



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 647 OF 2021

Devidas s/o Lachamanna Kadalwar,
Age : major, Occu. : Nil,
R/o. : Degloor, Tq. Degloor
Dist. Nanded – 431717.

.. Petitioner

Versus

1. The Union of India,
Through its Secretary,
Home Department,
New Delhi.
2. Inspector General of Police,
(Communication/Information Technology)
CRPF, East Block No. 0-7, Level 4,
R. K. Puram, Sector- 1,
New Delhi – 110066.
3. Deputy Inspector General of Police,
Signal Range, CRPF, Sector – 5,
Salt Lake, Kolkata,
West Bengal – 700091.
4. Commandant – 119 Battalion,
CRPF, Rauriaya,
Jorhat, Assam – 785004.
5. Radio Grid Supervisor,
119 – Battalion,
CRPF, Rauriaya,
Jorhat, Assam – 785004.

.. Respondents

Mr. V. D. Sapkal, Senior Advocate i/by S. R. Sapkal a/w Mr. Yash A
Jadhav, Advocates for the Petitioner.

Mr. Bhushan B. Kulkarni, Advocate for Respondent Nos. 1 to 5.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 07th January, 2025.

Date on which order pronounced : 05th February, 2025.

ORDER :-

. The unsuccessful petitioner before all the authorities has approached this Court by challenging the judgment and order passed by the learned Inspector General of Police (Communication/Information Technology) CRPF, New Delhi. In the revision, the learned Inspector General of Police i.e. respondent No. 2 confirmed the order passed by the Deputy Inspector General of Police, Signal Range, CRPF, Kolkata i.e. respondent No. 3. The learned Deputy Inspector General of Police by the said order confirmed the order passed by the Commandant – 119 Battalion, CRPF, Rauriaya, Jorhat, Assam thereby dismissing the appeal. He further prayed for relief of reinstatement of the petitioner with continuity in service and consequential benefits.

2. The first respondent is the Union of India. The second respondent is the Inspector General of Police (Communication/Information Technology) CRPF, New Delhi. The third respondent is the Deputy Inspector General of Police, Signal Range, CRPF, Kolkata. The Fourth respondent is the Commandant – 119

Battalion, CRPF, Rauriaya, Jorhat, Assam. The fifth respondent is the Radio Grid Supervisor, 119 – Battalion, CRPF, Rauriaya, Jorhat, Assam.

3. The facts in short giving rise to the present petition are as below :

4. The petitioner was appointed on 12.02.1999 to the post of Constable in CRPF. In the service he passed examination of radio operator in the year 2004. On completion of training he was appointed as radio operator at Nimach, Madhya Pradesh. In the year 2005, he was transferred from place to place. The last such posting was at 119 – Battalion, Assam. While in service he applied for 40 days leave from 21.04.2016 to 30.05.2016 to attend the rituals of death anniversary of his mother. The said leave was sanctioned. After leave period he was supposed to report on 31.05.2016. However, he could not join the duties as he felt ill and was diagnosed with Pulmonary Tuberculosis which required a prolong treatment. When he was on leave an offence came to be registered against him. He was therefore arrested and was in custody from 21.07.2018 till 30.11.2018. From the jail he sent communication to the authorities stating that he is in jail. He thereafter also preferred the said communication seeking extension of leave along with supporting medical certificates and reports.

5. The department, however, decided to hold departmental enquiry for overstaying and for disobedience. A memo was issued on 24.01.2019 by the Deputy Inspector General of Police. A charge was framed under Section 11 (1) of the Central Reserve Police Force Act (hereinafter referred to as "CRPF Act"). A charges was for disobedience and being negligent in duties as he was on leave from 21.04.2016 to 30.05.2016. He was to report on 31.05.2016, but he did not report to the duties in spite of repeated letters sent on his home address. He was ordered to visit in CRPF hospital or nearby CTC, CRPF, Nanded (Maharashtra) with complete medical reports for treatment or for on duty treatment to report to Battalion Headquarter. In spite of such directions, he did not report for treatment of disease to CRPF hospital. The second charge was that, he committed misconduct by disobedience of order by remaining absent from duties for treatment from 21.07.2018 to 30.11.2018 for 133 days . In the departmental enquiry, it was held that the charges against the petitioner are proved. The punishment was proposed of dismissal from service. On receiving explanation and finding that the same was not satisfactory, an order of termination came to be passed on 20.07.2019 by respondent No. 3. The petitioner therefore filed an appeal before respondent No. 3. The same came to be dismissed on 21.11.2019. Against the judgment in appeal, the petitioner preferred revision. The said revision also came to be

dismissed by order dated 20.07.2020. The petitioner is therefore, before this Court.

6. It is the case of the petitioner that, though the allegations are that the petitioner did not report to the duty, it is for the reason that the petitioner was not well and thereafter was in jail for some period. About second charge, it is the case of the petitioner that the petitioner did not receive any communication and therefore he could not report to the medical hospital, CRPF.

7. The learned senior advocate Mr. Sapkal for the petitioner argued the case in detail. He submits that, the leave was sanctioned on 18.04.2016. While on leave he was diagnosed with Tuberculosis and it is for that reason he could not join the duties. He was thereafter falsely implicated in a criminal case for the offence under Section 307 of the Indian Penal Code. It is for this reason he was in jail from 21.07.2018 to 30.11.2018. Though intimation was sent through jail, the same was not received by the respondents. He submits that, no fault can be found with the petitioner for non receiving of communication by the respondents. The communication sent directing petitioner to report to CRPF hospital was also not received as that was not sent on the correct address given by the petitioner. None of these acts can be said to be deliberate act on the part of the petitioner. No case is therefore made

out of disobedience. The revisional authority did not give any personal hearing to the petitioner. Thus, since no personal hearing was given, the petitioner did not get an opportunity to satisfy the revisional authority. The punishment of dismissal is a major punishment and therefore, it was necessary to give proper opportunity to the petitioner. His further submission is that, the petitioner could not report to the duty for the reasons beyond his control. Considering this aspect, the punishment appears to be harsh and disproportionate. This is on the background that the period of absenteeism was condoned by the authorities. When the period of absenteeism is condoned, there is no question of taking the said charge as proved. He thus submits that, the impugned action deserves to be quashed and set aside.

8. The learned advocate Mr. Kulkarni appearing for all the respondents strongly opposes the petition. He submits that, taking the facts as it is, it is seen that, even after release of the petitioner from jail, there was no intimation sent by the petitioner. In any case, the same was even not received by the authorities. It was for the petitioner to report to the duty in time and if he could not report to duties, it was for him to send proper communication. The petitioner was working in a disciplined force which requires to maintain a strict discipline. Any lapse on the part of member of the force is taken seriously as it has got

the serious consequences. Maintaining the discipline is of paramount importance in the forces. He submits that, the communications sent by the authorities were sent on the address given by the petitioner himself. There is no substance in the submission that the petitioner did not receive the communications asking him to report to CRPF hospital. He submits that, no interference is required while exercising jurisdiction under Article 227 of the Constitution of India.

9. This Court has gone through the submissions. It is seen that, the petitioner was suffering from Tuberculosis and there is record supporting this position. The communication dated 20.11.2016 sent from the jail shows the endorsement of the jail authority sending to the headquarter of the petitioner. However, the same appears to be the only communication sent by the petitioner in that regard. There is nothing to show that, he had made any extra efforts to see that the communication reached by the authorities. The papers of the departmental enquiry conducted by Commandant – 119 Battalion, CRPF shows that, the statement of concerned persons were recorded. The report was sufficient to come to conclusion that the petitioner had suppressed the fact that he was lodged in the jail. He had sent communications dated 08.10.2017 to 07.06.2018 and 08.06.2018 to 31.01.2019 and sought extension when in fact for this period the

petitioner was in jail. It is thus concluded that, when he was in jail he did not intimate this fact though he sent communications stating that he needs to extend the leave as he is suffering from Tuberculosis. In the enquiry report, all the details are recorded about sending of the communication by the respondents to the petitioner. The petitioner did not cross-examine the witnesses. As many as nine witnesses were examined in the departmental enquiry. In the enquiry, it is considered that, the leave was regularized of 643 days on medical ground. It is concluded that the petitioner suppressed the fact that, he was lodged in the jail. In spite of specifically asking to report to the hospital he did not report.

10. On 20.07.2019, the Commandant – 119 Battalion sent communication calling for the explanation. It is only thereafter he considered the questions and answers between the enquiry officer and the petitioner. In the answer, it was stated that though he received the communication of asking him to report to the CRPF hospital, he did not report. It is stated that, since he was taking treatment in Government hospital he did not feel it necessary to approach the CRPF hospital. It was again asked that why he was required treatment for about three years when Tuberculosis is normally cured within 6-9 months. The answer was that since he used to feel omitting after taking the tablet

and he was getting reactions. It is stated that, for this reason he did not take tablets regularly. During the course of enquiry it came on record that the petitioner was not even at home for three months after lodging the complaint against him and for that he had not made any communication. This all shows that, the conduct of the petitioner was unbecoming a member of disciplined force. It is considered that, all the communications were sent on the address given by the petitioner. It is the petitioner who was staying away from his residence. Thus, considering all, the order was passed of dismissal. In the meantime, the petitioner had also approached this Court by filing Writ Petition No. 13887/2019 seeking certain reliefs. However, subsequently that become infructuous in view of communication dated 21.11.2019. A leave was granted to challenge the said communication in appropriate proceeding.

11. So far as not giving personal hearing to the petitioner is concerned, this Court finds that, no provision is shown requiring personal hearing to be given to a member of force in a revision. From the order of dismissal of petitioner this Court finds that, the medical authority had considered all the documents and the enquiry report. The impugned order shows that there was proper application of mind. It is specifically considered that, though the petitioner was in jail he was

sending communications along with the medical papers seeking extension of leave period without disclosing that he was in jail. This is held to be act of indiscipline. In the enquiry the petitioner also accepted that, since he was trying for bail, he was not at his home for about three months. It is further considered that, he deliberately suppressed the fact of his custody in jail. He stayed at a distant place from his residential place. Thus, all these things were considered.

12. The learned senior advocate for the petitioner during the course of argument relied upon the judgment in the case of **Akhilesh Prasad Vs. Union Territory of Mizoram**¹. This Court does not find that, the said judgment is useful in any manner to the petitioner.

13. He further relied upon the judgment in the case of **Union of India and others Vs. Giriraj Sharma**². In the said case, the delinquent had over stayed the period of leave by 12 days. It was the case of the employee that, because of unexpected circumstances he was required to over stay for 12 days. For such duration of over stay action of dismissal was taken against the employee. In that view the High Court had set aside the dismissal order. In an appeal before the Hon'ble Apex Court, it is held that the penalty of dismissal from service was not

1 AIR 1981 SC 806.

2 AIR 1994 SC 215

called for in that case. It was left open for the authorities to impose a minor penalty. This Court finds that, the said judgment is also of no use to the petitioner. In that case the period of over stay was only 12 days and the High Court had accepted that it was because of the unexpected circumstances.

14. In the present case, the petitioner has over stayed for much longer period about 643 days and that too by suppressing the fact that he is in jail. From the jail, he was sending the communications stating that he is not well and suffering from Tuberculosis and was praying for extension of leave period. This is certainly a deliberate act on the part of the petitioner.

15. Considering all above and the judgments cited, this Court finds it difficult to hold that the petitioner was Innocent. To hold that the petitioner did not remain absent deliberately and that he could not obey the orders of the superiors as he did not receive the communication is difficult. It has clearly come on record that the petitioner was staying at a distant place from his residence and it is for this reason he did not receive the communications. Secondly, for all these reasons this Court is not convinced by the submissions of the petitioner.

16. This Court does not find any merit in the writ petition and the writ petition, therefore, stands dismissed. No order as to costs.

(KISHORE C. SANT, J.)

PS.B.