



WP No.35732 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-10-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

**WP No.35732 of 2019
And
WMP No.36643 of 2019**

C.Parandhaman

..

Petitioner

VS.

- 1.The Director General,
CRPF, CGO Complex,
Lodhi Road,
New Delhi – 110 003.
- 2.The Inspector General of Police,
Karnataka and Kerala Sector,
CRPF, Yelahanka,
Bangalore – 560 064.
- 3.The Deputy Inspector General of Police,
Range Hqr., CRPF,
Yelahanka,
Bangalore-64.



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4. The Commandant,
77 Bn, CRPF,
Karaianchavadi,
Poonamallee,
Chennai – 600 056.

5. The Commandant,
78 Bn, CRPF,
Zubza, Kohima,
Nagaland.

..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the fifth respondent's order dated 31.08.2018 in proceedings No.P-VIII-3/2018-Estt-II and subsequent appeal order dated 09.05.2019 of the third respondent in proceedings No.R.XIII.01/2019-(78)-EC.3(R/BLR) and revision order dated 22.10.2019 of the second respondent in proceedings No.R-XIII-4/2019-Adm-1 and quash the same directing the respondents to reinstate the petitioner into service in the 77 Battalion, CRPF, Poonamallee and allow him to proceed on voluntary retirement considering the health conditions of his disabled/ailing daughter.

For Petitioner : Ms.R.Meenakshi

For Respondents : Mr.V.Ashok Kumar,
Central Government Standing Counsel.



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ORDER

The order of dismissal from service, which was confirmed by the Appellate Authority and the Revisional Authority, are under challenge in the present writ petition.

2. The petitioner joined as Constable in Central Reserve Police Force on 01.10.1994. After completing 23 years of clean service, the petitioner's daughter suffered with certain serious ailments and the petitioner had to attend his daughter for the purpose of taking continuous treatments. The petitioner states that his first two children were delivered and expired due to prematurity and congenital problems. Thereafter, a female child was born to the petitioner during February 2007. The daughter of the petitioner was born in Kovai Medical Centre and Hospital Limited, Coimbatore with skin problems. Thereafter, the child of the petitioner was admitted in the KG Hospital at Coimbatore on the 24th day and the Dermatologists of the Hospital opined on 20.03.2007 that “the patient is admitted with complaints of generalised bullous eruption including palms and soles. Starting as small



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blisters, progressively increasing in size. Some initially seropurulent and some haemorrhagic rupturing, ulceration and healing without scars. Oral mucosal lesions are present. Nails show dystrophic changes with onycholysis. No history any disease in mother during pregnancy.”

3. The petitioner further states that he took continuous treatment for his daughter from 2007 at various Hospitals viz., Madras Medical College Hospital, Chennai, Kanchi Kamakoti Child Trust Hospital, Chennai, Apollo Children's Hospital, Chennai, Ramachandra Medical Centre, Chennai and Dr.Rabindran's Health Care Pvt. Ltd., till November 2014. After treatment from the above Hospitals and incurring huge expenditures, no improvement was seen in the health of the petitioner's daughter. Finally, the daughter of the petitioner was referred to the CGHS, SRTC, K.K.Nagar, Chennai, where she was examined by the Board of Doctors and issued Disability Certificate dated 23.12.2014. As per the said Certificate, she has been declared as 60% disability. The Tiruvallur District Disabled Rehabilitation Officer has also issued Disabled Certificate/Card for the petitioner's daughter for 60% disability.



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4. The petitioner states that the Chief Medical Officer, Composite Hospital (CH), CRPF, Avadi Chennai had also issued Medical Certificate on 23.04.2015 that Baby Iniya, D/o. Ct/GD Paranthaman is suffering from “EPIDEMOLYSIS BULLOSA SIMPLEX” throughout body, a congenital disease of the skin-generalised bullous eruption of the whole body, purulent haemorrhagic blisters rupturing, ulceration and healing. Oral nail and tongue also involved. The daughter of the petitioner requires continuous antibiotics lifelong regular dressing. Now she is taking continuous treatment from GH, Chennai. The petitioner further states that his daughter's right eye is not functioning properly and it has also been found recently that she has hole in the heart and she is also having back bone pain. She is unable to walk independently and she cannot go to school alone, for which she requires the help of the petitioner. The petitioner bringing his daughter to school at morning and afternoon. The daughter of the petitioner is unable to eat like normal child and she can take only liquid food viz., fruit juice and milk.



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5. The petitioner states that as per the instructions given in

Government of India, Ministry of Personnel and Training OM No.42011/3/2014-Estt (Res) dated 06.06.2014 and 17.11.2014, the Government employee, who has disabled child served as the main care giver of such child, any displacement of such Government employee will have a bearing on the systemic rehabilitation of the disabled child since the new environment/set up could prove to be a hindrance for the rehabilitation process of the child. Therefore, a Government Servant, who is also a care giver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.

6. The petitioner was transferred from 77 Battalion CRPF, Poonamallee to 78 Battalion CRPF, Nagaland and he was put into embarrassing position considering the health condition of his child. There was no one can take care of her. Hence he made a representation dated 16.11.2015 to the IGP, S/S, CRPF Hyderabad along with all the medical documents with a request to repost him to the places where his child can be given better treatment and also where Kenriya Vidyalaya School is available.



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However, the representation submitted by the petitioner was not considered.

Thus he approached the High Court. Pursuant to the interim stay granted in the writ petition, the petitioner continued in the same post and subsequently the said writ petition was dismissed in the year 2017.

7. The petitioner was issued with a charge memorandum in proceedings dated 31.08.2018. The allegation in the charge memorandum was that he was relieved from 77 Battalion on 31.08.2017 and thereafter, he remained absent from duty and not joined in the transferred post at Nagaland. The petitioner had not responded to the charge memorandum and not participated in the process of an enquiry conducted by the Department. Thus an ex parte enquiry was conducted and the Enquiry Officer submitted the Final Report, which was accepted by the Disciplinary Authority and a final order was passed imposing the penalty of dismissal from service. The appeal filed by the petitioner before the Deputy Inspector General of Police was also rejected. The revision filed thereafter before the Authority Competent was not considered and rejected. Thus the petitioner is constrained to move the present writ petition.



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8. The learned counsel for the petitioner made a submission that on extreme circumstances, the petitioner remained unauthorisedly absent in order to take care of his disabled daughter. His daughter's medical records were already submitted before the Competent Authorities with a request to repost him in a place where his daughter can be given better treatment and provide his daughter education in Kendriya Vidyalaya School. Since the Authorities have not considered his request, the petitioner approached the High Court. Pursuant to the interim order, he continued in the same post and after dismissal of the writ petition, he could not join in the transferred place at Nagaland and not reported for duty without any intention.

9. The learned counsel for the petitioner reiterated that there was no intention on the part of the writ petitioner to remain unauthorisedly absent and on account of unavoidable situation, he was not in a position to report for duty in a far off place at Nagaland. Therefore, the unauthorised absence of the writ petitioner cannot be construed as intentional. The petitioner, who was in distressed mood and due to mental pressure, the



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petitioner had not attended the departmental disciplinary proceedings and allowed the Authorities to conclude the proceedings ex parte.

10. It is contended that the petitioner had completed 23 years of clean service and remained unauthorisedly absent for about 60 days and thereafter, an enquiry was conducted and the penalty of dismissal from service was imposed. The petitioner was not a habitual offender. He has not earned any previous punishment. Unfortunately, the daughter of the petitioner also died. Under these circumstances, the learned counsel for the petitioner states that the punishment of dismissal from service is excessive and therefore, the case of the writ petitioner is to be considered.

11. The learned Central Government Standing Counsel, appearing on behalf of the respondents, objected the contentions raised on behalf of the learned counsel for the petitioner by stating that the petitioner remained unauthorisedly absent for more than 60 days. The petitioner had not even participated in the process of enquiry. An ex parte enquiry was conducted by following the procedures as contemplated under the Rules and



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therefore, there is no infirmity in respect of the proceedings conducted and thus the penalty of dismissal from service was imposed on the writ petitioner for the proved misconduct.

12. The learned Central Government Standing Counsel, appearing on behalf of the respondents, reiterated that, no doubt, the petitioner submitted a request application for re-transferring him in the same place or in the nearby place. Further he has already submitted his daughter's medical certificates. The Authorities on administrative reasons had not considered the said application of the writ petitioner and thereafter the petitioner approached the High Court and an order of interim stay was passed. Pursuant to the interim stay, he was allowed to continue in the 77 Battalion, Poonamallee. After the dismissal of the writ petition, the petitioner ought to have joined in the transferred place at Nagaland. Since he failed to join in the transferred place and he remained unauthorisedly absent. Thus the Authorities have initiated departmental disciplinary proceedings against the petitioner. Thus there is no infirmity in respect of the procedures followed and the punishment imposed on the writ petitioner. Consequently,

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the writ petition is to be rejected.

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13. Considering the arguments as advanced between the respective leaned counsels appearing on behalf of the parties to the lis on hand, the unauthorised absent of the writ petitioner is a misconduct under the Rules. There is no infirmity in respect of the procedures followed by the respondents in conducting the departmental disciplinary proceedings. Admittedly, the petitioner had not availed the opportunities provided to him for the purpose of defending his case. However, the mitigating factors and the long services rendered by the writ petitioner are also to be considered for the purpose of imposing the punishment.

14. The facts are not in dispute between the parties in the present case.

15. The petitioner was transferred from 77 Battalion, Poonamallee, Chennai to 78 Battalion at Nagaland. Pursuant to the interim orders granted by this Court he continued in 77 Battalion till the dismissal of



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the writ petition filed by him. However, the petitioner was relieved from 77 Battalion on 31.08.2017. Thereafter, the petitioner had failed to report for duty for about 60 days.

16. Regarding the departmental disciplinary proceedings, the Court in the exercise of judicial review must restrict its review to determine whether:-

- (i) The rules of natural justice have been complied with;
- (ii) The finding of misconduct is based on some evidence;
- (iii) The statutory rules governing the conduct of the disciplinary enquiry have been observed;
- (iv) Whether the findings of the Disciplinary Authority suffer from perversity;
- (v) The penalty is disproportionate to the proven misconduct.

17. As far as the facts established in the present case is concerned, the rules of natural justice had not been violated. The petitioner was afforded with an opportunity to defend his case, but he failed to defend



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his case by availing the opportunity. Thus the Authorities Competent had complied with the principles of natural justice and there is no infirmity as such. The findings of misconduct is also based on some evidence.

18. The respondents had established that the petitioner remained unauthorisedly absent for about 60 days. Thus the charge of unauthorised absent was established with reference to the service records. There is no perversity regarding the findings of the Enquiry Officer with reference to the charges framed against the writ petitioner.

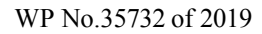
19. The Rules applicable to the petitioner governing the conduct of the departmental disciplinary proceedings were also absorbed by the respondents. Thus the findings of the Disciplinary Authority did not suffer from any perversity. In other words, this Court do not find any infirmity in respect of the findings of the Enquiry Officer, which was accepted by the Disciplinary Authority. However, this Court has to consider the proportionality of punishment with reference to the misconduct proved against the writ petitioner.



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20. Regarding the proportionality of punishment, the Court has to consider whether the order of dismissal from service can be justified or not and at no reasonable employer would have imposed the extreme punishment of dismissal from service in like circumstances. In this regard, it is relevant to consider the principles laid down by the Hon'ble Supreme Court of India in the case of **State of Punjab vs. Dr.P.L.Singla [(2008) 8 SCC 469]**. In such circumstances, the position held by the employee, the period of absence cause/explanations for the absence are also to be considered. If the reasons furnished by the employer is genuine and the proved misconduct of unauthorised absence was unintentional, then the Authorities are expected to take a lenient view.

21. That apart, if the employee was a habitual unauthorised absentee, then such a lenient view may not be required. Regarding the first time unauthorised absence and more-so, an employee, who had completed 23 years of clean service if remained unauthorisedly absent during one spell and submitted certain medical documents and established the seriousness



22. In the present case, it is not in dispute that the petitioner had served 23 years in the Central Reserve Police Force without earning any punishment. It is not in dispute that his daughter was taking treatment continuously and the records are made available in Composite Hospital, CRPF at Avadi. Therefore, the petitioner has not suppressed any facts regarding the medical treatment given to his daughter continuously at various Hospitals in and around Chennai. Finally, the petitioner lost his daughter also.

23. When the petitioner made a representation to the Authorities to retransfer him in any nearby place, the said application was not considered by the Authorities taking note of the genuine circumstances



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explained by him.

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24. The learned Central Government Standing Counsel, appearing on behalf of the respondents, in this regard, has contended that the petitioner was transferred on administrative grounds. No doubt, administrative transfers are inevitable in Uniformed Services. However, in certain extreme circumstances, the Competent Authorities are expected to be considerative based on the genuine reasons, if any, established by the Personnel working in the Force.

25. In the present case, the petitioner has not demanded any particular place. He made a request to transfer him to a place, where he can provide better treatment to his daughter and provide education in any Kendriya Vidyalaya School. However, the petitioner was transferred to Nagaland wherein the petitioner reasonably thought he cannot provide better treatment to his daughter. Thereafter, he remained unauthorisedly absent for about 60 days and therefore, the misconduct committed by the petitioner cannot be held to be intentional. Unintentional unauthorised absent for a



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spell at the first instance need be considered for the purpose of imposing the major penalty of dismissal from service.

26. In the case of **Krushnakant B. Parmar vs. Union of India [(2012) 3 SCC 178]**, the Hon'ble Supreme Court of India considered the question is the employee alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether “unauthorised absence from duty” amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances. In the present case, the unauthorised absence was due to compelling circumstances, which cannot be disputed.

27. Thus, in the present case, the punishment of dismissal from service imposed is harsh and disproportionate with the gravity of the charges proved and for all these reasons, this Court is inclined to consider the present writ petition.



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28. Accordingly, the impugned order of dismissal from service issued by the fifth respondent dated 31.08.2018 in proceedings No.P-VIII-3/2018-Estt-II, subsequent appeal order dated 09.05.2019 of the third respondent in proceedings No.R.XIII.01/2019-(78)-EC.3(R/BLR) and the revision order dated 22.10.2019 of the second respondent in proceedings No.R-XIII-4/2019-Adm-1, are quashed and the respondents are directed to reinstate the petitioner in service within a period of four weeks from the date of receipt of a copy of this order. However, the petitioner is not entitled for backwages, since the principles of 'No Work, No Pay' would be applied, but he is entitled for continuity of service.

29. With the abovesaid directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No.

Internet : Yes/No.

Speaking Order/Non-Speaking Order.

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CRPF, CGO Complex,
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S.M.SUBRAMANIAM, J.

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