

**Vijay Kumar Singh Vs. Union of India and Ors**

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**Court :** Jharkhand

**Decided On :** Jan-21-2016

**Appellant :** Vijay Kumar Singh

**Respondent :** Union of India and Ors

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 1562 of 2011  
Vijay Kumar Singh, Force No.913255921, G.D. 3-E, Battalion, C.R.P.F., son of Sri  
Parmeshwar Singh, resident of village & P.O.- Mathia Bhopat, P.S. & District-  
Motihari, Bihar. .... Petitioner Versus 1. Union of India.

2. The Deputy Inspector General of Police, Central Reserve Police Force, Ajmer,  
Rajasthan.

3. The Commandant, Battalion 3, Central Reserve Police Force, C.L.A. College,  
Daltonganj, Jharkhand.

4. Shri J.J.

Singh, Assistant Commandant cum Enquiry Officer, Battalion 3, Central Reserve  
Police Force, Bari, Bramhana, Jammu. .... Respondents --- CORAM : HON'BLE  
MR. JUSTICE PRAMATH PATNAIK --- For the Petitioner : M/s. Dr. S.N. Pathak,  
Sr. Advocate, Shatish Kumar & K. K. Bhatt, Advocates For the Respondents : Mr.  
Binod Singh, Advocate ----- CAV on 26/11/2015 Pronounced on 21/1 /2016 Per  
Pramath Patnaik, J.

In the instant writ application, the petitioner has inter-alia prayed for issuance of a writ in the nature of certiorari for quashing the order dated 05.10.2010 passed by Revisional Authority, Inspector General of Police, CRPF affirming the order dated 02.04.2003 and the order dated 13.09.2003 passed by the Disciplinary Authority and the Appellate Authority pertaining to dismissal from services and for direction commanding the respondents to reinstate the petitioner on the post with all consequential benefits in accordance with law.

2. The brief facts as disclosed in the writ application, is that the petitioner was initially appointed on 08.04.1991 as Constable (G.D.) in CRPF, since the date of appointment, the petitioner continued to discharge his duties to the utmost satisfaction of his superior authorities. On 09.03.2002, the petitioner suffered from severe pain and swelling in his foot and requested to Company Commander to send his sick report to company Doctor for treatment. However, Company Commander directed him to go and join 140 Battalion but the petitioner expressed his inability to wear shoes dress. Thereafter, the petitioner was treated by Dr. S. K. Verma and the said fact was entered in sick report register. On 11.03.2002, the petitioner's sick report was sent to the doctor of CRPF for further check up and the doctor of said battalion prescribed medicine. In spite of the fact that the petitioner was very much suffering with pain and swelling in his feet from 09.03.2001 to 16.03.2001 and the doctor had prescribed medicine and advised for full rest and excused boot, the Company Commander insisted the petitioner to join 140 Battalion. After recovering from illness, the petitioner joined his duty on 27.07.2002. While the petitioner was on his active duty at Katra, Udhampur Station, he has received information about the death of younger brother and again allowed 15 days leave by Company Commander from 23.08.2002 to 10.09.2008. Thereafter, the petitioner came on leave to his Village for attending the rituals of his younger brother but unfortunately fell ill. Thereafter, petitioner was referred to Sadar Hospital, Motihari for medical treatment. The petitioner was under treatment in Sadar Hospital, Motihari 3 from 14.09.2002 to 31.03.2003 thereafter, he was discharged to resume his duty. After discharge, the petitioner went to his duty at Head Quarter on 02.04.2003 with his all medical prescription and certificates but was asked to return as he has been dismissed from services by office order by Commandant, Battalion 3 C.R.P.F. Thereafter, the petitioner received the order of

dismissal dated 02.04.2003 at his village. Being aggrieved order of dismissal filed an appeal on 22.04.2003 under Rule 28 of the C.R.P.F Rules before the respondent no.2 and respondent no.2 vide order dated 13.09.2003 dismissed the appeal. Against the order of disciplinary authority and appellate authority, the petitioner moved this Court in W.P.(S) No.210 of 2004 and the said writ petition was disposed of by the order dated 07.05.2009 with an observation to petitioner to move the revisional authority. Against the order of the learned Single Judge, the petitioner preferred LPA No. 262 of 2009 and the order of learned Single Judge has been affirmed. The petitioner preferred revision before the IG of Police, C.R.P.F and the revisional authority dated 05.10.2010 affirmed the order of dismissal. Being aggrieved of the order of disciplinary authority dated 02.04.2003 and the order dated 13.09.2003 passed by the appellate authority and the order dated 05.10.2010 passed by the revisional authority, the petitioner left with no other alternative efficacious and speedy remedy, has approached this Court invoking extra- ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. Per-contra a counter-affidavit has been filed on behalf of the respondents controverting the averments made in the writ applications. In the counter-affidavit, it has been inter-alia submitted that after recovering from illness, the petitioner joined and was detailed to proceed 140 Battalion CRPF for attachment but refused the lawful orders and straightway denied to receive the movement order. He also loudly used filthy language to Officer Commanding E/3 Battalion CRPF and also indulged as misconduct in an indisciplined manner. Due to above enquiry report order passed against him vide office memo dated 04.09.2002 on the charges of misconduct and disobedience of lawful order. The petitioner applied for 15 days casual leave due to death of his brother duty on 10.09.2002 but again he overstayed from leave without any information/approval by the competent authority. Thereafter, the charges framed against him was sent at his home address through Registered letter dated 24.09.2002 directing him to appear before the E.O. Failing which ex-parte departmental enquiry shall be commenced against him. But the petitioner did not turn up for duty. In these circumstances, the departmental enquiry was conducted ex-parte by the Enquiry Officer. The enquiry officer himself also sent several letters dated 07.10.2002, 01.11.2002, 10.12.2002,

02.01.2003 and 03.02.2003 to appear before the Enquiry officer and to prove his innocence and to produce evidence in his favour. Neither the petitioner reported back nor responded the correspondence made by the enquiry officer. In view of the said facts ex-parte departmental enquiry was conducted by the enquiry officer and proceedings were submitted to the disciplinary authority on 13.03.2003 for further action and after carefully going through the departmental inquiry proceedings and before passing the final orders on the departmental enquiry report of the inquiry officer was sent to his home address giving him 15 days time to report or produce any documents in his defense. In response, the petitioner sent an application along with medical documents issued to him by the private hospital and requested for extension of leave up to 20.03.2003. On 5 expiry the time limit and after careful examination of the departmental enquiry proceeding all the charges levelled against the petitioner have been proved beyond any doubt. Accordingly, final orders were passed on the departmental enquiry and the petitioner was dismissed from services vide office order dated 02.04.2003 which has been affirmed by the appellate authority as well as revisional authority.

4. Heard Mr. Dr. S. N. Pathak, learned senior counsel appearing for the petitioner and Mr. Binod Singh, learned counsel appearing for the respondents and perused the records.

5. Learned senior counsel for the petitioner has strenuously urged that the impugned order of punishment which has been confirmed by the appellate authority as well as revisional authority having passed on ex-parte inquiry and the said inquiry report is perverse and illegal. The inquiry officer has not considered on the medical ground of the petitioner. The disciplinary as well as appellate authority without taking cognizance of the illness coupled with the medical certificate of the petitioner has not considered the case the matter in the right perspective which ought to have been interfered with for ends of justice. Learned senior counsel for the petitioner has further submitted that impugned order of punishment being confirmed, the appeal is harsh, excessive and disproportionate to the alleged misconduct. Learned senior counsel for the petitioner has referred to decisions in the case of *Krushnakant B. Parmar Vs. Union of India And Another* as reported in 2012 (3) SCC178 *Union of India And Another Vs. G. Ganayutham*, as reported in

(1997) 7 SCC463 and also referred in the case of Shri Bhagwan Lal Arya Vs. Commissioner of Police, Delhi & Ors as reported in 2004 (2) JLJR184(SC). 66. As against this submission of the learned counsel for the petitioner, learned counsel for the State has submitted that on the basis of unauthorized absence from duties, the petitioner being a constable in a disciplined force- CRPF, has been found guilty by the inquiry officer. Basing on the report of the inquiry, the disciplinary authority has passed the impugned order of punishment dismissal/termination from service which has been affirmed by the appellate as well as revisional authority under Article 226 of the Constitution of India. This Court ought not to reappraise or reappraise the evidences led before the disciplinary authority. In support of this contention, learned counsel for the respondents has referred to the decision of the Hon'ble Apex Court in the case of Chennai Metropolitan Water Supply & Sewerage Board And Others Vs. T. T. Murali Babu as reported in (2014) 4SCC108 has been elaborately discussed which is quoted hereinunder:-

32. The learned counsel for the respondent has endeavoured hard to impress upon us that the respondent had not been a habitual absentee. We really fail to fathom the said submission when the respondent had remained absent for almost one year and seven months. The plea of absence of habitual absenteeism is absolutely unacceptable and, under the obtaining circumstances, does not commend acceptance. We are disposed to think that the respondent by remaining unauthorizedly absent for such a long period with inadequate reason had not only shown indiscipline but also made an attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate.

7. Having heard learned counsel for the respective parties and on perusal of the relevant documents on records, the petitioner has not been able to make out a case for interference due to following facts, reasons and judicial pronouncements:

7. (i) In the instant case, petitioner being charged of unauthorizedly absence from duty of 98 days has been held guilty by the inquiry officer. Despite, given opportunity to the petitioner, the petitioner has not bothered to appear before the inquiry officer, so the inquiry was conducted ex-parte. Considering the gravity of charges the disciplinary authority has passed the order of dismissal from services which has been affirmed by the appellate as well as revisional authority. On perusal of the decision of the Hon'ble Supreme Court hereinabove there cannot be any shadow of doubt that the doctrine of proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate. (ii) In the case in hand, in view of the seriousness of allegation and misconduct committed by the petitioner, the power of judicial review cannot be applied. Moreover, finding three consecutive materials on record cannot be interfered with, as has been held by the Apex Court in the case of Uttar Pradesh and Another Vs. Man Mohan Nath Sinha & Another as reported in (2009) 8 SCC310

15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions..... (iii) In that view of the matter, I find no reason to interfere with the impugned order of punishment dated 05.10.2010 passed by Revisional Authority/Inspector General of Police, CRPF affirming the order dated 02.04.2003 and order dated 13.09.2003 passed by the Disciplinary Authority and the Appellate Authority.

8. On the cumulative effect of facts and reasons stated in the foregoing paragraphs, I am of the considered view that the impugned order dated 8 05.10.2010 passed by Revisional Authority/Inspector General of Police, CRPF affirming the order dated 02.04.2003 and order dated 13.09.2003 passed by the Disciplinary Authority and the Appellate Authority, do not warrant any interference by this Court.

9. Accordingly, the writ petition is dismissed being devoid of any merit. (Pramath Patnaik, J.) RKM/- N.A.F.R.

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