

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

SWP No. 2232/2013

Pronounced on: 06.06.2024

Mohammad Yousuf Bhat

.... Petitioner/Appellant(s)

Through:- Mr. Hamza Prince, Advocate with
Ms. Urba Naseer, Advocate.

V/s

Union of India and others

.....Respondent(s)

Through:- Mr. Hakim Aman Ali, Dy. AG.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
JUDGMENT

01. Petitioner in this writ petition seeks quashing of Order No. R.XIII.1/20111-Adm-II, dated 20.12.2012, to the extent of awarding punishment to the petitioner and a direction to release the withheld salary of the petitioner w.e.f. 03.05.2011 to 31.12.2011.

02. The case set up by the petitioner is that in the year 1994 he was appointed as a Constable in the Central Reserve Police Force (hereinafter referred to as 'CRPF') in 1994. The petitioner, while serving in the unit, requested for leave from the Commandant of the 185th Battalion, CRPF, on account of his mother's hospitalization, but no heed was paid to his request, as a result, the petitioner left his place of duty to visit his ailing mother and due to these circumstances he could not attend his duty for 63 days.

03. The contention of the petitioner is that he received a letter from respondent No. 5, and in compliance to which, he reported at the unit on 11.07.2013 but he was sent to the quarter guard from 11.07.2011 to 26.07.2011. Thereafter, he was dismissed from service after the judicial trial on 10.08.2011 by respondent No. 5 vide order dated 10.08.2011.

04. The petitioner filed an appeal against his dismissal before the DIGP, CRPF, who rejected the same vide order dated 30.12.2011. Thereafter, a revision petition was filed by him against the said order before the IGP, CRPF, J&K, who reinstated the petitioner vide his office order dated 28.06.2012 under the provisions of Rules 28 and 29 of the CRPF Rules, 1955.

05. The petitioner rejoined the unit on 14.07.2012 after his reinstatement, but he was again dismissed from service with effect from 16.07.2012 on a departmental enquiry in which the final order was held in abeyance due to the dismissal order on the basis of judicial trial.

06. Aggrieved of order of dismissal dated 16.07.2013, the petitioner filed an appeal against the same before the DIGP, CRPF, which was dismissed vide order dated 16.10.2013. Thereafter, a revision petition was preferred against the order before the IGP, CRPF, J&K on 30.10.2012. The IGP, CRPF, J&K, after thorough consideration of the facts and circumstances of the case, vide his order dated 20.12.2012, concluded that the punishment of dismissal was inappropriate and excessive and consequently, reinstated the petitioner with the following orders:

“(i) The appellant is hereby awarded penalty by stoppage of two increments for a period of two years with cumulative effect.

(ii) His period of dismissal, i.e., from 16.07.2012 to date of reporting on his duty will be treated as extra-ordinary leave (with no leave salary) as he has not done any duty during the above period.

(iii) The appellant is hereby transferred from 185 Bn to 18 Bn, CRPF with immediate effect.

(iv) The appellant will report to the Commandant, 18 Bn within 15 days from the date of receipt of order.”

07. The impugned order dated 20.12.2012, has been assailed by the petitioner to the extent punishment awarded on the ground that he left duty because of the illness of his mother and subsequently rejoined the duty.

08. The petitioner asserts that he was dismissed in an arbitrary and mechanical manner without conducting any inquiry under Section 27 of the CRPF Rules. It is submitted that no punishment could have been imposed upon him without conducting departmental inquiry. It is further averred that he would not have been dismissed again on the previous charge of absence from duty. Therefore, once he was reinstated on duty after being previously dismissed, the respondents could not have initiated a fresh inquiry and dismissed the petitioner from service. The impugned order was passed without affording any opportunity of hearing to him, and he was dismissed for the same charge for the second time.

09. The respondents submit that the petitioner was transferred to Group Centre, CRPF, Srinagar, on 11.11.2010 but was retained in the unit on his promise of delivering good operational results. The petitioner failed to deliver the promised results, as such, he was directed to proceed on transfer from 185 Bn, Tral, to Group Centre, CRPF, Srinagar.

10. The respondents have denied the claim of the petitioner regarding applying for leave and informing the office about his mother's illness on the day he left the unit. They have further submitted that the petitioner left the camp without proper permission or intimation on 10.05.2011 and failed to report to the Adjutant-185th Battalion. The respondents searched for the petitioner in the camp but could not locate him and when he was contacted through his mobile phone, he stated that he had left to meet someone to receive long pending payment. Despite efforts from both the respondents

and his close friends in the unit to persuade him to return to the unit, the petitioner refused. The respondents issued warrant of arrest on 18.05.2011 but the petitioner neither reported nor was arrested. As a member of a disciplined force, the petitioner's action of leaving the camp without prior permission was considered misconduct.

11. The respondents, thereafter, served a Memorandum of Charge to his at home address on 21.05.2011 to submit his document evidence/statement within 15 days but the petitioner neither replied nor reported to the unit. An enquiry officer was directed to conduct disciplinary enquiry. On 18.06.2011, an Enquiry Officer was detailed to order Departmental Enquiry vide office Order No. P.VIII-4/2011-EC-II. A Court of Enquiry was ordered on 24.06.2011 and on the finding of the said Court, he was declared a deserter w.e.f. 10.05.2011. The petitioner reported on 11.07.2011, after sixty-three days of absence from duty and judicial trial was conducted and he charged with offences of remaining absent without leave under the provisions of Section 10(m) of the CRPF Act and was punished with 15 days imprisonment for this offence and for the offence under Section 10(n), prejudicial to good order and discipline, he was punished with imprisonment of 10 days and further for the act of desertion under Section 10(p) of the Act, he was punished with 10 days imprisonment.

12. The sentence of imprisonment for a period of 15 days by criminal Court was suspended w.e.f. the date of detention in terms of Rule 10(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and by this time, the petitioner was dismissed from service vide office order dated 10.08.2011. The Departmental Enquiry was complete but was kept in abeyance for final orders, as he was dismissed from

service on 10.08.2011. On his appeal against the order of dismissal, the IGP, Srinagar, took a lenient view in his appeal and revoked his dismissal and posted him to the unit.

13. The petitioner rejoined the unit on 14.07.2012 since the charges levelled against the petitioner in the Departmental Enquiry were proved but final order was held in abeyance due to dismissal order dated 10.07.2011 passed in judicial trial. The Disciplinary Authority, after considering all the aspects, dismissed him from service based on Departmental Enquiry w.e.f. 16.07.2012. The petitioner, after his dismissal, on 16.07.2012 filed an appeal against the order to DIG, CRPF South, who rejected the same on 16.10.2012. Revision against the same order was accepted and the petitioner was reinstated vide order dated 30.10.2012.

14. The respondents initiated a departmental inquiry against the petitioner on 27.06.2011. A questionnaire was sent to his home, with a direction to provide his reply/evidence. However, since the petitioner did not cooperate by joining the proceedings, the departmental inquiry continued in his absence. A Warrant of Arrest was issued, and when the petitioner finally reported to the unit, he was arrested and brought before the 1st Class Magistrate-cum-Commandant, 185th Battalion, CRPF.

15. The respondents submit that under the provisions of Section 10(m) of CRPF Act, initially a judicial trial was conducted by the 1st Class Magistrate-cum-Commandant, 185th Battalion. The petitioner was sentenced to 15 days' imprisonment from the date of his custody, i.e., 10.07.2011. Subsequently, following the judicial trial, he was dismissed from service on 10.08.2011, in accordance with Rule 27(cc) of the CRPF

Rules, 1955. The petitioner's appeal against this decision was rejected by the DIGP, CRPF, Srinagar, on 30.11.2011.

16. The grievance of the petitioner is that he was dismissed without holding any Departmental Enquiry. This contention is without any merit, as the respondents had initiated a Departmental Enquiry against the petitioner and the Enquiry Officer was detailed to conduct an enquiry vide office Order No. P.VIII-4/2011-EC-II. The charges against the petitioner were proved and final order was passed on 16.07.2011. The revision authority found that there was deliberate and willful absence from Government duty but reinstated him by taking a lenient view. The petitioner did not raise any plea that he was not offered any opportunity of being heard at any stage nor moved any such application for the same, therefore, this plea is also without any merit. The respondents had not initiated any fresh enquiry but in fact initiated a judicial trial.

17. The authority stated that the petitioner's actions constituted a clear case of deliberate and willful absence from government duty, which could not be condoned in the interest of maintaining discipline within the force. However, upon careful consideration of the circumstances and the petitioner's length of service, the authority deemed the punishment of dismissal from service to be inadequate and excessive. Instead, the authority opted to take a lenient and compassionate view of the matter. Consequently, the order of dismissal was set aside, and the petitioner was penalized with the stoppage of two increments for a period of two years, with cumulative effect. The period of dismissal was treated as extraordinary leave, and the petitioner was transferred from the Battalion with immediate

effect. Following this order, the petitioner joined his duty, however, has challenged the extent of the order passed.

18. From the facts and circumstances presented in the case, it is evident that the petitioner deliberately absented himself from the duty and left the camp without obtaining prior permission from the authorities on 10.05.2011. Furthermore, he failed to respond to phone calls from the authority. The petitioner himself has admitted that he remained at home for a period of 63 days without permission due to his mother's illness and subsequent death. As a member of a disciplined force operating in a sensitive area, the petitioner was fully aware of the requirement to obtain proper permission before leaving the camp. There is also no record of his leave application supporting his claims in this petition. The respondents declared him a deserter and sent him various communications to which he did not respond. Consequently, a judicial trial was conducted, resulting in the petitioner's dismissal from service. However, the revisional authority, taking a compassionate view of the matter, reinstated the petitioner.

19. As the petitioner was initially dismissed, the departmental proceedings were kept in abeyance. Upon his reinstatement and resumption of duty, the departmental proceedings resumed, resulting in his dismissal once again. However, the revisional authority, while acknowledging that the petitioner had willfully and deliberately remained absent and that his conduct was unbecoming of a disciplined force member, directed his reinstatement. The petitioner was penalized with the stoppage of two increments for a period of two years, with cumulative effect. Moreover, the period of dismissal was treated as extraordinary leave, and he was transferred from the Battalion with immediate effect.

20. The petitioner has not questioned the infraction of any procedure adopted by the respondents rather his services have been saved and he has been reinstated in service, he has only challenged the withholding of two increments with cumulative effect and also the treating his dismissal period as extra-ordinary leave without salary. There is no averment regarding infraction of any rule by the respondents, rather his services have been saved and he has been reinstated in service.

21. The petitioner has raised a plea that he was requesting for leave to attend his ailing mother but the same was not granted to him. This cannot be a ground to leave the duty without any permission. The grant or rejection of the leave is the prerogative of the competent authority, who has to consider administrative and official factors while considering the personal requests of the applicant. This cannot be a ground to oppose the decision and act on its own. The rejection of leave cannot be a ground to leave duty and same cannot be condoned.

22. The Hon'ble Apex Court in **“Union of India and others vs. Constable Sunil Kumar, 2023 (3) SCC 622**, has held as under:

“8. At the outset, it is required to be noted that the disciplinary authority imposed the penalty of dismissal after holding the departmental enquiry and after following the due procedure as required under Rule 27 of the CRPF Rules, 1955 and after having held the charges and misconduct proved. The charges and misconduct held to be proved against the respondent who was serving in CRPF – a disciplined force can be said to be a grave and serious misconduct. The charges and misconduct proved against the respondent is of misbehaving with superior and giving threats of dire consequences to the superior, may be under the influence of intoxication. He also misbehaved and gave threats to the colleagues. The misconduct committed by the respondent is of insubordination also. The misconduct of misbehaving with the superior/senior officer and of insubordination can be said to be a very serious misconduct and cannot be tolerated in a disciplined force like CRPF and therefore, as such the Division Bench of the High Court is not justified in observing that on the proved charges and misconduct penalty of dismissal can be said to be disproportionate.”

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11. Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In the case of Surinder Kumar (supra) while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in the case of Union of India Vs. R.K. Sharma; (2001) 9 SCC 592 that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Article 226 or 227 or under Article 32 of the Constitution.”

23. The petitioner has admittedly remained absent without prior permission. In fact, the respondents taking a lenient view despite the fact that the petitioner is the member of a disciplined force have reinstated him on duty and have rightly awarded him the aforesaid penalty. The respondents having taken compassionate view have only awarded the punishment, which was appropriate, as such, the impugned order does not merit any interference.

24. The petitioner has failed to show how the penalty awarded is disproportionate to the proved charges. In **“State of U.P. and others vs. Ashok Kumar Singh and another”**, 1996 SCC (1) 302, the Hon’ble Apex Court has held as under:

“We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that 'his absence from duty would not amount to such a grave charge'. Even otherwise on the facts of this case, there was no justification for the High Court to interfere

with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out."

25. In view of the aforesaid facts and circumstances, this petition is without any merit and the same is, accordingly, **dismissed**.

(Sindhu Sharma)
Judge

Jammu:

06.06.2024

Michal Sharma/PS

Whether approved for speaking : *Yes*

Whether approved for reporting : *Yes*

