

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2114 of 2016

In
Civil Writ Jurisdiction Case No.378 of 2011

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Priya Ranjan Kumar, son of Sri Surya Deo Pandey, resident of village -
Barahrup, P.O. Warishpur, Police Station - Bhagwanpur, District – Vaishali.

... .. Appellant/s

Versus

1. The Union Of India through the Director General, C.R.P.F., New Delhi.
2. Inspector General of C.R.P.F. Sector Bihar, Ashiana Digha, Patna.
3. D.I.G. C.R.P.F. Group Centre, C.R.P.F. Range Head Quarter, Muzaffarpur, Bihar.
4. The Commandant 133 Battalion, C.R.P.F. HEC Sector - 2, Dhurwa Ranchi, Jharkhand.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Mrigank Mauli, Senior Advocate
Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mr. Manoj Kumar, C.G.C

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-09-2023

The question arising in the appeal is as to whether the dismissal of the writ petitioner/appellant from the services of the Central Reserve Police Force (for brevity, ‘CRPF’) and the rejection of his appeal was proper. The learned Single Judge by the impugned judgment found that the dismissal was proper, since the petitioner had unauthorizedly remained absent after the sanctioned leave. The medical grounds stated by the petitioner was also not



properly substantiated. The petitioner also had refused to appear in the enquiry and the records revealed that the conduct of the petitioner was not above-board; especially regarding certain false statements made by him and unnecessary allegations raised against the Commandant and the Enquiry Officer.

2. We have heard Sri Mrigank Mauli, learned Senior Counsel appearing for the appellant and Sri Manoj Kumar, learned Central Government Standing Counsel appearing for the respondent-CRPF. The learned Senior Counsel would, in addition to the grounds raised in the writ petition, contend that there was no Presenting Officer appointed in the enquiry. Reliance is also placed on a decision of the Hon'ble Supreme Court in *State of Uttar Pradesh v. Saroj Kumar Sinha, (2010) 2 SCC 772*. The enquiry officer cannot act as a Judge and the Prosecutor; in which event, there would be a question raised about his neutrality. Immediately, we enquired with the learned Senior Counsel as to whether such a contention was raised in the writ petition; since we found that the enquiry report was before the learned Single Judge, who had examined it. The learned Senior Counsel conceded that there was no such ground raised.

3. The learned Central Government Standing Counsel sought to uphold the judgment of the learned Single Judge.

4. The appellant was appointed as a Constable in the



CRPF on 05.09.1994 and according to him applied for leave from 19.01.2009 to 17.02.2009; on being informed of his mother's death. While continuing on leave, he suffered from a back problem and he visited the Command Hospital at Muzaffarpur which referred him to Shri Krishna Medical College and Hospital, Muzaffarpur. Since he was undergoing treatment, he had sought for extension of leave, a number of times, which was not responded to. A representation was made before the Director General, CRPF, complaining against the Commandant and alleging that the Commandant was biased against the appellant and he had been continuously refusing lighter duty despite his back problem.

5. Admittedly, the appellant did not chose to participate in the enquiry and an *ex parte* enquiry was conducted. Based on the enquiry report, the Commandant-cum-Disciplinary Authority required the appellant to show cause after forwarding him the enquiry report. The contention raised against the second show cause is that despite 15 days time granted to show cause from the receipt of the enquiry report, the Commandant peremptorily passed the order of dismissal before expiry of the time granted. To substantiate this contention, the appellant also asserts; without any substantiation, that he received the communication dated 13.04.2010 only on 03.05.2010 and though he filed his reply on



11.05.2010, the dismissal order was passed before that on 07.05.2010.

6. The learned Single Judge found that the appellant had proceeded on leave which extended from 19.01.2009 to 17.02.2009, but never returned back to duty. Even before the appellant proceeded on leave, he had been complaining about a chronic back pain, for reason of which he was granted a light duty. Despite this, when his continued leave applications, after overstaying his leave, were not sanctioned, he raised an allegation against the Commandant. It has also come out from the record that though the leave was applied for on the ground of his mother's death, later he alleged that it was his grand mother who died. The records reveal that even his grand mother died only on 19.01.2009; in which circumstance he could not have taken leave for reason of the death alone. It has also been found that despite a direction to report before the Medical Board, the appellant refused so to do. His contention was also that he received the letter to appear before the Medical Board on 08.10.2009; when the date of appearance was indicated as 09.10.2009, thus disabling him from reaching the location. However, it has come out that the acknowledgment card of the service of the letter was received by the wife of the appellant on 05.10.2009. The appellant, hence, was found to have been misrepresenting and falsifying facts before his employer and



this Court.

7. Be that as it may, it is admitted that the appellant overstayed his leave, for which disciplinary action was taken. The appellant had produced certain medical documents, on perusal of which it was found by the learned Single Judge that the certificates suggested only symptomatic treatment and nothing beyond. The appellant was certified as suffering from back pain, requiring rest which period ended on 28.06.2009, as per the observation of the consulting Doctor, seen from page 5 of the supplementary affidavit dated 29.05.2009. However, the appellant did not then join duty and later it was reported that he was suffering from hepatitis since 03.07.2009; which also stood cured as on 08.09.2009. Again, he waited for his back pain to resurface upon which a medical certificate was obtained from the Homoeopathic Medical College and Hospital at Muzaffarpur with effect from 14.09.2009. The intervening period of fitness was ignored by the appellant and he did not chose to rejoin duty.

8. Further, as we noticed, despite repeated directions, the appellant failed to appear before the Medical Board. The fact of the medical certificates having not disclosed, a medical situation warranting long absence and the subsequent refusal of the appellant to appear before the Medical Board; assumes relevance, in declining relief to the appellant. A contention was raised that



there was no Presenting Officer appointed, but, the contention was for the first time raised at the time of hearing before this Court and not before the learned Single Judge; before whom the enquiry files were produced.

9. *State of Uttar Pradesh* (supra) was a case in which there was no oral evidence taken and the documents were not proved. There is no such contention taken in the present case. Even if no Presenting Officer was examined, as long as the enquiry officer did not elicit any answers from the witnesses who produced the document, there could be absolutely no defect found in the enquiry proceedings. As was noticed, no such contention was raised at any point of time by the appellant. The absence or rather the overstayal of leave is very evident from the facts disclosed and it is admitted by the delinquent/appellant. The appellant despite non-sanctioning of the extension of leave sought for, failed to appear before his Controlling Authority. If the contention was of physical incapacitation, borne out by medical certificates; then he should have appeared before the Medical Board constituted by the employer, who would have examined and confirmed the ailment. The appellant stubbornly refused so to do and also made false statement of the directions to report before the Medical officer having been received far later, to which he actually was established to have received it. Even in the enquiry, the



appellant refused to participate. The appellant also raised unsubstantiated allegations against the Commandant and against the Enquiry Officer appointed. Though the issue of unsubstantiated allegations having been mischievously raised does not form part of the terms of the domestic enquiry; it definitely restrains this Court from attempting any equitable consideration of the appellant's case. The appellant's case as set out in defence cannot be countenanced at all and neither does his case warrant any compassion or leniency. The appellant also has approached this Court with tainted hands; as discernible from the deliberate falsehood stated on various facts, further disintitling the appellant from any equitable relief.

10. We find absolutely no reason to interfere with the judgment of the learned Single Judge and dismiss the appeal, leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sunil/-

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