

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**LPA No. 300/2019 in
SWP No. 1822/2013**

Reserved On: 14th of August, 2025
Pronounced On: 26th of August, 2025

Nasir Ahmad Parray, Age: 43 Years
S/O Abdul Aziz Parray
R/O Jabla, Uri, Kashmir.

... Appellant(s)

Through: -
Mr Nisar Ahmad Bhat, Advocate.

V/s

1. **Union of India,**
Through Ministry of Home Affairs,
New Delhi.
2. Director General,
Central Reserve Police Force,
New Delhi C/o 56 APO.
3. Commandant, 84-Bn,
Central Reserve Police Force,
Village Chatha, Jammu.
4. Company Commander,
84-Bn, Central Reserve Police Force,
Udhampur.

... Respondent(s)

Through: -
Mr Tahir Majid Shamsi, DSGI with
Ms Rehana Qayoom, Advocate.

CORAM:

Hon'ble Ms Justice Sindhu Sharma, Judge
Hon'ble Mr Justice Shahzad Azeem, Judge

(JUDGMENT)

Shahzad Azeem-J:

01. Before touching the merits of the case, we deem it proper to set the record straight. It is relevant to note that when the matter came up for

hearing, it has been noticed that before the Writ Court the Appellant-Writ Petitioner has impleaded as many as 04 Respondents, however, to the contrary, in the memo of parties in the Letters Patent Appeal (LPA), there are 05 Respondents. Therefore, when this variation is pointed out to Mr Nisar Ahmad Bhat, the learned Counsel appearing for the Appellant-Writ Petitioner, he fairly conceded that it is only due to typographical mistake Respondent No.4, i.e., “**University Grants Commission**” came to be reflected in the memo of parties and, thus, the learned Counsel prayed that same may be deleted from the array of Respondents.

02. Accordingly, the statement made by the learned Counsel for the Appellant is taken on record and the Respondent No.4-University Grants Commission is struck off from the array of Respondents and, as a corollary thereof, the Respondent No.5, i.e., Company Commander, 84-Bn, Central Reserve Police Force, Udhampur shall be read as Respondent No.4, as has been reflected before the Writ Court also.

I. SUBJECT MATTER OF CHALLENGE:

03. This *intra* Court appeal is directed against the Judgment dated October 15, 2019 passed by the learned Single Judge [“the Writ Court”] in SWP No. 1822/2013 titled ‘**Nisar Ahmad Parray v. Union of India & Ors.**’, whereby the Writ Court has dismissed the Writ Petition filed by the Appellant-Writ Petitioner seeking quashment of his Order of dismissal from the Central Reserve Police Force (CRPF) under Section 11 (1) of the Central Reserve Police Force Act, 1949 [for short “the Act of 1949”] read with Rule 27 of the Central Reserve Police Force Rules, 1955 [hereinafter referred to as “the Rules of 1955”].

II. FACTS:

04. The background facts need to be noted in brief:

05. The Appellant, in the year 1994, came to be appointed as a Constable in the 84 Bn of CRPF and continue to perform his duty as such, till 2001, when he suffered some medical emergency. However, although during the intervening period, he is said to have underwent treatment, but on account of his deteriorating health condition, applied for Earned Leave w.e.f. 27th of October, 2005 to 5th of December, 2005, which was accordingly sanctioned in his favour and, thus proceeded on leave.

06. After expiry of the leave period, the Appellant did not report back, purportedly due to health reasons. Therefore, the Appellant when regained health is said to have reported to the Bn, but he was not permitted to join, resultantly, he filed Writ Petition, being SWP No. 1093/2013. The said Writ Petition, vide Order dated June 19, 2013, came to be disposed of at the motion hearing stage with the direction to the Respondents to consider the claim of the Appellant-Writ Petitioner under Rules. Accordingly, in compliance thereto, the Respondents, vide Order dated August 03, 2013, accorded consideration to the case of the Appellant and, thus, rejected the same, detailing therein that the Appellant has been dismissed from service w.e.f. February 26, 2007 in pursuance of Departmental Enquiry [DE] held by the competent authority.

07. As a consequence to the above, the Appellant, through the medium of SWP No. 1822/2013, impugned the Order of dismissal dated February 26, 2007 and also Order dated August 03, 2013, whereby the consideration to the case of the Appellant was accorded in compliance to the direction passed in Writ Court in SWP No. 1093/2013 and same was rejected.

III. PROCEEDINGS BEFORE THE WRIT COURT:

08. The pleas raised by the Appellant before the Writ Court that he was struggling with medical condition, inasmuch as he was never informed about the holding of Departmental Enquiry did not weigh with the Writ

Court, mainly, on the ground that neither the Appellant could place on record any medical prescription showing that he was ever admitted as an indoor patient nor from the record produced by the Respondents the Writ Court could satisfy itself with the plea of the Appellant that at no point of time he was informed regarding the conduct of Departmental Enquiry. In that, the Writ Court has returned the finding on the basis of record that not only the Appellant was duly informed, but even Special Messenger was also sent, however, it is only after the failure of the Appellant to resume the duty, the impugned Order of dismissal came to be passed after observing due procedure as envisaged under the Act of 1949 and the Rules of 1955.

IV. CHALLENGE:

09. Since, we will be dealing with the relevant submissions raised by the Appellant and the grounds taken in the memo of appeal at length hereinafter, therefore, for the sake of brevity, it is suffice to say that the bone of contention of the Appellant is that his absence was not deliberate, rather, same was due to his deteriorating health condition, coupled with the fact that, though he properly informed the Respondents about the cause of his failure to join back the duty after expiry of his leave period, but same has not been taken into consideration by the Writ Court, while passing the impugned Judgment.

10. The other limb of argument of the Appellant is that, while passing the Order of dismissal, the Respondents have blatantly violated the rules of natural justice as he was never informed regarding holding of the Departmental Enquiry against him, therefore, the Respondents failed to observe the procedure prescribed under the Act of 1949 and the Rules of 1955, while holding *ex-parte* Departmental Enquiry against him, but the Writ Court did not take into consideration this aspect of the matter.

11. *Per contra*, Mr Tahir Majid Shamsi, the learned Deputy Solicitor General of India, appearing for the Respondents, vehemently

argued that sufficient material was placed on record before the Writ Court regarding the willful absence of the Appellant and numerous notices in this regard came to be issued to the Appellant, inasmuch as a Special Messenger was also sent, but the Appellant neither responded nor resumed the duty, therefore, the Respondents were left with no option but to hold an *ex-parte* Enquiry, which resulted in passing of the Order of dismissal against the Appellant.

12. The learned Counsel further canvassed at Bar that it was only on the basis of record submitted before the Writ Court and, after drawing satisfaction that all the codal formalities were completed by the Respondents, the impugned Order of dismissal came to be passed, as such, the Writ Court, on sound legal principles, dismissed the Writ Petition, therefore, no fault can be found with the same, hence prayed for the dismissal of the appeal.

V. ANALYSIS:

13. The Writ Court had come to the conclusion that the absence of the Appellant-Writ Petitioner was not on account of health condition and, therefore, Appellant, being member of a disciplined force and such conduct cannot be countenanced on any count. The Writ Court has also returned a specific finding that the Respondents have duly informed the Appellant, but he did not turn up, therefore, rightly impugned Order of dismissal came to be passed. However, although before us also, on the similar lines, the Appellant has questioned the legality of the impugned Judgment dated October 15, 2019 passed by the Writ Court, but, as propriety demands, we deem it proper to test the legality of the impugned Judgment in the light of the available record and rival contentions urged by the learned Counsels for the parties.

14. Admittedly, the Appellant had proceeded on earned leave w.e.f. October 27, 2005 to December 05, 2005 and he was required to join

back the duty on December 06, 2005, i.e., after expiry of his leave period. But, the Appellant failed to report back and, thus, became 'Over Staying Leave' (O.S.L.) w.e.f. December 06, 2005. The contention of the Appellant is that because of his deteriorating health condition, he could not report back on expiry of the leave period and this fact was duly brought in the notice of Respondents by way of representation filed through his father. According to the Appellant, he was undergoing treatment and was, all along, being examined in the Hospital and was continuously getting follow-up treatment till February, 2013, but, thereafter, when he reported back before 84 Bn CRPF, which, at that time, was stationed at Udhampur, but he was not allowed to join, therefore, he filed SWP No. 1093/2013 and it is only, thereafter, he came to know that he has been dismissed from service.

15. Broadly speaking, the points for our consideration arise: as to whether the Respondents have complied with the rules of natural justice while holding of Departmental Enquiry and the reason of the Appellant for not joining the duty on medical grounds considered properly, coupled with the fact as to whether the Respondents have observed the due procedure before inflicting the punishment of dismissal upon the Appellant.

16. In order to find out as to whether before initiating the Departmental Enquiry, the Appellant was duly informed or not, in this regard, again, we have thrashed the record of the Departmental Enquiry produced by the Respondents. Perusal of the record reveals that when on expiry of the leave period, Appellant failed to report back, notices/communications dated December 14, 2005, December 22, 2005 and December 31, 2005, respectively, came to be duly issued to the home address of the Appellant, directing him to report on duty, failing which disciplinary action will be initiated. The Appellant neither reported back nor responded to the said communications issued by the Respondents.

17. Thereupon, the Officer Commanding, vide communication dated January 09, 2006, lodged a complaint against the Appellant in the Court of CJM-cum-Commandant-84 Bn, who on receipt of the complaint, vide letter dated January 28, 2006, directed the Senior Superintendent of Police [SSP], Baramulla to apprehend the Appellant and hand over him to Additional DIGP, GC, CRPF, GC, Srinagar, Jammu & Kashmir for further action, but the Appellant could not be apprehended for the reason as depicted in the communication of SSP, Baramulla that on enquiry, it has been reported to him that the Appellant is undergoing treatment somewhere in Jammu in a private Hospital, since January, 2006 and also the SSP, Baramulla enclosed the medical certificates, which would depict that these certificates have been issued by the Medical Superintendent, Government Psychiatric Hospital, Srinagar and not that of any hospital from Jammu.

18. When the Appellant did not turn up, the Respondents have convened a Court of Inquiry vide Order dated June 20, 2006 and, after holding the Court of Inquiry, the Appellant was declared as “**deserter**” vide Order dated July 30, 2006. It appears that the Respondents have, again, in order to ascertain the genuineness of the cause of absence of the Appellant from duty, sent HC/ GD Mr Mushtaq Ahmad, CRPF personnel posted in 84 Bn, to the residence of the Appellant on August 02, 2006. The statement of Mr Mushtaq Ahmad is on record and perusal whereof shows that on his visit, a startling revelation came to fore that the Appellant, to the surprise of everybody, found to have been running a Garment shop near his residence.

19. It is seen that when repeated notices/ communications did not yield any result and also Special Messenger sent by the Respondents to find out the cause of absence of Appellant reported that the Appellant is fit and fine, who is running a Garment Shop, the Respondents got convinced about the willful absence of the Appellant, therefore, charges regarding misconduct were framed and ‘Articles of Charges’ duly dispatched to the Appellant through registered post vide letter dated September 24, 2006,

whereupon, Enquiry Officer came to be appointed vide Order dated October 24, 2006.

20. The Commanding Officer, C, 84 BN CRPF, vide letter dated October 21, 2006, intimated the Appellant about holding of Departmental Enquiry and nomination of Enquiry Officer regarding his desertion/unauthorized absence beyond the sanctioned leave granted in his favour. The Appellant was also asked to present before the Enquiry Officer or submit his reply through post within a period of 15 days, otherwise, the Enquiry shall be conducted *ex-parte*, but the Appellant neither responded nor turned up.

21. Again, the Enquiry Officer, vide communication dated December 19, 2006, asked the Appellant to submit reply, but despite same having been duly delivered, the Appellant, yet again, failed to respond.

22. On December 20, 2006, the Enquiry Officer sent copies of the statement of witnesses recorded during Enquiry proceedings to the Appellant with a direction to submit his evidence within a period of 15 days, but, as per record, he did not respond.

23. Subsequently, on January 23, 2007, the Commandant, C, 84 Bn sent a copy of Enquiry report to the Appellant through registered post with a direction to the Appellant to submit his reply within a period of 15 days, but this too met with same fate.

24. Finally, on the basis of the enquiry report submitted by the Enquiry Officer, Shri Ram Chander Jatt, in terms of communication dated January 11, 2007, the Commandant, being the competent authority, after recording his findings, dismissed the Appellant from service vide Order dated February 26, 2007, which was subject matter of challenge before the Writ Court.

25. The perusal of record further makes it abundantly clear that the Respondents have, at every stage of the proceedings, duly informed the Appellant, either through registered post or tried to reach out to him through Special Messenger, so much so, a warrant was also issued through SSP, Baramulla, but on enquiry, again, it appears that the SSP, Baramulla was misled by the family members of the Appellant on the ground that the Appellant is undergoing treatment in some private hospital in Jammu, whereas, the fact of the matter remains that there is no *iota* of documentary proof that the Appellant ever underwent treatment in any of the hospitals in Jammu.

26. Therefore, the plea of the Appellant that the departmental proceedings have been conducted against him in violation of the principles of natural justice is not only misconceived, but also self-defeating, rather, it appears that the Appellant never intended to resume his duties, as he was found to have been running a Garment shop, which itself substantiates the act of grave misconduct on the part of the Appellant.

27. Now, let us consider the plea of the Appellant that due to bad health, he could not join the duty, but same is not considered in right perspective.

28. Although, the Writ Court has held threadbare discussion on the point of the alleged health condition of the Appellant, but, for our satisfaction, we have again tried to cull out as to whether the alleged ailment was in fact of such magnitude that constrained him not to join the duties.

29. In this regard, all the medical prescriptions available on record beyond any doubt shows that the Appellant, all along, got treatment as an outdoor patient and, thus, the Writ Court rightly took note of the said fact in the impugned Judgment.

30. The communication of SSP, Baramulla, rather casts a cloud on the conduct of the Appellant, as his family members tried to mislead the SSP, Baramulla by convincing that the Appellant is undergoing treatment in a private hospital at Jammu, but, when we through a glance over the medical prescriptions enclosed with the letter of the SSP, Baramulla, the same seem to have been issued by Medical Superintendent, Government Psychiatric Hospital, Srinagar, therefore, it shows the *mala fide* on the part of the Appellant, so as to conceal himself from being apprehended and also attempt to generate false evidence, so as to justify his desertion/ unauthorized absence from duty. This opinion of ours is further cemented from the fact that, instead of showing *bona fide* by approaching the Respondents, the Appellant tried to hoodwink the Respondents by filing Writ Petition SWP No. 1093/2013, on the ground that he was not allowed to join and also further made attempt to create the evidence by taking refuge under undated purported representation submitted by his father.

31. As we have discussed at length hereinbefore that prior to passing of Order of dismissal from service against the Appellant, he was duly informed of all the proceedings, so much so, the perusal of Order of dismissal shows that the copy whereof was duly endorsed to the Appellant and dispatched to his home address through registered post, therefore, the plea of the Appellant that he was not even served with the dismissal Order is without any basis, rather, same is belied by the record which speaks abundantly for itself. Hence, we do not find any procedural illegality or irregularity committed by the Respondents in holding disciplinary proceedings, till their final culmination in the shape of order of dismissal.

32. The learned Counsel for the Appellant placed reliance on the Judgment of the Hon'ble Apex Court passed in case titled '**State of West Bengal etc. v. M. R. Mondal and Anr.**; AIR 2001 SC 3471', to buttress his argument that if any order is passed but not communicated to the affected party, same has no valid existence in the eye of law.

33. As we have discussed at length that at every stage while holding the Enquiry or taking any proposed action against the Appellant, the Respondents have duly informed him, but, it is only after his failure to respond, the proceedings against the Appellant were conducted in *ex-parte*, therefore, the aforesaid Judgment relied by the Appellant is of no help, in the facts and circumstance of the case on hand.

34. The learned Counsel appearing for the Appellant has tried to convince the Court that since the case on hand is one of overstaying of leave, falling within the four corners of Section 10 (m) of the Act of 1949 and under the heading “**less heinous offences**”, as such, the punishment imposed is disproportionate to the alleged acts of omission and commission on the part of the Appellant.

35. The issue raised by the learned Counsel for the Appellant has its answer lying in Rule 31 of the Rules of 1955 itself, which deals with “**desertion and absence without leave**”. Rule 31 of the Rules of 1955, *inter alia*, provides that if a member of the force who becomes liable for trial under clause (m) of Section 10 of the Act of 1949 does not return of his own free will or is not apprehended within sixty days of the commencement of the desertion, absence or overstaying of leave, then the Commandant shall assemble a Court of Inquiry to inquire into the desertion, absence or overstaying of leave of the offender and such other matters as may be brought before them. Clause (c) of Rule 31 further provides that on completion of the Court of Inquiry, the Commandant shall publish in the Force Order the findings of the Court of Inquiry and the absentee shall be declared as a “**deserter**” from the Force from the date of his illegal absence. Therefore, to say that it is a case of simplicitor overstaying of leave, same runs contrary to the statutory provisions contained under Rule 31 of the Rules of 1955, as such, the Respondents have rightly declared the Appellant as a “**deserter**” on finding him unauthorizedly absented from duty, upon his failure to join the duty on expiry of his leave period.

36. Since, this issue is no more *res integra* and is settled by the Hon'ble Supreme Court, therefore, without further going into this aspect of the matter, it is worthwhile to take note of the Judgment of the Hon'ble Supreme Court passed in somewhat similar circumstances in case titled **'Union of India & Ors. v. Datta Linga Toshatwad; (2005) 13 Supreme Court Cases 709'**, wherein the Hon'ble Supreme Court, at paragraph No.8, observed, thus:

"8. The present case is not a case of a constable merely overstaying his leave by 12 days. The respondent took leave from 16-6-1997 and never reported for duty thereafter. Instead he filed a writ petition before the High Court in which the impugned order has been passed. Members of the uniformed forces cannot absent themselves on frivolous pleas, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if it goes unpunished, will greatly affect the discipline of the forces. In such forces desertion is a serious matter. Cases of this nature, in whatever manner described, are cases of desertion particularly when there is apprehension of the member of the force being called upon to perform onerous duties in difficult terrains or an order of deputation which he finds inconvenient, is passed. We cannot take such matters lightly, particularly when it relates to uniformed forces of this country. A member of a uniformed force who overstays his leave by a few days must be able to give a satisfactory explanation. However, a member of the force who goes on leave and never reports for duties thereafter, cannot be said to be one merely overstaying his leave. He must be treated as a deserter. He appears on the scene for the first time when he files a writ petition before the High Court, rather than reporting to his Commanding Officer. We are satisfied that in cases of this nature, dismissal from the force is a justified disciplinary action and cannot be described as disproportionate to the misconduct alleged."

37. Similarly, the Hon'ble Supreme Court in case titled **'Union of India & Ors. v. Ghulam Mohd. Bhat; (2005) 13 Supreme Court Cases 228'**, what has been observed in paragraph Nos. 7 and 9 assumes importance, which reads, thus:

"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.

.....

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*, 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 characterized as disproportionate and/or shocking. 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.”

38. From the above noted authoritative pronouncement of the Apex Court, there remains no *iota* of doubt that a member of uniformed force, who overstays his leave and never reports for duties, must be treated as a “**deserter**”, therefore, the penalty of dismissal from service of such member of uniformed force cannot be described as disproportionate to the alleged misconduct. Therefore, in view of the settled proposition of law, the plea raised by the Appellant that the punishment of dismissal from service is disproportionate to the alleged conduct is devoid of any merit.

39. Even otherwise, it is settled proposition of law that the scope of judicial review under Article 226 of the Constitution of India is very limited to the extent as to whether there is any *mala fide* or perversity in

arriving at any decision and, as such, the power of judicial review cannot be stretched to replace the findings of fact arrived at in the Departmental Enquiry. Therefore, once from the available record, sufficient proof of adherence to rules of natural justice is discernible, inasmuch as no *mala fide* or perversity is found to have been committed in the decision making process, in that event, interference in any manner is totally unwarranted and uncalled for.

40. It goes without saying that the Appellant, being a member of a disciplined Force, is expected to observe a high standard of discipline and, if he is found lacking in any manner, then, undoubtedly, he is required to be dealt with sternly.

41. In the case on hand, it has been found that the Departmental Enquiry came to be conducted in accordance with the statutory rules and no allegation of mala fide, bias or violation of principles of natural justice was substantiated. The Court's role is limited to reviewing the fairness of the process, not substituting its own view on the proportionality.

42. The aforesaid Judgments clarify that Section 11 (1) of the Act of 1949 complemented by Rule 27 of the Rules of 1955 which empowers the competent authority to impose the punishment of removal or dismissal even for the offences catalogued under Section 10 (m) of the Act of 1949. It reinforces the Hon'ble Apex Court's consistent stand that serious indiscipline in uniformed services justifies stern penalties.

43. Since, all the pleas raised by the Appellant, be it regarding the non-serving of notices/ communications relating to holding of Enquiry; violation of rules of natural justice; inasmuch as the medical grounds; etc.; are belied by the record, therefore, it seems that the Appellant, at every stage, made an abortive attempt to justify his unauthorized absence which, when tested on the anvil of facts and law, does not withstand judicial scrutiny.

VI. RELIEF:

44. For the foregoing reasons, we do not find any error of fact or law committed by the Writ Court, while dismissing the Writ Petition vide impugned Judgment under challenge, therefore, same does not call for any interference. Accordingly, the instant appeal, being devoid of any merit, is **dismissed**. Interim direction(s), if any, subsisting as on date, shall stand vacated.

45. The record produced by the Respondents be returned to them through their Counsel, with due dispatch.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

SRINAGAR

August 26th, 2025

"TAHIR"

- i. Whether the Judgment is approved for reporting? Yes.