of qualifying service may, by giving notice of not less than three months in writing to the appointing authority, retire from service voluntarily and unless the exigencies of service require otherwise, he shall be permitted to retire.

...

(vi) a notice to retire voluntarily under clause (i) after completion of 20 years of qualifying service shall require acceptance by the appointing authority if the date of retirement on the expiry of the period notice would be earlier than the date on which the member of the Force concerned could have retired under sub-rule (a). Such acceptance may be generally given in all cases except where-

(a) any Disciplinary proceedings are pending or contemplated against the member of the Force concerned for the imposition of a major penalty and the Disciplinary Authority, having regard to the circumstances of the case is of the view that the imposition of the penalty of removal or dismissal from the service would be warranted in the case;

(b) ...

Provided that -

(i) in cases, referred to in item (a) and item (b) above, approval of the Government in the case of Superior Officers, of the Inspector-General in the case of Subordinate and under Officers, of the Deputy Inspector - General in the case of other members of the Force except enrolled followers and of the Commandant in the case of enrolled followers shall be obtained;

(ii) in other cases, acceptance by the appointing authority may be presumed and the retirement of the member of the Force concerned may take effect in terms of the



notice, unless the appointing authority passes an order to the contrary before the expiry of the period of notice;

19. The learned Single Judge has rightly held that, when the final order has been passed by the Appellate Authority, the remedy lies only by way of a Revision and that, the original order of the Authority cannot be questioned. Hence, we are of the view that, as Charge Memo is issued to the employee by the competent Authority, the deeming provision will not be applicable to the case of the Appellant, to enable him to contend that, there will be cessation of employer-employee relationship on completion of three months' notice period from the date of submission of Application under Voluntary Retirement Scheme. Hence, Writ Appeal No.244 of 2020 shall go.

20. As to the challenge of the order dated 02.11.2017 passed by the Disciplinary Authority, this Court is of the view that, the order of the Disciplinary Authority gets merged with the order dated 06.03.2018 passed by the Appellate Authority, and hence, the question of challenging the original order alone is not going to help the Appellant. Hence, the learned Single Judge has rightly observed that, when Rule 29 provides for a Revision, it is open to the Appellant to approach the Authority by filing a Revision.

21. In view of the foregoing, we are of the view that, Writ Appeal No.245 of 2020 will have to be dismissed, as the order of the Disciplinary Authority gets merged with the order of the Appellate Authority, moreso, in the light of the fact that, the order of Appellate Authority is tested in W.P.No.14251 of 2020.

22. Now, the issue to be decided is, whether the order dated 06.03.2018 passed by the Appellate Authority which is under challenge in W.P.No.14251 of 2020, needs to be interfered with by this Court, in the light of the Rules quoted by the learned counsel for the parties.

23. On a perusal of the Charge Memo issued to the Appellant/Writ Petitioner, it is seen that, she was unauthorizedly absent from duty and did not obey the orders of the Authorities concerned. Being a member of the Disciplined Force, as her conduct has caused prejudice to the interest of the employer, the Disciplinary Authority passed an order of dismissal from service, which was confirmed by the Appellate Authority. Though the Writ Petitioner tried to project that, she has not committed any misconduct, a detailed enquiry has been conducted, and she could not bring an iota of evidence in her favour. However, in the normal circumstances, when the Appellate Authority has confirmed the order of the Disciplinary



Authority, and when there is an alternative remedy of Revision available, as has been held by the learned Single Judge, this Court is not inclined to interfere with the orders of the Authorities concerned. Having rendered more than 22 years of service, whether the Writ Petitioner has absented herself in the previous years of service, is not known to us, as nothing adverse to the Writ Petitioner is on record.

24. The Writ Petitioner was advised to avail Medical rest from 15.11.2015 to 12.04.2016. However, after availing medical rest, she ought to have reported at Central Training College, CRPF, Coimbatore on 12.04.2016 (A.N.) for further review, but she failed to do so and remained absent from 13.04.2016 on her own, without the permission of the competent Authority.

25. It is no doubt true that, in a Disciplined Force, permission of the Authorities is sought to be obtained and the Writ Petitioner should have appeared before the Medical Board and based on the evidence, she should have either continued in service or availed leave with permission. After reporting for work, a Charge Memo has been issued to the Writ Petitioner and thereafter, she continued to be absent till final orders were passed. Though, absence from duty appears to be minor charge, it amounts to serious misconduct in a Disciplined Force.

26. From the contention of the employee, it appears that, she did not continue to work and the factum appears that, she did not obey the order of transfer and questioned it initially by way of a Writ Petition, which came to be dismissed. Hence, unauthorized absence is distinctly proved in the present set of facts. Even, if a Revision is filed, there is a meagre chance for the Revisional Authority to interfere with the punishment.

27. At this juncture, it is worth referring to the Apex Court decision in the case of Director General of Police, Railway Protection Force vs. Rajendra Kumar Dubey (Civil Appeal No.3820 of 2020, dated 25.11.2020), wherein, with reference to its judgment rendered in the case of Union of India vs. P.Gunasekaran, reported in (2015) 2 SCC 610, the Apex Court has held as under:

"In Union of India Vs. P.Gunasekaran, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether: (a) the enquiry is held by the competent authority; (b) the enquiry is held according to the procedure prescribed in that behalf: (c) there is violation of the principles of natural justice



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in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the findings; (i) the finding of fact is based on no evidence.

In paragraph 13 of the judgment, the Court held that:

"13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based;
- (vi) correct the error of fact ,however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience."

28. In the case on hand, as the Appellant/Writ Petitioner has absented herself from duty without prior permission from the competent Authority after availing leave initially on being



advised for medical rest, it appears that, she does not have the intention to continue in service. Hence, we are of the view that, permitting the Appellant/Writ Petitioner to continue in service is not going to help her, moreso, the Disciplined Force. However, in the present set of facts and in view of the ratio laid down by the Apex Court in the judgment cited supra, the punishment of dismissal from service imposed on the Appellant/Writ Petitioner, appears to be harsh. Though the scope of interference is very limited, the Apex Court in the case of B.C.Chaturvedi vs. Union of India, (1995 (6) SCC 749), has held that, depending upon the charges, the Court is empowered to mould the relief.

29. It is laid down under Articles 226 and 227 of the Constitution of India that, the High Court shall not go into the proportionality of punishment, unless it shocks its conscience. In view of the foregoing, while we agree that, the employee shall not be allowed to continue in service, instead of confirming the punishment of dismissal of service imposed on the employee by the Disciplinary Authority, as confirmed by the Appellate Authority, we modify the same into one of 'compulsory retirement', as the punishment imposed is shockingly disproportionate, in order to enable the Appellant/Writ Petitioner to get her terminal benefits for the long service of 22 years rendered by her, provided, there is no break in her service.

30. In fine, Writ Appeal Nos.244 and 245 of 2020 are dismissed and Writ Petition No.14251 of 2020 is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

(vm/aeb)

To:

1. The Director General of Police,
Directorate General CRPF, CGO Complex,
Lodhi Road, New Delhi 110 003.
2. The Inspector General of Police (TRAINING),
Training Directorate CRPF,
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3. The Inspector General of Police,
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Coimbatore District - 17, Tamil Nadu.
5. The Commandant,
O/o. IGP, Principal Central Training College,
CRPF, Coimbatore 17.

+1cc to Mr.M.Elango, Advocate, S.R.No.49998

+1cc to Mr.K.Srinivasa Murthy, Senior Panel Counsel, S.R.No.49278

W.A.Nos.244 and 245 of 2020
and
W.P.No.14251 of 2020

GJ(CO)
PM/28/10/2021