

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1307 of 2019

In
Civil Writ Jurisdiction Case No.12697 of 2016

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Santosh Kumar Son of late Kamaljeet Prasad, Resident of Village- Gaighat,
P.S. Simri, District Buxar.

... .. Appellant/s

Versus

1. The Union of India through the Director General of Police, Central Reserve Police Force, New Delhi.
2. The Inspector General of Police, CRPF, Ranchi, Jharkhand.
3. The Deputy Inspector General of Police, CRPF, Dhurwa, Ranchi, Jharkhand
4. The Commandant, Battalion, C.R.P.F., Udaipur (South Tripura)
5. The Commandant, 114 Battalion, C.R.P.F. Leidren Camp Jalandhar, Punjab.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Bhola Kumar, Advocate
For the Respondent/s	:	Mr. S.D. Sanjay (ADSG)
For the UOI	:	Mr. Kumar Priya Ranjan, CGC
		Mr. Girish Nandan Abhishek, Advocate
		Ms. Nirmala Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-09-2023

The impugned judgment in appeal, rejected the prayer of the petitioner to interfere with the punishment of dismissal on the ground of proportionality; rejecting his prayer that the harsh penalty of dismissal was not warranted for unauthorized absence of 50 days. The petitioner is said to have



proceeded on sanctioned leave for the period 13.12.2004 to 10.02.2005 and alleged to have not reported for duty on 11.02.2005. Proceedings were initiated, ex-parte and an order of dismissal was passed, which went through a series of litigations, eventually culminating, again, in an order of dismissal after due enquiry conducted. The challenge made on various grounds was rejected by learned Single Judge of this Court, but the appellate authority was directed to consider mitigating circumstances, if any, which could result in a lesser punishment. The Appellate Authority having rejected the claim and affirmed the order of dismissal, the petitioner is once again before the writ court.

2. The learned Single Judge found that the challenge against the disciplinary proceedings and the order of dismissal was earlier concluded in C.W.J.C. No. 238 of 2012 and there could be no fresh consideration made. The petitioner was relegated to the appellate authority only for consideration of a lesser punishment, which prayer has been rejected by the appellate authority. It was found based on binding precedents of both this Court and the Hon'ble Supreme Court that unless the punishment imposed, shocks the conscience of the Court, there cannot be interference caused under Article 226 of the



Constitution of India, even on the principles of proportionality. The disciplinary authority's prerogative to impose punishment and the exceptional circumstances in which an interference could be caused, was highlighted to dismiss the writ petition; against which the instant appeal is filed by the petitioner, the dismissed employee.

3. Learned counsel for the petitioner invited this Court's attention to Annexure-2 order passed at the first instance by a learned Single Judge of this Court. It was pointed out that the extenuating circumstances in which the petitioner could not join duty has been explained therein. The petitioner while challenging the advisability of imposing a punishment of dismissal for unauthorized absence of a mere 50 days, also takes the aid of the statute, to urge the illegality involved. Reliance is specifically placed on Section 10 of the Central Reserve Police Force Act, 1949, wherein less, heinous offences are listed out. Clause (m) of Section 10 speaks of absenting without leave or overstaying the leave granted without sufficient cause. It was pointed out that the offence of overstaying the leave is categorized as a less heinous offence, which is punishable with imprisonment for a term and fine or even both. Rule 31 of the Central Reserve Police Force Rules,



1955, is also referred to, which permits a proceeding under Section 10, only if the absentee does not return on his own free will, or is not apprehended within 60 days of the commencement of the desertion. In the case of the petitioner, the overstayal was only of 50 days, thus, prohibiting a proceeding under Section 10, and in that context, punishment of dismissal is gross, illegal and arbitrary. The learned counsel would also rely on *Union of India v. Giriraj Sharma* reported in *AIR 1994 SC 215*, with reference to the very same service wherein the order of dismissal for overstaying the period of leave, was held to be un-called for.

4. Learned Standing Counsel for the C.R.P.F. argues that the only consideration could be as to whether there was any mitigating factor in the case of the appellant, to award a lesser punishment. The story set up by the appellant of having joined the transit camp and then travelling to Guwuhati, where he was left to fend for himself in the railway station are all cooked up stories not supported by any documents. This is the third round of litigation and the petitioner cannot reagitate the challenge against the order of the disciplinary authority, *per se* finding him guilty of the offence of unauthorized absence, since the same stands



concluded by the judgment in C.W.J.C. No. 238 of 2012. The respondents would rely on ***Union of India v. Ex-Constable Ram Karan 2022 (1) SCC 373*** which upheld the primacy of the discretion vested with the disciplinary authority to impose punishment, commensurate with the nature of the offence proved; which was also held to be not possible of usurpation by a Court.

5. The period of leave and overstay as alleged by the respondent employer have already been stated. We would first look at the litigations initiated by the appellant. Annexure-2 is the judgment in C.W.J.C. No. 7369 of 2005, which challenged the order of dismissal after an *ex-parte* proceeding. The proceeding was initiated for failure of the appellant to join the battalion on 11.02.2005. A reference was made to the supplementary counter affidavit filed by the petitioner which stated that having availed 60 days earned leave till 10.02.2005, he joined the Transit Camp at Jammu on 11.02.2005 and due to heavy snowfall on the Jammu-Srinagar Highway, he was detained in the transit camp on 14.02.2005. It was the statement of the petitioner that thereafter, he was allowed 15 days earned leave from 15.02.2005 to 01.03.2005 so as to enable the weather conditions to improve. Again, he



boarded Archana Express to report at the Transit Camp, Jammu on 01.03.2005 but due to obstruction on the railway track beyond Ambala, he reached Jammu on 03.03.2005, at which instance, he was again detained at Jammu till 10.03.2005, when again he was allowed 20 days earned leave with effect from 11.03.2005 to 30.03.2005. On 31.03.2005, he is said to have reported at Transit Camp, Jammu, and proceeded with his battalion to Tura in the State of Meghalaya via Guwahati and on the way at Guwahati, he was left to fend for himself at the railway station by the officer-in-charge, who refused to allow him to board the vehicle going to Tura. He is said to have stayed in the platform on 04.03.2005; purchasing a platform ticket, after which he proceeded back to Patna. He also made representations on 15.04.2005 and 25.04.2005. The learned Single Judge impressed by the aforesaid submissions, as also noticing that it was an *ex-parte* proceeding, directed the petitioner's reinstatement and payment of the entire arrears of salary for the period between 11.02.2005 till the date of his dismissal. A contempt petition was filed in which compliance was recorded, of the petitioner having joined pursuant to the office order dated 22.01.2009. On 05.05.2009, he was also reinstated with effect from 15.12.2008.



6. The disciplinary proceedings were initiated and concluded after which the order of dismissal was again passed, which was challenged in C.W.J.C. No. 238 of 2012. Annexure-4 judgment indicates that the learned Single Judge was not impressed by the contentions raised based on Section 11(1) of the Act of 1949 and the decision in Giriraj Sharma (*supra*). The learned Single Judge found that under Section 9 of the Act, major punishments are prescribed while minor punishments are prescribed under Section 11. The term punishment that can be imposed under Section 11 of the Act was found to be possible of imposition, in lieu of or in addition to the order of suspension or dismissal. The petitioner was found to have overstayed his leave by 50 days but, again, the submission of the petitioner that he had a reasonable explanation was reckoned to direct the appellate authority to consider, whether the petitioner has made out a case for lesser punishment, in which event, it was also directed that a minor punishment could be imposed. The finding on the offence of overstaying of leave hence, stands concluded by the aforesaid judgment.

7. Now we come to the reference made to the statutory provision and precedents. Section 10 describes less



heinous offences for which imprisonment for a term not extending to 1 year or fine, or both, could be imposed, which fine can only extend to 3 months pay. As was rightly pointed out by the appellant, Rule 31 restricts any such proceeding to be initiated against the appellant since the overstay of leave was less than 60 days. This is not to say that the employer would be disabled from imposing any punishment, if the overstay is below 60 days.

8. The scheme of the penal provisions as discussed by the learned Single Judge in C.W.J.C. No. 238 of 2012 appeals to us. Section 9 to 14 are under the sub-headings offences and punishments; Section 9 listing out the heinous offences while Section 10 lists out less heinous offence with prescription of the maximum punishment for both, which is in the nature of imprisonment, a fine or both. Section 11 specifically speaks of minor punishments, which could be imposed by the appropriate authority, which can be *in lieu* of or in addition to suspension or dismissal. Hence, the punishment of suspension or dismissal does not come under the said chapter and it would be covered by the rules of classification, conduct & appeal regulating departmental proceedings, as brought out by the Central Government. The



corollary to what is stated in Section 11, would be that the punishment of suspension or dismissal does not fall under the punishment imposed for offences committed and this could be in addition to the punishments imposed under Section 9 to 11; which punishment under Section 9 to 11 could also be *in lieu* of suspension or dismissal.

9. We also look at the decisions relied upon by both states. Giriraj Sharma (*supra*) was a case in which the employee overstayed period of leave by 12 days and as has been found by the Hon'ble Supreme Court, it was on account of unexpected circumstances. Reading of the decision would not indicate as to the nature of the unexpected circumstances but, the learned Judges were satisfied with the explanation, and it was in such circumstances that the order of the High Court interfering with the punishment of dismissal was affirmed. Ex-constable Ram Karan (*supra*), it has to be emphasized was with respect to a very serious offence of the delinquent employee having misbehaved with the complainant; a doctor, threatened and abused him and also raised false allegations of the complainant having sexually abused the employee's wife. We are, however, more concerned with the principles laid down therein, of a punishment



imposed by the disciplinary authority, not being interfered with, unless it is found shocking to the conscience of the Court. It was held that, even if such a contingency arises, it was not for the Court to impose another punishment. The matter should be relegated to the disciplinary authority to reconsider the quantum of penalty. Immediately, we notice that this was once done in writ proceedings. Only in rare and exceptional cases, to shorten litigation, the Court's should substitute its own view as to the quantum of punishment which should also be supported with cogent reasons. Section 11 of the Act of 1949 was specifically referred to and it was concluded that the authorities are empowered to award punishment of suspension or dismissal to a member of the force, who is found guilty of any of the offences listed out in the Act and in addition to or *in lieu* of such penalty, punishments mentioned in clause (a) to (e) may also be awarded.

10. It is with these principles in mind, that we have to consider the issue raised in the appeal, as argued by the learned counsel for the respondents. For consideration of a lesser punishment, there can be no adjudication of the disciplinary proceedings initiated and concluded and the



finding of guilt of the misconduct alleged. The Appellate Authority was directed to consider the question of mitigating circumstances which consideration is found in Annexure-6. The contention before the Appellate Authority was also as stated hereinabove, from Annexure-2 judgment, in the first of the writ petitions filed by the appellant herein. The disciplinary authority has found that there is absolutely no documentary evidence regarding the alleged reporting for duty at Jammu and detention at the transit camp on 11.02.2005, 03.03.2005 and 31.03.2005. It was observed that the transit camps are established at major rail heads to facilitate a safe and secure journey for the personnel of the force. When reporting at the transit camp, it is the duty of the individual concerned to deposit the leave certificate with the designated authority at the transit camp to enable the authority to send him to his unit through the first available convoy, after duly recording the date and time of his arrival and departure from transit camp. If the appellant had reported in the transit camp and detained therein, definitely there would have been entries recorded in his leave certificate, which he has not submitted along with the appeal. Further, the alleged leave granted to him; on the ground of inclement climate, from the transit camp



has also not been proved with documentary evidence. This makes the story set up by the appellant to be a cooked-up story, as rightly argued by the learned counsel for the respondents.

11. The Appellate Authority, not only found the overstay of leave from 11.02.2005, but also found that the appellant had never reported for duty on 31.03.2005. It was also found that after reinstatement and disbursal of arrears of salary, the appellant again deserted, from the unit headquarters on 28.12.2008. When, the *de novo* disciplinary enquiry was under progress, again the appellant deserted the unit on 04.07.2010 and he was summoned to appear on 05.07.2010 by the enquiry officer.

12. We find absolutely no reason to interfere with the order of the disciplinary authority as confirmed by the appellate authority. The appellant's explanation which impressed this Court at the first instance has been proved to be a cooked up story. If the appellant's explanation was correct, he would have had, with him, the original leave certificate with the endorsement of the transit camp regarding his reporting for duty and the further sanction of leave asserted by him, would also be available; none of which was produced by



the appellant. We cannot also ignore this subsequent conduct of the appellant after reinstatement in service, when a proper disciplinary enquiry was proceeded against him.

13. We find absolutely no reason to entertain the appeal and dismiss the same affirming the judgment of the learned Single Judge.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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