

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 2824 of 2010

Gouri Sankar Das
Versus
Union of India & Ors.

For the petitioner : Mr. Rabindra Kumar Jaiswal

For Union of India : Ms. Chandreyi Alam

Heard on : 8th April, 2024

Judgment on : **8th April, 2024.**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the order dated 27th October, 2009 passed by the Inspector General of Police, Central Reserve Police Force (CRPF) as also the order dated 23rd June, 2008, issued by the Commandant 171 Battalion, CRPF.
2. The petitioner was an employee of the CRPF and was designated as Water Carrier. At the relevant point of time, he was posted at 171 Battalion at Tangasole, West Midnapore.
3. According to the petitioner, on 7th November, 2007 a movement order was issued. Although the petitioner in terms of the said

movement order had proceeded from Tangasole Head Quarter to Burijore of Midnapore, unfortunately, on 8th November, 2007 at around 8.12 hrs., in the morning when he called up his wife to ascertain her condition, he came to learn that his wife was seriously ill. According to the petitioner, he became confused and had to return to his home to see his wife. The petitioner claims that at the relevant point of time his wife was pregnant and that was the reason for his worry.

4. On 9th November, 2007, the petitioner had informed the Commandant with regard to the aforesaid development by posting a registered letter with acknowledgement due addressed to the Commandant of 171 Battalion. Subsequently the petitioner was served with an order of suspension dated 24th January, 2008 and later, on the basis of a charge-sheet levelled against him on 8th February, 2008 an enquiry was conducted by the Assistant Commandant under the provisions of Section 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter referred to as the “said Act”), read with Rule 27 of Central Reserve Police Force Rules, 1955 (hereinafter referred to as the “said Rules”). On the basis of the aforesaid enquiry, the petitioner was removed from service. Such fact would corroborate from the communication dated 23rd June, 2008.
5. Being aggrieved, the petitioner had preferred an appeal. Since the appeal was kept pending, the petitioner had moved this Hon’ble

Court under Article 226 of the Constitution of India by filing a writ petition which was registered as WP 3369 (W) of 2009. By an order dated 16th March, 2009, a Coordinate Bench of this Hon'ble Court taking note of the pendency of the appeal, had directed the Deputy Inspector General of Police, CRPF, to consider and dispose of the appeal on merits as early as possible but positively within 30 days from the date of receipt of a copy of this order.

6. Records reveal that the Appellate Authority had since, in terms of the direction passed by a Coordinate Bench of this Court decided the appeal and by order dated 4th April, 2009 having noted that the charges levelled against the petitioner have been established, and considering the serious misconduct committed by him found the penalty of removal from service to commensurate with his misconduct. Thus, having not found any cogent reason to interfere with the order of the Disciplinary Authority, the Appellate Authority had rejected the appeal as devoid of merit.
7. The petitioner had, however, unsuccessfully challenged the said order by filing a revisional application. Since then, the present writ petition has been filed.
8. Mr. Jaiswal, learned advocate representing the petitioner, by drawing attention of this Court to the charge-sheet submits that the respondents had levelled a charge of desertion against the petitioner by terming him as "Bhagora". He submits that once, an allegation of this nature is levelled, the respondents are obliged to

hold a Court of enquiry in terms of the provisions contained in Rule 31 of the said Rules. Admittedly, in this case, the enquiry was conducted by the Assistant Commandant. No court of enquiry was held. Since the procedure for holding enquiry was not followed, the entire enquiry proceeding stands vitiated. In support of his aforesaid contention he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Virendra Kumar through his wife v. the Chief of the Army Staff, New Delhi***, reported in **AIR 1986 SC 1060**.

9. The petitioner also claims that the petitioner had duly informed the authorities the circumstances leading to his unscheduled return to his residence and as such, in the fitness of things the order of removal from service ought not to have been passed. The order of removal from service is disproportionate to the misconduct. This Court in the given facts should interfere with the said order.
10. *Per contra*, Ms. Alam, learned advocate representing the respondents has placed before this Court the provisions of Sections 9 and 10 of the said Act. According to her, only in case of punishment proposed to be inflicted either under Section 9 or under Section 10 of the said Act that an enquiry as contemplated in Rule 31 of the said Rules is required to be undertaken. She submits that the aforesaid procedure has been provided in the statute to ensure safeguards before a person's liberty is affected.

Admittedly, in this case, proceeding under Section 11 of the said Act was held. The respondents had never proceeded against the petitioner with the object of punishing him by invoking the provisions of Sections 9 or 10 of the said Act. As such, there was no requirement for holding an enquiry in terms of Rule 31 of the said Rules. The petitioner has not questioned any procedural irregularity committed by the Assistant Commandant nor has he claimed violation of principles of natural justice. It is not a case of no evidence. Sufficiency or insufficiency of evidence before a domestic enquiry cannot form the subject matter of enquiry before this Hon'ble Court in exercise of power under Article 226 of the Constitution of India. She submits that considering the gravity of the offence, the punishment of removal from service cannot be said to be disproportionate. The writ petition does not merit any further consideration and should be dismissed.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly in this case it is noticed that a proceeding under Section 11 of the said Act was initiated against the petitioner. No proceeding under Section 9 or Section 10 of the said Act had been initiated.
12. Having regard to the aforesaid, I am of the view that the enquiry contemplated under Rule 31 of the said Rules was not necessary. The judgment relied on by the petitioner in the case of **Virendra Kumar through his wife** (*supra*) is in relation to Army

Act, 1950 which, *inter alia*, provides for imposition of death penalty for desertion. The said judgment is distinguishable on facts and does not assist the petitioner at all. It is well settled that a judgment is an authority of what it decides, a slight variation in facts is likely to alter the final outcome. The petitioner has not made out any case of violation of principles of natural justice. The petitioner has also not been able to identify any procedural irregularity. Although, it has been contended on behalf of the petitioner that sufficient cause for not complying with the movement order had been shown, I do not find any scope to consider such submissions as there is no scope to reappraise evidence. Admittedly, the petitioner has not been able to demonstrate that the enquiry was based on no evidence.

13. Although, the petitioner has claimed that in the given facts the punishment imposed on the petitioner was disproportionate to the charges levelled, however, I find that the Appellate Authority had duly considered such question. The relevant portion of the order passed by the Appellate Authority is extracted hereinbelow:

“Although appellant was directed by the Adjutant-171 Bn.CRPF to report at D/171 Bn (Burijore) from Bn Hqr (Tangalose) Kharagpore for a urgent duty (serving food in time to jawan), he deserted at his own thus deliberately disobeying the lawful command. His absence without leave had caused a lot of administrative problems to the Jawans of D/171 Coy who did not get food in time though they were fighting

naxalites by risking their lives. The charged official himself pleaded guilty during course of enquiry proceedings. Since he has committed serious misconduct, causing serious problems to the jawans who are fighting naxalites, awarding him the penalty of 'Removal from Service' is considered to commensurate with his misconduct."

14. Having regard to the aforesaid, I am of the view that no interference is called for in the present writ petition. The writ petition is accordingly dismissed.

15. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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