

L.MOHAPATRA, J & ARUNA SURESH, J.

W.P.(C) NO.4417 OF 2004 (Decided on 21.01.2011)

**SANTOSH KU.SAHU (DEAD)
AFTER HIM SABITA SAHU**

.....Petitioner.

.Vrs.

**ADDL. D.I.G.P., GROUP CENTRE,
CRPF,BBSR & ANR.**

.....Opp.Parties.

For Petitioner - M/s. Saswata Patnaik, L.Mishra & S.N.Ratha.

For Opp.Parties - Mr. Sakti Dhar Das

Asst. Solicitor General of India

L.MOHAPATRA, J. The petitioner, a Constable in Central Reserve Police Force (in short "C.R.P.F.") was proceeded departmentally and he having been found guilty of the charge, faced a major punishment of dismissal apart from other punishments and his appeal also having been rejected, this writ petition has been filed by him challenging the order of punishment as well as the order passed by the appellate authority.

2. The petitioner joined as a Constable in C.R.P.F. on 30.6.1985. He was posted at different places and while working at Bhubaneswar in the month of January, 1999, he was promoted to the post of Lance Naik. In June 2002 after getting information about his wife's illness, he applied for three days leave and one day P.L. for 30th of June, 2002 was granted and two days C.L. for 1st of July and 2nd of July 2002 were also granted. The petitioner availing the leave left for Bolangir to attend his wife and could not come back and join on 3.7.2002 because of the condition of his wife. On 5th of July, 2002 he sent an application to the D.I.G. of Police, Group Centre, C.R.P.F., Bhubaneswar expressing his inability to join in time. Another similar letter was also written by him to the same authority on 15.8.2002. However, after the condition of his wife improved, he joined duty on 2.11.2002. Thereafter he submitted an application with all Medical Certificates for regularization of his absence from 3.7.2002 to 1.11.2002. Instead of regularizing the said period as leave, a departmental proceeding was initiated against him on the ground of "overstay" without intimation for the said period. In the enquiry he was found guilty of the charge and accepting the enquiry report, the disciplinary authority in Annexure-4 dismissed him from service. His period of unauthorized absence was treated as Dies-Non and the period of suspension from 7.3.2003 to 26.7.2003 was directed to be treated as such. All medals and decorations earned by him were directed to be forfeited. His appeal against the said order of punishment was dismissed by the appellate authority in Annexure-6. Challenging the order of punishment as well as the order of the appellate authority, this writ petition has been filed.

3. The learned counsel for the petitioner argued solely on the question of quantum of punishment and submitted that overstay for the reasons stated in the petition should not have attracted the punishment of dismissal from service. Shri S.D. Das, the learned Assistant Solicitor General referring to the counter affidavit filed by the Department

submitted that earlier the petitioner had remained absent unauthorisedly on nine occasions and on three occasions he was proceeded with by the Department and had been punished. He being a habitual unauthorized absentee, no other punishment could have been imposed for such conduct.

4. The petitioner in the writ petition does not challenge the findings of the Enquiry Officer. Rather, the ground taken in the writ petition and the submission of the learned counsel for the petitioner are that because of illness of his wife he had no other option except remaining present by her side till her condition improved and he had not only sent two letters intimating these facts to the higher authority but also after joining, he had submitted an application for regularizing the period of absence as leave. Had that been allowed by the Department, the petitioner could not have been proceeded departmentally on the charge of unauthorized absence.

5. On perusal of the enquiry report, we find that evidence was adduced on behalf of the Department in support of the charge but the petitioner did not cross-examine those witnesses. Therefore, the uncontroverted statements of the witnesses examined on behalf of the Department were accepted by the Enquiry Officer and the petitioner was found guilty of the charge. While imposing punishment, the disciplinary authority has observed that the service conditions in C.R.P.F., which is a Para Military Force of the Union of India, are very sensitive and its members have to be extraordinary vigilant and obedient while discharging lawful duties. The petitioner seems to be of incorrigible character who willfully and intentionally disobeyed the lawful orders of the competent authority and continuation of such type of individual in the Force is likely to set bad example for others to follow. With these observations, the disciplinary authority imposed the punishment of dismissal from service apart from other punishments stated earlier. The appellate authority also took similar view while dismissing the appeal.

6. In the counter affidavit filed by the Department, it is stated that the petitioner is in the habit of overstaying whenever he goes on leave. Nine such instances have been given in paragraph-13 of the counter affidavit. In respect of three such unauthorized overstay, departmental proceedings were conducted and the petitioner had been punished. In spite of such punishment, the petitioner did not improve his conduct and again remained absent unauthorisedly taking the plea of his wife's illness.

7. Under such circumstances, we are also of the view that retaining the petitioner in service or showing any lenience in the matter of punishment would set a bad example for other members of the organization to follow. Our view is supported by a decision of the Hon'ble Supreme Court in the case of ***Union of India and others v. Gulam Mohd. Bhat, reported in AIR 2005 S.C. 4289.***

8. For the reasons stated above, we do not find any merit in the writ petition and accordingly dismiss the same.

Writ petition dismissed.