

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 7550 of 2018

Between:

V.Balaswamy

... Petitioner

And

The Government of India and others

... Respondents

JUDGMENT PRONOUNCED ON: 01.11.2022

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 7550 of 2018**

% 01.11.2022

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< Gist:

> Head Note:

! Counsel for the Petitioners : Mr A.Ravinder

^ Counsel for the Respondents: Asst.Solicitor General of India

? Cases Referred:

(2012) 3 SCC

(2006) 5 SCC 88,

(1971) 2 SCC 102

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 7550 of 2018****ORDER:**

Heard learned counsel for the petitioner and learned Assistant Solicitor General of India.

2. This writ petition is filed to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus by declaring the impugned orders passed by the respondents wherein removing the petitioner from service issued in order No.P-XIII-4/2015-EC-II, dated 08.04.2016 by the 5th respondent and its consequential order issued by the 4th respondent in order No. R.XIII-01/2017-Estt-3, dated 10.03.2017 rejecting the appeal submitted by the petitioner and consequential orders No.R.XIII-36/2017-Admn-7, dated 04.12.2017 issued by the 3rd respondent rejecting the revision petition is illegal, arbitrary and consequently set aside the same with a direction to reinstate the petitioner into service with all consequential benefits.

3. **PERUSED THE RECORD.**

FACTS NOT IN DISPUTE :

4. The petitioner is removed from service as per Section 11(1) of Central Reserve Police Force Act, 1949 read with Rule 27 of CRPF Regulations, 1955 vide the Impugned Order No.P-VIII-4/2015-EC-II, dt. 08.04.2016 issued by the 5th Respondent w.e.f. 08.04.2016, only on the ground of unauthorized absence. The 4th respondent issued order No.R.XIII-O1/2017-Estt-3, dt. 10.03.2017 rejecting Petitioner's Appeal and consequential orders No.R.XIII-36/2017-Admn.7, dated 04.12.2017 are passed by the 3rd Respondent rejecting Petitioner's Revision.

5. The main contentions put-forth by the Counsel for the petitioner are as follows:

a) The order impugned No.P-VIII-4/2015-EC-II, dated 08.04.2016 issued by the 5th Respondent is challenged by the petitioner.

b) On an earlier occasion vide Office Order dated 10.02.2013 the Petitioner was removed from service as per Section 11(1) of Central Reserve Police Force Act, 1949 read with Rule 27 of CRPF Regulations, 1955

c) The allegations levelled against the Petitioner are as follows :

This Bn.No.041591573 Sep./G.D. V.Balaswamy B/150 Bn.Sep./GD joined service under CRPF Act 1949 Sec.10(m) become member in the force, should perform duty according to the rules, avail 30 days earned leave and paternal leave 11/5/2011 to 24/06/2011 after that duty joined on 25/06/2011 duty joint report is given, but not does it happen, competent authority by taking permission from authority but he did not like this do it, without taking permission from competent authority with his own willingness is regular absent. The force not in the force absconded from 25/06/2011 this force violated higher authority orders is a punishable offence.

d) That the Respondent authorities without following any Rules conducted an enquiry without giving reasonable opportunity to the Petitioner to submit Petitioner's defence statement and based on the said defective enquiry the 5th Respondent awarded the major punishment of removal from service vide Order No.P.VIII-1/2012-159-ECII, dt. 10.02.2013.

e) That aggrieved by the said orders of the punishment the Petitioner preferred an Appeal with 2nd Respondent and the

2nd Respondent issued favourable orders in favour of the Petitioner vide Order No.R.XIII-2 (159)/15-EC-I, dt. 30.06.2015 observing as follows :

a. Departmental Enquiry proceeding along with final order No.P.VIII-01/12-159-EC-II, dated 10.02.2013 which was issued by 159 Bn. CRPF against No.041591573 CT/GD V. Balaswamy of B/159 BN is set aside.

b. No.041591573 CT/GD V. Balaswamy of B/159 Bn may be reinstated in 159 Bn.CRPF which will be effective from date of his reporting in 159 Bn. CRPF.

c. De-Novo enquiry may be initiated against the above CT/GD on the basis of charge i.e., on account of being absent from leave under section 11(1) of CRPF Act 1949.

d. Absence period i.e., from the date of removal to the date of reporting on his reinstatement may be regularized after finalization of De-Novo enquiry.

f) That the charges framed against the Petitioner at the second instance vide No.P.VIII/04/2015 Loc-(2) dated April 2016 are identical to the charges framed on an earlier occasion and that the same is not permissible under law and further on the same set of charges there cannot be a second enquiry.

g) That the authorities failed to take into consideration Rule 31 of CRPF Rules, 1955 and as per the said Rules the

person should be declared as deserter after completion of 60 days from the date of absence from duty.

h) The Counsel for the petitioner placed reliance on the judgments of the Apex Court in the **State of U.P. v. Saroj Kumar Sinha¹ reported in (2010) 2 SCC 772** on the point that an Enquiry Officer acting in Quasi-Judicial Authority is in the position of an independent adjudicator and case of **Roop Singh Negi v. Punjab National Bank² reported in (2009) 2 SCC 570** on the point that in the Departmental Enquiry conclusion should be based on evidence and in the Petitioner's case the enquiry report furnished by the Enquiry Officer is based on no evidence and **K.Bala Rama Raju v. High Court of Andhra Pradesh, Hyderabad & Another³ reported in (2009) 5 ALD (DB)** on the point that it is not permissible for the Enquiry Officer to justify his findings on some extraneous material which did not form part of the record or charge, in support of his submissions.

¹ (2010) 2 SCC 772

² (2009) 2 SCC 570

³ (2009) 5 ALD (DB)

i) That the disciplinary authority and the enquiry officer conducted the enquiry against the procedure as contemplated in CRPF Act and Rules and therefore the Writ Petition has to be allowed as prayed for since the punishment awarded is disproportionate to the gravity of offence.

6. The main contentions put-forth by the learned Counsel for the Respondents are as follows :

a) That the enquiry officer conducted the De-Novo enquiry against the Petitioner as per due procedures and formalities and found him guilty of charge framed against him. Accordingly a copy of De-Novo proceedings were served to the Petitioner giving the Petitioner 15 days time to submit representation if any within the time frame or appear in person with relevant material for his defence before the Disciplinary Authority, however, no reply is received by the Petitioner.

b) That after considering all the recorded statements of the prosecution witnesses, final order on De-Novo enquiry was issued by the Disciplinary Authority as per Section 11(1) of Central Reserve Police Force Act, 1949 r/w Rule 27 of CRPF

Regulations, 1955 in which the Petitioner was awarded the punishment of removal from service with effect from 08.04.2016.

c) That the Appeal preferred by the Petitioner against the present impugned order dt. 08.04.2016 was considered and rejected by the Appellate Authority, DIG, CRPF, Range Hyderabad, being devoid of merit vide order dt. 10.03.2017. Aggrieved by the same Petitioner preferred Revision Petition dated 13.07.2017 before the I.G., 7th Sector, CRPF, Hyderabad and the same was also rejected by the Revisional Authority vide Order dated 04.12.2017 and therefore, the Writ Petition needs to be dismissed in *limini*.

7. PERUSED THE RECORD :

8. THE RELEVANT LEGAL PROVISIONS of the Central Reserve Police Force Act, 1949 reads as under:

Section 10(m) of the Central Reserve Police Force Act, 1949 :

10. Less heinous offences – Every member of the force who-----

(m) absents himself without leave, or without sufficient cause overstays leave granted to him; or

Section 11 of the Central Reserve Police Force Act, 1949 :

11. Minor Punishments – (1) *The Commandant or any other authority or office 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 of rank;*
- (b) *fine of any amount not exceeding one month's pay and allowances.*
- (c) *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*
- (d) *removal from any office of distinction or special emolument in the Force.*

Rule 27 (c) of the Central Reserve Police Force Rules, 1955 deals with procedure for the Award of punishment.

Rule 31 – Desertions and Absence without leave –

31. Desertion and Absence without leave-

- (a) *If a member of the force who becomes liable for trial under clause (f) of section 9, or clause (m) of section 10 or for deserting the Force while not on active duty under clause (p) of section 10 read with clause (f) of section 9, does not return of his own free will or is not apprehended within sixty days of the commencement of the desertion, absence or overstayal of leave, then the Commandant shall assemble a court of Inquiry consisting of at least one Gazetted Officer and two other members who shall be either superior or subordinate officers to inquire into the desertion, absence or overstayal of leave of the offender and such other matters as may be brought before them.*
- (b) *The Court of Inquiry shall record evidence and its findings. The court's record shall be admissible in*

evidence in any subsequent proceedings taken against the absentee.

- (c) *The Commandant shall then publish in the Force Order the findings of the Court of Enquiry and the absentee shall be declared a deserter from the Force from the date of his illegal absence, but he shall not thereby cease to belong to the Force. This shall, however be no bar to enlisting another man in the place of a deserter.*

Rule 28 Appeal.

Rule 29 Revision.

9. Counter Affidavit filed by the 4th respondent herein at paras 8, 13 and 17 reads as under :

Para 8 :

It is submitted that as directed and as provided under Sec.11(1) of Central Reserve Police Force Act, 1949 r/w Rule 27 of CRPF Regulations, 1955, a De-Novo Enquiry was initiated against the writ petitioner vide 159 Bn. CRPF office order No.P.VIII.04/2015-159-EC-II, dated 26.09.2015 and Shri Santhos Kumar, 2-I/C of 159 Bn. CRPF was detailed as Enquiry officer to conduct the De-Novo Enquiry. The Enquiry Officer conducted the De-Novo Enquiry against the petitioner as per due procedures and formalities and found him guilty of charge framed against him. Accordingly, a copy of De-Novo proceedings were served to the Petitioner giving him 15 days time to submit representation, if any within the time frame or appear in person with relevant material for his defense before the Disciplinary Authority as per Rule 15 of CCS (CCA) Rules 1965 vide 159 Bn. CRPF Office letter No.P.VIII-4/2015-159-EC-II, dated 09.03.2016. However, no reply was received from the Petitioner.

Para 13 :

In reply to para 4, it is submitted that, the writ petitioner did not report for duty even after expiry of 60 days from the due date i.e., 25.06.2011. As per procedure the Court of Inquiry was conducted under Rule 31 of CRPF Rules, 1955. Since the petitioner didn't report even after issuing repeated directions

the petitioner was declared as 'Deserter' from the Force w.e.f. 25.06.2011 vide 159 Bn. CRPF Office Order No.LX-25/2011-159-EC-II, dated 14.12.2011. The petitioner being a member of disciplined force CRPF, supposed to have exemplary conduct with good discipline and punctuality. But the petitioner found indisciplined by remaining unauthorized absence without any intimation or correspondence, hence the disciplinary authority acted as per relevant Rules which is proper and lawful. The plea of family member illness at this stage is neither acceptable nor tenable.

Para 17 :

De-novo Departmental Enquiry was conducted citing the same article of charge as per the decision taken by the Appellate authority (i.e., respondent No.4) exercising the power vested upon him under Rule 28 of CRPF Rules, 1955. After following due procedure and providing all reasonable opportunities besides ensuring principals of natural justice to the petitioner, the Departmental enquiry was concluded by awarding the punishment of "Removal from service" by the disciplinary authority (Commandant-159 Bn. CRPF, respondent No.5) under section 11(1) of CRPF Act, 1949 read with Rule 27 of CRPF Rules, 1955.

10. The Apex Court in a judgment reported in (2012)

3 SCC 178 in Krushnakath B. Parmar v. Union of India &

Another⁴ – observed at Para 17, 18, 19, 20, 21 and 25

as follows :

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness,

⁴ (2012) 3 SCC 178

accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

18. *In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.*

19. *In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold the absence is wilful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty.*

20. *The question relating to jurisdiction of the Court in judicial review in a Departmental proceeding fell for consideration before this Court in **M.B. Bijlani vs. Union of India and others** reported in (2006) 5 SCC 88 wherein this Court held:*

" 25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi- criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

21. *In the present case, the disciplinary authority failed to prove that the absence from duty was wilful, no such finding has been given by the Inquiry Officer or the Appellate Authority. Though the appellant had taken a specific defence*

that he was prevented from attending duty by Shri P. Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3rd October, 1995 addressed to Shri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office of Telephone calls dated 29th September, 1995, etc. but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the Inquiry Officer held the appellant guilty.

25. Taking into consideration the fact that the Charged Officer has suffered a lot since the proceeding was drawn in 1996 for absence from duty for a certain period, we are not remitting the proceeding to the disciplinary authority for any further action. Further, keeping in view the fact that the appellant has not worked for a long time we direct that the appellant be paid 50% of the back wages but there shall be no order as to costs.

11. The Apex Court in its judgement reported in (1971) 2 SCC 102 in K.R. Deb v. The Collector of Central Excise, Shillong⁵ at paras 10 to 13 observed as follows :

Para 10 :

A number of points have been raised before us but we need only mention one point, viz., that the Collector had no authority to appoint Shri K. P. Patnaik to inquire into the charge after the Inquiry Officers had reported in his favour. It was urged before us that such an inquiry is not contemplated by the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was contended that rule 15 of the 'Classification and Control Rules did not contemplate successive inquiries, and at any rate, even if it contemplated, successive inquiries there was no provision for setting aside earlier inquiries without 'giving any reason

⁵ (1971) 2 SCC 102

whatsoever. It was further contended that the order dated February 13, 1962 was mala fide.

Para 11 :

Rule 15(1) of the Classification and Control Rules reads as follows:

"(1) Without prejudice to the, provisions of; the Public Servants (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in clauses (iv) to (vii) of rule 13 shall be passed except after an inquiry, held, as far as may be, in the manner hereinafter provided."

Clause (2) of rule 15 provides for framing of charges and communication in writing to the 'government servant of these charges With the statement of .allegations on which they are based, and it also provides for a written statement of defence. Under cl. (3) the government servant is entitled to inspect and take extracts from such official records as he may specify, subject to certain exceptions. Under clause (4) on receipt of the written statement of defence the Disciplinary Authority may itself enquire into such of the charges as are not admitted, or if it considers it necessary so to do, appoint a Board of Inquiry or an Inquiring Officer for the purpose. Clause (7) provides that at the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefore. If in the opinion of such authority the proceedings of the inquiry establish charges different from those originally framed it may record findings on such charges provided that findings on such charges shall not be recorded unless the Government servant has admitted the facts constituting them or has had an opportunity of defending himself against them. Under cl. (9) "the Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge." Clause (10) provides for issue of show-cause notice.

Para 12 :

It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the

Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report- of, the Inquiring Officer or Officers does not appeal to the disciplinary, Authority-. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9.

Para 13 : *In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get" some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant.*

DISCUSSION & CONCLUSION :

15. This Court opines that the offence committed Section 10(m) of CRPF Act, 1949 is a minor offence for which minor punishment has to be awarded as contemplated under Section 11 of CRPF Act, 1949, but in the present case, the petitioner has been awarded major punishment of removal from service which is contrary to CRPF Act and Rules. This Court further opines that the Petitioner having been charged under Section 10(m) of CRPF Act, 1949 for not reporting for duty on 25.06.2011 after availing 30 days of sanctioned leave from 11.05.2011 to 24.06.2011 was declared a 'Deserter' w.e.f. 25.06.2011 and the order declaring the Petitioner as a Deserter had also mentioned that the

Petitioner committed minor offence U/s.10(m) of CRPF Act, 1949. A bare perusal of Rule 31 of CRPF Rules, 1955 extracted above clearly indicate that only after completion of 60 days of absence from duty the procedure to declare a person as 'Deserter' has to be initiated, but not before completion of 60 days, but in the present case as borne on record the Petitioner was declared as 'Deserter' on 25.06.2011 itself.

16. A bare perusal paras 8, 13 and 17 of the Counter Affidavit filed by the 4th Respondent (extracted above) clearly indicates that the Petitioner did not reply to the copy of De-Novo proceedings served on the Petitioner as per Rule 15 of CCS (CCA) Rules 1965 and final order on *De-Novo* enquiry was issued by the Disciplinary Authority as per Rule 11(1) of CRPF Act, 1949 r/w Rule 27 of CRPF Rules, 1955 and the Court of Enquiry was conducted under Rule 31 of CRPF Rules, 1955, but the Petitioner however, did not report and the Petitioner was declared as 'Deserter' from the Force w.e.f. 25.06.2011 and further the *De-Novo* Departmental Enquiry was conducted citing the same article of charge

as per the decision taken by the Respondent No.4. A bare perusal of the charges at the first instance alleged against the Petitioner dated 10.02.2013 and the charges at the second instance levelled against the Petitioner in April 2016 clearly indicate that they are identical set of charges. Therefore, this Court opines that there cannot be a second enquiry on the same set of charges. The respondents having admitted at para 8 of the counter affidavit that the disciplinary authority proceeded with enquiry under Rule 15 of CCS (CCA) Rules 1965, however as borne on record failed to follow the procedure contemplated under the said Rule.

17. The Apex Court in its Judgement reported in (1971) 2 SCC 102 in K.R. Deb v. The Collector of Central Excise, Shillong (extracted above) very clearly held that there cannot be successive enquires setting aside earlier enquiries without giving any reason whatsoever, as per Rule 15 of the Classification and Control Rules. Admittedly as borne on record as explained above, the Respondents did not adopt the procedure warranted by the Rules, since neither the Rule 31 of the Central

Reserve Police Force Rules, 1965 was strictly followed nor the procedure contemplated under Rule 15 of CCS (CCA) Rules, 1965. It is also clear that in the instant case neither Enquiry Officer nor the Appellate Authority nor the Revisional Authority arrived at any finding on merits against the Petitioner to prove that the unauthorised absence of the Petitioner was wilful.

18. Taking into consideration the law laid down by the Apex Court referred to and discussed above in *Krushnakath B. Parmar v. Union of India & Another* reported in (2012) 3 SCC 178, *M.B. Bijlani vs. Union of India and others* reported in (2006) 5 SCC 88, and *K.R. Deb v. The Collector of Central Excise, Shillong* reported in (1971) 2 SCC 102) and also the averments made in paras 8, 13 and 17 of the Counter Affidavit filed by the 4th Respondent and also taking into consideration the law laid down in the judgements relied upon by the Counsel for the Petitioner the writ petition is liable to be allowed as prayed for.

19. Accordingly, the writ petition is allowed as prayed for. The impugned orders passed by the Respondents wherein removing the Petitioner from service issued in order No.P-VIII-4/2015-EC-II dated 08.04.2016 by the 5th Respondent and its consequential orders issued by the 4th Respondent in order No.R-XIII-01/2017-Estt.-3, dated 10.03.2017 rejecting the appeal submitted by the Petitioner and consequential orders No.R-XIII-36/2017-Adm-7, dated 04.12.2017 issued by the 3rd Respondent rejecting the revision petition are set aside and the respondents are directed to reinstate the petitioner forthwith into service with all consequential benefits. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.

SUREPALLI NANDA, J

Date: 01.11.2022

Note: L.R. Copy to be marked

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