

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2827 OF 2010

Kishor s/o Bhauraoji Giri,
Aged about 38 years,
R/o. Gadge Nagar, Near Jyoti High School,
Plot No. 135-B, Nagpur-400 009.

..... **PETITIONER**

...V E R S U S...

1. Deputy Inspector General of Police,
(Communication),
Central Reserved Police Force,
CGO Complex, Lodhi Road, New Delhi.
2. The Commandant,
2 Signal Batalian CRPF,
Chandragupta, Hyderabad.
3. Officer Commanding,
E/2, Signal BN, CRPF,
Hingna Road, Nagpur,
Now : In the Office of the Inspector General of Police,
Western Sector, 4th Floor, CBD,
Belapur New Mumbai-400 614

..... **RESPONDENTS**

Shri R.B.Khan, Advocate for petitioner.
Ms Neerja G. Chaubey, Advocate for respondents.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
DATE :- 6th JULY, 2023

JUDGMENT (PER A.S.CHANDURKAR, J.)

The challenge raised in this writ petition is to the order of dismissal imposed by way of penalty on the petitioner on 03.01.2008, the

order dated 26.05.2008 dismissing the appeal preferred against that order as well as the order dated 28.10.2009 passed by the Revisional Authority maintaining the order of penalty.

2. The petitioner came to be appointed as Constable with the Central Reserve Police Force - CRPF on 01.04.1990. After obtaining necessary training, the petitioner was posted as Radio Operator. During the course of his service, he came to be issued a movement order dated 10.05.2007 by which he was asked to report from BN CRPF, Nagpur to BN CRPF, Hyderabad. On the ground that the petitioner refused to receive the movement order and failed to proceed to Hyderabad, a Departmental Enquiry was ordered to be held against the petitioner on 30.07.2008. The petitioner was issued a charge-sheet that he had disobeyed the orders in discharge of duty and had failed to report for duty on 11.05.2007 pursuant to his relieving order dated 10.05.2007. This conduct of the petitioner was stated to be in breach of Section 11(1) of the Central Reserve Police Force Act, 1949 (for short, the Act of 1949). The Enquiry Officer after giving due opportunity to the petitioner and after considering all relevant aspects concluded the enquiry. Thereafter on 03.01.2008 an order of punishment of dismissal from service came to be issued to the petitioner. Being aggrieved, the petitioner preferred an appeal before the Director General, Central Reserve Police Force. The said appeal was dismissed on 26.05.2008. The

petitioner preferred a revision which came to be dismissed on 28.10.2009. Being aggrieved, the orders dated 03.01.2008 issued by the Commandant, 26.05.2008 passed by the Director General as well as the order dated 28.10.2009 passed by the Revisional Authority have been challenged in the writ petition.

3. Shri R.B.Khan, learned counsel for the petitioner that the petitioner was under medical treatment at the relevant period and as per medical advice dated 29.01.2007 the petitioner was found fit for travelling alongwith escort and attendant. The petitioner was not in position to travel alone and despite his aforesaid medical opinion, he was not provided with escort and attendant but was asked to report at Hyderabad. The petitioner had challenged the order of transfer/movement order by filing Writ Petition No.2196 of 2007. While issuing notice, an order of status quo came to be passed. On that date, the petitioner had not received the relieving order and hence he had not reported for duty at Hyderabad. Disregarding the order of status-quo, the enquiry was held and the order of penalty came to be imposed. In absence of there being any material on record to indicate that the movement order was duly served on the petitioner, the Officers of the CRPF were not justified in holding the enquiry against the petitioner. There was no breach of any order whatsoever and hence the provisions of Section 11(1) of the Act of 1949 had not been violated. It was thus submitted that

the order of penalty be set aside and the petitioner be reinstated in service alongwith all the consequential benefits.

4. Ms Neerja Chaubey, learned counsel for the respondents supported the impugned orders. It was pointed out that after giving due opportunity to the petitioner, the enquiry proceedings were held and after conclusion of the enquiry, the order of punishment came to be issued. The medical condition of the petitioner had been reviewed by CH, CRPF, Bantalab on 14.03.2007 and the petitioner was placed in category S-2 with the remark that he was fit for duty without fire arms for a period of six months. Despite receiving the movement order, the petitioner did not obey the same and did not report at Hyderabad. It was on that basis that the order of penalty came to be issued on 03.01.2008. Being a member of the disciplined force, the petitioner ought to have obeyed the orders issued and ought to have reported for duty at Hyderabad. Attention was also invited to the past record of the petitioner and it was submitted that various punishments in the form of censure as well as treating his unauthorized absence as leave without pay had been imposed on him. There was no reason to interfere in writ jurisdiction.

5. Having heard the learned counsel for the parties and having perused the documents on record, we find that the Enquiry Officer has recorded a finding that the movement order was served on the petitioner.

He was relieved from duty on 10.05.2007 and was expected to join at Hyderabad on 11.05.2007. His absence thereafter from duty was treated as unauthorized absence. Despite the directions issued to the petitioner he failed to report for duty for which he alone was responsible. As per the medical opinion obtained with regard to the petitioner, the same indicates that on 14.03.2007 he was found fit for duty without fire-arms for the stipulated period. It is on that basis that the movement order dated 10.05.2007 came to be issued. The Enquiry Officer and thereafter the Disciplinary Authority have found that the petitioner could have got himself relieved and thereafter joined at Hyderabad since he was found fit for duty. The grounds raised by the petitioner have not been found acceptable either by the Appellate Authority or by the Revisional Authority. The findings thus recorded cannot be said to be perverse or without any material on record.

6. The petitioner has sought to place considerable reliance on the ad-interim order passed in Writ Petition No.2196 of 2007. It is seen that the aforesaid ad-interim order is dated 22.05.2007 which is much after the issuance of the movement order and thereafter the relieving order. By directing status-quo to be maintained, the parties were governed by the position prevailing on the date of the order. By that time the petitioner had already been relieved and therefore nothing much would turn on the aforesaid ad-interim order dated 22.05.2007. The aforesaid writ petition

came to be dismissed on 11.12.2007 by observing that transfer was an incident of service and that there was no reason to interfere in writ jurisdiction. The petitioner cannot take support of the said ad-interim order to contend that he was not liable to be relieved from duty.

7. The petitioner being a member of a disciplined force he was required to obey the movement order and consequent relieving order. There is no justifiable reason indicated for failure to obey these orders. Perusal of the petitioner's earlier service record indicates that he has been awarded 'censure' on two occasions, 'severe censure' on two occasions and has been on unauthorized absence on two occasions. In this factual aspect when the facts leading to imposition of penalty of dismissal are considered, we do not find that there is any basis whatsoever to interfere in writ jurisdiction. Despite grant of sufficient opportunity, the petitioner failed to make the most out of it in the enquiry. The petitioner is thus responsible for the position in which he finds himself placed.

8. We do not find that there is any case made out to exercise writ jurisdiction in the aforesaid facts. The writ petition is therefore dismissed. Rule stands discharged with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)