



Writ Appeal.No.1280 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	12.04.2023
Pronounced on	28.06.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND**

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

Writ Appeal.No.1280 of 2010

J.Arul Dass

.. Appellant

Vs

- 1.The Director General of Police,
Central Reserve Police Force,
C.G.O.Complex,
Lodhi Road, New Delhi.
- 2.The Deputy Inspector General of Police,
Group Centre, CRPF,
Avadi, Chennai-65.
- 3.Additional Deputy Inspector of
General of Police,

1/18



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Group Centre, CRPF,
Avadi, Chennai-65
4. The Commandant,
18th, Battalion, CRPF, C/o.56 APO,
Sri Nagar.

....Respondents

Prayer: Writ Appeal has been filed under Clause 15 of Letters Patent against the order dated 27.04.2010 made in W.P. No.27695 of 2007.

For appellants : Mr.A.S.Mujibur Rahman

For RR1to R4 : Mr.J.Madanagopal Rao
Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by K.GOVINDARAJAN

THILAKAVADI J.)

This writ appeal arises from the order dated 27.04.2010 in W.P.No.27695 of 2007, where under and whereby the writ petition filed by the appellant herein was dismissed.



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2.The appellant/Writ petitioner filed the writ petition for quashing the order passed by the 2nd respondent dated 27.05.2008 in his order No.R.XIII.10/2007 EC-III and for modifying the order passed by the 4th respondent dated 07.12.2007 in his office order No.P.VIII.5/2007-EC.2 received by the GCA/BLDG dated 15.12.2007 issued by the 3rd respondent herein and to direct the 4th respondent to take the petitioner in the strength of the CRPF as Head Constable GD with all monetary benefits.

3.The facts in brief relevant for the purpose of adjudication are that the appellant/writ petitioner joined CRPF as a Constable-GD on 10.6.1983. He was transferred to Group Centre, Avadi 18th Battalion on 1.10.1996 and he was serving in the said Battalion. After availing 60 days Earned Leave from 08.1.2007 to 08.3.2007, he joined the duty on 09.3.2007. He had submitted an application on 09.3.2007 stating that his father was admitted in the hospital due to chest pain and requested for 11 day's casual leave to see his ailing father. Accordingly, 17 days enhanced casual leave was sanctioned from 12.3.2007 to 3.4.2007 with permission to avail Government holidays



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and restricted holidays and Sundays. The appellant/writ petitioner was directed to report to the duty on 4.4.2007. While so, the appellant/writ petitioner visited his native place at Keelaiyur on 31.3.2007 and was taking care of some construction work. In that process, he fell down from the stair case and sustained injury on the backside of his hip. He was taken to Primary Health centre, Keelaiyur for first aid and subsequently, referred to the Government Hospital, Nagapattinam for Orthopaedic treatment on 01.04.2007. He was given treatment up to 07.04.2007. He was advised to take rest for 30 days.

4.It is further stated that the appellant/writ petitioner was again admitted in the same hospital from 08.05.2007 to 12.05.2007 for further treatment for Sponderlitis C Disc and after discharge, he was referred to Tanjore Medical College Hospital for MRI and for further treatment. The appellant/writ petitioner sent a telegram on 04.04.2007 which was received by the fourth respondent on 07.04.2007. The other telegrams sent by the appellant/writ petitioner were not received by the respondents. Thereafter, the



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case of the appellant/writ petitioner was examined and after considering the treatment given to him, he was directed to join the duty on 08.05.2007. Since the appellant/writ petitioner failed to comply with the direction and the medical document submitted by him were not considered by the respondents, his leave on medical ground was rejected. Since the appellant/writ petitioner failed to comply with the condition, a complaint was lodged by the officer Commending 18th Battalion before the Commandant and the Chief Judicial Magistrate of 18th Battalion, CRPF. After taking cognizance of the complaint, a warrant of arrest was issued to the Superintendent of Police, Nagapattinam and the appellant/writ petitioner was directed to be produced. It was thereafter, the appellant/writ petitioner sent two letters with medical documents.

5.However, the warrant of arrest was not executed and the appellant/writ petitioner was overstaying his leave for more than 60 days. A court of enquiry was ordered by the fourth respondent. The Court of enquiry found that the appellant/writ petitioner was overstaying his leave without prior permission and the leave was not sanctioned by the competent authority.



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Therefore, by exercising the power under Rule 31(c) of CRPF Rules, 1955, the appellant/writ petitioner was declared as deserter from the force and a copy was also served on the appellant/writ petitioner. A departmental enquiry was also initiated under Rule 27 of the CRPF Rules, 1955. A charge memo dated 28.08.2007 was issued to the appellant/writ petitioner. The charge was relating to overstaying of leave without sanction and being an habitual offender.

6. According to the appellant/writ petitioner, his overstayed leave was not wilful and was only under compelling circumstances. The disciplinary authority is required to prove that the absence is wilful. In absence of such finding, the absence will not amount to misconduct. To support his contention he had relied upon the decision in the case of **Krishnakant B.Parmar vs. Union of India & Another** in which the Hon'ble Supreme Court held that,

"If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful."



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Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always means wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government Servant".

7.Placing reliance upon the above principles laid down by the Hon'ble Supreme Court, the learned counsel for appellant/writ petitioner would contend that the disciplinary authority failed to prove the absence is wilful and therefore the appellant/writ petitioner cannot be held guilty of failure of devotion to duty.

8.On the other hand, the learned counsel appearing for the respondents would contend that, the appellant/writ petitioner was declared "Deserted from force" with effect from 04.04.2007 vide 4th respondent office order No.W.II-



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3/2007-EC- II dated 26.07.2007 for his commission of various offences such as overstaying of leave without prior permission to respond or comply with the direction of 4th respondent for the several communications sent to appellant/writ petitioner home address. Aggrieved by the above said order, the appellant/writ petitioner filed W.P.No.27695/2007 before this Court by challenging the order dated 26.07.2007, in which interim stay was granted. He would further submit that during the course of enquiry the charges levelled against the appellant/writ petitioner were fully proved. The Disciplinary Authority i.e., the 4th respondent awarded punishment of dismissal from service with effect from 07.12.2007 vide 4th respondent office order No.P.VIII-5/2007-EC-II dated 07.12.2007. Aggrieved by the orders of disciplinary authority the appellant/writ petitioner had preferred an appeal to the 2nd respondent. The 2nd respondent who after taking into account the entire gamut of the case into consideration and keeping in view of the length of the service put in by the appellant/writ petitioner, his family background, etc., took a lenient view and modified the punishment of "Dismissal from service" as compulsory retirement from service with effect from 07.12.2007 A.N with full



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compensation pension and retirement gratuity vide his order No.R.XIII.10/2007-EC-III dated 06.05.2008. It is further submitted that, aggrieved by the order dated 06.05.2008 and 07.12.2007 the appellant/writ petitioner filed the writ petition in W.P.No.819 of 2008, challenging the order of the 4th respondent, with request to reinstate the petitioner into the service with all consequential benefits and against the vacation of family quarters. Both the writ petitions were listed and this Court was pleased to dismiss the writ petitions with the following order:

" A full-fledged enquiry was also held and the petitioner was found to be unauthorised absent. 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 or 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 he finds



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inconvenient, is passed. 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 cases of this nature, dismissal from the force is a justified disciplinary action and cannot be describes as disproportionate to the misconduct alleged"

In the light of the above, both the writ petitions will stand dismissed."

9.The learned counsel for the respondent further submitted that during the pendency of the writ petitions, the appellant/writ petitioner had completed his Compulsory Retirement Pension papers and accordingly, he was sanctioned Compulsory Retirement Pension. The appellant/writ petitioner although drawing the retirement pension had filed revision petition on



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11.03.2009 for setting aside the orders passed by the 2nd and 4th respondents.

The above revision petitions were rejected by the revisionary authority on the ground of devoid of merits vide their order No.R.XIII-5/2009-Adm-I dated 07.07.2009. Without challenging the said order the appellant/writ petitioner has preferred the above writ appeals which are liable to be dismissed *in limini*.

10.Heard on both sides, records perused.

Rule 3(1)(i) and Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964, relates to all time maintaining integrity, devotion to duty and to do nothing which is unbecoming of a Government servant and reads as follows:

"Rule 3-General.

(1) Every Government servant shall at all times.

(i) maintain absolute integrity;



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(ii) maintain devotion to duty, and

*(ii) do nothing which is unbecoming of a
Government servant."*

11.In the case of appellant/writ petitioner referring to unauthorised absence, the disciplinary authority alleged that he failed to maintain devotion of duty and his behaviour was unbecoming of a Government servant. Now, the question arose whether the unauthorised absence of the appellant/writ petitioner from the duty amounts to failure of devotion of duty or behaviour unbecoming of a Government Servant. This cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. It is not in dispute that, the appellant/writ petitioner failed to comply the direction to join the duty on 08.05.2007, considering his representations. He had also not participated in the enquiry conducted by the



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5th respondent. His further extension of leave on medical grounds were not considered by the concerned authorities for the reason that the original medical records were not submitted by him.

12.As per the appellant's/petitioner's own version, his request for extension of leave with effect from 04/04/07 when he ought to have joined duty after availing 15 days Causal Leave already sanctioned by the competent authority, was not made through his letter dated 17/05/07 and 25/05/07 and his own version that, his request for extension of leave with effect from 04/04/2007 when he ought to have rejoined duty after availing 15 days Causal Leave already sanctioned by the competent authority was made through his letter dated 17/5/2007 and 25/05/07 after a lapse of 45 days only and the appellant/ writ petitioner did not make any request for extension of leave right from the beginning, since he met with the accident on 31/03/2007. Even in his telegram dated 04/04/07, the appellant/writ petitioner did not make any request for extension of leave on medical grounds. It is quite relevant to state here that the appellant/writ petitioner is a habitual offender in



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overstaying from leave (OSL) and as per his service record, he remained OSL for 12 times since he joined CRPF in 1983 and 5 times since he joined 18 BN on 01.10.96 as per details furnished below:-

- a) EL OSL from 19.7.97 to 19.9.97
- b) CL/OSL from 21.12.97 to 2.2.98
- c) OSL hospital admission/rest period from 01.05.99 to 22.01.2000
- d) OSL period from 15/04/02 to 23/05/02
- e) Absent/hospital admission treatment medical rest and journey period w.e.f 16.04.05 to 12.01.06

13.As rightly point out by the learned Single judge in the above writ petition, the 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. Moreover, a member of the uniformed force who overstayed his leave by few days must



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be able to give a satisfactory explanation. In the present case, the appellant/writ petitioner failed to give a satisfactory explanation with proof for his overstay his leave. Therefore, he cannot be said to be one merely overstaying his leave. He must definitely be treated as a deserter. The conduct of the appellant/writ petitioner seen from the materials on record that his absence is wilful and the respondents have rightly held that the appellant/writ petitioner is guilty of failure of devotion of duty. Moreover, it is stated by the learned respondent's counsel that considering the family background of the appellant/writ petitioner and his length of service the 2nd respondent has modified the punishment of "Dismissal from Service" as "Compulsory Retirement from Service" with effect from 07.12.2007 by granting full compensation pension and retirement gratuity vide his order No.R.XIII.10/2007-EC -III dated 06.05.2008. It is also not in dispute that the appellant/writ petitioner is drawing his retirement pension as ordered by the 2nd respondent. Therefore, we are satisfied that, the dismissal of the appellant/writ petitioner from the force is justifiable action.



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14.In the light of the above discussion, the writ appeal stands dismissed. However, there shall be no order as to cost.

(D.K.K.,J.) (K.G.T.,J.)

28.06.2023

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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To

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D.KRISHNAKUMAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

Vsn

PRE- DELIVERY JUDGEMENT MADE IN
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