

Sunil Kumar Vs. Uoi and ors.

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Court : Delhi

Decided On : Mar-07-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Appeal No. : W.P.(C) 2610/2010

Appellant : Sunil Kumar

Respondent : Uoi and ors.

Advocate for Def. : Mr.Ravinder Agarwal, Adv.

Advocate for Pet/Ap. : Ms.Rekha Palli; Ms.Punam Singh; Ms.Amrita Prakash, Advs.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. Assigned the roster to hear writ petitions pertaining to Para Military Forces, we are constrained to note that every 4th case dealt with by us pertains to a Constable or a Head Constable of a Para Military Force overstaying leave or leaving the unit in a state of distress and claiming that he told the Company Havaldar Major of the reason why he was going to his village and needless to

state the Company Havaldar Major not being the competent authority to sanction leave, disciplinary action being taken against these Constables and Head Constables for the misdemeanour of unauthorized absence. Invariably, penalty imposed is of removal or dismissal from service or one of compulsory retirement.

2. These cases have a cry for justice on the part of the petitioners who render a tale of woes with reference to the social conditions in their village. We highlight that each and every case dealt with by us in this category pertains to a Constable or a Head Constable from a rural area.

3. On the other hand is the call of discipline raised by a Para Military Force. We are told that the command structure would be adversely affected if jawans are allowed to decide for themselves as to when should they avail leave.

4. It is next to impossible to find a legal norm on which these cases can be decided with precisions or with previous cases being used as precedents.

5. Each case has its own story to tell and whatever we can find with reference to past precedents is that, on case to case basis, Hon'ble Judges of this Court and other High Courts as also the Supreme Court have tried to blend compassion and justice with discipline.

6. Having joined as a Constable with CRPF, petitioner availed leave from 26.02.2008 till 11.3.2008. He rejoined duty on 12.3.2008 but left the unit on 17.3.2008. He claims that he verbally informed the Company Havaldar Major a fact denied by the respondents, who additionally claim that the Company Havaldar Major was not the competent officer to whom leave application could be made. In any case, respondents state that the petitioner never claims to have submitted any written application seeking leave. He claims that he verbally informed the Company Havaldar Major.

7. Be that as it may, petitioner joined back on 16.4.2008 and in the meanwhile a charge sheet had been drawn up on 26.3.2008, which was served upon the petitioner on 17.4.2008 i.e. the day next to his joining back.

8. It be noted that the petitioner remained absent for 30 days.

9. Unfortunately, for the petitioner, before the Inquiry Officer, he gave no proof to justify his remaining absent, save and except his verbal statement that he did so on account of his wife having medical problems post caesarean operation; for which he had already availed leave from 26.2.2008 till 11.3.2008.

10. The Inquiry Officer indicted the petitioner and accepting the report of the Inquiry Officer the Disciplinary Authority levied the penalty of removal from service vide order dated 28.1.2009.

11. The Disciplinary Authority took the view that the petitioner had shown cowardice inasmuch as the unit concerned was to move to Chattisgarh, a Maoist affected area on 18.3.2008, and opined that this was the probable reason for the petitioner to abscond on 17.3.2008.

12. Appeal filed by the petitioner was rejected vide Appellate Order dated 21.5.2009. Revision filed has been turned down vide revisional order dated 8.10.2009.

13. That the wife of the petitioner had a caesarean operation is not in dispute. That a second female child was born to the petitioner is also not in dispute. That the child was born during period when petitioner was sanctioned leave is also not in dispute.

14. The petitioner who is personally present in Court informs us that he had to rush to his village inasmuch as the birth of a second female child was not to the liking of his parents and his wife who had undergone a caesarean operation was mentally disturbed and this was adversely affecting her health. On the one hand he had the call of his duty. On the other hand he had a commitment to his ailing wife and the newly born female child.

15. No doubt, the petitioner is in default, but we feel that the authorities have unnecessarily read into the conduct of the petitioner, an act of cowardice.

16. It is not in dispute that after he was employed as a Constable on 15.9.2001, petitioner has served in various parts of India, including the troubled State of Tripura. It is apparent that the petitioner is not a coward.

17. In a somewhat similar situation, pertaining to a Constable in CRPF who left for his hometown without sanctioned leave; on account of the medical sickness of his mother, in the decision dated 29.4.2008 W.P.(C) 1917/2000 Const.P.Rajan v. UOI, a Division Bench of this Court set aside the penalty order and directed the Revisional Authority to reconsider the matter and impose an appropriate penalty. In said case order passed was of dismissal from service.

18. Pertaining to a Constable in the Provincial Armed Constabulary (UP), in the decision reported as 2010 (2) SCC 236 State of UP & Ors. v. Ram Daras Yadav, the Supreme Court held that notwithstanding discipline being the backbone of the police force requiring highest degree of discipline to be maintained for the smooth functioning of a police force, justice had to be tempered with said requirement. For an act of using abusive language against his companion while on security duty and adopting threatening postures with a rifle against another companion; the threatening posture being akin to a prepatory act to eliminate the companion, the Supreme Court set aside the penalty of dismissal from service and substituted that same to one of withholding two increments. The respondent therein was reinstated in service with only 50% back wages paid. It was held that the penalty was squarely disproportionate.

19. We dispose of the writ petition quashing the revisional order dated 8.10.2009 and remit the revision petition filed by the petitioner before the Revisional Authority requiring the Revisional Authority to pass a fresh order levying an appropriate penalty upon the petitioner, which would not be of a kind where the petitioner loses his job. The petitioner would be reinstated in service and an appropriate penalty would be levied. For the period post 28.1.2009 till he is reinstated, and for which we fix the time limit as 6 weeks from today, no wages would be paid to the petitioner. However, said period would be reckoned in service for all other purposes.

20. The penalty levied upon the petitioner would be of a kind where the petitioner does not lose his job.

21. No costs.