

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
SWP NO. 1019/2017

JAVAID AHMAD KUMAR
S/O MOHD SHUBAN KUMAR
R/O HAYANPALPORA
TEHSIL KANGAN DISTRICT GANDERBAL.

...Appellant(s)/Petitioner(s)

Through: Mr. M.Y. Lone, Advocate

Vs.

- 1. UNION OF INDIA THROUGH MINISTRY OF HOME AFFIARS NEW DELHI;**
- 2. DIRECTOR GENERAL C.R.P.F BLOCK NO. (1) CGO COMPLEX LODHI ROAD NEW DELHI- 03;**
- 3. INSPECTOR GENERAL OF POLICE IMPHAL RANGE CRPF (IMPHAL) MANIPORE;**
- 4. DEPUTY INSPECTOR GENERAL OF POLICE IMPHAL RANGE CRPF (IMPHAL) MANIPORE-795113 AND OTHERS.**

...Respondent(s)

Through: Mr. T.M. Shamsi, DSGI with
Ms. Yasmeena, Advocate

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
02.07.2024

Oral:

1. The petitioner in the instant petition filed under Article 226 of the constitution has prayed for the following reliefs:-

“a) A writ of "certiorari" or any other appropriate writ, order or direction may be issued in favor of the petitioner and against the respondents and the impugned termination order No P.V111.2./2011-27 ESTT -11 dated 27-10-2011. & order bearing no R.X1 1 14.27/2016-EC-1 (Annexure E) and impugned order dated March 2017 (Annexure G) passed by the respondents may be quashed.

b) By issuance of writ of "mandamus" or any other appropriate writ, order or direction directing the respondents to reinstate the petitioner with retrospective

effect & give the petitioner all monetary, promotional, service and seniority benefits retrospectively.”

2. The facts giving rise to the filing of the instant petition as stated therein are that the petitioner came to be appointed as Constable in the Central Reserve Police Force (for short CRPF) on 4th March, 2008 and was allotted number 085342156 after completion of basic training and consequently posted in A-27 Battalion CRPF on 15th September, 2009, and that the petitioner applied for 20 days leave on account of ailment of his mother which came to be granted by respondent 5 herein in terms of sanction dated 15.10.2010 w.e.f 16.10.2010 upto 04.11.2010, and that, on account of seriousness of ailment of his mother, the petitioner could not resume his duties on 05.11.2010, however, reported for duties on 08.11.2010, but was not allowed to resume the duties and instead came to be informed that his services will be terminated and that the petitioner despite that continued to approach the respondent 5 for allowing him to resume his duties which he was not allowed though representations as well were made continuously by the petitioner in this regard, and that a legal notice also came to be served by the petitioner upon the respondents through his Advocate in this behalf, in response to which notice, the petitioner came to be informed that he stands dismissed from service on 27.10.2011 and that he can prefer an appeal against the said dismissal, whereupon the petitioner preferred an appeal against the said dismissal which appeal, however, came to be rejected by the respondent 4 in terms of order dated 30th June, 2016, whereafter the petitioner filed petition before this Court being SWP No. 2108/2016, which petition came to be disposed of on 28.12.2016 at its threshold calling upon the petitioner to file a revision petition against the order

of dismissal as also the order of rejection of appeal, whereupon the petitioner preferred a revision petition before the Revisional Authority which revision petition as well came to be rejected in terms of order dated 7th March, 2017.

3. The petitioner has challenged in the instant petition impugned dismissal order dated 27.10.2011, the orders of Appellate and Revisional Authorities dated 30.06.2016 and 7th March, 2017 respectively on a fundamental ground that the petitioner has been condemned unheard by the respondents while dismissing him from service as the petitioner was never served with any show cause notice for resumption of duty or a notice for holding of a departmental enquiry inasmuch as a notice to participate thereof therein the said enquiry as also a notice before directing his dismissal from service.
4. **Objections** to the petition have been filed by the respondents, wherein the petition is being opposed *inter-alia* on the grounds that the petitioner though came to be sanctioned 20 days leave w.e.f 16.10.2010 upto 04.11.2010, the petitioner did not resume his duties and after awaiting for a considerable period of time for the petitioner to resume his duties, after the petitioner had been called upon to his duties resulted into lodgment of a complaint against the petitioner for issuance of a warrant of arrest before the CJM-Commandant on 15.12.2010 requiring the Superintendent of Police Ganderbal to effect the arrest of the petitioner and thereafter a Court of Enquiry was ordered by the respondent Commandant on 31st January, 2011 and based on the recommendations of the said Court of Enquiry, the petitioner came to be declared as a **Deserter** vide order dated 09.04.2011, followed by ordering of a departmental enquiry against

the petitioner commencing by issuance of memorandum of charges dated 27.05.2011 issued and addressed to the petitioner at his home address followed by the appointment of an enquiry officer to enquire into the charges levelled against the petitioner which enquiry officer as well called upon the petitioner to participate in the said enquiry in terms of letter dated 04.07.2011 and on account of failure of the petitioner to respond to the said notice, ex-parte enquiry was conducted by the enquiry officer and the copy of said enquiry report came to be sent to the home address of the petitioner on 08.10.2011, calling upon the petitioner to produce any document/witness in his defence within 15 days and on account of his failure to respond to the same, the respondent Commandant consequently ordered dismissal of the petitioner from service in terms of order dated 27th October, 2011.

It is being further stated in the objections that the allegations levelled by the petitioner in the petition against the respondents are baseless and wrong and that the petitioner after repeated correspondence did not report back to his duties and also failed to participate in the enquiry conducted against him, wherein the said enquiry, the charges levelled against the petitioner came to be proved and consequently resulted into issuance of order of dismissal against the petitioner.

It is being further stated in the objections that the petitioner came to be granted ample opportunities to defend himself and the order of dismissal came to be passed as per rules and regulations and that the accusations made by the petitioner that he was never served with any notice or order of dismissal are wrong as the same were sent to the petitioner through concerned Superintendent of Police or SHO.

Heard learned counsel for the parties and perused the record.

5. At the outset it is revealed from the record of the proceedings that the appearing counsel for the respondents had raised a plea qua the maintainability of the petition on the ground of lack of territorial jurisdiction of this Court on the premise that the order of termination passed against the petitioner has been issued by DIG at Manipur. The counsel for the respondents, however, now would contend that the said plea is not being pressed and would pray for consideration of the matter on merits. The statement of the counsel is taken on record and the matter is taken up for consideration on merits. Even otherwise also perusal of the record available on the file prima facie suggests that this Court is possessed of the jurisdiction to deal with the matter particularly having regard to the part of the cause of action having arisen within this Court.
6. The core issue involved in the instant petition which begs consideration of this Court is as to whether the respondents have served the petitioner with the notice/s after his overstaying of leave initially requiring him to resume his duties after availing the sanctioned leave of 20 days, thereafter at the time of ordering of holding of a departmental enquiry against him as also after that during the course of holding of said enquiry and lastly upon completion of the said enquiry.
7. Perusal of the record produced by the counsel for the respondents pertaining to the case of the petitioner prima facie tend to show that there is no proof of **actual service of** any notice claimed to have been issued by the respondents to the petitioner ever since the petitioner overstayed his leave. The said fact even gets authenticated,

corroborated and even endorsed by an inter se communication dated 15.04.2015 of the respondents contained in the record file bearing No. P.VIII 2/11.27EC-II at running page 43 bearing No. J.II.2/2015-EC-I addressed by DIGCENT RANGE IMP to the COMMANDANT 27 BN) providing therein as under:-

“FURTHER, ON PERSUAL OF PWC AND COI/DE FILES, IT IS EMERGED THAT COPIES OF COI REPORT, MOC, ENQUIRY REPORTS & FINAL ORDER WERE SENT TO INDIVIDUAL AT HIS HOME ADDRESS THROUGH REGISTERED POST WITH AD, BUT NO PROOF AS TO CONFIRMED THAT SAME WERE REACHED TO HIM OR HE DENIED TO RECEIVE THEM, OR ANY REMARKS OF THE POSTAL AUTHORITIES HAS NOT BEEN TAKEN INTO ACCOUNT WHILE DECIDED MATTER WHICH IS CONTRARY TO THE INSTRS/DIRECTION ON THE SUBJECT (.) AS PER RULE, CHARGE SHEET HAS TO BE DELIVERED TO CONCERNED EMPLOYEE IN PERSON OR THOUGH REGISTERERED POST (.) MERE COMMUNICATION IS NOT SUFFICIENT (.) DISCIPLINARY AUTHORITY & INQUIRY OFFICER ARE DUTY BOUNDED TO CONFIRMED THAT CHARGE SHEET IS REACHED TO DELINQUENT AND IF HE DID NOT RESPOND TO IT, THEN, INQUIRY OFFICER CAN PROCEED EX-PARTE ONLY (.) HENCE, POINT OF LAW IS ARISED OUT THIS CONTEXT IS THAT PROTRACTED CORRESPONDENCE MADE WITH THE PRETENDER REACHED TO HIM, IS REQUIRED TO BE ESTABLISHED BASED ON RELIABLE DOCUMENTS (.)”

Having regard to the aforesaid admitted position, the only inescapable conclusion that could be drawn in the matter is that the respondents have failed to follow the fundamental principles of

natural justice while proceeding against the petitioner in the matter of his overstaying of leave as indisputably the respondents have failed to prove that the notices claimed to have been addressed to the petitioner asking him to resume his duties inasmuch as the notices claimed to have been issued by them to the petitioner *qua* the departmental enquiry held against him, have had been actually served upon the petitioner. The respondents in essence have failed to prove and establish the “**actual service**” of the said notices upon the petitioner, thus, in the process have made a complete departure from the Rule being Rule 27 of the Central Reserve Police Rules of 1955 which rule provide for the procedure for conducting a departmental enquiry against an erring force personnel and seemingly has been conceived with the aim and object of providing a reasonable opportunity of hearing to a delinquent force personnel. A reference in this regard to the judgment of the Apex Court passed in case titled as “*Union of India and others Vs. Dinanath Shataram Karekar & Ors*” reported in 1998 (7) SCC page 569 would be relevant, wherein at para 10, following has been laid down :-

“where the disciplinary proceedings are intended to be initiated by issuing a chargesheet, its actual service is essential as the person to whom the chargesheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of “Communication” cannot be invoked and “Actual Service” must be proved and established.”

Since as has been noticed in the preceding paras that the respondents have failed to prove and establish the “**actual service**” of the notices upon the petitioner in the matter, it cannot, but be said that the respondents have invaded and infringed the legal, statutory and fundamental rights of the petitioner in the matter while dismissing him from services in terms of impugned order rendering the consequential orders passed by the Appellate and Revisional Authorities irrelevant and insignificant.

8. Considering the fact that the respondents have conducted the disciplinary enquiry against the petitioner in breach and violation of principles of natural justice inasmuch as the rules occupying the field, it is deemed appropriate to remand the matter back to the respondents for holding a de nova enquiry in the matter against the petitioner.
9. **Viewed thus**, for the aforesaid reasons, the instant petition deserves to be allowed. Accordingly, the petition is allowed and the impugned order of dismissal dated 27.10.2011, including the impugned orders of the Appellate and Revisional Authorities dated 30.06.2016 and 7th March, 2017 respectively are quashed, while providing a liberty to the respondents to conduct the departmental enquiry against the petitioner afresh strictly in tune with Rule 27 of the Central Reserve Police Rules of 1955 preferably within a period of three months from the date of passing of this order and for the purpose, the respondents shall reinstate the petitioner back into service thereto and take a decision thereof in accordance with law. Should the respondents fail to conduct the said enquiry within the stipulated time frame, the respondents shall be deemed to have forfeited the liberty granted to them in this regard and in that event, the petitioner shall be deemed to

be in service and entitled to all service benefits except the salary for the period the petitioner remained out of service.

10.Disposed of.

**(JAVED IQBAL WANI)
JUDGE**

SRINAGAR
02.07.2024
ARIF

Whether the order is speaking? Yes

Whether the order is reporting? Yes

