IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 2694 of 2012

Samlendra Kumar … … Petitioner

Versus

1. Union of India through C.R.P.F., represented through Inspector General of Police, Tripura Sector, Agartalla.
2. Inspector General of Police, C.R.P.F., Tripura Sector, Agartalla.
3. Deputy Inspector General of Police, C.R.P.F., Agartalla Rage, Tripura.
4. Commandant, 189 Battalion- C.R.P.F., Mahur (Assam).

… … Respondents

CORAM : HON'BLE DR. JUSTICE S.N. PATHAK

For the Petitioner : Mr. Vikash Kumar, Advocate
For the Respondents : Mr. Anil Kumar, ASGI

C.A.V. On :08.02.2024 **PRONOUNCED ON : 22.03.2024**

Dr. S.N.Pathak, J. Heard Mr. Vikash Kumar, learned counsel for the petitioner and Mr. Anil Kumar, learned ASGI representing the respondents.

2. The petitioner has challenged the office order dated 12.6.2010 by which he has been dismissed from service on account of unauthorised absenteeism. The appellate order dated 29.12.2010, whereby his appeal challenging the dismissal order was rejected, is also under challenge.

The Facts

3. Briefly stated, the petitioner was appointed as Hawaldar in the Central Reserve Police Force on 9.8.2006. After completion of training, he was posted at 189 Bn at Mokamaghat. In the month of October, 2008, he was transferred to Assam. Due to illness of his mother, the petitioner proceeded on earned leave from 8.1.2009 to 6.2.2009 and he was supposed to join duty on 7.2.2009. It is the case of the petitioner that since the condition of his mother did not improve, rather, it was worsen and she was admitted in Appollo Hospital, Ranchi and during course of her treatment, the petitioner was also made the victim of jaundice, he could not report for the duty on time and therefore, he sent a letter through fax to the respondent nos. 3 and 4 for extension of his leave from 6.2.2009 to 27.03.2009. However, no consideration was shown on the repeated requests of petitioner right from 5.6.2009 to 27.8.2010 and ultimately, by declaring the petitioner to be deserter with effect from 7.2.2009, a memo of charge was framed against the petitioner vide order dated 7.10.2009. The inquiry

officer proceeded ex-parte and submitted his report proving the charge of unauthorised absence of the petitioner on 14.5.2010, which resulted in dismissal of the petitioner by the disciplinary authority under section 11(1) of the CRPA Act read with Rule 27 of the CRPF Rules, 1955 by order dated 12.6.2010. The appeal preferred there-against on 27.8.2010 was also rejected by the appellant authority on 9.12.2010. Having no alternative and efficacious remedy, the petitioner has approached this Court challenging the aforesaid orders.

4. A counter affidavit has been filed by the respondents stating inter alia that the petitioner was dismissed from service for unauthorised absence of 490 days. When the petitioner did not join after the sanctioned leave, several letters were sent to his residential address and even warrant of arrest was also issued vide letter dated 24.3.2009. Thereafter, court of inquiry was conducted and he was declared to have deserted the office with effect from 7.2.2009. Since the petitioner did not turn up before the inquiry officer, the enquiry was proceeded ex-parte. Thereafter, the copy of enquiry proceeding was sent to the petitioner to submit his reply thereon, but when no response was given by the petitioner, he was finally dismissed from service, which was affirmed by the appellate authority also.

Submissions on behalf of Petitioner

5, Mr. Vikas Kumar, learned counsel appearing for the petitioner argues that the very charge of unauthorised absence from duty is not sustainable in the present facts and circumstances of the case, as the petitioner had already informed the respondent-authority to extend the sanctioned leave on the ground of circumstances which were beyond his control. Learned counsel submits that the enquiry was proceeded against the petitioner ex-parte and even no second show cause notice along with the copy of the enquiry report was served to the petitioner. Learned counsel submits that admittedly, the petitioner was proceeded on sanctioned leave on the ground of illness of his mother for 60 days. He further submits that there was every possibility either improvement in health condition of her mother or deterioration of the same. Since the health condition of her mother deteriorated and during such harassment, the petitioner was also diagnosed with jaundice, he made application for extension of sanctioned leave, but his request was never considered by the respondent-authority. In

reply to the ground of not participating in the enquiry proceeding, learned counsel submits that since the petitioner's mother was seriously ill and she was admitted to hospital and even the petitioner also suffered from jaundice, there is every possibility for non-receiving of the letters and reminders by the petitioner issued by the respondent-authority. Learned counsel further submits that the respondent authority has not at all considered the compelling situation of the petitioner. Even at the appellate stage, the compelling situation of the petitioner which was full of supportive medical evidence, has not been considered by the respondent-appellate authority.

6. Placing reliance upon a decision of the Hon'ble Apex Court in the case of ***Union of India & Ors. Vs. Giriraj Sharma***, reported in **AIR 1994 SC 215**, learned counsel contends that when there was no wilful intention on the part of the petitioner to flout the order of the superior authority, the punishment of dismissal is excessive and disproportionate. Further to contend that the penalty imposed on a delinquent must be commensurate with the gravity of his misconduct, learned counsel places heavy reliance upon the decision of the Hon'ble Apex Court in the case of **Bhagat Ram Vs. State of Himachal Pradesh and Ors**., reported in **AIR 1983 SC 454**, wherein it has been held that if any penalty is imposed disproportionate to the gravity of the misconduct, the same would be violative of Article 14 of the Constitution.

7. Relying on the aforesaid ratios, learned counsel submits that the petitioner has been punished with the capital punishment for the alleged act of overstayal of leave which was beyond his control. Therefore, the impugned order is fit to be quashed and set aside and the matter may be remanded back to the respondents for taking a lenient view considering the compelling situation of the petitioner.

Submissions on behalf of Respondents

8. Per contra, counter affidavit has been filed. Mr. Anil Kumar, learned ASGI representing the respondents submits that there is no illegality and irregularity in the impugned order. The petitioner was given fullest opportunity to place his case at every point of time. Every attempt was made by the inquiry authority to hold the enquiry in presence of the petitioner. Several letters / reminders were sent to the residential address

provided by the petitioner himself, but no one has turned up to inform the inquiring authority. Therefore, it is the duty of the petitioner to be present and attend the enquiry. Learned counsel submits that if the petitioner deliberately evades from the enquiry, he cannot take advantage of the fact that the enquiry was conducted behind his back and it is an ex-parte proceeding. Learned counsel further adds that even after submission of enquiry report, a copy thereof has been sent to the residential address of the petitioner and it is only after expiry of statutory period, the disciplinary authority awarded the punishment of dismissal. Learned counsel further submits that even the points raised by the petitioner were considered by the appellate authority in its right perspective, but having shown no fresh ground, the appeal of the petitioner was rejected. Learned counsel submits that the petitioner being a member of disciplined force should maintain the utmost discipline and should obey the direction of the superior. Learned counsel submits that there was no folly in the entire departmental proceeding including the impugned punishment order which warrants any interference by this Court. Therefore, the writ petition is fit to be dismissed.

Findings of the Court

9. Heard the rival submissions of the learned counsel for the parties and perused the entire records. It is not in quarrel that the petitioner proceeded for leave due to illness of his mother after getting it sanctioned from the competent authority from 8.1.2009 to 6.2.2009. It is also not in dispute that the petitioner was supposed to join duty on 7.2.2009, but he did not report. It is specific stand of the petitioner that he sent his application for extension of leave period on the ground that the health conditions of her mother become deteriorated, and he was also suffering from jaundice, but no consideration was shown on his request. On the other hand, the stand of the respondents is that several letters were sent to the residential address of the petitioner, but the petitioner did not turn up. Even warrant of arrest was also issued. Thereafter, the enquiry was conducted ex-parte, which culminated into his dismissal from service. This appears to be a disputed fact, which cannot be decided in the writ jurisdiction.

10. Now the question arises as to whether on the ground of non-furnishing of the prior information regarding absence of the petitioner, the

termination order is justified.

11. To examine this aspect, it would be apposite to examine as to whether the absenteeism of the petitioner was wilful or due to compelling circumstances beyond his control. From perusal of the enquiry report, it appears that though the inquiry officer has proved the charge of unauthorised absence of the petitioner, but at the same time, the inquiry officer himself has mentioned in his report that the petitioner has duly requested the authority for extension of leave period, as her mother was admitted in hospital with supportive medical reports. It was also mentioned therein that the extension of leave period was rejected by the competent authority and it was informed to the petitioner to report for duty. It was also mentioned therein that the petitioner has again requested the authority to extend the leave period, but no order was passed thereon and he was directed to report duty. From perusal of the enquiry report, it is clear that the overstyal of leave by the petitioner was under the compelling circumstances. The finding of the inquiry officer was based on the fact that the application for extension of leave was rejected and hence, it is the duty of the petitioner to join the duty. Of course, it is the duty of the employee like the petitioner that too in a disciplined force to join immediately on the duty place, once leave period is exhausted. But at the same time, it is also the obligation of the respondents before imposing the punishment to take into consideration major, magnitude and degree of misconduct and all other relevant circumstances after excluding the irrelevant factors. Admittedly, in the present case, the overstyal of leave by the petitioner is neither wilful nor deliberate; rather, it was beyond his control. Therefore, the punishment of dismissal from service is certainly disproportionate to the nature of misconduct which shocks the conscience of this Court.

12. In this context, the Hon'ble Apex Court in the case of ***Union of India & Ors. Vs. Giriraj Sharma*** (supra) has held that when there was no wilful intention on the part of the petitioner to flout the order of the superior authority, the punishment of dismissal is excessive and disproportionate. Further, the Hon'ble Apex Court in the case of ***Bhagat Ram*** (*supra*) has held that the penalty imposed on a delinquent must be commensurate with the gravity of his misconduct and if any penalty is imposed disproportionate to the gravity of the misconduct, the same would

be violative of Article 14 of the Constitution.

13. This ratio in Bhagat Ram has been followed by the Hon'ble Supreme Court in a very erudite and lucid judgment in the case of ***Ranjit Thakur Vs. Union of India & Ors***., reported in **AIR 1987 SC 2386**.

14. Further, in a case of absenteeism, the Hon'ble Apex Court in '***Krushnakant B. Parmar Vs. Union of India Vs. Anr***.', reported in **(2012) 3 SCC 178** held that dismissal amounts to forfeiture of the entire amount which has to be earned by an employee in his/her remaining tenure of service. The Constitution provides right to livelihood and such right cannot be snatched away by order of dismissal in cases where absenteeism is not willful and intentional. The Hon'ble Apex Court in para-17 thereof held as under:-

> *"17. if the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot 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, 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."*

15. The Hon'ble Apex Court while dealing with a case of quantum of punishment held that the question of interference on the quantum of punishment has already been answered in a catena of judgments whereunder it has been held that if the punishment awarded is disproportionate to the gravity of misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution of India. It has also been held that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. This judgment is rendered in the case of ***S.R. Tiwari Vs. Union of India***, reported in **(2013) 6 SCC 602**.

16. The aforesaid judgments are squarely applicable in the present case in view of the fact that the impugned order of dismissal does not indicate any evidence whatsoever against the petitioner which was looked into in the enquiry proceeding. Even the medical certificates and reply submitted by the petitioner have been completely ignored. Dis-

proportionality of the punishment vis-a-vis the charges imputed against the petitioner can also be seen by application of the judgment of Hon'ble Supreme Court in ***Krushnakant B. Parmar*** (*supra*) in which Hon'ble Supreme Court has specifically held that the question of unauthorised absence from duty amounting to misconduct can be decided only after the decision on the question as to whether the absence is wilful or because of compelling circumstances. It has been further held that if the absence is the result of some compelling circumstances under which it was not possible to report for duty, such absence cannot be said to be wilful and, therefore, would not amount to misconduct whereunder dismissal from services would be effected.

17. In the backdrop of the record, it can be safely assumed that the petitioner was under compelling circumstances due to which he could not report back to duty resulting in his unauthorised absence. Unauthorised absence of the petitioner was not wilful and deliberate, so as to warrant the capital punishment.

18. However, the fact remains that this Court sitting under Article 226 of the Constitution cannot substitute its own conclusion on the quantum of punishment to that of the disciplinary authority. Hence, it would be appropriate to remit back the matter to the disciplinary authority on the quantum of punishment. In this context, the Hon'ble Supreme Court in the case of ***Naresh Chandra Bhardwaj Vs. Bank of India & ors***., reported in **(2019) 4 Supreme 614**, has held as under:-

> *"There is really no difference in the proposition, which is sought to be propounded except that in the latter judgment the principles have been succinctly summarised in the last paragraph of the judgment, which read as under:*
> *19. The principles discussed above can be summed up and summarized as follows:*
> *19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.*
> *19.2. The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.*
> *19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court.*
> *19.4.* ***Even in such a case when the punishment is set aside as***

shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

(Emphasis supplied)

Conclusion

19. As a cumulative effect of the aforesaid rules, observations, guidelines, the impugned penalty order dated 12.6.2010 passed by the Commandant, 189 Battalion, CRPF, Mahur (Assam) and the appellate order dated 29.12.2010 passed Deputy Inspector General of Police, CRPF, Agartalla Range, Tripura, are hereby quashed and set aside. The petitioner is directed to be reinstated in service. However, the matter is remitted back to the disciplinary authority to consider the case of the petitioner for grant of lesser punishment considering the aforesaid facts and situation, in accordance with law. Let the entire exercise be undertaken by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.

20. Resultantly, the writ petition stands allowed with the directions and observations, as aforesaid.

(Dr. S.N. Pathak, J.)

R.Kr./RC