



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3297 OF 2021

Shri Bainade Santosh Vitthalrao
Age 48 years, Occ. Labour
Constable GD No. 931332111,
Ex. CT/GD/BS Vitthalrao
31 BN CRPF R/o. Khamgaon Village
Tq. Badnapur, District Jalna
(Maharashtra State)
Marathwada Region

...Petitioner

Versus

1. The Union of India
Through its Secretary of Ministry of
Home Affairs, North Block,
New Delhi 110 001
(Copy to be served on office of
Assistant Solicitor General,
Standing Counsel for UOI)
2. The Director General CRPF,
East Block-10, 7th Floor,
R.K. Puram, New Delhi 110 056
3. Inspector General of Police
North Eastern Sector,
CRPF, Stoney – Havan,
Bishop Cotton Road,
Shilong Meghalaya 793 001
4. D.I.G. of Police CRPF,
Khatkhati Assam,
5. Commandant 31 B.N. CRPF,
New Delhi 110 096

...Respondents

Mr. Chetan Choudhari h/f Shri Ravindra D. Bhamare advocate for the petitioner

Ms. Sudha Chintamani, stand counsel for respondents.

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**CORAM : MANGESH S. PATIL AND
PRAFULLA S. KHUBALKAR, JJ.
DATED : 14 DECEMBER 2024**

JUDGMENT (MANGESH S. PATIL, J.) :-

Heard.

2. Rule. It is made returnable forthwith. Learned advocate for the respondents waives service. At the joint request of both the sides, the matter is being decided finally at the stage of admission.

3. By resorting to Article 226 of the Constitution of India, the petitioner is challenging legality of the order dated 18.01.2003, passed by respondent No.3 – Inspector General of Police, Central Reserve Police Force, whereby, under Section 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter “CRPF Act”) r.w. Rule 27 and 29(d) of the Central Reserve Police Force Rules, 1955 (hereinafter “CRPF Rules”), the petitioner has been inflicted with a punishment of removal from service. He is also challenging the order of respondent No.3 - D.I.G. of Police, CRPF, whereby his appeal was dismissed on 06.05.2003. He is also taking exception to the order dated 6.5.2003, whereby revision against the order of the appellate authority has also been turned down.

4. The learned advocate for the petitioner submits that this petition is in the form of a mercy petition. He submits that the charge against the petitioner was not serious in as much as, unauthorized absence for a period of 92 days was the issue. He had resumed suo-moto and had furnished sufficient grounds for remaining absent. His wife was taken ill. She had to be hospitalized but the cause was not considered. The principles of natural justice were not followed and the punishment was inflicted. He would submit that the charge was in the nature of instances, which could have been met with the minor punishment under Section 10 of CRPF Act. The punishment imposed is grossly disproportionate and may be interfered with.

5. He would cite the decision of the supreme court in the case of ***Union of India vs. Giriraj Sharma; 1994 (Supp.3) SCC 755.***

6. *Per contra*, the learned advocate Ms. Sudha Chintamani, for the respondents would submit that there is no merit in the petition and it is liable to be dismissed. She would submit that it is a matter indiscipline in the CRPF. The petitioner was absent without permission for more than 90 days. Besides this charge, he was also charged for dereliction of the directions served to him, which was the second charge. Mere absence from duty was not the only charge. His conduct in not reporting to duty inspite of couple of intimations

was more serious than charge No.1. Due procedure was followed. He was called upon to explain and was heard and on merits, his case was considered. There is no fault in the decision making process, much less to the prejudice of the petitioner. She would refer to the case of Supreme Court in the matter of ***Union of India vs. Ghulam Mohd. Bhat; (2005) 13 SCC 228*** and would submit that it being a matter of disciplined force, the petitioner was liable to be dealt with sternly and the petition be dismissed.

7. We have considered the rival submissions and perused the papers.

8. The powers of judicial review in the matter of disciplinary proceedings, are well settled. It is only in the matter of no evidence that such power can be exercised. Even in an appropriate case, the power can be exercised to examine proportionality of the punishment inflicted. With this preface, let us examine the matter in hand.

9. Admittedly, the petitioner had remained absent without prior permission for more than 90 days. Section 9 provides the category of more heinous offences. Section 10 enlists less heinous offences. Though it is being now submitted on behalf of the petitioner that the petitioner's offence was of the kind prescribed under Section 10, though the clause (n) covers charge No.1 against the petitioner being 'absents himself without leave, or without sufficient cause overstays

the leave granted to him', one cannot ignore the fact that simultaneously, he was charged with another charge, whereby it was expressly alleged that he was guilty of negligence in duty/ remissless in discharging duty, having disobeyed the order conveyed to him by the competent authority directing him to return for duty, by communications dated 01.03.2002 and 03.04.2002. If such is state of affairs, we cannot concede to the submission of the learned advocate for the petitioner that the misconduct was merely of a less heinous kind, as described in Section 10 of CRPF Act. Charge No.2 would be more serious and would fit into the category of heinous offence, prescribed under Section 9 of CRPF Act of 'disobeying the lawful command' under clause (e) or 'desertion of the force' under clause (f).

10. Reliance of the learned advocate for the petitioner in the matter of ***Union of India vs. Giriraj Sharma (supra)*** conveniently overlooks the fact that an individual therein had merely overstayed the leave by 12 days and still was terminated. There was no other charge and that is why it was held that the punishment in the circumstances was harsh and he could have been visited with a minor punishment. On facts, the petitioner's case stands on a different footing. For the reasons, discussed herein-above, he is not entitled to derive the benefit of this decision.

11. Once having concluded as above, following the observations in the matter of ***Union of India vs. Ghulam Mohd. Bhat (supra)***, the punishment of removal, inflicted under Section 11 of CRPF Act, cannot be said to be grossly disproportionate.

12. The writ petition is dismissed.

13. Rule is discharged.

(PRAFULLA S. KHUBALKAR, J.)

(MANGESH S. PATIL , J.)

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