



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.20388 of 2015

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Baikunthanath Sahoo *Petitioner(s)*

-versus-

Director General of Police, Central *Opposite Party (s)*
Reserve Police Force, C.G.O.,
Complex, New Delhi & Ors.

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Sudarsan Behera, Adv.*

For Opposite Party (s) : *Ms. Bijayalaxmi Tripathy, Adv.*
(for O.Ps.1 to 6)

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-05.04.2024

DATE OF JUDGMENT: -25.06.2024

Dr. S.K. Panigrahi, J.

1. The Petitioner through this Writ Petition has challenged the order of dismissal from service from the post of Constable under CRPF.
- I. **CASE OF THE PETITIONER:**
2. The brief fact of the case is that:
 - (i) The petitioner was appointed as Constable on 30.8.1994 bearing No.941176087 under C.R.P.F., Bhubaneswar. When he was deputed at Khatkhathi, Assam, the petitioner attempted suicide on the ground of



mental pressure at Nalgunda. Subsequently, Disciplinary proceeding was initiated against the petitioner.

- (ii) During Disciplinary proceeding against the petitioner, the petitioner was examined by the Doctor/ Superintendent, Institute of Mental Health, Hyderabad (A.P.) He opined that the petitioner is fit to join the duty. He may be given duties not involving the use of or coming in contact with Fire Arms. The Doctor issued fitness certificate in favour of the petitioner. He was admitted in the Hospital on 2.9.2000 and discharged on 15.9.2000 and during the said period, the petitioner was treated for depression.
- (iii) The disciplinary proceeding was closed and the punishment was awarded for removal from service. It is pertinent to mention here that the Medical report and fitness certificate were given a clear go by.
- (iv) At the same time, the authority registered one complain case before the learned Special Judicial Magistrate First Class at Nalgonda bearing Number C.C. No. 759/2001 under section 309 I.P.C against the petitioner. The said case was dropped on 28.3.2002 and the accused/petitioner was admonished under Section 360 Cr.P.C. and released. Thereafter, the petitioner filed appeal before the authority, but it was also dismissed on 12.11.2001.
- (v) Thereafter, the Petitioner filed another appeal on 26.1.2015 before the Opp. Party No.3 to look into his appeal dated 13.8.2001 personally. The said appeal was also dismissed. Thereafter, the petitioner filed Revision petition to Opp. party No. 2. It was forwarded to Opp. Party No. 3. On 26.8.2015, the said Revision Petition was rejected by Opp. Party No. 3



without referring to the judgment of the Special Judicial Magistrate, Nalgonda, Andhra Pradesh and Medical report of Superintendent, Institute of Mental Health, Ryderabad (A.D.).

(vi) Hence, this Writ Petition.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions.

- (i) It is submitted that the order of dismissal from service is not appropriate punishment in the event of suicide. Hence the order of dismissal from service may be modified and the petitioner may be re-instated in his service with consequential benefits.
- (ii) The authority Opp. party No.3 should obey the order of learned Special Judicial Magistrate, First Class, Nalgonda.
- (iii) It is submitted that the Medical Report, clearly indicates the issue of mental pressure. Hence, it was advised to assign duties without Fire Arms and he also has given fitness certificate to resume his duty. But the Opp. party did not consider it and passed dismissal order from service, against the petitioner which is bad in law
- (iv) In such view of the matter, learned counsel for the Petitioner prays for allowing this Writ Petition.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES :

4. Learned counsel for the Opposite Parties earnestly made the following submissions in support of his contentions.



- (i) The facts of the case is that No. 941176087/Ex-Constable (GD) Baikunthanath Sahoo of B/35 Battalion, CRPF (hereinafter called as "the petitioner"), while performing Sentry duties was deployed at Narayanpur, District- Nalgonda (A.P.) made an unsuccessful attempt to commit suicide on 19/07/2000 by blasting two grenades. The Guard Commander Head Constable (GD) Suresh Kumar of B/35 Battalion, CRPF while checking the night guard also checked the Morcha where the petitioner was on duty. When the Guard Commander went to another sentry post, he heard blast sound of two grenades, the post/camp immediately came to stand still position. The blast sound of grenades came from the morcha of the petitioner, who threw the grenades inside the morcha by standing outside with an evil intention.
- (ii) The petitioner was hit by a splinter on his right knee joint and some other minor splinter injuries was also noticed on his other parts of the body, thereafter he was taken to the Govt. Hospital, Chautupal and given first aid and subsequently referred to Base Hospital-2, Guwahati. As per X-ray reports, only one splinter in his right knee joint was found. Thereafter he was further referred to Osmania Hospital, Hyderabad and he was operated on 20/07/2000 and the splinter was taken out and he further remained under treatment/medical rest.
- (iii) An F.I.R. was also lodged against him at Narayanpur P.S. vide F.I.R. No. 19-ACT-IPC-SEC-286 dated 19/07/2000, consequent thereupon a Court of Inquiry was ordered. As per order passed by the Head of Office, a Departmental Enquiry was initiated to enquire about the misconduct aspect of the incident committed by the petitioner. In the



departmental enquiry, article of 3 charges framed against him and all of these were proved. Subsequently, punishment of removal from service was awarded to him with effect from 16/04/2001 vide Commandant-35 Battalion, CRPF Office Order No.P:VIII-14/2000-35-EC-II dated 16/04/2001. Punishment of removal from service was imposed upon the petitioner after conducting a proper departmental enquiry after fully considering the gravity of the offence committed by the petitioner.

- (iv) On the other hand, the petitioner preferred an appeal against the order of removal which was also rejected being devoid of merit vide DIGP, Range CRPF, Khatkhati (Assam) Office Order No. R.XIII-4/2001-DA-2 dated 12/11/2001 after hearing the petitioner and affording reasonable opportunity to him. After about 13 years of the said order passed by the Appellate Authority, the petitioner preferred a revision petition dated 26/01/2015 before the Revisional Authority which had been rightly rejected vide Office Order No.R.XIII-8/2015-Estt-3 of 1.G.P., Eastern Sector, CRPF, Kolkata dated 26/08/2015.
- (v) It is submitted that a Departmental Enquiry was completed against the petitioner, Ex-CT/GD Baikunthanath Sahoo of 35 Battalion, CRPF based on the article of charges framed against him as per Para-1 of the Memorandum No.P.VIII-14/2000-35-EC-II dated 09/11/2000, statements of Prosecution Witnesses and exhibits. Hence, the petitioner was removed from service with effect from 16/04/2001 and the said order of removal from service was passed by the Commandant-35 Battalion, CRPF vide Office Order No. P.VIII-14/ 2000-35-EC-II dated 16/04/2001. Since the offence was grievous in nature, hence request of the petitioner



for quashing the order of removal from service does not arise. Accordingly, the present Writ Petition is liable to be dismissed.

- (vi) It is submitted that disciplinary proceeding was initiated on the charges of misconduct committed, by the petitioner on 19/07/2000, in which, he had committed an unsuccessful suicide attempt by blasting two grenades. Out of two grenades, one was issued to the petitioner for duty and the other one the petitioner took stealthy from No. 913133637, Constable (GD), M.W. Lamtile while he was in deep sleep. Hence, the Writ Petition is liable to be dismissed.
- (vii) Learned counsel for the Opposite Party, accordingly, prays for dismissal of this Writ Petition.

IV. COURT'S REASONING AND ANALYSIS:

5. This Court is conscious of the fact that in exercise of powers under Article 226 of the Constitution of India, the High Court does not sit as an Appellate Court and re-appreciate the evidence. However, in the present case, this Court has referred to the evidence to show that it is a case of no evidence and complete miscarriage of justice inasmuch as the Competent Authority has been totally oblivious of the mental health of the Petitioner. The Authority has treated him like an ordinary offender and dealt the issue sternly.
6. It is pertinent to refer to Section 115 of the Mental Healthcare Act, 2017 which reads as under:

"115. Presumption of severe stress in case of attempt to commit suicide.--(1) Notwithstanding anything contained in section 309 of the Indian Penal Code (45 of 1860) any person who attempts to commit suicide shall be presumed,



unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code. (2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide."

7. Section 115 of the Mental Healthcare Act raises a statutory presumption that any person who attempts to commit suicide shall be presumed to have severe stress and shall not be tried and punished under the Indian Penal Code. It further casts a duty upon the appropriate Government to provide care, treatment and rehabilitation to a person, having stress and who attempted to commit suicide to reduce the risk of recurrence of attempt to commit suicide.
8. In the instant case, the medical records pertaining to mental health condition of the Petitioner, *inter alia*, the consultation, prescriptions etc., were not even examined or taken on record. Even when the medical condition was brought to the notice of the Appellate Authority, it was also not taken into account. Even the doctors under whom the Petitioner was receiving treatment were not examined to evaluate the mental health of the Petitioner and to consider the proportionality of punishment.
9. In this context, reference may be had to the decision of the Supreme Court in *Ravinder Kumar Dhariwal v. Union of India*¹, wherein the Court has held that "*The duty of providing reasonable accommodation to persons with disabilities is sacrosanct. All possible alternatives must be*

¹ (2023) 2 SCC 209



considered before ordering dismissal from service." In the present case, this aspect has not been given due importance.

10. The Supreme Court in *Ravinder Kumar Dhariwal* (supra) further held that *"an issue that remains contentious is the examination of misconduct charges against persons with mental health disorders. There are two strands of argument. One argument is that mental disability often manifests as atypical behaviour that may fall within the ambit of misconduct. If such conduct is causally connected to the disability, then dismissal on grounds of misconduct is discrimination based on disability"*. The Supreme Court referred to the minority opinion in *Stewart* [*Stewart v. Elk Valley Coal Corpn.*²; wherein it was observed that making a distinction between the disability and the disability-related conduct is akin to making a distinction between a protected ground and conduct that is intertwined with the protected ground. On the other hand, it was argued that while mental health disorders may diminish the control a person has over their actions, it does not necessitate that the persons have completely lost their ability to comply with acceptable standards of workplace conduct.
11. It is common knowledge that members of the forces work under tremendous stress and strain attached to their duties. If the stress is compounded by external factors from the home front there are possibilities of members of the force taking extreme steps. In this

² 2017 SCC OnLine Can SC 72 : (2017) 1 SCR 591],



regard, in the case of *Vasudev Panchal vs Union Of India*³, the Delhi High Court held that:

"53. In the case of the Petitioner, he was also under medical treatment and was placed in low medical category. He attempted suicide and was sentenced to Rigorous Imprisonment for 89 days. Then he was having trouble at his home front. His colleagues were also counseling him. The Commandant instead of taking into account his mental condition and a empathetic view of the fact that he had attempted to take a drastic step of taking his own life, awarded him the harshest of punishment "be Dismissed from service".

54. We find merit in the submission of learned counsel for the Petitioner that Respondents were treating mental illness, like depression, as a "bad conduct" and Petitioner was being called a "habitual offender" as if he had a choice of mental illness or deliberately self-inflicted depression upon himself.

55. Record also does not reflect that Petitioner was violent or aggressive or a threat to others. He was highly depressed and had only attempted to cause harm to himself. Petitioner along with his appeal the Discharge Card of the Department of Psychiatry which recorded that "after admission, Risk assessment and safety plan was applied. Risk of harm to self was high at the time of admission, so high risk management was done.

56. The Appellate authority has also erred in not appreciating the mental medical condition of the Petitioner before, during and after the incident. We are also of the view that the punishment of dismissal from service is also highly disproportionate to his alleged conduct."

12. In this case, during the disciplinary proceedings against the Petitioner who underwent a medical examination conducted by the Doctor/Superintendent of the Institute of Mental Health in Hyderabad,

³ W.P.(C) No. 12228/2019 (Delhi High Court)



Andhra Pradesh. The examining physician concluded that the Petitioner was fit to resume his duties. However, the doctor recommended that the Petitioner be assigned tasks that do not involve handling or being in proximity to firearms. Accordingly, the doctor issued a fitness certificate affirming the Petitioner's capability to work under these specific conditions. Therefore, this Court accedes to the submission of the Petitioner.

13. Members of the armed forces operate under immense stress and strain due to the demanding nature of their duties, which often involve life-threatening situations, long periods away from family, and the responsibility of national security. The high-stakes environment requires constant vigilance, quick decision-making, and resilience, all of which contribute to significant psychological pressure. When these already substantial stresses are compounded by additional external factors from the home front, such as marital issues, financial problems, or family health crises, the burden can become overwhelming. The compounded stress can erode coping mechanisms and diminish the support structures that are crucial for mental well-being. Consequently, without adequate mental health support and intervention, members of the force may resort to extreme measures as a way to escape the relentless pressure. It is imperative to acknowledge and address the dual sources of stress faced by these individuals to prevent such tragic outcomes and ensure their overall well-being rather than punishing them like removal from job.



14. With respect to the aforesaid discussion and the cases cited hereinabove, this Court is inclined to quash the order of dismissal from service from the post of Constable under CRPF. This Court hereby directs the Opposite Parties to reinstate the Petitioner within a period of 3 months and the Petitioner be assigned tasks that do not involve handling or being in proximity to firearms as recommended in the report. However, if the Petitioner has been retired, in the meantime, his retiral benefits may be calculated appropriately and shall be disbursed forthwith.
15. Accordingly, this Writ Petition is allowed.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 25th June, 2024/