Date of reserved for Judgment: 05.01.2026
Date of Pronouncement :09.04.2026
Date of uploading :09.04.2026

APHC010552882013

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3545]
(Special Original Jurisdiction)

THURSDAY,THE NINTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

WRIT APPEAL NO: 925/2013

Writ Appeal under clause 15 of the Letters Patent Appeal against the order dt. 28.12.2012 passed in W.P. No. 20449/2002.

Between:

1. MEGHAVAT MANTRI NAYAK,, S/O CHANDRA NAIK, SUGALITHANDA VILLAGE, P.O., DIGUVAMATTA VIA GIDDALUR, PRAKASAM DIST.

...APPELLANT

AND

1. DY INSPECTOR GENERAL OF POLICE, NEW DELHI RANGE, CRPF R.K.PURAM, NEW DELHI
2. THE ADDIL DY INSPECTOR GENERAL OF POLICE, GROUP CENTRE, CRPF-3/KALAN, NEW DELHI-66
3. THE COMMANDANT, 113,BN, CRPF, WARANGAL, A.P.,
4. THE ADDITIONAL DY INSPECTOR GENERAL OF POLICE, GROUP CENTRE, CRPF, HYD.
5. INSPECTOR GENERAL OF POLICE/SECTOR, CRPF, BANJARA HILLS HYD.

...RESPONDENT(S):

IA NO: 1 OF 2013(WAMP 851 OF 2013

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to

condone the delay of 25 days in filing the present Writ Appeal by allowing the W.A.M.P. and pass

IA NO: 2 OF 2013(WAMP 1963 OF 2013

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in pursuance to the orders dt.28-12-2012 in WP No.20449/2002 passed by the learned single Judge

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to expedite the hearing of the Writ Appeal No. 925 of 2013 and to pass

Counsel for the Appellant:

1. MADHU SUDHAN P

Counsel for the Respondent(S):

1. DEPUTY SOLICITOR GENERAL OF INDIA

The Court made the following:

THE HON'BLE SRI JUSTICE BATTU DEVANAND

AND

THE HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

WRIT APPEAL No.925 of 2013

JUDGMENT:*(Per Hon'ble Sri Justice A. Hari Haranadha Sarma)*

Introductory:

1. This Writ Appeal is directed against the orders dated 28.12.2012 passed by a learned Single Judge of this Court in W.P.No.20449 of 2002.

2. The appellant is the writ petitioner. The Writ Petition was filed invoking Article 226 of the Constitution of India with a prayer to declare the action of respondent Nos.4 and 5 in imposing punishment of removal of the petitioner from service as illegal, arbitrary, discriminatory and to direct the respondents to reinstate the petitioner into service as constable with all consequential benefits. The Writ Petition was dismissed under the impugned orders by the learned Single Judge of this Court. Aggrieved by the same, the present appeal is filed.

3. For the sake of convenience, the parties will be referred to as the petitioner and the respondents as and how they are arrayed in the writ petition.

4. The Petitioner was working as a Constable in the Central Reserve Police Force (CRPF) at Warangal. A disciplinary enquiry was conducted against him on a charge of desertion, that the writ petitioner while functioning

as CT (GD) in D/113 Bn CRPF during the period from 15.07.1995, committed an act of misconduct and disobedience of orders, in his capacity as a member of the Force, under Section 11(1) of the CRPF Act, 1949, and that he deserted from the unit lines, Bheemaram, Warangal on 09.11.1998 without permission of competent authority and did not report for duty even after repeated directions which is pre-judicial to good orders and discipline of the armed Force. The punishment of removal from service is imposed.

Case of the writ petitioner:

5(i). The writ petitioner was recruited as O.R. (Constable) in C.R.P.F in the year 1994. He was selected in Kurnool as Constable and sent back to C.R.P.F, Hyderabad, where he stayed till June, 1995. Later, he was sent to 113 Bn, Triupra, where he served for 2 1/2 years. Then he was sent to 113 Bn, Warangal. He suffered ill health at Warangal. He was on medical rest for 15 days w.e.f. 05.11.1998 to 19.11.1998. He has undergone operation for Sinusitis. After the operation, once again he was advised rest for 15 days. Hence, he applied for leave to move to his native place. Though he sought permission, there was no response from respondent No.3. However, he has rushed to native place from where he sent a telegram that he will be able to join / report duty on 22.11.1998. But he did not recover fully and was unable to report. Meanwhile, he submitted representation for prosecuting studies for B.Com degree at Sri Venkateswara University, Tirupati and requested leave for five years and to have lien on the job without salary. He left the

headquarters on 09.11.1998 a warning / recall letter was issued dated 24.11.1998. He could not report as directed for the reason of ill health.

(ii). The enquiry was ordered in a routine manner. The punishment awarded is very grave and disproportionate. The Offence falls under Section 10(m) of the C.R.P.F. Act, 1949, which is described as a less heinous offence. Hence, the punishment imposed is excessive.

Case of the respondents:

6(i). The departmental enquiry was ordered for the charge referred to above and a charge sheet was sent to the writ petitioner at his home address, which was received by him on 10.05.1999, but he did not submit any reply. An enquiry officer was appointed and the enquiry was conducted in accordance with the procedure laid down on the subject, providing sufficient opportunity to the writ petitioner to defend.

(ii). The writ petitioner has submitted medical documents for his absence and same were not found genuine by the enquiry officer, hence, the charge was found proved. The writ petitioner was on medical rest w.e.f. 05.11.1998 to 19.11.1998. He was directed to avail medical rest at unit lines/M.I. room, but he left the unit lines without permission of the competent authority on 09.11.1998 AN. On reaching home, he sent a telegram dated 09.11.1998 intimating that he will report back after expiry of his medial rest. He was directed to report back forthwith vide letter dated 24.11.1998 but he did not comply with the same and sent one more application requesting for five years lien period without salary and in case of his request for five years' lien period

is not considered, to treat his application as resignation from service. He was again directed to report back immediately, vide letter dated 11.01.1999, but he has reported back only on 15.05.1999 on his own, after absenting himself for 186 days.

(iii). The defence of the writ petitioner that he fell ill due to jaundice and remainder under treatment / rest is not correct but as he had to appear for B.Com examinations in open Venkateswara University, Tirupathi, he had opted and requested for five years' lien period alternatively resignation. Since permission is not granted, he reported back for duty on 15.05.1999.

(iv). The charge is proved / admitted, opportunity was given to the writ petitioner by transmitting the enquiry officer's report vide office letter dated 07.12.1999, for which he has submitted a reply dated 16.12.1999, which was received on 24.12.1999 without adding anything new.

(v). Upon considering the misconduct of deserting without permission and asking for a five-year lien period in service, which reflects that he is not sincere and responsible, in exercise of powers vested under Rule 27 of the CRPF Rules, 1995 read with Section 11(1) of the C.R.P.F. Act, 1949 punishment of removal from service was imposed.

(vi). The appeal preferred before the IGP also ended in rejection, confirming the findings of the disciplinary authority.

Observations in the Writ Petition:

7(i). Sufficient opportunity was given to the writ petitioner

(ii). The petitioner requested for leave for five years with a lien to enable him to prosecute the Degree Course from Sri Venkateswara University and the same was refused. The attitude of the petitioner shows that the C.R.P.F is an organization in which he can work and leave as he likes.

(iii). The absenteeism from Government service, especially a disciplinary force like CRPF without intimations is evident from the conduct of the petitioner, as per the observations of the disciplinary authority.

(iv). The facts and circumstances in the case on which reliance is placed by the writ petitioner are different and the conduct of the present writ petitioner is not comparable to the case relied vide ***State of Tripura and Others vs. Naresh Chandra Das***[1], where the reason for absence was beyond the control in the case cited, but here the circumstances are different.

(v). Punishment of removal is justified.

Arguments in the appeal:

For the appellant / writ petitioner:

8(i). The charge as to misconduct is not properly appreciated with reference to the evidence.

(ii). The medical reasons stated by the writ petitioner are not considered.

[1](2007) 15 SCC 759

(iii). providing sufficient opportunity to defend itself is not sufficient. The proportionality of the punishment shall also be considered.

(iv). The learned Single Judge ought to have considered the observations of the Hon'ble Supreme Court made in ***State of Tripura and Others vs. Naresh Chandra Das*** (1 supra).

(v). Further, in a similar circumstances, the High Court for the State of Telangana in W.A.No.472 of 2023 considered that the removal or dismissal from service is disproportionate.

(vi). In some other cases, the High Courts of Jharkhand and Madras have considered the issue liberally and the case of petitioner herein is on a better footing. Therefore, similar benefit may be extending by setting aside the orders of the learned Single Judge in W.P.No.20449 of 2022 and quashing the orders of respondent Nos.4 and 5.

For the respondents:

9. The services of C.R.P.F. stand on an important pedestal than any other ordinary civil services or civil posts. Unauthorised absence cannot be encouraged. The conduct of the petitioner has been properly considered all through by the enquiry officer / disciplinary authority / appellate authority and by the learned Single Judge. Therefore, there are no grounds to interfere.

Hearing:

10. Heard both sides extensively. Thoughtful and anxious consideration is given to the arguments advanced by both sides.

Points for consideration:

11. The points that arise for consideration in this appeal are:

1) Whether the orders of the learned Single Judge in W.P.No.20449 of 2002, dated 28.12.2012 are sustainable or require any interference?

2) What is the result of the appeal?

Point No.1:

Analysis & reasoning:

12. The argument of the learned counsel for the appellant is that the appellant joined in the service in the year 1994. He was on authorised leave period from 05.11.1998 to 19.11.1998. He has sent a telegram dated 22.11.1998. The recall letter was issued by the respondents on 24.11.1998. The writ petitioner could not join duty till 15.05.1999. The alleged unauthorised leave period is from 10.11.1998 to 15.05.1999. The leave period was regularised as EOL. Therefore, the contention of the respondents that the petitioner deserted duty is not correct. The violations alleged are incorrect. The quantum of punishment awarded is disproportionate to the gravity of the charge. The absence period is only 186 days and the same is not wilful. The dismissal of the writ petition by the learned Single Judge is not proper.

13. It is relevant to note that, admittedly, the departmental enquiry was preceded by notice, charge and participation of the writ petitioner. The report of the enquiry officer reveals that the charge framed against the writ petitioner was addressed with reference to evidence. Therefore, the procedural violations are not there. As per P.W.2 before the enquiry officer, the writ

petitioner left the lines on his own on 09.11.1998. As per P.W.3, the writ petitioner reported at the unit on 19.10.1998 and was admitted in M.G.M. Hospital Warangal Hospital on 27.10.1998 due to Sinusitis and was discharged from the hospital on 30.10.1998 with advice of one week rest by the concerned hospital. Accordingly, the writ petitioner was on leave under the supervision of the unit medical personnel. After one week rest, he was again sent to the hospital on 05.11.1998 and again he was advised 15 days rest by the ENT specialist. Accordingly, the writ petitioner submitted an application and note sheet was submitted for approval of the same. The writ petitioner was advised to take medical rest in the unit under the supervision of unit people/personnel, but he deserted from the unit on his own on 09.11.1998, without any permission of the competent authority. However, he sent a telegram at 11:30 P.M. on 10.11.1998 stating that he will be report to duty. A specific letter was sent to the house address of the writ petitioner to report to duty immediately. Thereafter, the writ petitioner did not report to duty. Further, the writ petitioner sent an application to the office for grant of leave or acceptance of resignation from service.

Jurisprudence and Precedential Guidance:

The Writ Petitioner relied on:

14(i). The observations of the High Court of Judicature at Patna in ***Sumit Kumar vs. Union of India through its Home Secretary, Union of India and Others***[2]***,*** vide orders dated 13.08.2024, for the proposition that when an

[2] 2024 SCC OnLine Pat 5647

explanation is offered by the delinquent for absence from duty was due to treatment of his mother who was detected with cancer and as the reason beyond his control is not properly considered, reinstatement is ordered. The facts and circumstances are entirely different. It is not the case of the petitioner that, for the period of absence of the writ petitioner for 186 days, he has submitted any medical record of sickness either for himself or his necessity to attend some other family member. Therefore, the findings are not applicable.

(ii). The observations made by the learned Single Judge of this Court in ***Ch. Prabhakar Rao vs. Deputy Inspector General of Police, New Delhi Range, CRPF, R.K. Puram, New Delhi and others***[3]***,*** where the absence of 11 months 23 days was under consideration and where medical record was submitted and the same was not considered, the dismissal from service was found to be a disproportionate punishment. Further, in the case cited, the son of the delinquent, aged 4 years, broke his leg in an accident and the mother of the delinquent fell sick and medical records were produced at that time. The facts and circumstances are different, hence, found not applicable.

(iii). The observations of High Court of Jammu and Kashmir and Ladakh in ***Mohd. Ashraf Shah vs. Union of India and Others***[4] made in S.W.P.No.16 of 2005, dated 13.04.2023, wherein the concept of desertion and the method of conducting enquiry by providing opportunity of hearing, procedure to be followed are all considered. It was a case of non-observance of certain

[3] 2011 SCC OnLine AP 875: (2012) 1 ALD 57
[4] 2023 SCC OnLine J & K 224

procedural formalities and also where the punishment was found disproportionate, particularly in the context of a charge of absence for 39 days. Here, the absence period is 186 days and the context is different. Therefore, the reliance placed by the writ petitioner is found not applicable.

(iv). The observations of the High Court for the State of Telangana in ***V. Balaswamy vs. Government of India and Others***[5] in W.P.No.7550 of 2018, dated 01.11.2022, wherein the charge was absence for 60 days and where absenteeism was not found to be wilful and the relief prayed for was gratned. The context and material placed in the present case does not match with the reliance placed by the writ petitioner.

(v). Observations of the High Court of Madras in ***M.P. Balasubramaniyan vs. The Director General, CRPF and Others***[6], where it was a case of the delinquent suffering from mental and physical sickness and there was overstay of leave already granted and the absence was explained and reasonable. In that context, the punishment was found to be disproportionate. This reliance is also found not applicable.

Other relevant case law:

15. This Court finds it relevant to note the observations of the Hon'ble Apex Court which are relevant to the context of the present case:

(i). ***Union of India and others vs. Ghulam Mohd. Bhat***[7]- it was a case of absenteeism for more than 300 days by a CRPF constable without sanctioned

[5] 2022 SCC OnLine TS 2638: (2022) 6 ALT 583
[6] MANU/TN/5916/2023: W.P.No.12977 of 2021, dated 18.10.2023
[7] (2005) 13 SCC 228

leave and without justifiable reason. The observations of the Hon'ble Supreme Court in para Nos.5 to 9 of the judgment are as follows:

> ***5.*** *A bare perusal of Section 11 shows that it deals with minor punishment as compared to the major punishments prescribed in the preceding section. It lays down that the Commandant or any other authority or officer, as may be prescribed, may, subject to any rules made under the Act, award any one or more of the punishments to any member of the Force who is found guilty of disobedience, neglect of duty or remissness in the discharge of his duty or of other misconduct in his capacity as a member of the Force. According to the High Court the only punishments which can be awarded under this section are reduction in rank, fine, confinement to quarters and removal from any office of distinction or special emolument in the Force. In our opinion, the interpretation is not correct, because the section says that these punishments may be awarded in lieu of, or in addition to, suspension or dismissal.*
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> ***6.*** *The use of the words "in lieu of, or in addition to, suspension or dismissal", appearing in sub-section (1) of Section 11 before clauses (a) to (e) shows that the authorities mentioned therein are empowered to award punishment of dismissal or suspension to the member of the Force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clauses (a) to (e) may also be awarded.*
>
> ***7.*** *It may be noted that Section 9 of the Act mentions serious or heinous offences and also prescribes penalty which may be awarded for them. Section 10 deals with less heinous offences and clause (m) thereof shows that absence of a member of the Force without leave or without sufficient cause or overstay without sufficient cause, is also mentioned as less heinous offence and for that also a sentence of imprisonment is provided. It is, therefore, clear that Section 11 deals with only those minor punishments which may be awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of*

dismissal can certainly be awarded thereunder even if the delinquent is not prosecuted for an offence under Section 9 or Section 10.

8. *It is fairly well-settled position in law that removal is a form of dismissal. This Court in Dattatraya Mahadev Nadkarni (Dr.) v. Municipal Corpn. of Greater Bombay [(1992) 2 SCC 547 : 1992 SCC (L&S) 615 : (1992) 20 ATC 275 : AIR 1992 SC 786] explained that removal and dismissal from service stand on the same footing and both bring about termination of service though every termination of service does not amount to removal or dismissal. The only difference between the two is that in the case of dismissal the employee is disqualified from future employment while in the case of removal he is not debarred from getting future employment. Therefore, dismissal has more serious consequences in comparison to removal. In any event, Section 11(1) refers to the Rules made under the Act under which action can be taken. Rule 27 is part of the Rules made under the Act. Rule 27 clearly permits removal by the competent authority. In the instant case the Commandant who had passed the order of removal was the competent authority to pass the order.*

9. *This Court had occasion to deal with the cases of overstay by persons belonging to disciplined forces. In State of U.P. v. Ashok Kumar Singh [(1996) 1 SCC 302 : 1996 SCC (L&S) 304 : (1996) 32 ATC 239] the employee was a police constable and it was held that an act of indiscipline by such a person needs to be dealt with sternly. It is for the employee concerned to show how that penalty was disproportionate to the proved charges. No mitigating circumstance has been placed by the appellant to show as to how the punishment could be characterised as disproportionate and/or shocking. (See Mithilesh Singh v. Union of India [(2003) 3 SCC 309 : 2003 SCC (L&S) 271] .) It has been categorically held that in a given case the order of dismissal from service cannot be faulted. In the instant case the period is more than 300 days and that too without any justifiable reason. That being so the order of removal from service suffers from no infirmity. The High Court was not justified in interfering with the same. The order of the High Court is set*

aside. The appeal is allowed but under the circumstances there shall be no order as to costs.

(ii). ***State of Uttar Pradesh and others vs. J.P. Saraswat***[8]- in respect of a case wherein the scope of interference with the punishment is observed vide para 8, which is as follows:

> ***8.*** *Any interference on the question of punishment is permissible in very rare cases where the punishment is so disproportionate to the established charge that it would appear unconscionable and actuated by malice. In the facts of the case, the punishment given to the respondent was quite moderate and there was not even a whisper of any malice, etc. The respondent went to the USA and overstayed his leave for over a year-and-a-half on the first occasion and on the second occasion, he went to the USA without even caring to obtain leave and remained there for over four years. In those circumstances, the punishment of termination of service that would not debar from future employment was a perfectly reasonable and fair punishment and there was no occasion for the High Court to interfere with that order. The High Court was equally wrong in setting aside the punishment order passed against the respondent on the ground that the State Government had not responded to his applications for extension/grant of leave or that during the long period of his absence the Government had not sent him any notice asking to resume duties by a certain date. These could never be the grounds for the High Court to set aside the punishment order passed by the State Government and to replace it by its own set of directions.*

16. In the present case, the writ petitioner is unable to place any mitigating circumstances or justifiable reason as to why he could not join duty till 15.05.1999, when he himself has stated that he will report to duty on 22.11.1998 as per the telegram sent by him. Even after 22.11.1998, the letter

[8] (2011) 4 SCC 545

dated 24.11.1998 was issued and the same was served on the writ petitioner. In the absence of convincing reasons for absence, the absenteeism can be considered as wilful, whereby the matter falls within the scope of desertion and wilful absenteeism from duties, contributing for the invocation of the power and jurisdiction of the employer to proceed as per the service rules, including imposition of appropriate punishment.

17. Learned counsel for the writ petitioner/ appellant would submit that the punishment is disproportionate. It is not as if there was no remainder from the respondents calling upon the writ petitioner to report to duty.

18. The argument that the absence period was considered as EOL cannot be the basis to accept the absence was ignored. Regularisation of the absence period is different from taking action for the misconduct of unauthorised absence.

19. Admitting an absentee employee whenever he reports to duty is a must and routine procedure. Any such admission to duty is subject to the regularisation of the absence period either in the form of granting leave etc. Imposing punishment and passing appropriate orders as to treating the absence period along with the punishment order is the regular procedure. Therefore, the arguments that writ petitioner was permitted to join after 15.05.1999 and thereafter enquiry was conducted and he was removed from the service does not by itself make out any strong ground for the writ petitioner to claim that the punishment is disproportionate and that his absence has been condoned.

20. The argument that the penal provisions are not invoked in terms of Sections 9 or 10 of the CRPF Act, 1949 is found to be not relevant, as they deal with prosecution and punishment for omissions and violations of statutory provisions constituting offences, whereas Section '11' of the CRPF Act, 1949 provides for punishments for misconduct on the administrative side, touching the employment and continuation of service of a member of the Armed Force. Non prosecution of the delinquent is no bar to imposing punishment in terms of Section 11. Though Section '11' is captioned with a heading indicating minor punishments, it is relevant to note that suspension or dismissal are also contemplated. Removal is less heinous compared to dismissal.

21. The applicability of Section '11' for imposing punishment, including dismissal, was considered by the Hon'ble Apex Court in ***Union of India and others vs. Ghulam Mohd. Bhat*** (7 supra) vide para Nos.5 to 8 of the judgment referred above. Section '11' contemplates the punishments suspension, dismissal etc. with regard to misconduct. The punishment of removal or dismissal by the competent authority i.e. the DIGP, upon a detailed departmental enquiry. There is no dispute about the competency of the authority who passed the removal orders. Therefore, the orders of the disciplinary authority that the delinquent failed to explain his absence for a long period of '186' days amounting to desertion from the camp without permission from the competent authority and that he is not fit to be continued in Armed Forces and that writ petitioner's stand in his application requesting five years' lien reflects that he is not sincere and irresponsible and that

granting lien in such cases is likely to have a multiplied effect on other force personnel and the same will lead to undesirable consequences relating to discipline and operation of companies of coy and units as well and that removal from service will be an appropriate punishment is found as well reasoned and well founded both on facts and in law.

22. Further, the findings of the learned Single Judge in the impugned orders in the writ petition, as to (i) appreciation of the merits in the writ petition with reference to the nature of employment, insufficient explanation of the writ petitioner for the absence from the duties, and (ii) appreciation of the observance of the principles of natural justice by the disciplinary authority, are found fit for concurrence.

23. In view of the above, we conclude that there is no scope for interference, particularly when the orders of the learned Single Judge are considered in the light of the precedential guidance of the Hon'ble Apex Court mentioned above. The point framed is answered accordingly.

Point No.2:

24. In the result, the Writ Appeal is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE BATTU DEVANAND

JUSTICE A.HARI HARANADHA SARMA

Date:09.04.2026.
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THE HON'BLE SRI JUSTICE BATTU DEVANAND

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THE HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

WRIT APPEAL No.925 of 2013

Date:09.04.2026

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