



W.P.No.12977 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.09.2023
Pronounced on	18.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.12977 of 2021

M.P.Balasubramaniyan

... Petitioner

Vs.

1. The Director General
CRPF, CGO Complex,
Lodhi Road,
New Delhi – 110 003.
2. The Inspector General of Police
Western Sector, CRPF
3rd Floor, CGO Complex,
CBD Belapur,
Navi Mumbai – 400 614
Maharashtra
3. The Deputy Inspector General of Police,
Range Hqr., CRPF
Nagpur
Maharashtra – 440 019.
4. The Deputy Inspector General of Police
Group Centre, CRPF
Avadi, Chennai 600 054.
5. The Commandant,
30 Battalion, CRPF
Chariduar District,



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Sonitpur, Assam – 784 103.

... Respondents

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PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus to call for the records of the order dated 25.01.2020 of 5th respondent dismissing the petitioner from service with effect from 25.01.2020 in proceedings No.P.VIII-1/2019-Estt-II/30 and subsequent order dated 10.07.2020 of 3rd respondent in proceedings No.R.XIII-1/2020-EC-I and order dated 06.01.2021 of 2nd respondent in proceedings No.R.XIII.1/2020-WS-Adm-I rejecting his appeal as well as revision petition and quash the same and thereby direct the respondents to re-instate him into the service of CRPF with all monetary benefits.

For Petitioner : Mrs.R.Meenakshi

For Respondents : Mr.R. Subramanian
Central Govt. Standing Counsel

ORDER

This Writ Petition has been filed seeking to call for the records of the order dated 25.01.2020 of 5th respondent dismissing the petitioner from service with effect from 25.01.2020 in proceedings No.P.VIII-1/2019-Estt-II/30 and subsequent order dated 10.07.2020 of 3rd respondent in proceedings No.R.XIII-1/2020-EC-I and order dated 06.01.2021 of 2nd respondent in proceedings No.R.XIII.1/2020-WS-Adm-I rejecting his appeal as well as revision petition



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and quash the same and thereby direct the respondents to re-instate him into the service of CRPF with all monetary benefits.

2. The learned counsel for the petitioner submitted that the petitioner joined the Central Reserve Police Force as Constable (General duty) on 29.03.2013 through open recruitment and after completion of his basic training at Regional Training Centre - 2 (RTC-2), CRPF, Avadi, Chennai, he was posted to III Battalion, CRPF deployed at Dhantewada, Chhattisgarh till 2018. During the year 2018, he was posted to 30 Battalion, CRPF at Chariduar District, Sonitpur, Assam. Since the petitioner could not leave his wife either at his home or at his wife's home, he was compelled to bring his wife to his duty place and was keeping her at Chattisgarh with the permission of the Commandant of the Battalion for sometime, but he was not given permission to keep family at 30th Battalion locations at Assam due to the prevailing bad situations. Hence the petitioner was compelled to leave his wife at her home and he is having two female children. While the petitioner was serving in 30th Battalion he proceeded on 15 days casual leave from 26.02.2019 to 16.03.2019 with permission to avail Sunday/Restricted Holiday/Joining period on the reasons of eye operation of his mother. During his leave period, his wife namely Mrs.Devi Saradha served legal notice dated 11.03.2018 to the petitioner for divorce by the



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instigation of her parents, as the petitioner could keep family with him in the duty place and due to such situation he was put to mental agony.

3. The learned counsel for the petitioner further submitted that in the meantime, the petitioner met with a motorcycle accident, in which he sustained severe injury in his left leg and his ligament was damaged. The Doctor advised him to take treatment for six months so that the ligament will function as usual and hence the petitioner took continuous treatment for the same. Since he was spending his time to convince his wife, he could not make any correspondences with the Commandant of 30th Battalion, CRPF, Assam. On 15.09.2019 there was a fire accident in which the petitioner's house was completely burnt and the fire and rescue service of the Kanchipuram district was also informed about the incident. In the said fire accident, the documents sent by the department and medical documents of his treatment were burned, so he could not make any correspondence with the Commandant of 30th Battalion, CRPF at Assam. The petitioner also booked air ticket during the month of November 2019, proceeding to his duty place for joining duty on 14.11.2019 but due to problems created by his wife and her parents on the basis of legal issue he could not report for duty and he had to cancel his air ticket. Subsequently after



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convincing his wife, he went to his battalion at Assam along with his wife by air for joining duty on 06.12.2019 but the Battalion Havildar Major (Head Constable Upendra Singh) did not allow him to join duty and returned them from campus as problems are going in the State, hence the petitioner and his wife stayed there upto 14.12.2019 due to curfew and came back to his home at Chennai. Again he went to Assam by air for joining duty on 1st February 2020 but this time also he was not allowed to join duty and his dismissal order has been sent to his home address.

4. The learned counsel for the petitioner would further submit that the punishment of dismissal from service was imposed upon him by instituting an ex-parte departmental proceedings for the following alleged article of charges vide Commandant – 30th Battalion, CRPF order No.P.VIII-1/2019 – Estt.II/30 dated 25.01.2020 which was received by the petitioner on 03.02.2020 and the charges are as follows:-

Article – I

1) "That he was sanctioned 15 days casual leave from 26.02.2019 to 16.03.2019 with permission for 03/03, 10/03 & 17/03 being Sunday, 28/2 & 4/03 being Restricted Holidays and 18/03 to 20/03/2019, 3 days being Joining period. After availing the above said leave, he should have report for duty on 20.03.2019 (AN). But he continued on overstaying leave from



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21.03.2019 (FN) without prior permission of the competent authority and till date he did not report for duty at 30 Battalion, CRPF Chariduar, Assam. Thus he committed offence in the discipline force and against the CRPF Act under Section 11(1) read with rule 27 of CRPF Rules 1955.

Article – II

2. That as he overstayed from leave, he was directed to report for duty immediately by the Company Commander-B/30 Battalion, CRPF vide his letter No.L.II.01/19 B/30 dated 03/04/19, 13/04/19 and 24/04/19 to his home address. He was directed to report for duty forthwith but neither he gave any reply to the letter of the Company Commander nor he reported for duty. So he committed the offence of disobeying the order of the superior authority and absence from duty in the discipline force and against the CRPF Act under Section 11(1) read with rule 27 of CRPF Rules 1955.

5. The learned counsel would further submit that challenging the above punishment of dismissal from service, the petitioner preferred an appeal dated 18.02.2020 against the above punishment to the appellate authority (3rd respondent) with request to re-instate him into service by quashing the punishment order of dismissal issued by the 5th respondent. The appellate authority rejected his appeal being devoid of merit vide order No.R.XIII-1/2020-EC-I dated 10.07.2020. Aggrieved with this order, the petitioner preferred revision petition to the 2nd respondent being revisionary authority on 07.08.2020 and the 2nd respondent rejected his revision petition being devoid of



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merit vide his order No.R.XIII.1/2020-WS-Adm-I dated 06.01.2021. Rules 10 (m) of the Central Reserve Police Force Act and Rules 1949 is extracted as follows:-

10. Every member of the Force who absents himself without leave or without sufficient cause overstays leave granted to him.

6. The learned counsel for the petitioner further drew the attention of this Court to the CSR copy given by the Chengalpattu Town Police Station, Kancheepuram district dated 15.11.2019 informing about the fire accident which took place on 14.10.2019 and also information obtained from the Assistant Divisional Officer, Department of Fire and Rescue Services, Kancheepuram district vide Na.Ka.No.312/2019 dated 14.10.2019 and the same are extracted as hereunder:-



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தமிழ்நாடு தீயணைப்பு-மீட்டிப்பணித்துறை

அனுப்புநர்,

தொகு தகவல் அலுவலர்,
மற்றும் உதவி நாயட்ட அலுவலர்,
தீயணைப்பு-மீட்டிப்பணிகள்,
காஞ்சிபுரம் மாவட்டம்,
காஞ்சிபுரம்.

பெறநர்,

திரு. மா. பழனி, த/பெ. மாணிக்கம்
பரமேஸ்வரபுரம்,
செங்கல்பட்டு வட்டம்,
காஞ்சிபுரம் மாவட்டம்.

ந.க.எண்: 312/2019

நாள்: 14.10.2019

அன்பு,

பொது: தீயணைப்பு-மீட்டிப்பணித்துறை - காஞ்சிபுரம் மாவட்டம் - தகவல் அறிவும் உரிமை
சட்டத்தின் கீழ் விவரம் கோரினது - குறித்து

பார்வை: தங்கிவிடமிருந்து பெறப்பட்ட விண்ணப்பம், நாள்: 02.10.2019

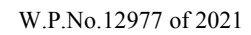
காஞ்சிபுரம் மாவட்டம், செங்கல்பட்டு வட்டம், பரமேஸ்வரபுரம் கிராமம், எண்.22, என்ற தகவல்
திரு.மா. பழனி த/பெ. மாணிக்கம், என்பவரது வீடு தீ விபத்துக்குள்ளானது. தீ விபத்து ஒன்று
தீயணைப்பு-மீட்டிப்பணி துறையுள் அறிக்கையின்படி கீழ்க்காணும் விவரம்
பெறப்படுகிறது.

தீ விபத்து செய்தி கிடைக்கப்பெற்ற நாள் மற்றும் நேரம் : 15.09.2019
21.09

தீ விபத்து நடந்த நாள் மற்றும் நேரம் : 15.09.2019
21.50

திரு.மா. பழனி, த/பெ. மாணிக்கம்
பரமேஸ்வரபுரம்,
செங்கல்பட்டு வட்டம்,
காஞ்சிபுரம் மாவட்டம்.

தொகு தகவல் அலுவலர்,
தீயணைப்பு-மீட்டிப்பணிகள்,
காஞ்சிபுரம் மாவட்டம்,
காஞ்சிபுரம்.



10. பெரிய பீதி

CHENGALPATTU TOWN

இதற்கிடையே : KANCHEEPURAM

- 15.09.2019 ம் தேதி மனுதாரரின் வீட்டு நீர் விபத்திற்குள்ளானதாகவும் அன்று தீயணைப்பு வீரர்களுக்கு உதவல் கொடுத்து தீயை அணைத்ததாகவும் வீட்டில் உள்ள டிபி, டிஷ், ஒரு சவரன் நடை, மருத்துவ கார்ட்டிங், வீட்டு உபயோக பொருட்கள், ஆவணங்கள் அனைத்தும் தீயில் எரிந்து சேதமடைந்தது. இப்போது தாங்களும் இந்த தீ விபத்து சம்பந்தமாக நடவடிக்கை எடுக்காமல் கா...

1499. *Agrostis* *subulata*
1500. *Agrostis* *subulata*

NATARAJAN E-SSI OF POLICE

Sir, Enclosed are copy
L. S. Palmer



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7. Due to the above fire accident most of his belongings were destroyed including the medical records. The learned counsel appearing for the petitioner submitted the copy of the medical certificate dated 02.06.2011 relating to the ailment suffered by the petitioner and the medical documents for bike accident dated 20.08.2019 by way of additional typed set of papers dated 05.09.2023 before this Court.

8. The learned counsel for the petitioner further drew the attention of this Court to the flight ticket which was booked for 11.03.2019 and the same was cancelled due to the matrimonial dispute between the petitioner and his wife. Leave was granted from 26.02.2019 to 16.03.2019 and the petitioner ought to have reported for duty on 20.03.2019 but due to the matrimonial dispute he could not report for duty. Thereafter, the petitioner met with a bike accident on 20.08.2019 and the medical records related to the accident was also damaged in the above fire accident which took place on 14.10.2019. The petitioner served from 29.03.2013 till 2018 in Chattisgarh and from 2019 in Assam.

9. The learned counsel would further submit that the petitioner was



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mentally disturbed due to the family dispute, mother treatment, injury sustained during the accident and the fire accident of his house in which his house was totally destroyed and as a result he was not able to contact with his Battalion and in the mean time, the enquiry had been completed as ex-parte. Thereafter, the petitioner reported to the Bn HQ two times i.e., on 08.12.2019 and 01.02.2020 but Battalion Havildar Major did not allow him to join duty. If the petitioner was allowed to join duty, he would have got chance to explain his grievances. Hence the petitioner was not given any opportunity to defend the case, atleast he should have been given reasonable opportunities before issuing final order of dismissal from service from CRPF. Therefore, the enquiry is clear cut violation of principle of natural justice.

10. The learned counsel would further submit that the Commandant of the Battalion being the disciplinary authority supposed to realise the facts that he reported to the 30th Bn HQ at Tejpur, Assam two times i.e, on 08.12.2019 and 01.02.2020 for rejoining duty but he was refused to join duty and sent him out from campus by the Battalion Halvidar Major (BHM). The BHM should have produced him before the Unit Commandant and the Commandant supposed to call him in his chamber and hear his personnel



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grievances and reasons for his overstaying leave, but he failed to do so and passed order in a stereo typic manner. The disciplinary authority is well aware of the life conditions of the jawans the hazardous duty, family problems, hence the petitioner could not able to look after his wife, children and parents and he could not give proper treatment to the old age parents and facing financial crisis and other issues relating to affection, love and sentiments. The enquiry was completed ex-parte and order was passed to dismiss the petitioner from service with effect from 25.01.2020 without giving any opportunity to defend his case.

11. The learned counsel would further submit that according to article 311(2) of Indian Constitution of India which say as follows:-

“No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Even though, the enquiry officer as well as disciplinary authority had not given any opportunities to him to furnish his grievances/defend the enquiry it can be seen from the enquiry proceedings sent to his home address. Thus, the disciplinary authority violated the principles of natural justice and his action is illegal and arbitrary”.

12. The learned counsel for the petitioner would further submit that for the effect of failure of Natural justice she relied upon the judgement of the



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Hon'ble Supreme Court of India in the case of ***R.B.Shreeram Durga Prasad Vs. Settlement Commission***, the Hon'ble Supreme Court of India has reiterated the proposition that an order made in violation of the principles of natural justice is a nullity. The Court has referred to ***Orissa Vs. Dr.Binapani Dei, Ridge Vs Baldwin*** and ***Anisminic Ltd., Vs Foreign Compensation Commission*** in support of this view. In this case, the petitioner was not given reasonable opportunity to furnish by grievances/defend the enquiry since nothing has been explained about the opportunities given to him during the course of departmental enquiry. As such, the enquiry is clear cut violation of natural justice and the punishment order is a nullity.

13. The learned counsel further relied on the judgment dated 01.10.2009 in W.P.No.17670 of 2004 filed by ***Rajendran Vs.Principal RTC II, CRPF*** who was dismissed from service for absence from duty more than six times without prior approval of competent authority, this Court set aside the punishment order dated 22.11.2003 and remanded to the CRPF authority to consider and pass fresh orders, with regard to quantum of punishment alone. This Court passed this order based on the judgment of the Division Bench of this Court dated 07.12.2006 in W.P.No.17307 of 2003 in ***Shunmugham Vs.***



The Commandant, CISF. This was also a case of Cook in CISF and charges were identical and in the case of the petitioner the punishment of dismissal from service awarded by the disciplinary authority is not commensurate with the offence.

14. The learned counsel would further submit that the disciplinary authority failed to follow the instructions given in CRPF Directorate letter No.P.VIII/I.Adm.3.RK dated 24.06.2002 that the personnel committed offence of overstayed leave should not be given heavy punishment and in the case of the petitioner, the quantum of punishment was not commensurate with the gravity of the offence alleged to have been committed by him. According to section 11(1) of the CRPF Act, 1949 all the minor punishments have been mentioned and not included the punishment of dismissal being major punishment. But the disciplinary authority awarded major punishment of dismissal. As per CRPF Act and Rules and CCS (CCA) Rules, the dismissal from service is the major punishment. Therefore, the disciplinary authority passed erroneous order. It has been instructed in Govt.India Instructions (1) below rule 15 and Rule 27 of CCS (CCA) Rules, 1965 that instances have come to their department, where the final orders passed by the competent disciplinary



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/ appellate authorities do not contain the reasons on the basis whereof the decisions communicated by that order were reached. Since such orders may not confirm to legal requirements they may be liable to be held invalid, if challenged in a Court of Law. It is therefore, impressed upon all concerned that the authorities exercising disciplinary powers should issue self-contained, speaking and reasoned orders confirming to the aforesaid legal requirements. These instructions have not been strictly followed in this case and the appellate authority has just narrated the story of the petitioner and simply rejected. Therefore, the order of the appellate authority is to be considered invalid.

15. Further according to Rule 27 of CCS (CCA) Rules that a number of points are generally raised in the appeal and the appellant reasonably expects that the appellate authority would give weightage to those points before coming to any decision on his request. While it may be that the appellate authorities had made a mental examination of those points, but their observations to the effect that they were not tenable cannot satisfy the appellant. It is necessary that all the points raised by the appellant are summarised in the orders and the appellant are not likely to be satisfied with the orders and will apparently submit petitions to the higher authorities even though there may not be



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sufficient justification therefore. In the petitioner's case this instruction was not followed by the appellate authority as well as revisionary authority.

16. The learned counsel would further submit that as per Sub-rule-2 of Rule 27 clearly lays down that the Appellate Authority shall consider:-

(a) whether the procedure laid down in the CCS (CCA) Rules has been complied with and if not whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice.

(b) whether the findings of the Disciplinary Authority are warranted by the evidences on the record and

(c) whether the penalty is adequate, inadequate or severe

17. The learned counsel further submitted that the appellate authority as well as the Disciplinary Authority failed to examine all the facts deeply and rejected the petitioner's appeal by issuing an order in a stereo typic and mechanical manner. The decision of the authorities are predetermined and the same is violation of natural justice. Further the orders of the appellate and revisionary authorities are not a speaking order.



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18. The learned counsel further relied on the judgement of the Hon'ble Supreme Court of India in the case of ***Shri Bhagwan Lal Arya Vs Commissioner of Police, Delhi and others*** reported in (2004) 4 SCC 560 and the relevant portions are extracted as below:-

13. In B.C. Chaturvedi Vs. Union of India (three Judge Bench) the question posed for consideration was as to whether the High Court/Tribunal can direct the authorities to reconsider punishment with cogent reasons in support thereof or reconsider themselves to shorten the litigation. In this case, at para 18, this Court has observed as under:-

18. A review of the above legal position would establish that the disciplinary authority and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof”.



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and yet in another case in ***Krushnakant B.Parmar Vs Union of India & another*** in Civil Appeal No.2106 of 2012 and the relevant portions are extracted as below:-

14. Rule 3(1) (ii) 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

(ii) maintain devotion to duty and

(iii) do nothing which is unbecoming of a Government Servant.”

15. In the case of appellant 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.

16. 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.

19. The learned counsel further submitted that according to the respondents the details of the petitioner's previous OSL are as under:-

(i) 01 day OSL on 27/11/15



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(ii) 26 days OSL wef 01/06/16 to 26/06/16

(iii) 275 days OSL wef 31/07/17 to 01/05/18

(iv) 311 days OSL wef 21/03/19 to 25/01/20

20. Aggrieved by the order passed by the 2nd respondent dated 06.01.2021 rejecting his appeal, the petitioner has come forward with the present writ petition.

21. Counter affidavit dated 27.09.2021 has been filed by the respondents and it is relevant to extract the following paragraphs from the counter affidavit.

5. It is respectfully submitted that, No.135031757 CT/GD M.P.Balasubramaniam (herein after called as petitioner) was enlisted in CRPF on 29/03/2013 and while he posted in B/30 Bn, CRPF he was granted 15 days Casual Leave wef. 26/02/2019 to 16/03/2019 with permission to avail 03/03/19, 10/03/19 & 17/03/19 being Sunday, 28/02/19 & 04/03/19 being RH and 03 days Journey period w.e.f 18/03/19 to 20/03/19 by officer commanding B/30 Bn. The petitioner was supposed to report back on duty on 20/03/19(A.N), but he failed to do so and remained OSL (Over Stay from Leave) without sanction of leave and without obtaining any permission from the competent authority which is a serious act of indiscipline.



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7. *It is respectfully submitted that as per procedure, Officer Commanding-B/30 Bn CRPF, lodged a complaint against the petitioner before the Chief Judicial Magistrate-cum Commandant – 30 Bn, CRPF (Herein after called as 5th respondent) after examining the complaint a Warrant of Arrest was issued vide 5th respondent letter No.W.II-1/2019-30-EC-II dated 01/05/19 and forwarded the same to the Superintendent of Police, District-Kancheepuram (Tamil Nadu) for its execution, but neither the Warrant of Arrest executed by the state police nor the petitioner reported on duty. Hence, as the petitioner remained absent unauthorisedly for more than 60 days, as per procedure a Court of Inquiry was ordered vide 5th respondent office order No.D.II-1/2019-EC-2-30 dated 03/06/2019 so as to ascertain the circumstances under which the petitioner remained over stay from leave w.e.f. 21/03/2019, accordingly Shri.Sudhan D.V., Asstt., Commandant of 30 Bn was detailed as Presiding Officer (PO) with direction to submit the COI report within prescribed time.*

8. *It is respectfully submitted that on going through all the facts, pros and cons of COI report submitted by the P.O vide his letter No.L.II-1/19-A/30 dated 27/06/2019 and 5th respondent declared the petitioner as DESERTER from the Force w.e.f. 31/03/2019(FN) under the provision contained in Section 31 of CRPF Act-1949. It is pertinent to mention that, desertion from Force falls under heinous offence as per section-9 of CRPF Act-1949.*



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13. It is respectfully submitted that as per records the petitioner had remained OSL earlier without approval of competent authority on four occasions. The details are as under:-

- | | |
|---|--------------------------|
| <i>i) On 27/11/2015</i> | <i>= 01 day</i> |
| <i>ii) wef 01/06/2016 to 26/06/2016</i> | <i>= 26 days</i> |
| <i>iii) wef 31/07/2017 to 01/05/2018</i> | <i>= 275 days</i> |
| <i>iv) wef 21/03/2019 to 25/01/2020</i> | <i>= 311 days</i> |

22. The learned standing counsel appearing for the respondents submitted that as per records the petitioner had remained overstayed from leave (OSL) earlier without approval of competent authority on four occasions. The details are as under:

- | |
|--|
| i) on 27/11/2015 = 01 day |
| ii) wef 01/06/2016 to 26/06/2016 = 26 days |
| iii) wef 31/07/2017 to 01/05/2018 = 275 days |
| iv) wef 21/03/2019 to 25/01/2020 = 311 days |

the period of service rendered by the petitioner was 7 years out of which he has taken unauthorised leave for 613 days.

23. The learned standing counsel further relied on the judgment of



the Hon'ble Supreme Court of India in the case of ***Union of India and others*** Vs ***Ghulam Mohd. Bhat*** dated 20.10.2005 wherein it is held that “this Court had occasion to deal with the cases of overstay by persons belonging to disciplined forces. In the case of State of U.P. Vs Ashok Kumar Singh (1996 (1) SCC 302) the employee was a police constable and it was held that an act of indiscipline by such a person needs to be dealt with sternly. It is for the employee concerned to show how that penalty was disproportionate to the proved charges. No mitigating circumstance has been placed by the appellant to show as to how the punishment could be characterised as disproportionate and / or shocking.

23.1 (Mithilesh Singh Vs Union of India and Ors (2003(3) SCC 309) wherein it has been categorically held that in a given case the order of dismissal from service cannot be faulted. In the instant case the period is more than 300 days and that too without any justifiable reason. That being so the order or removal from service suffers from no infirmity”. The learned standing counsel relied upon another Hon'ble Supreme Court judgement also in ***Union of India*** Vs ***Datta Linga Toshawad*** wherein it is held that the members of the uniformed forces cannot absent themselves on frivolous pleas, having regard to



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the nature of the duties enjoined on these forces that such indiscipline if it goes unpunished will greatly affect the discipline of the forces and the uniformed force who overstays his leave by a few days must be able to give satisfactory explanation. The Supreme Court has accordingly declined to interfere with the orders of removal holding that such a punishment is a justified disciplinary action and cannot be described as disproportionate to the alleged proven misconduct.

24. Heard both sides and perused the materials available on record.

25. In this case the petitioner joined the Central Reserve Police Force as a Constable on 29.03.2013 through open recruitment and subsequently posted at Chattisgarh and later on from 2019 at Assam. He applied for leave for the period from 26.02.2019 to 16.03.2019 and ought to have reported to duty on 20.03.2019. but the petitioner failed to do so and remained Over Stayed from Leave (OSL) wef 21.03.2019 to 25.01.2020 = 311 days and on earlier 3 occasion i.e., on 27.11.2015 = 1 day, 01.06.2016 to 26.06.2016 = 26 days and 31.07.2017 to 01.05.2018 = 275 days. For the earlier three occasions the punishment was awarded to the petitioner. In regard to the present period i.e., from 21.03.2019 to 25.01.2020 taking into account the earlier three occasions



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of OSL the respondent dismissed the petitioner from service with effect from 25.01.2020 which was subsequently confirmed by the Appellate Authority on 10.07.2020 and by the Revisional authority on 06.01.2021. Hence all the three orders are under challenge in the present writ petition. No doubt the petitioner was on OSL but there are some bonafide and genuine reasons which are as follows:-

1. the reason given by the petitioner for his OSL from 21.03.2019 to 25.01.2020 is that he was having matrimonial dispute with his wife since he could not keep his wife with him at his duty place.

2. there was a bike accident on 20.08.2019 by which the petitioner suffered severe injury in his left leg and his ligament was damaged and Doctor advised him six months treatment and rest so that his ligament would function normal.

3. there was a fire accident on 14.10.2019 in which his whole house was destroyed.

26. In regard to the first reason there is no sufficient documents to prove that there was a dispute between the petitioner and his wife and it is quiet **natural between the husband and wife and that too for a person who is working in a far away place such as Chattisgarh and Assam and leaving**



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his wife at Parameshwarapuram village Chengalpattu taluk,
Kancheepuram district which is 1000 kms.

27. In regard to the bike accident there is a medical certificate dated 20.08.2019 and in the certificate it is mentioned as Casualty, Chengalpattu Medical College Hospital and the name of the petitioner as Balasubramaniyan, aged 29 years.

28. In regard to the fire accident which took place on 14.10.2019, the petitioner has enclosed the copy of the complaint given to the Chengalpattu Town Police Station, Kancheepuram district dated 15.11.2019 in which the complainant has stated that on 15.09.2019 the house of the petitioner was completely burnt and the movable properties like T.V., Dish Antennae and one sovereign jewel, medical documents and house hold articles were all completely burnt in the said fire accident. The complaint was also taken on file by the Special Sub Inspector of Police, Chengalpattu Town Police Station, Kancheepuram district. The petitioner has also obtained information from the General Information Officer and Assistant District Officer, Fire and Rescue Services Department,



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Kancheepuram district, Kancheepuram vide Na.Ka.No.312/2019 dated 14.10.2019 in which it is mentioned that the incident of fire accident was received on 15.09.2019 at 21:09 p.m. The fire was extinguished on the same day on 15.09.2019 at 21.50 p.m. and the place of the fire accident was at Parameshwarapuram, Chengalpattu, Kancheepuram district and the person name was Palani, father of the petitioner.

29. The flight ticket dated 06.12.2019 from Chennai to Guwahati was also enclosed in the typed set of papers filed by the petitioner. **It is pertinent to note that the petitioner was on overstayed from leave (OSL) from 21.03.2019 to 25.01.2020 for 311 days but the reasons given by the petitioner for the said period of OSL seems to be bonafide and genuine and the petitioner is working** as only as a Police Constable and most of them who hail from interior or rural villages from Tamil Nadu and serving in the Armed forces and the Central Police Forces belong to poor family and the same was evident in many cases and this Court had an occasion to deal with similar cases especially the police personnel serving in the lowest rank such as Grade I, II Constables/ Havildars etc., In one way it is really pathetic case that the petitioner has suffered and undergone mental agony from **21.03.2019 to**



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25.01.2020 due to the above three incidents. It is very difficult for any person to face/undergo such type of instances/incidents within a short span of seven months. It is very important for a person that too serving in Armed forces, Police forces they should have peace of mind and physical fitness but in the instant case the petitioner suffered both mentally and physically since he was having matrimonial dispute with his wife and the fire accident which is evident from the records and suffered physically since he met with a bike accident and the same is evident from the certificate issued by the Casualty Chengalpattu Medical College Hospital dated 20.08.2019. No doubt the petitioner has served only for seven years out of which he was on unauthorised absence /Overstayed from leave (OSL) for 613 days in total. Out of which for the three earlier occasions 1 day, 26 days, 275 days appropriate punishment were imposed on the petitioner **but in regard to the present period from 21.03.2019 to 25.01.2020 (311 days) the petitioner was imposed with a major penalty of removal from service by taking into consideration of the previous three occasions by the respondent is unsustainable in law. As far as the present period is concerned i.e., 311 days (21.03.2019 to 25.01.2020) the reason given by the petitioner is genuine and the same should have been considered by the Disciplinary Authority, Appellate authority and**



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Revisionary Authority.
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30. This Court directed the learned counsel appearing for the respondents to produce the copy of the letters issued to the petitioner along with the postal acknowledgement card in regard to the dates of the enquiry conducted by the respondents and other intimations by the respondents. Accordingly the learned counsel for the respondents has filed the typed set of papers dated 29.09.2023 in which the copies of the letters along with the postal receipts were alone submitted **but there is no acknowledgement card to prove or to show that the petitioner has received the same and only in this context the learned counsel was directed to file the copy of the acknowledgement card but the same was not done so far by the respondents.**

31. The petitioner is having two female children and he is only 30 years of age at the time of dismissal from service and at the time of filing the writ petition and as on date he is only 32 years. The respondents ought to have taken into consideration the age aspect and the family situation of the petitioner while imposing the punishment and his survival itself will be in question if the



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major punishment of removal from service is imposed on the petitioner.

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32. The respondents ought to have taken into consideration all the facts and circumstances which made the delinquent / petitioner for being absent from duty. No prudent man will be absent from duty without any bonafide or genuine reason that too working / serving in the uniformed services. In the case on hand, the impugned orders and the consequential orders of the Appellate / Revisional Authority was mainly based on past records of the petitioner where he had committed similar delinquency on three earlier occasions and passed the order in a stereo typic and mechanical manner. The mitigating factors which made the petitioner to commit the present delinquency and also the respondents ought to have given humanitarian consideration while imposing the major punishment of removal of service and not because of the earlier delinquency for which punishments were already imposed by the respondents. The enquiry was also not conducted in a fair and proper manner, no opportunity was given to the petitioner/delinquent to put forth his case before the enquiry officer, even the letters/notices asking him to appear for the enquiry was also not served on him which is clear and evident from the documents submitted by



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the respondents in the typed set of papers and the same is in violation of principles of natural justice. This Court had also noted the past delinquency committed by the petitioner. Judgments of the Hon'ble Supreme Court to be relied wherein it has been held that unauthorised absence the punishment of removal of service is too harsh and disproportionate for the delinquency of unauthorised absence committed by the petitioner.

33. There is no second thought or second view that a man serving in the Armed forces, Police forces should be highly disciplined and must obey the rules and regulations of the force strictly and properly but the facts and circumstances of each case ought to be taken into consideration by the concerned authorities while imposing punishment, especially while imposing major penalty like termination and removal from service. This Court has come across in many cases similar to this case where the petitioner were serving in Central Police Organisation like the present Central Reserve Police Force (CRPF), Central Industrial Security Force (CISF), Railway Protection Force (RPF), Border Security Force (BSF), Border Road Organisation (BRDO), Indian Tibetan Border Police (ITBP) etc., were normally the petitioners belong to a very poor family and most of the cases he will be the only bread winner of



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the family.
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34. Any person who is serving in the uniformed services/armed forces must be in peace of mind and it is is very important for the nature of service rendered by the persons. In the present case, the three reasons given by the petitioner which has been substantiated by the relevant documents would reveal that the petitioner would have undergone mental agony which is evident from the above that would have definitely disturbed his peace of mind that resulted in the unauthorised absence and no prudent person will do intentionally for the reason that in the present highly competitive world, it is very difficult to get a job that too in State or Central Government Police Organisation like the Central Reserve Police Force (CRPF).

35. This Court is also aware of the fact that the Central Reserve Police Force (CRPF) is one of the most dedicated, the biggest and a premier Central Police Organisation which is dealing also with the Naxalites infested States like Orissa, Chattisgarh, Jharkhand etc., and also providing security to many VVIP's across the country. It has an exclusive battalion by named “COBRA” to deal with the Naxalites. The petitioner must feel proud for being



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selected / appointed in such a esteemed police organisation and this Court hopes that the petitioner will not commit such a delinquency in the future under any circumstances.

36. The learned counsel for the petitioner has rightly relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Shri Bhagwan Lal Arya Vs Commissioner of Police, Delhi and others* reported in (2004) 4 SCC 560 and also in another case in *Krushnakant B.Parmar Vs Union of India & another* in Civil Appeal No.2106 of 2012.

37. Taking into consideration of all these aspects and the facts and circumstances of the present case and the ratio laid down by the Hon'ble Supreme Court of India, this Court is of the considered view that the punishment of removal from service (major punishment) imposed on the petitioner is disproportionate to the delinquency committed by the petitioner i.e., 311 days unauthorised absence/overstayed from leave (OSL) is genuine and bonafide for the reasons as stated supra. The petitioner being a married person having two female children cannot be allowed to have an economic death.



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38. Hence the order dated 25.01.2020 passed by the 5th respondent in proceedings No.P.VIII-1/2019-Estt-II/30 and subsequent order dated 10.07.2020 of the 3rd respondent in proceedings No.R.XIII-1/2020-EC-1 and order dated 06.01.2021 of the 2nd respondent in proceedings No.R.XIII.1/2020-WS-Adm-1 are liable to be quashed and the same is hereby quashed.

39. The petitioner is also directed to submit a sworn affidavit to the respondents tendering apology and assuring that he will not commit the delinquency of unauthorised absence or any other delinquency in future which will warrant the respondent authorities to impose the punishment of minor or major penalty which may lead to his termination or removal of service from the police force along with the copy of this order.

40. The above direction is given to the petitioner taking into consideration of the age of the petitioner/delinquent that he is 32 years of age, married and having two female children.

41. In the result, the writ petition stands allowed and the respondents



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are directed to reinstate the petitioner into the service of Central Reserve Police Force (CRPF) with all monetary benefits within a period of two months from the date of receipt of a copy of this order. No costs.

18.10.2023

dpq

Index : Yes /No

Speaking Order : Yes/No

To



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1. The Director General
CRPF, CGO Complex,
Lodhi Road, New Delhi – 110 003.
2. The Inspector General of Police
Western Sector, CRPF
3rd Floor, CGO Complex,
CBD Belapur,
Navi Mumbai – 400 614
Maharashtra
3. The Deputy Inspector General of Police,
Range Hqr., CRPF
Nagpur, Maharastra – 440 019.
4. The Deputy Inspector General of Police
Group Centre, CRPF
Avadi, Chennai 600 054.
5. The Commandant,
30 Battalion, CRPF
Chariduar District,
Sonitpur, Assam – 784 103.

J. SATHYA NARAYANA PRASAD, J.



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18.10.2023