

GAHC010202062017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6002/2017

PANKAJ BEZBARUAH
S/O SRI AJIT BEZBARUAH R/O VILL- PUBSARIAHATALI P.O. HATI NAMATI
DIST. NALBARI, ASSAM, PIN - 781337.

VERSUS

THE UNION OF INDIA and 4 ORS.

REP. BY THE SECRETARY TO THE HOME AFFAIRS, NORTH BLOCK,
CENTRAL SECRETARIAT, NEW DELHI, PIN - 110001.

2:DEPUTY INSPECTOR GENERAL OF POLICE
CENTRAL RESERVE POLICE FORCE HYDERABAD RANGE
HYDERABAD
PIN - 500005.

3:ADDITIONAL DEPUTY INSPECTOR GENERAL OF POLICE
GROUP CENTRE
CEPF
AMERIGOG
GUWAHATI
ASSAM
PIN - 781023.

4:COMMANDANT 5 BN CRPF
MAHAVIR NAGAR
TILAK NAGAR
NEW DWLHI
PIN - 110018

5:ASSISTANT COMMANDANT 5BN

CRPF
MAHAVIR NAGAR
TILAK NAGAR
NEW DELHI- PIN -11001

Advocate for the Petitioner : MR.H P NEOG

Advocate for the Respondent : MR.S C KEYAL

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the Petitioner : Mr. B.K. Das
Mr. H.P. Neog
Mr. H.P. Guwala ... Advocates

For the respondents : Mr. R.K. Dev Choudhury ASGI

Date of hearing : 15.03.2022

Date of judgment : 17.03.2022

JUDGMENT AND ORDER (CAV)

Heard Mr. B.K. Das, learned counsel for the petitioner. Also heard Mr. R.K. Dev Choudhury, learned ASGI for all the respondents.

2. The petitioner is challenging the order dated 12.10.2011 passed by the respondent No. 4, whereby, the petitioner has been dismissed from service on the basis of a departmental proceeding. He has also challenged the order dated 09.05.2017, by which the petitioner's appeal has been rejected. The departmental proceeding was in relation to unauthorized absence of the petitioner for 347 days. The petitioner was given a memorandum of charge which stated that he had been unauthorizedly absent from 14.10.2010 to 01.07.2011, totaling 261 days and from 19.07.2011 to 12.10.2011, totaling 86 days. The petitioner did not make any reply to the memorandum of charge and the

enquiry report made by the enquiry officer was also furnished to the petitioner. However, the petitioner did not make any reply to the enquiry report also. Thereafter, vide the impugned order dated 12.10.2011 passed by the respondent No. 4, the petitioner was dismissed from service due to unauthorized absence for 347 days. The petitioner submitted an appeal dated 21.01.2017, i.e. more than 5 years after the dismissal order dated 12.10.2011. The same was rejected by the appellant authority on 09.05.2017.

3. The petitioner's counsel submits that it is not in dispute that the petitioner was absent for 347 days. However, the reason for the petitioner's absence was due to the petitioner having met with an accident in New Delhi on 22.12.2009 and having sustained a head injury, due to which the petitioner started losing his mental balance. The petitioner's counsel submits that the petitioner was treated in the LGB Regional Institute of Mental Health, Tezpur and in support of his submission, the petitioner's counsel has referred to the Certificate dated 26.11.2016, issued by the LGB Regional Institute of Mental Health, Tezpur, herein after referred to as the "Mental Hospital". He also referred to the Out Patient Department (OPD) ticket dated 26.03.2016 and the receipt dated 28.10.2011, which shows that the petitioner had paid an amount of Rs. 1,000/- to the Mental Hospital on 28.10.2011.

4. The petitioner's counsel submits that the Apex Court in ***Krushnakant B. Parmar v. Union of India & Another***, reported in ***(2012) 3 SCC 178***, has held that 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. It had further held that 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 and in the absence of such finding, the absence will not amount to misconduct. The petitioner's counsel submits that in the present case, the enquiry officer in his enquiry report has not been able to prove that the unauthorized absence of the petitioner was willful, while coming to a finding that the petitioner had been unauthorizedly absent from duty. He further submits that the petitioner's mother had submitted an application dated 10.11.2011 to the authority stating that due to mental disorder, her son could not attend his duty for a long period and that the petitioner was under treatment in a mental hospital.

5. The petitioner's counsel also submits that the respondents did not furnish a copy of the enquiry report made by the Court of Enquiry in terms of Section 31 of the CRPF Rules, 1955 and as such, the petitioner was prejudiced by non-furnishing of the said enquiry report.

6. Mr. R.K. Dev Choudhury, learned ASGI submits that a perusal of the Certificate dated 26.11.2016, issued by the "Mental Hospital", which is at Annexure-7 of the writ petition shows that the petitioner did not suffer from any psychiatric illness during the entire period the petitioner was under observation in the "Mental Hospital". Further, the petitioner did not go for any follow up from 07.11.2011 till 26.03.2016. Also, the petitioner did not attend the next medical board after 26.03.2016 as had been advised by the "Mental Hospital". He also submits that the enquiry

report made in terms of Rule 31 of the CRPF Rules, 1955 is only to confirm as to whether an employee has been absent from duty and once it was found that the petitioner was absent from duty, the competent authority declared the petitioner as a deserter on the basis of the enquiry report. He submits that no prejudice is caused to the petitioner with the non-furnishing of the enquiry report made under Rule 31 of the CRPF Rules, 1955 and no penalty is imposed on the petitioner, on the basis of the said enquiry report. The learned ASGI submits that though the memorandum of charge and the enquiry report were sent to the petitioner's home address, the petitioner did not participate in the departmental proceeding, except for a brief period, when he rejoined his duty and his statement was recorded by the Enquiry Officer. However, prior to the conclusion of the Departmental Enquiry, the petitioner was again unauthorisedly absent.

7. The learned ASGI also submits that there is no material on record in the writ petition, to show that the petitioner was suffering from any mental illness and as such, the petitioner cannot be said to have been suffering from any mental disorder. He thus submits that the unauthorized absence of the petitioner was willful, as the petitioner, being a normal person, had intentionally remained absent from duty for 347 days, without asking or taking permission for the same.

8. I have heard the learned counsels for the parties.

9. The challenge made by the petitioner to his dismissal from service is basically on the ground that the petitioner was mentally imbalanced, as his mental condition had allegedly deteriorated due to his accident in Delhi. As the petitioner's absence from duty was due to his mental

disorder, the absence not being willful in nature, the petitioner could not be found to be guilty of unauthorized absence in terms of the judgment of the Apex Court in ***Krushnakant B. Parmar (supra)***. The petitioner's second ground of challenge to his dismissal order is that the petitioner was not given the Inquiry Report made in terms of Rule 31 of the CRPF Rules, 1955, wherein he was declared as a deserter. Thus, he was prejudiced due to non-supply of the Enquiry Report made by the Court of Enquiry.

10. With regard to the petitioner's submission that prejudice has been caused to him for non-furnishing of the Enquiry Report made under Rule 31 of the CRPF Rules, 1955, this Court finds that the role of the Court of Enquiry, which had been constituted under Rule 31 of the CRPF Rules, 1955, was only to come to a finding as to whether the petitioner was unauthorizedly absent from duty. The fact that the petitioner was unauthorizedly absent from duty is an admitted fact. Though the petitioner's case is that the absence was due to his mental disorder and not done intentionally, there is no denying the fact that the petitioner was unauthorizedly absent. Even if the Enquiry Report had been issued to the petitioner, the petitioner's only reply to the Court of Enquiry could be to the effect that he was absent due to his mental disorder. As such, this Court is of the view that no prejudice is caused to the petitioner due to non-furnishing the Enquiry Report and the declaration of the petitioner as a deserter in terms of Rule 31 of the CRPF Rules, 1955.

11. With respect to the petitioner's case that the petitioner was not intentionally absent from duty, but was due to his mental disorder, this

Court finds that while the petitioner has been charged with unauthorized absence from 14.10.2010 to 01.07.2011 and from 19.07.2011 to 12.10.2011, the petitioner has submitted medical documents, which are subsequent to the dates mentioned above. The Certificate dated 26.11.2016 issued by the Mental Hospital states as follows :

“To whom it may concern

This is to certify that Mr. Pankaj Bezbaruah, 28 years, male, So: Ajit Bezbaruah, Vill: Pub Sariah Tali, Po: Hati Namati, Ps: Nalbari, Dist: Nalbari, Assam was admitted in this Institute on 28/10/2011 for diagnosis and treatment. But he got discharged on his request on 07/11/2011. However, on evaluation no psychiatric illness was found during the period of his observation.

Following discharge he did not come for any follow-up till 26/03/2016. On 26/03/2016 he attended our OPD for medical certificate and he was advised to attend our next medical board but he did not attend the medical board thereafter.

Discharge certificate was given to him at the time of discharge form our Institute.”

12. A bare perusal of the above Certificate shows that while the petitioner was admitted in the “Mental Hospital” on 28.10.2011, for diagnosis and treatment, the petitioner was discharged on his own request on 07.11.2011. Also on evaluation of the petitioner’s condition, the Medical Certificate states that **“no psychiatric illness was found during the period of his observation”**. The second paragraph of the Medical Certificate also states that following discharge, the petitioner did not come for any follow-up till 26/03/2016. On 26/03/2016 when the petitioner attended the OPD, he was advised to attend the medical

board but he failed to attend the medical board. Thus, in terms of the Medical Certificate dated 26.11.2016, the petitioner cannot be said to be suffering or had suffered any mental disorder at any point of time. Further, while the Medical Certificate states that he was admitted in the “Mental Hospital” on 28.10.2011, the period of petitioner’s unauthorized absence was prior to 28.10.2011. As such, the above facts give rise to an inference that the petitioner had never suffered from any mental disorder/imbalance.

Further, the Money Receipt issued by the Mental Hospital for Rs.1000/- to the petitioner is dated 28.10.2011 and the OPD Ticket dated 26.03.2016, i.e. after the dates of his unauthorized absence.

13. Though the petitioner’s counsel has submitted that there is no finding by the inquiry officer that the petitioner was willfully absent, the fact that the Medical Certificate states that the petitioner did not suffer from any psychiatric illness during that period of observation implies that the petitioner was never having any mental disorder or imbalance. As such, the only implication that can arise from the above is that the petitioner was having normal mental capability and had remained willfully absent without taking any permission from the respondents for 347 days.

14. The petitioner has not made a challenge to his dismissal order on grounds of procedural irregularities. The challenge has been made only on the ground that the petitioner was mentally ill, which has not been proved by the petitioner. Further, the Medical Certificate which has been annexed to the writ petition, states that the petitioner did not have

psychiatric illness.

15. In the case of *B.C. Chaturvedi vs Union of India & Others*, reported in (1995) 6 SCC 749, the Apex Court has held that the Disciplinary Authority is the sole Judge of facts. In the case of *Lalit Popli vs Canara Bank and Others* reported in (2003) 3 SCC 583, the Apex Court has held that while exercising jurisdiction under Article 226 of the Constitution of India, the High Court does not act as an Appellate Authority. It's jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors, leading to manifest injustice or violation of principles of natural justice. In the present case, the petitioner's challenge is only to the factual aspect of the case and not with respect any error of law or procedural errors.

16. In view of the reasons stated above and keeping in view the judgments of the Apex Court referred to above, this Court finds that there is no merit in the writ petition.

17. Accordingly the writ petition is dismissed.

JUDGE

Comparing Assistant