

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17219 of 2018

=====

Santosh Kumar, S/o Chandra Shekhar Yadav, R/o Ramchandrapur, P.S.-
Jamalpur, District- Munger.

... .. Petitioner

Versus

1. The Union Of India through Director General, Central Reserve Police Force, New Delhi.
2. Director General, Central Reserve Police Force, New Delhi.
3. Spl. Director General, South Zone CRPF, Hyderabad.
4. Inspector General of Police, Central Reserve Police Force, New Delhi.
5. Inspector General of Police, Western Sector, Central Reserve Police Force, Navi Mumbai.
6. Deputy Inspector General of Police, Central Reserve Police Force, Nagpur.
7. Commandant- 29 Battalion, Rawalpura, Srinagar CRPF.

... .. Respondents

=====

Appearance :

For the Petitioner/s : Mr. Harsh Singh with
Mr. Tej Pratap Singh, Adocates

For the U.O.I. : Mr. Rakesh Kumar Sinha, CGC

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 07-11-2022

Heard learned counsel for the petitioner and learned
counsel for the Union of India.

2. Serving as a constable in the Central Reserve Police
Force (for brevity 'C.R.P.F.'), the petitioner proceeded on leave for



60 days from 05.01.2015 at his posting in Srinagar. He was required to report back by night of 06.03.2015. These are the admitted facts. It is further admitted that thereafter the petitioner has never reported to his duty in the force. The dispute is whether the petitioner has valid cause for not reporting to his posting or for overstaying his leave. In this connection, the learned counsel for the petitioner submits that on lapse of a period of leave when the petitioner was called to resume his duties, he has submitted prescriptions, based on which, he claimed to be ill and incapacitated from joining his posting. The three prescriptions submitted by the petitioner are dated 01.03.2015, 19.04.2015 and 21.05.2015. The petitioner was thereafter issued a notice dated 24.02.2016 whereby and whereunder he was communicated to be charged under Section 10(m) and Section 11(1) of the Central Reserve Police Force Act, 1949 ('Act' for short) punishable under Rule 27 of the Central Reserve Police Force Rules, 2012 ('Rules' for short). The undisputed fact is that even after issuance of the charge memo, the petitioner has not appeared before the Authorities in the resultant proceedings. He, however, has submitted an application that on account of his continued ill health, he is unable to join and that he be allowed voluntary retirement from the C.R.P.F. The application is stated to be of



01.10.2015, copy of which is annexed as Annexure-7 to the writ petition.

3. It is in this factual background that the petitioner has been proceeded against *ex-parte* and has been dismissed from service under impugned order dated 20.09.2016. as contained in Annexure-15 to the writ petition. The petitioner has preferred appeal against the said order, the same has also been rejected by the Dy. Inspector General of Police, C.R.P.F., Range HQR-Nagpur, on the order dated 09.03.2017, as contained in Annexure-18 to the writ application. Petitioner's revision has also been rejected by the DIG, C.R.P.F., Nagpur, under communication dated 17.08.2017 as contained in Annexure-23 to the writ petition. The petitioner has also filed a petition under Rule-30 of the Central Reserve Police Force Rules, 1955 (for brevity 'Rules of 1955') which enables a subordinate Officer or an officer of any other rank below him including an enrolled follower who has any grievance may present a petition subject to the condition that it is addressed to the officer of the lowest rank who is empowered to pass the desired order. The same has also been rejected by ADG, South Zone, CRPF, Hyderabad, under communication dated 13.06.2018, as contained in Annexure-26 of the writ petition. All these orders are assailed by way of the instant writ proceedings.



4. Learned counsel for the petitioner submits that the illness of the petitioner duly substantiated by the three medical prescriptions, forwarded within time, there was no occasion for the Authorities to proceed against the petitioner in the aforesaid manner. The aforesaid orders are, therefore, unsustainable. It is further submitted that the allegations being of “less heinous offence”, in terms of Section 10 the Act, the extreme punishment of dismissal is disproportionate to the gravity of the allegation and, therefore, at least to that extent, this Court should consider the petitioner’s case.

5. Learned counsel for the Union of India, on the other hand, submits that overstayal of the petitioner is indefinite. Having availed the sixty (60) days leave, it is apparent from the pleadings of the petitioner itself that he has never care to rejoin the duty on any date whatsoever. Admittedly, the petitioner’s request for extension of leave were turned down under due communication. The petitioner thereafter has still chosen not to rejoin the duty. Upon due communication of charges, he has also chosen not to participate in the proceedings. The circumstances, therefore, are glaring. The petitioner being a member of discipline uniform force cannot be permitted to indulge in overstayal of leave on the basis of prescriptions issued by a Doctor without any report in support



thereof. He has also failed to avail the opportunity of getting himself examined by the medical facilities of the C.R.P.F. apparently, the petitioner's plea of illness lacks *bona fide*, which is apparent from bare reading of medical prescriptions submitted by him. The fact that he has chosen not to participate in the proceedings amounts to a waiver of the requirement of the natural justice in terms of the decision in the Case of ***Board of Directors, Himachal Pradesh Transport Corporation and Anr. Versus K.C. Rahi*** reported in (2008) 11 SCC 502. The Court would find that the three prescriptions relied on by the petitioner does not *prima facie* inspire any confidence whatsoever. The three prescriptions are issued by a Doctor who repeatedly records a symptom of difficulty in sitting, pain and advice of some tests including SGPT, SGOT, Serum bilirubin and an advice for 15 days rest. What was the result of these investigations or what was the diagnosis, is lacking from these prescriptions.

6. This Court is not inclined to accept the three prescriptions issued by a Doctor, without any report, in support thereof to be a valid claim set forth by the petitioner. The fact that the petitioner has stayed away from the proceedings is also admitted. It is also admitted that all his requests for extension of leave has been turned down. The petitioner's continued



unauthorised absence, failure to report in spite of repeated rejection of his application/s for extension of leave, refusal to appear for getting himself examined at medical facilities of the CRPF and chosing not to avail opportunity of appearing in the proceedings are facts and circumstances which leave a lot to be desired from the petitioner in terms of dedication/devotion to duty in a disciplined uniform force.

7. This Court would therefore find that the petitioner’s continuance in the Force is highly undesirable to say the least. Also the petitioner is estopped from raising the plea of natural justice in view of the law as stated by the Apex Court in the case of *K.C. Rahi* (supra). No case is made out for exercise of writ jurisdiction in favour of the petitioner.

8. The writ petition is dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21-12-2022
Transmission Date	

