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W.P.No.4705 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.4705 of 2014

C.Srikumar

... Petitioner

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Home Department,
(Para Military Service)
New Delhi.

2.The Inspector General of Police,
CRPF, Southern Sector,
Road No.10-C, Jubilee Hills,
Near New MLA / MPs Colony,
Gayathiri Hills,
Hydrabad – 500 033.(A.P)

3.The Deputy Inspector General of Police,
Range HQR, CRPF,
Yelahanka, Bangalore – 64.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records on the file of the 3rd respondent made in Ref.No.R.XIII.4/2013-EC.III, dated 24.06.2013 and consequential order passed by the 2nd respondent made in ref.No.R.XIII.34/13 - Adm-7 dated 11.11.2013 and quash the same.



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For Petitioner : Mr.D.Bharathy

For Respondents
[R1 to R3]

: Mr.K.Gunasekar
Senior Panel Counsel for Central
Government

ORDER

The order of dismissal from service passed by the disciplinary authority, which was confirmed by the Appellate Authority/3rd respondent and Revision Authority/2nd respondent are under challenge in the present writ petition.

2. The writ petitioner joined as Constable (General Duty) in the Central Reserve Police Force. The petitioner states that due to his ill health and on account of illness of his wife, he was unable to attend the duty. The petitioner sent a representation to the Department for grant of leave and to extend the leave period along with the Medical Certificate for his overstay. However, the petitioner was dismissed from service through order dated 28.03.2011, stating that he remained unauthorisedly absent from attending duty. The petitioner states that an enquiry had been conducted in his absence and he had not received any communication from the Department regarding departmental enquiry. The ex-parte enquiry conducted and the consequential dismissal order passed were done



in the absence of the writ petitioner. Thus, the petitioner preferred an Appeal to the 3rd respondent on 17.10.2012 along with the relevant documents. However, the Appeal was rejected on 24.06.2013 and he preferred a Revision Petition before the 2nd respondent, who in turn, confirmed the order passed by the Disciplinary Authority and the Appellate Authority.

3. The learned counsel for the petitioner mainly contended that the petitioner was ill health and his wife was also suffering from medical complications and he was hospitalised along with his child. Under those circumstances, he overstayed in his native place and therefore, the genuine reasons furnished by the writ petitioner was not considered by the respondents even in Appeal. It is contended that an ex-parte enquiry was conducted in the absence of the writ petitioner and based on the ex-parte enquiry report, the order of dismissal from service was issued. Thus, the orders impugned are liable to be set aside.

4. The respondents have stated that the petitioner joined as Constable on 07.12.2005. After completion of basic training, he was posted in F/70 BN CRPF with effect from 02/2007 to 15.08.2008. He was relieved on transfer. Instead of reporting for duty, he availed 10 days leave



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and thereafter, absented himself for about 80 days. A Departmental Enquiry was conducted against the writ petitioner for his unauthorised absence from joining time and resulted in awarded of punishment of “stoppage of Annual Increment for a period of 2 years with cumulative effect”. The period of absence from 25.08.2008 to 12.11.2008, total 80 days was regularised as Dies Non.

5. In the year 2010, the petitioner was sanctioned 30 days Earned Leave with effect from 06.02.2010 to 07.03.2010 and he was due for joining duty by 08.03.2010, but the petitioner overstayed the said period of sanctioned leave. The petitioner neither submitted any written request for extension of leave nor informed the Competent Authority about reasons for his absence. During his overstay from leave, the petitioner was directed to report for duty forthwith. The said letters sent to the last known home address of the petitioner were returned by the Postal Authorities as Undelivered without mentioning any remarks. In spite of repeated directions, the petitioner neither reported on his own nor did he communicate in writing, explaining the reasons for absence. Due to his continuous unauthorised absence from duty, a Court of enquiry was ordered vide proceedings dated 20.05.2010 to enquire into the matter.

Based on the recommendation of the Court of Enquiry (COI), the



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petitioner was declared as Deserter from the Force in terms of Rule 31 of CRPF Rules 1955 vide Commandant 170 BN Office No.I.X-15/2010-170-EC-II dated 12.07.2010. A Departmental Enquiry was initiated against the petitioner in proceedings dated 02.08.2010. A Copy of memorandum of charges together with Annexures (I to IV) was sent to the home address of the petitioner through Registered Post with AD directing him to submit written statement of his defence within 15 days from the dated of issue of memorandum. The petitioner neither reported in person nor submitted any representation against the memorandum of charge within the prescribed time frame. The Enquiry Officer was appointed by the Disciplinary Authority i.e., Commandant 170 BN CRPF. The Enquiry Officer, who conducted the departmental enquiry and was ultimately left with no other option, but to set the petitioner ex-parte, as per laid down procedure, as the petitioner never reported / participated or even attempted to report / participate in the enquiry at any stage. However, the Enquiry Officer had given him all possible reasonable opportunities to the petitioner at each stage during the course of enquiry to defend himself, but he failed to avail the same. The Enquiry Officer had submitted the report to the Disciplinary Authority. Before taking any action on the report of the Enquiry Officer, a copy of enquiry report was sent to the petitioner at his home address vide



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Commandant 170 BN CRPF Office letter No.P.VIII-06/10-170-EC-II

dated 10.03.2011, directing him to submit further representation, if any, within 15 days from the issue of the letter for consideration before reaching on final decision. But the petitioner had not submitted any reply. Even thereafter, in order to provide an opportunity, the petitioner was directed to report for duty forthwith vide Commandant letter dated 10.03.2011, but the petitioner had not responded.

6. The respondents have stated that the petitioner in his five years of service, overstayed from joining time on transfer and leave in three times unauthorisedly without seeking prior permission of the Competent Authority and without having any genuine cause. The Departmental Enquiry was conducted as per the procedures laid down and by affording reasonable opportunities to the writ petitioner to defend his case. Thereafter, the Disciplinary Authority had left with no option, but to award the punishment of dismissal from service, after considering the Departmental Enquiry Proceedings.

7. The learned Senior Panel Counsel appearing on behalf of the respondents made a submission that the petitioner had served hardly about five years and within the short span of service, he remained unauthorisedly



absent on three occasions and finally, the Court of enquiry was ordered, who in turn, declared the petitioner as Deserter after following the procedures laid down under the Rules. Thereafter, the Departmental Enquiry was also conducted and thus, there is no infirmity in the matter of conducting the enquiry.

8. The learned Senior Panel Counsel for the respondents relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India and Others Vs. Datta Linga Toshatwad*** reported in ***[(2005) 13 SCC 709]***. The Apex Court of India held as follows:

“8. The present case is not a case of a constable merely overstaying his leave by 12 days. The respondent took leave from 16-6-1997 and never reported for duty thereafter. Instead he filed a writ petition before the High Court in which the impugned order has been passed. Members of the uniformed forces cannot absent themselves on frivolous pleas, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if it goes unpunished, will greatly affect the discipline of the forces. In such forces desertion is a serious matter. Cases of this nature, in whatever manner described, are cases of desertion particularly when there is apprehension of the member of the force being called upon to perform onerous duties in difficult terrains or an order of deputation which



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he finds inconvenient, is passed. We cannot take such matters lightly, particularly when it relates to uniformed forces of this country. A member of a uniformed force who overstays his leave by a few days must be able to give a satisfactory explanation. However, a member of the force who goes on leave and never reports for duties thereafter, cannot be said to be one merely overstaying his leave. He must be treated as a deserter. He appears on the scene for the first time when he files a writ petition before the High Court, rather than reporting to his Commanding Officer. We are satisfied that in case of this nature, dismissal from the force is a justified disciplinary action and cannot be described as disproportionate to the misconduct alleged.”

9. Unauthorised absence or overstaying leave is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the period of the unauthorised absence in which event the misconduct stood condoned. The Second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.

10. If the employer is satisfied that there was sufficient cause or justification for the unauthorised absence of the overstay after expiry of



leave, the employer may condone the act of indiscipline and sanction leave *post facto*.

11. Pertinently, a request for condoning the absence may be favourably considered, where, the unauthorised absence is for a few days or a few months and the reason for absence is stated to be the sudden, serious illness or unexpected bereavement in the family. But long unauthorised absence are not usually condoned. In fact, in Security services, where, discipline is of utmost importance, even a few days of overstay is viewed very seriously.

12. Where the employee, who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause / explanation for the absence.



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13. In the present case, the petitioner hardly served for about five years in the CRPF. Within a short span of his service, he remained unauthorisedly absent in three occasions. On earlier occasion, the Disciplinary Authority took a lenient view and imposed the punishment of stoppage of Annual Increment for a period of two years with cumulative effect. Even thereafter, the petitioner has not changed his conduct and remained unauthorisedly absent and thereafter, the case of the petitioner was referred to the Court of Enquiry. The Court of Enquiry declared the writ petitioner as Deserter and thereafter, the departmental disciplinary proceedings were initiated. Even the communications sent by the respondents / Authorities were returned by the Postal Authorities. The petitioner had not shown any interest to report for duty in order to respond to the communications sent by the Department. Thus, the conduct of the petitioner and the unauthorised absence is no doubt wilful and thus, this Court do not find any infirmity in respect of the procedures followed by the respondents.

14. The manner, in which, the enquiry was conducted by the respondents reveals that sufficient opportunities were afforded to the delinquent official, and each and every stage, the opportunity was granted



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to the writ petitioner to defend his case, but he had wilfully remained absent and not submitted any defence statement or participated in the process of enquiry. Even during the process of enquiry, the petitioner had not made any attempt to report for duty. This being the conduct of the writ petitioner, this Court do not find any reason to interfere with the order of dismissal from service issued by the Disciplinary Authority, which confirmed by the Appellate Authority and the Revision Authority.

15. Thus, the Writ Petition is devoid of merits and stands dismissed.

No costs.

13.07.2022

Jeni/Kak

Index : Yes

Speaking order : Yes

To

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(Para Military Service)
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- 2.The Inspector General of Police,
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S.M. SUBRAMANIAM, J.

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