

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

WRIT PETITION NO. 3643/2021

Shri Sharwan Kumar s/o Surendra Yadav

..Petitioner

versus

1) The Union of India and others

..Respondents

Mrs. S.P. Dhotre, Advocate for petitioner

Mr. N.S. Deshpande, Assistant Solicitor General of India for respondents

...

CORAM: DIPANKAR DATTA, CJ
& NITIN SAMBRE, J.

DATED : 7th September, 2022.

P.C. :

1) The petitioner was a member of the Central Reserve Police Force, having been appointed as a Constable on 20th September 2007. He was granted leave from 27th December, 2014 to 31st December, 2014; however, he overstayed such leave and was proceeded against in a departmental proceeding. Despite service of charge-sheet dated 7th June, 2015 and notice relating to appointment of Inquiry Officer as well as notice of inquiry, the petitioner chose neither to respond to the charge-sheet nor attend the inquiry. However, by a particular letter dated 'nil', the petitioner had informed the Commandant of the relevant battalion that he was under medical treatment for anxiety and depression and assured that he would report for duty by 5th September 2015. However,

since the petitioner had not reported by 5th September, 2015, he was called upon by a letter dated 12th September, 2015 to report immediately to the Unit Headquarters or to report to the "GC Allahabad" for further treatment. In spite of receiving such a letter, the petitioner neither reported for duty nor reported at the concerned centre for treatment. The Inquiry Officer then proceeded to conduct an *ex parte* inquiry against the petitioner and held the charge of unauthorized absence as 'proved'. The report of the Inquiry Officer was forwarded to the petitioner seeking his comments, but the petitioner chose to remain silent. By a final order dated 22nd November, 2015, the petitioner was dismissed from service. An appeal followed, which also stood dismissed by an order dated 20th October, 2016. The appellate order was carried in revision and that too stood dismissed by an order passed some time in February 2017.

2) Since the revisional order is in the English script, we have looked into the same. The said order depicts the various steps that the disciplinary authority of the petitioner had taken to ensure the presence of the petitioner at the Unit as well as for attending the inquiry pursuant to his failure and/or neglect to resume duty. It further reflects the several opportunities granted to the petitioner to reply to the charge-sheet as well as participate in the inquiry proceedings. Not only that, the order also reveals that the disciplinary authority was generous enough to grant time to the petitioner till 5th September 2015 to resume duty, as prayed by him; however, since the petitioner did not respond to such a request positively, the

disciplinary authority or, for that matter, his delegate the Inquiry Officer was left with no other option but to proceed with the inquiry *ex parte*.

3) The order of dismissal passed against the petitioner together with the appellate and revisional orders are questioned in this writ petition, basically on the ground that the petitioner was mentally not stable and was receiving medical treatment for which he could not respond either to the charge-sheet or participate in the inquiry. In support of such a stand, Mrs. Dhotre, learned counsel for petitioner has invited our attention to the medical documents at pages 19 to 40 of the writ petition. Page 19 is a prescription of a doctor stationed at Basti (U.P.); pages 20 to 23 are the clinical test reports of a diagnostic centre in Gorakhpur (U.P.); the other pages also reflect the prescriptions of the doctor at Basti and diagnostic centre in Gorakhpur. The initial prescription is dated 28th December, 2014 and the last medical document is of 2016.

4) The petitioner was less than 30 (thirty) years old when he was dismissed from service. His version at paragraphs 4 and 5 of the writ petition reveals that during the period of leave, he had reached his native village at Awadhpur, district Gorakhpur. However, documents annexed to the writ petition reveal that he had taken treatment from Dr. R.N. Chaudhary, a doctor stationed at Basti. If indeed the petitioner was under medical treatment, we wonder why he had been shuttling between Basti and Gorakhpur, a distance of roughly 84 kms, for having treatment from the doctor at Basti and clinical tests

at the diagnostic centre at Gorakhpur, and did not go straightaway to Allahabad, a distance of less than 300 kms. for medical check-up as required by the disciplinary authority. Even otherwise, we are further left to wonder why the petitioner during this period did not opt, on a single occasion, to visit a Government Hospital for treatment. A certificate from such hospital could have substantiated his claim of being mentally unstable. These are factors which cannot be overlooked by us while we consider the request of Mrs. Dhotre for reconsideration of the order of penalty imposed on the petitioner. She has placed reliance on the decision in the case of ***Union of India and others vs. Giriraj Sharma***¹ and urged that the punishment ought to be revisited by the disciplinary authority.

5) We have perused the decision in *Giriraj Sharma* (supra). The delinquent had overstayed leave by 12 days only. This was considered as a factor for directing the disciplinary authority to revisit the punishment imposed upon him.

6) In the present case, we find that although the petitioner had been sanctioned leave for four days in addition to certain holidays preceding the leave period and in between, he did not return to duty for a long period of almost nine months. In such view of the matter, the decision in *Giriraj Sharma* (supra) does assist the petitioner.

7) The petitioner ought to have realized that being a member of a disciplined force, the level of discipline expected

¹ 1994 Supp (3) SCC 755

of him is a bit higher than the discipline expected in other services. He seems to have been oblivious of the responsibility of a Constable. It is not that he had put in several years of service so that a penalty of compulsory retirement with retirement benefits could be imposed on him. Having joined the force 7 (seven) years back, he may not have even put in qualifying service for entitlement to retiral benefits.

8) A coordinate Bench of this Court in ***Union of India and others vs. C.J. Solanki***², had the occasion to consider a similar grievance raised by a Central Government employee who had overstayed leave without permission and had sought to raise mental unfitness as a ground for not resuming duty. In this decision, most of the precedents in the field were considered by this Court including the decision in ***Krushnakant B. Parmar vs. Union of India***³.

9) We, however, see no reason to apply the ratio of the decision in *Krushnakant B. Parmar* (supra) to the facts and circumstances of the present case. If only the petitioner had participated in the inquiry and had produced documents in support of his claim of mental unfitness, the situation could have been otherwise and he could have salvaged a lesser punishment. Not having done so and giving due regard to his conduct as noticed above, it is too late in the day for the petitioner to rely on the documents annexed to the writ petition for seeking a direction from this Court to the disciplinary authority to reconsider the penalty imposed on

² 2022 (4) Bom.C.R. 373

³ (2012) 3 SCC 178

him.

10) In any event, no breach of the Central Reserve Police Force Act or the rules framed thereunder while proceeding against the petitioner has been demonstrated.

11) Such being the position on facts and in law, we find no reason to entertain the writ petition. The same is dismissed. No costs.

[JUDGE]

[CHIEF JUSTICE]

Sahare