

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 30.05.2024

Pronounced on: 07.06.2024

SWP No.181/2016

MOHAMMAD SHAHBAZ MIR

... PETITIONER(S)

Through: - Mr. Mir Majid Bashir, Advocate.

Vs.

UNION OF INDIA & OTHERS

...RESPONDENT(S)

Through: - Mr. Nazir Ahmad Bhat, CGSC.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged order dated 03.12.2012 issued by respondent No.4, whereby he has been dismissed from service.

2) Briefly stated, case of the petitioner is that he was appointed as a Constable with Central Reserve Police Force (CRPF) in the year 1997 and was posted in 181 Bn of the CRPF. The petitioner proceeded on leave with effect from 03.08.2011 to 30.08.2011 while his battalion was stationed at Cherar-i-Sharief.

3) According to the petitioner, due to psychological disturbances and chronic marital discord, he overstayed the leave period and did not join his duties. He came to be

arrested pursuant to warrants of apprehension issued by the authorities of the CRPF, whereafter he made a request to the respondents to allow him to resume his duties, but all his efforts went in vain. He served a legal notice upon the respondents and in response thereto, he received impugned communication dated 03.12.2012 informing him that he has been dismissed from service.

4) The petitioner has challenged the impugned order on the grounds that the same has been passed in violation of the principles of natural justice and that the procedure prescribed under Rule 27 of the CRPF Rules has not been adhered to by the respondents. It has been further contended that the petitioner is not well versed with Hindi language and that all the communications including the impugned communication have been issued by the respondents in Hindi language which he cannot read and understand.

5) The writ petition has been contested by the respondents by filing a reply affidavit in which it has been submitted that the petitioner was appointed as a Constable with CRPF on 21.07.1997 and on 09.04.2010, he was posted in 181 Bn. He was sanctioned twenty days earned leave with effect from 03.08.2011 to 30.08.2011 and he was

expected to report to his duties on 31.08.2011. He is stated to have overstayed his leave with effect from 01.09.2011 without any permission from the competent authority.

6) According to the respondents, the petitioner was asked to report for duty by the Commanding Officer in terms of letters dated 17.09.2011 and 31.10.2011 which were sent to him through registered post at his residential address, but he did not report for duty. Accordingly, vide application dated 13.12.2011, a prayer was made to Judicial Magistrate, 1st Class, Camp Commandant 181 Bn. CRPF in terms of Section 10(m) of the CRPF Act, pursuant where to, warrant of arrest to apprehend the petitioner was issued by the aforesaid Authority in terms of Section 16(2) of the CRPF Act, which was sent to SSP, Bandipora, for execution. However, the petitioner could not be apprehended, as a result of which, vide order dated 20.04.2012, he was declared as deserter from force with effect from 01.09.2011.

7) After following the aforesaid procedure, a departmental enquiry was initiated against the petitioner. The memorandum of charges is stated to have been issued to the petitioner in terms of order dated 09.05.2012, and he was asked to submit his reply within ten days. It has been

submitted that the petitioner did not respond to the memorandum of charges and, accordingly, an Enquiry Officer was appointed in terms of order dated 06.06.2012. The Enquiry Officer is stated to have given ample opportunities to the petitioner to appear before him, but he failed to avail of these opportunities, as a result of which, the Enquiry Officer proceeded to complete the enquiry in *exparte*. The Enquiry Officer submitted his report vide letter dated 12.08.2012. In the meantime, on 29.08.2012, the petitioner was apprehended and handed over to the 181 Bn. on 30.08.2012, as a consequence whereof, the warrant of arrest issued against him was cancelled.

8) The Disciplinary Authority is stated to have served a communication dated 04.09.2012 upon the petitioner giving him an opportunity to defend himself by producing defence evidence/witnesses. In response to the said communication, the petitioner is stated to have accepted all the charges by stating that due to compelling domestic reasons he was unable to resume his duties. In terms of his application dated 01.09.2012, he made a prayer that he may be discharged from service.

9) According to the respondents, before the request of the petitioner for discharge from service could be considered by

the competent authority, the petitioner again deserted from the camp on 09.09.2012. In this regard, a report was lodged with Police Station, Cherar-i-Sharief. Vide communication dated 10.10.2012, the Disciplinary Authority again gave an opportunity to the petitioner to present himself before the said Authority within a period of fifteen days, but he failed to do so. In view of these circumstances, the Disciplinary Authority proceeded to consider the enquiry proceedings and other material and found that the petitioner is not fit to be retained in the force which led to the passing of the impugned order dated 03.12.2012 whereby the petitioner has been dismissed from service. To lend support to their contentions, the respondents have produced the record relating to the enquiry.

10) I have heard learned counsel for the parties and perused the pleadings and the record.

11) The admitted facts which emerge from the pleadings of the parties are that the petitioner had proceeded on duly sanctioned leave with effect from 03.08.2011 to 30.08.2011 and he was to resume his duties on 31.08.2011. It is not in dispute that the petitioner did not resume his duties and he overstayed the sanctioned leave with effect from 01.09.2011. It is also not in dispute that the petitioner did

not resume his duties at all and ultimately, he came to be apprehended pursuant to the warrants of apprehension issued by the competent authority of the CRPF whereafter he was handed over to 181 Bn on 30.08.2012. The petitioner has not disputed the contention of the respondents that he again deserted CRPF camp on 09.09.2012, whereafter he never resumed his duties.

12) The only explanation tendered by the petitioner for his unauthorized absence for about one year upto the date of his apprehension and thereafter from the date of his second desertion w.e.f 09.09.2012 is that he was facing some domestic problems which prevented him from resuming his duties. According to the petitioner, he had a marital discord with his wife which had adversely impacted him psychologically, as a result of which he was unable to resume his duties. In this regard, the petitioner has placed on record copy of the divorce deed.

13) A perusal of the divorce deed produced by the petitioner reveals that the same has been executed on 1st June, 2009. The petitioner has also placed on record a copy of order dated 30.09.2010 passed by the learned Principal District Judge, Bandipora, which reveals that there was a dispute between the petitioner and his ex-wife with regard

to custody of the children. The said dispute has been set at rest by the learned District Judge vide his order dated 30.09.2010.

14) The petitioner has deserted the Force with effect from 01.09.2011, which is about one year from the date the custody dispute was decided by the court and about two years after he had snapped his marital ties with his ex-wife. The petitioner has not placed on record any material to show that there were any emergent domestic issues being faced by him at the time when he actually deserted the Force. Therefore, even if it is assumed that the respondents while holding enquiry against the petitioner have not adhered to the principles of natural justice, still then, from the own admissions and the documents of the petitioner, there was no justification for him to remain absent from duty.

15) The principles of natural justice do not operate in vacuum. When the facts are admitted, the holding of fresh enquiry and allowing opportunity of hearing to a delinquent employee would be an empty formality. Thus, from the material on record placed before this Court by the petitioner himself, it can safely be stated that he had no justification in remaining unauthorizedly absent from duty.

16) That apart, a perusal of the enquiry record shows that the respondents have meticulously adhered to the procedure prescribed under Rule 27 (c) of the CRPF Rules, which govern the procedure for conducting a departmental enquiry. The record shows that the Enquiry Officer has addressed a number of communications to the petitioner asking him to participate in the enquiry proceedings. In this behalf postal receipts dated 23.06.2012, 04.07.2012, 13.07.2012 and 24.07.2012 are available in the enquiry record, from a perusal whereof, it is discernible that communications have been addressed by the Enquiry Officer to the petitioner through registered post at his residential address.

17) Because the petitioner had deserted the Force, therefore, the only option available with the Enquiry Officer in the present case was to send the communications to the petitioner at his residential address. An employer is not expected to launch a manhunt for an absconding employee in the whole world. It is enough if an employer sends the communications to an absconding employee at his residential address. That is what has been done by the Enquiry Officer in the present case. Therefore, it cannot be stated that the Enquiry Officer has failed to follow the principles of natural justice.

18) Even after having been apprehended pursuant to the warrants issued by the competent authority, the petitioner did not contest the proceedings before the Disciplinary Authority. Instead he made an application before the Disciplinary Authority on 01.09.2012 seeking his discharge from service and admitting that he was unable to resume his duties. While his said prayer was under consideration, he again deserted the Force. In these circumstances, the only option available with the respondents was to dismiss the petitioner from service.

19) Learned counsel for the petitioner has vehemently argued that the petitioner is unable to read and understand Hindi language and all the communications addressed to him by the respondents are in Hindi language. He has also contended that the application stated to have been submitted by the petitioner before the Disciplinary Authority admitting the charges and praying for his discharge from service has not been written by the petitioner and that he has been made to sign the said application without understanding its contents.

20) In the above context, it is to be noted that the petitioner while praying for grant of leave in his favour had made an application which is in Hindi language. His

appointment orders are also in Hindi language. It is amazing that the petitioner can understand Hindi language when he applies for leave or when he is appointed to the Force, but he is unable to understand the said language, when he admits charges against him and when he is dismissed from service. The contention of the petitioner in this regard cannot be accepted at all.

21) The facts narrated hereinbefore clearly show that the petitioner has been given ample opportunities by the respondents before passing the impugned order. He has been informed about the enquiry proceedings through various communications sent to him through registered post, but he did not respond to the same. He did not even send a simple communication to the Enquiry Officer or the concerned Commandant informing them about his domestic problems. The petitioner is a resident of Kashmir Valley and the Battalion with which he was posted was also stationed in Kashmir Valley. The petitioner could have even physically informed the Commandant about his domestic problems. Instead of doing so, he chose to keep himself away from his duties and did not even care to inform his superiors about the reasons for his not joining the duties.

Even after his apprehension while his application for discharge from service was under consideration, he again

chose to desert the Force. In such situation, the petitioner cannot expect anything other than dismissal from service from his employer.

22) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed. Interim direction, if any, shall stand vacated.

23) The record be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

Srinagar,
07.06.2024
"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No

