

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2022

PRONOUNCED ON : 09.06.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.8494 of 2010

K.Srinivasulu

...Petitioner

Vs.

1. The Commandant,
Central Reserve Police Force,
42 Bn, Sri Nagar (C/O. 56 APO),
Jammu and Kashmir.

2. The Deputy Inspector General,
Central Reserve Police Force,
Group Centre, Avadi,
Chennai-600 065.

...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in his order No.D.IX.09/2004-EC=2(K.S) dated 15.10.2005 and directly served to the counsel for the petitioner on 09.10.2009 and quash the same and to direct the respondents to take the petitioner into the strength of the CRPF as Constable with all monetary benefits.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents: Mr.D.Simon

O R D E R

This writ petition is filed challenging the order of the 1st respondent dated 15.10.2005, whereby the petitioner was dismissed from service with effect from 15.10.2005, apart from issuing the following directions vide the above order.

a) Petitioner's unauthorized absence period from 11/10/2003 to till date i.e., 15.10.2005 is hereby regularised as "DIES-NON" for all purpose.

b) Petitioner's kit articles be classified and the cost of deficient items if any be recovered from him and deposited into

Government Treasury. In addition to this, outstanding dues if any pending against him may also be recovered from the dues payable to him and credited into Government Treasury.

c) Used Railway Warrant Counterfoil No.142543 dated 09.08.2003 issued to him from Guwahati Rly Station to Chennai Central Railway Station is hereby written off and the Cost of Railway fare for the Unused Railway Warrant No.142544 dated 09.08.2003 issued to him from Chennai Central Rly Station to Guwahati Rly Station i.e. Rs.650/- (Rupees Six Hundred fifty) only be recovered from the outstanding dues payable to him and credited into Government Treasury.

d) Outstanding dues, i.e., Mess dues if any pending against him may also be recovered from the Mess advance/ Rum advance payable to him and the balance be deposited into Unit WAF.

2. The petitioner has joined the services of Central Reserve Police Force on 01.08.1997 and was transferred to Tripura in June 2003. The petitioner got married to one Mrs.Ramalakshmi on 29.06.2001. It is submitted by the petitioner that his wife was suffering from medical ailments viz., fits and other health issues. Thereafter, the petitioner's wife delivered a pre-mature baby in March 2002. After delivery she suffered certain health complications. In view of his wife's medical condition petitioner came to Chennai on earned leave on 10.08.2003. Though the petitioner had to report to duty on 11.10.2003, the petitioner submitted an application dated 06.10.2003 along with medical certificate stating that he was suffering from 'Infectious Hepatitis' and requested extension of leave for a further period of 30 days. However, as the medical condition of his wife did not improve the petitioner allegedly submitted a letter for resignation and discharge from service to the first respondent vide registered letter dated 16.02.2004. However as there was no order passed on the request made by the petitioner for being discharged from service a writ petition in W.P.No.21724 of 2004 was filed praying for a direction to the first respondent to pass appropriate orders on the petitioner's resignation and discharge application dated 16.02.2004, inasmuch as the petitioner can be deemed to be a deserter, otherwise. However the respondent in the counter submitted that no such application/ request for resignation was ever received and in any view such request is not in compliance with Section 11(1) of CRPF Act read with Rule 27 of CRPF Rules 1955, for there is no provision to accept the resignation of the petitioner while on leave. In other words any request for resignation ought to be made only after joining duty. In the meanwhile, the petitioner had allegedly communicated to the first respondent through his counsel about the filing of writ petition. However, the first respondent vide his reply dated 02.12.2004 stated that no such communication was received and a rejoinder was also submitted dealing with the non-receipt of the resignation letter and also

challenging the claim of Rs.55,188/- made by the first respondent towards cost of training the petitioner. The respondent did not reply to the letter dated 17.12.2004. However, the first respondent issued a notice for enquiry dated 29.03.2005 which was served on the petitioner on 19.04.2005. Though not relevant, however for the sake of completing the narration of events it may be relevant to note that a writ petition was filed in W.P.No.19491 of 2004 challenging the charge memo dated 08.07.2004 and this Court by order dated 17.06.2005 dismissed the said writ petition.

3. It is submitted by the petitioner, that he was on earned leave for a month in view of his wife's medical condition, that he was unable to report to duty on completion of earned leave as he was infected with hepatitis. Thereafter, neither notice for enquiry nor enquiry report was served on the petitioner. In the meanwhile, when the writ petition in W.P.No.21724 of 2004 came up for hearing it was submitted by the counsel for the respondents before this Court that the order of dismissal has already been passed and therefore nothing survives in the said writ petition. This Court by order dated 19.10.2009 recording the submissions of the learned counsel for the respondents directed the respondents to serve a copy of order dated 15.10.2005 to the counsel for the petitioner. The copy of the order dated 15.10.2005 was served on the petitioner's counsel on 09.10.2009. Aggrieved by the same, the petitioner had challenged the same by filing this writ petition.

4. To the contrary it was submitted by the learned counsel for the respondents that the petitioner had originally proceeded for 60 days of earned leave with effect from 11.08.2003 and ought to have reported to duty in the afternoon of 10.10.2003. The petitioner submitted a letter dated 06.10.2003 along with medical certificates and requested for extension of leave for a period of 30 days with effect from 06.10.2003. However after the expiry of the extended period the petitioner neither reported to duty nor made any request for extension of leave and thus over stayed his leave without proper permission of the competent authority which according to the respondent would constitute gross misconduct and punishable under Section 11(1) of the CRPF Act 1949 read with Rule 27 of CRPF Rules 1955. It was submitted that the letter of resignation was never received by the respondents and the same is false and fabricated. In view of the fact that the petitioner has over stayed his leave with effect from 11.10.2003, Court of Inquiry was conducted as per Rule 31 of CRPF Rule 1955 consequent to which the petitioner was declared as deserter with effect from 11.10.2003. Though the memorandum of charges was sent through registered post with acknowledgement to the residential postal address of the petitioner the same was returned with the endorsement

"petitioner refused to receive the same". The departmental enquiry was conducted against the petitioner for having wilfully over stayed with effect from 11.10.2003 in terms of the provisions contained under Section 11(1) CRPF Act 1949 read with Rule 27 of CRPF Rules 1955. It is submitted by the learned counsel for the respondents that the departmental enquiry was conducted in terms of the procedures, rules and regulations of the department and despite adequate opportunities being granted, the petitioner did not participate in the enquiry. Though the enquiry report was forwarded to the petitioner, he failed to respond and did not avail the opportunities that were extended and the respondents thus proceeded to conclude enquiry by imposing the punishment of dismissal from service. It is the further submission of the respondent that the plea of having sent a letter requesting for resignation apart from being denied as false, it is stated that it overlooks the fact that any request for resignation can be made by the petitioner only after joining the duty and there is no provision to consider the request for resignation while the petitioner is on leave.

5. Heard the learned counsel on both sides and perused the entire materials available on record.

6. This Court is of the view that there are far too many disputed questions of fact and thus it may not be appropriate for this Court to entertain this writ petition as would be evident from the following:-

a) The question as to whether the resignation was submitted by the petitioner and whether the same was received by the respondents is a disputed question of fact.

b) Secondly, the petitioner has stated that the impugned order dated 15.10.2005 was not served until this Court directed to serve the same on the counsel for the petitioner in W.P.No. 21274 of 2004. Whether any attempt was made to serve the impugned order on the petitioner prior to the directions of this Court, in the absence of any material on record with regard to the same, there is an element of uncertainty with regard to the said fact.

c) Whether the petitioner was extended adequate opportunities is again a question of fact and which is in dispute.

d) Whether the petitioner refused to receive the charge memo allegedly sent by registered post is again a disputed question of fact.

7. In the light of the above discussion it appears that this is a case where it is appropriate for the petitioner to avail the alternate remedy by way of an appeal. Thus the writ petition is disposed of with liberty to the petitioner to approach the appellate authority under the Central Reserve Police Force

Act/Rules and it is open to the petitioner to file a petition to condone the delay which shall be disposed of by the appellate authority in accordance with law, if the same is filed.

8. With the above observations, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Psa

To :

1. The Commandant,
Central Reserve Police Force,
42 Bn, Sri Nagar (C/O. 56 APO),
Jammu and Kashmir.
2. The Deputy Inspector General,
Central Reserve Police Force,
Group Centre, Avadi,
Chennai-600 065.

+1cc to Dr.D.Simon, Advocate, S.R.No.33390

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JPL(CO)
RGA(22/06/2022)