

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi**

M.A.T. 847 of 2024

**Gouri Sankar Das
VS.
The Union of India & Ors.**

For the Appellant : Mr. Rabindra Kumar Jaiswal
Ms. Manjula Paul

For the Union of India : Ms. Chandreyi Alam

Heard on : September 2, 2024

Judgment on : September 2, 2024

DEBANGSU BASAK, J.:-

1. The appeal is directed against the judgment and order dated April 8, 2024 passed in W.P.A. No. 2824 of 2010 by the learned Single Judge.

2. By the impugned judgment and order, learned Single Judge dismissed the writ petition.

3. The appellant as the writ petitioner assailed an order of removal from service passed by the disciplinary authority.

4. Learned advocate appearing for the appellant submits that, the appellant was constrained to leave his post on November 7, 2007. Appellant was constrained to do so in view of the serious medical condition of his wife. His wife was in advanced stage of pregnancy. On November 9, 2007 itself appellant informed the Commanding Officer as to the medical situation and sought to be excused and granted leave. He submits that, from time to time, appellant continued to inform his Commandant as to his precarious condition. Appellant could ultimately join his post on December 8, 2007 since the child was born on November 25, 2007.

5. Learned advocate appearing for the appellant submits that, no Court of Enquiry was held as against the appellant, although the charge was one of desertion. He points out that charge of desertion cannot be leveled in view of the fact that the appellant did not desert the police force. In any event, the alleged desertion was not for a period in excess of 60 days. Desertion, if at all was for the period from November 7, 2007 till December 8, 2007.

6. Learned advocate appearing for the appellant relies upon **AIR 1994 SC 215 (Union of India and Ors. Vs. Giriraj Sharma)** and submits that, since the

appellant did not willfully flout any order of the authorities, punishment of removal from service is disproportionate. He submits that removal from service merely on the ground of overstaying the leave period is harsh and disproportionate.

7. Union of India is represented.

8. Learned advocate appearing for the Union of India submits that, the appellant as a Constable of the Central Reserved Police Force was governed by the provision of the Central Reserved Police Force Act, 1949 and the rules framed thereunder. Since the appellant was on unauthorized leave for the period from November 7, 2007 till December 8, 2007, disciplinary proceeding was initiated. In such disciplinary proceeding, the appellant was found guilty and was, therefore, removed from service. She submits that, the appellant in the disciplinary proceeding pleaded guilty. In any event, according to her, quantum of punishment is in the domain of the employer.

9. We considered the rival contentions of the parties.

10. Appellant was with the Central Reserved Police Force and stationed at Tangasole, West Midnapore. He was sent to headquarter office of Burijhore from Tangasole on November 7, 2007 at 13.00 hrs. On the way to Burijhore, he took shelter at the Belpahari Police Station and informed the CRPF Radio Operator. Thereafter, on November 8, 2007, he went to a Telephone Booth to enquire about the condition of his family when he

became aware that his wife was seriously ill. Appellant thereafter went home at Purulia on November 8, 2007. On November 9, 2007, he sent a letter to the Commanding Officer by registered post.

11. Appellant informed his Commanding Office by letters dated November 19, 2007 and November 29, 2007 about his inability to attend to his duties and sought leave.

12. Appellant rejoined the services on December 8, 2007. A Suspension order was issued to the appellant on January 24, 2008. In such suspension order, it was alleged that on November 7, 2007, appellant was found to be absent in attending to his duties and that he was absent without the permission of the competent authority which is beyond the concerned post.

13. An Enquiry Officer was appointed. On the basis of the report of the Enquiry Officer, disciplinary authority passed an order dated June 23, 2008 directing removal from service.

14. Appellant preferred an appeal on September 19, 2008. Such appeal not being considered, appellant filed a writ petition being W.P. No. 3369 (W) of 2009. Such writ petition was disposed of by an order dated March 16, 2009 directing the appeal to be considered on merits expeditiously.

15. Appeal of the appellant was disposed of by an order dated April 14, 2019. The appellate authority concurred with the view of the disciplinary

authority and found that the punishment awarded to the appellant was commensurate to the gravity of the offence committed by him.

16. Appellant thereafter filed a writ petition being W.P. No. 9550 (W) of 2009 challenging the order of the appellate authority. Such appeal was disposed of by granting liberty to the appellant to apply for revision of the appellate authority's order in terms of the Central Reserved Police Force Rules.

17. Pursuant to the order of the High Court, appellant filed an application for revision before the Inspector General of Police, CRPF. The revisional authority dismissed the revisional application by the order dated October 27, 2009.

18. Charge in the departmental proceeding was one of absence without intimation to the competent authority. During the enquiry as also in the disciplinary proceeding, appellant accepted the charge and pleaded guilty.

19. Desertion as contemplated under the Central Reserved Police Force Rules prescribe a period of 60 days and also prescribes a mechanism for the parties on treating such a person with that requisite quantum of day's desertion to be treated in the prescribed manner. In the facts of the present case, appellant was absent from his duties for a period less than 60 days and, therefore, departmental proceeding was initiated.

20. Nothing is placed before us to suggest that a disciplinary proceeding cannot be initiated as against a Constable of the Central Reserved Police Force for his absence for a period less than 60 days. Nothing is also placed before us to suggest that only a Court of Enquiry needs to be constituted for the purpose of considering the absence less than 60 days.

21. It cannot be said in the facts of the present case that the disciplinary authority was acting without jurisdiction. Neither can it be said that the appellate authority or the revisional authority acted without jurisdiction.

22. Breach of Principles of Natural Justice is not the case run by the appellant. The proportionality of the punishment is one of the issues raised by the appellant.

23. Appellant was absent from duties over the period from November 7, 2007 till December 8, 2007. It is trite law that the quantum of punishment is within the domain of the employer. Courts must be extremely slow to interfere with the quantum of punishment imposed in a disciplinary proceeding. However, Courts can interfere only if the quantum of punishment is so disproportionate so as to shock the conscience of the Court. Even such a scenario, Courts are required to leave the quantum of punishment to be decided by the employer and not substitute the quantum of punishment by a quantum fixed by the Court.

24. In **Giriraj Sharma** (supra), the incumbent therein was granted leave and he overstayed such leave. The incumbent was in a position to explain the circumstances which made it inevitable for him to continue with the leave. The incumbent overstayed the leave for a period of 12 days. In such circumstances, the Supreme Court found that the incumbent did not flout the order willfully and, therefore, upheld the High Court's order of quashing the order of removal.

25. In the facts of the present case, appellant was not on leave. He chose to leave the post without prior intimation to his Commanding Officer. At that material point of time the area where he was deployed was considered to be Naxalite affected. Period of time when he was absent from his duties is the far in excess of 12 days. Plea of medical condition of his wife is put forward as an extenuating factor. Apparently, the wife of the appellant was in an advanced stage of pregnancy. The appellant left his post on November 7, 2007. Child was born on November 25, 2007. Even, thereafter appellant took time till December 8, 2007 to join his post.

26. Posting of the appellant was in Kharagpur. His residence is in Purulia. Distance between the two places is not such that appellant required such a long period of absence from his post.

27. Quantum of punishment imposed given the charges proved cannot be disproportionate. Appellant belonged to a disciplined force and was deployed in an area where there were Naxalite activities.

28. In such circumstances, we find not ground to interfere with the impugned judgment and order.

29. **M.A.T. 847 of 2024 is dismissed** without any order as to costs.

(Debangsu Basak, J.)

30. I agree

(Md. Shabbar Rashidi, J.)

S.D.