

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 6326 of 2009

Vishal Waghale

-Vs-

Union of India & Ors.

For the Petitioner : Mr. Sk. Mujibar Rahman

For the respondents : Mr. Bhudeb Chatterjee

Heard on : 28.01.2025, 05.08.2025

Judgment on : 02.09.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner was enrolled in the Central Reserve Police Force (CRPF) in the year 2000 after fulfilling all eligibility requirements. He rendered unblemished and satisfactory service, performing his duties diligently and without complaint until the initiation of the disciplinary proceedings.
2. On 05.04.2005, the petitioner was served with a memorandum of charge under Section 11(1) of the CRPF Act, 1949, alleging misconduct for overstaying leave without permission after availing sanctioned earned leave for 60 days (01.05.2004 to 29.05.2004) and returning only on 07.02.2005.
3. A departmental enquiry was initiated, with Shri S.L. Sengupta, 2nd-in-Command, appointed as Enquiry Officer. The petitioner participated in the enquiry and explained his absence was due to serious illness and

unavoidable domestic exigencies. He submitted medical records and relevant documents, which were accepted by the Enquiry Officer. Witnesses examined did not depose anything adverse against the petitioner. Despite repeated requests, the petitioner was never supplied with a copy of the enquiry report, depriving him of the opportunity to make a representation before the Disciplinary Authority.

4. By order dated 15.09.2006, the Commandant imposed the major penalty of removal from service further directing that the absence period (233 days) be treated as *Dies Non*, all medals and decorations earned be forfeited under Section 12(1) of the CRPF Act, outstanding dues, if any, be recovered from his settlement. This was done on the purported ground that the petitioner allegedly admitted the medical documents to be false, which the petitioner denied.
5. The petitioner's appeal under Rule 28 of CRPF Rules, 1955, was rejected by order dated 09.05.2007 on stereotyped grounds, without proper consideration.
6. A revisional application under Rule 29 was thereafter filed on 16.06.2008, pointing out procedural irregularities and miscarriage of justice, but the Inspector General of Police, CRPF, Eastern Sector, by order dated 26.10.2008, also rejected the revision without considering the new facts raised.
7. The disciplinary proceedings were vitiated for violation of principles of natural justice, as the petitioner was never furnished with a copy of the enquiry report, nor given an opportunity to contest its findings.

8. The charge under Section 11(1) CRPF Act, 1949 contemplated only minor punishments under clauses (a) to (e), such as reduction in rank, fine, or confinement, but not removal from service. Thus, imposition of the penalty of removal is *ultra vires* the statute and violative of Article 20(1) of the Constitution.
9. The proper course for alleged misconduct of absence without leave was judicial trial under Section 10(m) read with Rule 36 of the CRPF Rules, 1955. Instead, the respondents adopted a shortcut by initiating a departmental proceeding under Section 11(1), which was legally impermissible.
10. The proceedings were pre-determined and conducted without application of mind, with the authorities bent on imposing removal from service.
11. The petitioner had an unblemished record, and his absence could have been condoned or regularized by sanction of extraordinary leave, instead of imposing the harshest penalty.
12. The orders of the Disciplinary, Appellate, and Revisional Authorities suffer from non-application of mind, arbitrariness, and gross disproportionality, and are liable to be quashed. The impugned orders are violative of the petitioner's fundamental rights under Articles 14, 16, 20(1), 21, and 311 of the Constitution of India, being arbitrary, excessive, and in disregard of statutory provisions.
13. The Learned Advocate representing the petitioner submitted as follows:-
 - (i) The impugned departmental enquiry initiated under Section 11(1) of the Central Reserve Police Force Act, 1949 and the resultant penalty of Removal from Service was *ultra vires* the

statutory framework as well as violative of Article 20(1) of the Constitution of India. Section 11(1) only contemplates minor punishments as enumerated therein and did not authorize a penalty of dismissal or removal from service.

- (ii) The legislature, by expressly enumerating the punishments under Section 11(1)(a) to (e), intended only minor punishments, namely — reduction in rank, fine not exceeding one month's pay and allowances, confinement to quarters not exceeding one month, confinement in quarter guard for not more than 28 days with or without extra duties, removal from any office of distinction or special emolument.
- (iii) By imposing removal from service, the disciplinary authority acted in derogation of the statutory limits thereby exceeding jurisdiction and acting contrary to legislative intent.
- (iv) No copy of the Enquiry Officer's report was ever furnished to the petitioner despite repeated requests.
- (v) No show-cause notice was issued before imposition of penalty.
- (vi) The medical documents submitted by the petitioner in justification of his absence were arbitrarily declared false without any verification from competent medical authorities.
- (vii) The enquiry proceedings were pre-judged and conducted in a manner violative of the principles of natural justice.
- (viii) The respondents failed to consider the petitioner's otherwise unblemished service record, the mitigating circumstances of illness and domestic exigencies, and the fact that he was a

young member of the Force. Instead of adopting a corrective or humanitarian approach, the respondents imposed the extreme penalty of removal thereby depriving the petitioner and his dependent family members of their livelihood which was protected under Articles 14, 16, 21 and 311 of the Constitution of India.

- (ix) The enquiry was not concluded within the prescribed time schedule under Standing Order No. 20/2001.
- (x) Section 10(m) of the CRPF Act, 1949 provides for judicial trial for absence without leave, read with Rule 36 of the CRPF Rules, 1955. By adopting Section 11(1) proceedings instead, the authority circumvented the mandatory procedure thereby vitiating the entire enquiry.
- (xi) There were material contradictions, such as the memorandum of charges being issued by one Commandant and final order being passed by another, without proper continuity or legal justification.
- (xii) Both the appellate and revisional authorities dismissed the petitioner's appeals mechanically, without due consideration of the medical evidence, fresh grounds, or principles of proportionality. Their orders were stereotyped, non-speaking, and devoid of judicial application of mind.
- (xiii) The penalty of removal from service and its affirmance in appeal and revision were violative of Articles 14, 16, 20(1), 21 and 311

of the Constitution of India, as well as contrary to the scheme of the CRPF Act, 1949 and CRPF Rules, 1955.

- (xiv) The impugned orders of the disciplinary, appellate, and revisional authorities were arbitrary, illegal, disproportionate, violative of statutory provisions and constitutional protections, and were liable to be quashed.

14. The Learned Advocate representing the respondents submitted as follows:-

- (i) The petitioner was serving as a GD Constable under the respondent CRPF authorities. He was sanctioned leave from 01.05.2004 to 29.06.2004 and was duty-bound to resume service on 30.06.2004. However, he failed to report for duty.
- (ii) Despite issuance of three successive notices dated 10.07.2004, 24.07.2004 and 02.08.2004 at his home address, the petitioner did not rejoin service. Consequently, an arrest warrant under Section 10(m) of the CRPF Act, 1949 was issued through the local police station. A Court of Enquiry under Rule 31 of the CRPF Rules, 1955 was also convened.
- (iii) The petitioner continued in unauthorized absence up to 06.02.2005 and only reported back voluntarily on 07.02.2005 (forenoon).
- (iv) A departmental enquiry was initiated vide Memorandum dated 05.04.2005. The petitioner participated in the proceedings and, during enquiry, pleaded guilty to the charge of misconduct and unauthorized absence.

- (v) The disciplinary authority, upon conclusion of the enquiry, held the petitioner unfit to be retained in service and imposed the penalty of Removal from Service w.e.f. 15.09.2006.
- (vi) The petitioner's departmental appeal was dismissed on 09.05.2007 as being devoid of merit. His revision application was also rejected on 26.10.2008. Having exhausted departmental remedies, the petitioner filed the present writ application.
- (vii) The respondents contend that the writ petition discloses no illegality, irregularity or irrationality in the disciplinary proceedings or in the orders of the appellate and revisional authorities, so as to warrant interference under the limited scope of judicial review.
- (viii) Since the petitioner expressly pleaded guilty during the enquiry, in terms of Section 58 of the Indian Evidence Act, 1872, admitted facts need not be proved. Thus, the charge stood conclusively established.
- (ix) Reliance was placed on the judgment of the Hon'ble Supreme Court reported in AIR 2008 SCW 2244 (Paras 15 & 17), which held that when misconduct was admitted, no further proof was required and punishment could not be interfered with.

15. The petitioner had been a member of the Central Reserve Police Force. Being sanctioned earned leave for 60 days by the respective authority commencing from 1st May 2004 to 29th June 2004, the petitioner went to avail the same, however, failed to rejoin his duties after expiry of the

sanctioned period of leave as aforesaid and continued to overstay without permission of the competent authority. The petitioner did not pay heed to the letters issued by the respective unit directing him to report to his duties and refrained from resuming his service. His whereabouts were reported as 'not known'. He remained absent on and from 30.06.2004. Ultimately a warrant of arrest was issued against him on 16th August 2004 vide 138 BN CRPF letter no.W.11-1/04-138-EC-11. Subsequently the petitioner reported at the Unit Headquarters (Unit Hqr/138 BN CRPF) on 07.02.05 at 16:45 hrs. on his own after a continuous absence of unauthorized leave of 223 days.

16. Consequently, a departmental enquiry was initiated against him for misconduct and disobedience of orders and a charge-sheet vide Memorandum and Article of Charge dated 05.01.2005 was issued against him. The petitioner failed to submit any representation objecting to the charge-sheet nor produced any documents to justify his illness.
17. The petitioner relied on two prescriptions issued by the Resident Medical Officer, MG Hospital Nagpur. The first prescription bearing SL No.0538390 placed him on bed rest from 25th June 2004 to 24th December 2004. The second prescription bearing SL No.0538438 advised him to be on rest from 25th December 2004 to 29th January 2005 and declared him fit to join duty on 30th January 2005. Corroborative medical records such as OPD numbers, admission slips, X-rays, cash memos or copies of FIR relating to the alleged spinal cord injury were not produced.
18. The disciplinary authority on scrutiny detected serious discrepancies. Moreover, the difference in the aforesaid serial numbers referred to

visitation 48 patients at the general hospital from 25.06.2004 to 29.01.2005 was implausible and incredulous. The petitioner further could not validate his claim through testimonials.

19. The disciplinary authority concluded the petitioner had deliberately overstayed leave, procured medical certificates as an afterthought and thereby committed grave misconduct in violation of service discipline. After affording due opportunity of hearing, the petitioner was imposed the penalty of removal from service by order dated 15th September 2006. The statutory appeal preferred by the petitioner was dismissed on 18th December 2006, affirming the findings of the disciplinary authority approving the punishment commensurate with the gravity of the offence.
20. The first complaint of the petitioner to have been denied with the service of the Enquiry Report cannot be sustained. The Commandant 138 Bn, CRPF, Mr. D. Bhattacharya had informed the petitioner through a communication No.P.VIII-5/2005-138/EC II dated 28th July 2006 of a departmental enquiry conducted against him forwarding the report of the Enquiry Officer, seeking a representation against the said enquiry report, if any, from the petitioner within 15 days of receipt of the aforesaid letter. The petitioner was granted reasonable opportunity to be heard.
21. The discrepancy in serial numbers only 48 patients apart despite a span of 7 months was rightly sustained. It is inconceivable in a general hospital of considerable repute on the aforesaid number of patients attended during that period. This anomaly casts grave suspicion on the genuineness of the documents which have been rightly disregarded by the Disciplinary and the Appellate Authority.

22. OPD / admission number was not mentioned nor were the X-ray reports, FIR or cash memos as aforesaid were produced by the petitioner. Despite repeated communications, the petitioner failed to intimate his medical condition or reasons for overstay or to seek further permission for extension of leave to be granted in his favour through valid considerations to the unit or to submit contemporaneous documents.
23. These omissions demur the evidentiary value of the medical slips and acquiesce the inference that the documents were procured belatedly as a subterfuge to regularize the unauthorized absence.
24. The conduct of the petitioner deliberately abstaining to report for duty on expiry of sanctioned leave on 29.06.2004 without convincing plausible reasons and communication exemplified audacity to unheed the directions from Superior Officers to resume duty on multiple occasions portray strong dereliction of duties. The warrant of arrest issued against the petitioner reflected defiance of compliance directions. Such consistent indiscipline contradicts the obligations and conduct of a member of a disciplined force. No procedural irregularity or violation of principles of natural justice could be conspicuous on record. The petitioner was granted ample opportunity to defend himself.
25. Section 11 of the Central Reserve Police Force Act, 1949 states as follows:-

“11. Minor punishments.— (1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of

other misconduct in his capacity as a member of the Force, that is to say,—

- (a) reduction in rank;
- (b) fine of any amount not exceeding one month's pay and allowances;
- (c) confinement to quarters, lines or camp for a term not exceeding one month;
- (d) confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other duty; and
- (e) removal from any office of distinction or special emolument in the Force.”

26. The Hon'ble Supreme Court in **M/S Indian Oil Corporation Ltd. Vs. Rajendra D. Harmalkar**¹ observed as follows:-

“2.7 Feeling aggrieved and dissatisfied with the order of dismissal passed by the disciplinary authority confirmed by the appellate authority, the original writ petitioner preferred the writ petition before the High Court. It was the case on behalf of the original writ petitioner that he admitted the alleged guilt of misconduct on the assurance of a lenient view being taken by the authorities. It was also argued that there was no minimum educational qualification and age-limit (minimum or maximum) prescribed to secure the job or even for the promotion. It was submitted that therefore in such circumstances, it cannot be said that he had submitted a false and forged certificate with an attempt to secure the job or promotion. That the certificate was produced only for the purpose of record and there was no dishonest intention to grab the job or promotion. It was also urged that the criminal court had acquitted him and that he had a good service record and that the first charge of insubordination is not established. The High Court framed only one point for determination, namely, whether the punishment imposed upon the petitioner is grossly disproportionate to

¹ (2022) 17 SCC 361

the misconduct committed by the petitioner. By the impugned judgment and order the High Court observed and held that the punishment imposed upon the original writ petitioner was grossly disproportionate to the misconduct and interfered with the order of punishment imposed by the disciplinary authority by observing that the respondent was assured that on admission of his guilt a lenient view may be taken while imposing the punishment. The High Court also observed that the petitioner is out of service from the year 2006 and as the counsel for the petitioner had made a statement that he will forego his back wages and promotion, by the impugned judgment and order the High Court allowed the said writ petitioner and directed the appellant to reinstate the original writ petitioner from the date of dismissal from service in the post of Refuelling Helper, however without any back wages or benefits.

....

3.5 Relying upon the decision of this Court in *Om Kumar v. Union of India* [*Om Kumar v. Union of India*, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039] ; *Union of India v. G. Ganayutham* [*Union of India v. G. Ganayutham*, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806] ; *Union of India v. Dwarka Prasad Tiwari* [*Union of India v. Dwarka Prasad Tiwari*, (2006) 10 SCC 388 : (2007) 1 SCC (L&S) 135] and *Union of India v. Diler Singh* [*Union of India v. Diler Singh*, (2016) 13 SCC 71 : (2017) 2 SCC (L&S) 583] , it is submitted that while interfering with the order of punishment imposed by the disciplinary authority the High Court has exceeded in its jurisdiction while exercising its powers under Article 226 of the Constitution of India. It is submitted that as per the settled position of law unless there is a procedural irregularity in conducting the disciplinary proceedings and/or the punishment imposed is shockingly disproportionate to the proved misconduct, then and then only, the High Court can exercise powers under Article 226 of the Constitution of India and interfere with the order of punishment imposed by the disciplinary authority.

....

6. By the impugned judgment and order, the High Court, in exercise of powers under Article 226 of the Constitution of India, has

interfered with the order of punishment imposed by the disciplinary authority and has ordered reinstatement without back wages and other benefits by observing that order of punishment of dismissal from the service imposed by the disciplinary authority is disproportionate to the misconduct proved.

Therefore, the short question which is posed for consideration by this Court is, whether, in the facts and circumstances of the case the High Court is justified in interfering with the conscious decision taken by the disciplinary authority while imposing the punishment of dismissal from service, in exercise of powers under Article 226 of the Constitution of India.

7. On the question of judicial review and interference of the courts in matters of disciplinary proceedings and on the test of proportionality, a few decisions of this Court are required to be referred to:

i) In Om Kumar [Om Kumar v. Union of India, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039] , this Court, after considering the Wednesbury principles and the doctrine of proportionality, has observed and held that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority to order and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as “Wednesbury principles”. In Wednesbury Case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] , it was said that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.

ii) In B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , in para 18, this Court observed and held as under : (SCC p. 762)

“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.”

iii) In Lucknow Kshetriya Gramin Bank v. Rajendra Singh [Lucknow Kshetriya Gramin Bank v. Rajendra Singh, (2013) 12 SCC 372 : (2013) 3 SCC (L&S) 159] , in para 19, it was observed and held as under : (SCC p. 382):

“19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority

or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed.”

27. However, the petitioner's conduct did not trace to multiple occasions of overstay to term him as a habitual absentee. The petitioner had been guilty of misconduct, though his past service record was satisfactory could not exonerate him from being imposed with punishment.

28. However, in absence of evidence of active malice, criminality or conduct that fatally undermined the first reposed in the petitioner, remedial punishments (censure, reduction in rank, stop of increments, forfeiture of seniority etc.) would have achieved the objectives of deterrence and maintenance of discipline. The otherwise satisfactory track record of the petitioner could have been a mitigating factor for tempering the punishment, which definitely was harsh and unconscionable. The punishment of removal from service was disproportionate considering the lack of reasoning on the part of the concerned authority that gravity of the dereliction of duties on the part of the petitioner had been detected on several occasions earlier of antecedent misconduct. The punishment of removal from service is stringent enough to shock the conscience of this Court.

29. Accordingly, the punishment of removal from service awarded to the petitioner vide office Memorandum No. P.VIII-5/2005-138-EC.II, dated

15th September, 2006 issued by Commandant-138 BN, C.R.P.F. and the office order No. R.XIII-5/07-DPR-ESTT-3 dated 9th May, 2007 issued by D.I.G.P., C.R.P.F., Durgapur are set aside.

30. In view of the above discussions, the respondent authorities are directed to reconsider the case of removal of the petitioner from service leniently, imposing any other punishment apart from the punishment of removal from service.

31. Accordingly, the instant writ petition being WPA 6326 of 2009 is disposed of.

32. There is no order as to costs.

33. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)