HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S. B. Civil Writ Petition No. 7778/2006

Hans Raj Doi son of Shri Devi Ram, aged about 35 years, resident of Pharaspura, Tehsil Sikrai, District Dausa (Rajasthan).

----Petitioner

Versus

1. Union of India through Secretary, Department of Home, New Delhi.
2. DIG (Group Centre) CRPF, Ajmer (Rajasthan).
3. Director General, Central Reserve Police Force, Block No. 1, CDG Complex, Lodhi Road, New Delhi.
4. Inspector General of Police, Rapid Action Force, Central Reserve Police Force, East Block No. 6, R K Puram, New Delhi.
5. Deputy Inspector of General, Rapid Action Force, Central Reserve Police Force, Sector 1, new Delhi.
6. Commandant, 100 Bn, Rapid Action Force, Central Reserve Police Force, Ahmadabad.

----Respondents

For Petitioner : Mr. Ashwani Chobisa Advocate with Ms. Priyansha Gupta Advocate.
For Respondents : Mr. Ram Singh Bhati Advocate.

HON'BLE MR. JUSTICE ANAND SHARMA

Judgment

REPORTABLE

Date of conclusion of arguments	**::**	**29.01.2026**
Date on which judgment was reserved	**::**	**29.01.2026**
Whether the full judgment or only the operative part is pronounced	**::**	**Full Judgment**
Date of pronouncement	**::**	**03.02.2026**

1. The petitioner has filed the present writ petition assailing order dated 27.07.2002 whereby penalty of removal from service has been imposed upon him. That apart, the petitioner has also challenged appellate, revisional and subsequent rejection orders dated 08.11.2002, 01.01.2003, 21.03.2003 and 24.07.2003

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respectively and sought for a direction to reinstate him back in service along with all consequential benefits.

2. Facts of the case, in brief, are that the petitioner was appointed as Constable (GD) through direct recruitment in the year .995 and joined his duties at Central Reserve Police Force (CRPF Group Centre), Ajmer. Thereafter, the petitioner also served with 3/100 Battalion, Rapid Action Force, CRPF, Ahmedabad. In order to show his commendable performance, the petitioner has placed before this Court certificates revealing that he was repeatedly appreciated by superior officers and awarded cash rewards on as many as eight occasions. His performance during sensitive and arduous deployments, including post-riot duties in Gujarat following the Godhra incident and rescue and relief operations during the devastating Bhuj earthquake, was formally acknowledged through appreciation letters issued by senior officers, including the Inspector General of Police. He also secured 'A' grading in the Basic Ammunition Training Course.

3. However, one charge-sheet dated 11.02.2002 was served upon the petitioner, whereby four charges were levelled against the petitioner, broadly alleging desertion from force during training, residing outside the camp without permission, misconduct during training and being a habitual indisciplined employee. Charge No. 1 levels the allegations that while functioning as Constable/GD, he committed misconduct inasmuch as he was deputed to undergo D & M Course, but he deserted from the camp on his own volition w.e.f. 0600 hours on 17.11.2001, without obtaining permission or sanction from any competent authority, and reported back only on 05.12.2001. Charge No. 2 was in relation to the allegation that while

undergoing training at Central Training College, he resided with his family in a rented accommodation outside the camp, without obtaining permission or approval from any competent authority, which is in violation of Force rules and training regulations. Charge No. 3 reflects that while undergoing D & M Course, Central Training College, the petitioner showed lack of interest in the course, displayed bad character, disobeyed orders, behaved improperly, indulged in lying and quarrelling, etc. Owing to these habits and conduct, he was expelled from the course and was directed to report to his unit on 06.12.2001. However, he failed to report within the stipulated time and instead reported on his own volition on 27.12.2001 and during this entire period of absence, no intimation was given to his office. Charge No. 4 contains allegation that on examination of petitioner's service record during his tenure in the CRPF, it was found that he has been punished on two occasions earlier for acts of indiscipline. This clearly indicates that he was not a disciplined member of the Force and is habitual of acts of indiscipline and misconduct and that such conduct is against the discipline of the Force.

4. The petitioner filed reply to the charge sheet denying the charges and it was stated by him in relation to Charge No. 1 that he never deserted from the force and since he suffered from acute renal pain due to suspected stone from 28.10.2001 and was referred from the CRPF Hospital to Civil Hospital, where he remained admitted till 09.11.2001 and even surgery was advised by the doctors. Immediately after discharge from the hospital, the petitioner reported to the Course In-charge and Company Commandant and sought permission to stay one day outside the

camp with his visiting ailing wife and brother, by application dated 09.11.2001. Prior permission to keep his family outside the camp for three months had already been granted on 20.08.2001, rendering fresh permission unnecessary. Despite this, permission was denied. However, owing to stress and recurrence of renal colic, the petitioner was again admitted to Badhwa Hospital, Neemuch from 11.11.2001 to 13.11.2001 and advised rest. As both he and his wife were ill, he proceeded to his native village on 17.11.2001, took treatment at CHC Bandikui and voluntarily rejoined duty on 05.12.2001. His absence from 17.11.2001 to 05.12.2001 was, thus, medically justified and supported by documents. In respect of Charge No. 2, the petitioner attempted to justify that the allegation of unauthorised residence outside the camp was incorrect. Upon his wife's illness, the petitioner was granted leave on 23.07.2001 and thereafter, he obtained written permission dated 20.08.2001 to keep his family outside the camp for three months. Hence, no violation of rules has taken place. With regard to Charge No. 3, it was stated by the petitioner that the allegation of indiscipline during training was baseless. Rather the petitioner secured highest marks in camp activities and his conduct was recorded as good. During his absence on convoy training on 18.08.2001 and 28.08.2001, his cook quarrelled with his wife. The petitioner promptly reported the incident to senior officers and submitted a written complaint on 03.09.2001, hence, in this regard no misconduct could be attributable to him. While justifying in respect of Charge No. 4, the petitioner clarified that the allegation of habitual indiscipline against him was unfounded and untenable. The petitioner was earlier awarded only minor penalties, namely censure and reduction of one

stage in pay for one year, which cannot justify branding him as a habitual offender.

5. Thereafter, the departmental enquiry was initiated and an Enquiry Officer was appointed on 25.02.2002.

6. Learned counsel for the petitioner contended that the entire enquiry was vitiated due to violation of principles of natural justice, denial of documents, and refusal to permit defence witnesses. It was argued that the petitioner's absence was fully explained by medical emergencies affecting both him and his wife and was supported by unimpeachable medical evidence. The charge of residing outside the camp was demonstrably false in view of prior written permission. It was further submitted that the petitioner had an unblemished and distinguished service record, and the punishment of removal was grossly disproportionate. Reliance was placed on settled law that perverse findings and non-speaking orders warrant interference under Article 226 of the Constitution of India. The challenge of the petitioner is founded on the grounds of levelling legally unsustainable charges, violation of principles of natural justice, perversity of findings, non-consideration of material evidence, disproportionate punishment, and non-speaking orders passed by the appellate authority as also revisional authority.

7. Learned counsel for the petitioner submitted that the very foundation and basis of the charge-sheet issued against the petitioner was fundamentally erroneous, misconceived and contrary to the statutory scheme of the Central Reserve Police Force Act, 1949 (hereinafter to be referred as 'the CRPF Act, 1949') and the Rules framed thereunder. It was contended that the charge-sheet proceeds on an incorrect assumption treating the petitioner to be

"deserter", thereby vitiating the entire disciplinary proceedings at the threshold.

8. Drawing attention to the contents of the charge-sheet, learned counsel argued that Charge No. 1 constituted the principal and dominant charge, while the remaining charges were merely ancillary and consequential. According to him, the entire disciplinary action was premised on the presumption that the petitioner had "deserted" the Force, which is the gravest offence under the CRPF Act, 1949. However, such presumption was not only unsupported by facts, but was also in direct contradiction to the charge-sheet itself, wherein it was specifically recorded that the petitioner had resumed duty within approximately twenty days of the alleged desertion.

9. It was further submitted that desertion, under the scheme of the CRPF Act, 1949 connotes a deliberate and permanent intention to abandon service and mere temporary absence, followed by voluntary resumption of duty, cannot in law amount to desertion. Once the charge-sheet itself admits that the petitioner returned to duty, the essential ingredient of *animus deserendi* stands negated, rendering the very invocation of desertion provisions legally impermissible.

10. Learned counsel further emphasised that even assuming, only for the sake of arguments, that the respondents suspected desertion, even then, they were statutorily bound to follow the mandatory procedure prescribed under Rule 31 of the Central Reserve Police Force Rules, 1955 (hereinafter to be referred as 'the CRPF Rules, 1955'), which contemplates holding of a Court of Enquiry before declaring a member of the Force as a "deserter". The object of Rule 31 of the CRPF Rules, 1955 is to ensure that a finding

of desertion, carrying serious civil and penal consequences, is arrived at only after due verification of facts and circumstances. In the present case, it was undisputed that no Court of Enquiry was ever convened, nor was the petitioner afforded the procedural safeguards envisaged under the Rules.

11. It was, therefore, submitted that the respondents, in complete disregard of the statutory mandate, presumed the petitioner to be a deserter and proceeded to issue the charge-sheet on that flawed premise. Such an approach amounts to non-application of mind and colourable exercise of power, rendering the charge-sheet itself unsustainable in law.

12. Learned counsel for the petitioner concluded by submitting that when the principal charge itself is legally untenable, all consequential proceedings, including the enquiry, findings and punishment, must necessarily fail. The imposition of the extreme penalty of removal from service, founded on an invalid and misconceived charge of desertion, was thus arbitrary, disproportionate and contrary to law, and liable to be quashed. Learned counsel, in support of his submissions, relied upon the judgments of the Hon'ble Supreme Court in the cases of **Union of India & Others v. Datta Linga Toshatwad, (2005) 13 SCC 709; Krushnakant B. Parmar v. Union of India & Another (2012) 3 SCC 178;** decision of Madhya Pradesh High Court in the case of **N. Hanumantha v. Union of India and Others, 2006 SCC OnLine MP 209,** decision of Gauhati High Court in the case of **Dharanidhar Kalita v. Union of India & Others, 2015 SCC OnLine Gau 846,** decision of Jammu & Kashmir & Ladakh High Court in the case of

Nasir Ahmad Parray v. Union of India through Ministry of Home Affairs & Others, 2025 SCC OnLine J&K 853.

13. On behalf of the respondents, learned counsel submitted that discipline is the backbone of a uniformed force and that unauthorised absence and misconduct cannot be lightly condoned. It was argued that adequate opportunity was provided to the petitioner during enquiry, charges were duly proved and that the disciplinary authority exercised its powers under Section 11(1) of the CRPF Act, 1949 read with the CRPF Rules, 1955. The dismissal, according to the respondents, was justified to maintain discipline and order in the Force.

14. Learned counsel for the respondents, controverting the submissions advanced on behalf of the petitioner, contended that the disciplinary proceedings are not rendered invalid merely on account of the use of the expression "deserter" in the charge-sheet. It was submitted that substance must prevail over form, and a charge-sheet cannot be read in isolation or hyper-technically. When the charge-sheet is read holistically, along with the enquiry proceedings, enquiry report and the final penalty order, it becomes manifest that the real intention was to level the charge of remaining "absence without leave", and not the offence of "desertion" in its strict statutory sense.

15. Learned counsel argued that the disciplinary authority never intended to prosecute or punish the petitioner for the offence of desertion under Section 9 of the CRPF Act, 1949. The proceedings, from inception, were conducted under Rule 27 of the CRPF Rules, 1955, culminating in the imposition of a penalty under Section 11 of the CRPF Act, 1949, which governs departmental

punishment for misconduct. The enquiry officer examined evidence only to ascertain whether the petitioner had remained unauthorisedly absent and the finding returned was that the charge of absence without leave stood proved. The penalty order also does not invoke Section 9 or Section 10 of the Act, 1949, thereby clearly demonstrating that the proceedings were disciplinary in nature and not penal or criminal.

16. It was further submitted that mere use of an incorrect or loosely worded expression in the charge-sheet cannot vitiate disciplinary proceedings, unless it is shown that such wording caused prejudice to the delinquent employee. In the present case, the petitioner was fully aware of the allegations against him, participated in the enquiry, cross-examined witnesses, submitted his explanation and defended himself specifically on the issue of unauthorised absence. At no stage, the petitioner was tried or punished as a deserter, nor was he exposed to any punishment prescribed under Section 9 of the CRPF Act, 1949. Therefore, no prejudice was caused to him.

17. Addressing the argument regarding non-holding of a Court of Enquiry, learned counsel submitted that the reliance placed on Rule 31 of the CRPF Rules, 1955 is wholly misplaced. It was contended that Court of Enquiry is required only in cases where a member of the Force is proposed to be tried for offences under Sections 9 or 10 of the CRPF Act, 1949, which may result in imprisonment or other penal consequences and not in cases where a departmental enquiry is conducted under Rule 27 of the CRPF Rules, 1955 for imposition of a penalty under Section 11 of the CRPF Act, 1949. It was emphasised that the present case squarely falls within

the latter category. Since the respondents consciously chose to proceed under Rule 27 of the CRPF Rules, 1955 and not under Sections 9 or 10 of the CRPF Act, 1949, the requirement of holding a Court of Enquiry did not arise. The departmental enquiry was conducted strictly in accordance with the prescribed procedure and the petitioner was afforded adequate opportunity of hearing.

18. Learned counsel, therefore, submitted that the contention of the petitioner that the charge-sheet is vitiated due to an alleged presumption of desertion is misconceived and legally untenable. The disciplinary authority rightly proceeded on the basis of unauthorised absence, which stood proved in the enquiry, and the punishment imposed under Section 11 of the CRPF Act, 1949 cannot be faulted merely because of the terminology used in the charge-sheet. It was accordingly urged that the writ petition deserves dismissal, as no procedural illegality, jurisdictional error, or violation of principles of natural justice has been established. Learned counsel for the respondents, in support of his arguments, relied upon the judgment of Hon'ble Supreme Court in the case of **Union of India & Others v. Ghulam Mohd. Bhat, (2005) 13 SCC 228.**

19. Heard rival submissions of learned counsel for the parties and carefully perused the record.

20. This Court is conscious of the limited scope of judicial review in disciplinary matters. However, it is equally well settled that where findings are perverse, material evidence is ignored, principles of natural justice are violated, or punishment is shockingly disproportionate, interference under Article 226 of the Constitution of India is not only permissible, but obligatory.

21. This Court has carefully perused the charge-sheet, enquiry report, penalty order, orders passed by the appellate authority and the revisional authority as well as the relevant provisions of the CRPF Act, 1949 and the CRPF Rules, 1955.

22. For the purpose of adjudication of the questions raised in the instant writ petition, it would be relevant to refer following provisions of the CRPF Act, 1949:

> ***"9. More heinous offence.-****Every member of the Force who-*
> *(a) xxxxx*
> *(b) xxxxx*
> *(c) xxxxx*
> *(f) deserts the Force; or*
>
> *……..shall be punishable with transportation for life for a term of not less than seven years or with imprisonment for a term which may extend to fourteen years or with fine which may extend to three months pay or with fine to that extent in addition to such sentence of transportation or imprisonment.*
>
> ***10. Less heinous offences.-*** *Every member of the Force who-*
> *(a) xxxxx*
> *(b) xxxxx*
> *(c) xxxxx*
> *(m) absents himself without leave, or without sufficient cause overstays leave granted to him; or*
>
> *……. shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to three months pay, or with both.*
>
> ***11. Minor punishments.-****(1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say,-*
> *(a) xxxxxx*
> *(b) xxxxxx*
> *(c) xxxxxx*
> *(d) xxxxxx*
> *(e) xxxxxx"*

23. Rule 27 of the CRPF Rules, 1955 provides for procedure for the award of punishments and the table appended to Sub-Rule (a) of Rule 27 makes it clear that penalty of dismissal or removal from service can be inflicted upon a Constable by the Commandant only after a formal departmental enquiry. Rule 31 of the CRPF Rules,

1955 deals with desertion and absence without leave and provides as under:

> ***"31. Desertion and Absence without leave.-****(a) If a member of the force who becomes liable for trial under clause (f) of section 9, or clause (m) of section 10 or for deserting the Force while not on active duty under clause (p) of section 10 read with clause (f) of section 9, does not return of his own free will or is not apprehended within sixty days of the commencement of the desertion, absence or overstayal of leave, then the Commandant shall assemble a court of Inquiry consisting of at least one Gazetted Officer and two other members who shall be either superior or Subordinate Officers to inquire into the desertion, absence or overstayal of leave of the offender and such other matters as may be brought before them.*
>
> *(b) The Court of Inquiry shall record evidence and its findings. The Court's record shall be admissible in evidence in any subsequent proceedings taken against the absentee.*
>
> *(c) The Commandant shall then publish in the Force Order the findings of the Court of Enquiry and the absentee shall be declared a deserter from the Force from the date of his illegal absence, but he shall not thereby cease to belong to the Force. This shall, however be no bar to enlisting another man in the place of a deserter."*

24. At the outset, this Court finds merit in the contention that Charge No. 1 constituted the foundational charge, on the basis of which, the remaining charges were framed and the extreme penalty of removal from service was imposed. The language employed in the charge-sheet apparently characterises the petitioner's conduct as "desertion", which under the statutory scheme of the CRPF Act, 1949 carries a distinct legal connotation and far more severe consequences than mere unauthorised absence.

25. The submission of the respondents that the use of the term "deserter" is inconsequential and that the proceedings must be read as relating to absence without leave cannot be accepted in the facts of the present case. It is a settled principle that while form cannot override substance, the nature of the charge determines the standard of proof, procedural safeguards and proportionality of punishment. Where the charge-sheet itself proceeds on the premise

that the delinquent has "deserted the Force", the respondents cannot subsequently dilute or reinterpret the charge to suit the outcome of the enquiry.

26. Significantly, the charge-sheet itself records that the petitioner resumed duty within about twenty days. Such an admitted fact directly negates the essential element of *animus deserendi*, which is the *sine qua non* for constituting the offence of desertion under Section 9 of the CRPF Act, 1949. In the absence of an intention to permanently abandon service, a charge of desertion is legally unsustainable. This Court finds that the respondents, while framing Charge No. 1, failed to appreciate this vital distinction and mechanically invoked a grave charge inconsistent with the admitted factual position.

27. The argument of the respondents that a Court of Enquiry is required only when an employee is to be tried under Sections 9 or 10 of the CRPF Act, 1949 and not when proceedings are initiated under Rule 27 of the CRPF Rules, 1955 read with Section 11 of the CRPF Act, 1949, does not fully answer the petitioner's grievance. While it is correct that requirement of Court of Enquiry is there only where the incumbent is subjected to the trial and not in the cases of departmental enquiry. Yet, equally it is also emerging from the record that the present proceedings although culminated in a departmental penalty under Section 11 of the CRPF Act, 1949, the very initiation of proceedings was premised on an allegation of "desertion", and not on "absence without leave". Both the aforesaid conducts have been specifically included in Sections 9 & 10 of the CRPF Act, 1949 in the category of more heinous offences and less heinous offences respectively. Bare perusal of the provisions of the

CRPF Act, 1949 and the CRPF Rules, 1949 would also make it clear that "misconduct" for the purposes of inflicting departmental penalty has nowhere been specifically defined. Thus, under the circumstances, where the terms desertion and absence without leave have been included specifically as offence under the CRPF Act, 1949, then the procedure for ascertaining the commission of desertion or absence without leave, as prescribed under Rule 31 of the CRPF Rules, 1955 and nowhere else, cannot also be ignored by the respondents.

28. Moreover, the enquiry report and penalty order do not demonstrate a clear and conscious segregation between the alleged misconduct of "desertion" and "absence without leave". The findings proceed in an ambiguous manner, reflecting non-application of mind to the statutory distinction between the two. Such ambiguity assumes significance in a disciplined force, where the gravity of misconduct directly influences the nature of punishment.

29. This Court further finds that the penalty of removal from service, imposed in the present case, bears the imprint of the erroneous foundation of the charge. Removal from service is a major penalty ordinarily reserved for grave misconduct. Once the charge of desertion is found to be unsustainable, the proportionality of the punishment becomes indefensible, particularly when the admitted facts disclose at best a case of temporary unauthorised absence followed by voluntary resumption of duty.

30. This court finds that there is a clear, conscious and statutory distinction exists between the offences of "desertion" and "absence without leave" under the CRPF Act, 1949. This distinction is not merely superficial; rather, it goes to the very root of culpability

and proportionality of punishment. While desertion, being the most heinous offence punishable under Section 9 of the CRPF Act, 1949, connotes a deliberate and permanent intention to sever ties with the Force without any intent to resume duty. The consistent judicial interpretation of Section 9 of the CRPF Act, 1949 establishes that desertion necessarily involves two essential ingredients, i.e., (i) unauthorised absence, and (ii) a deliberate and permanent intention to abandon service, i.e., *animus deserendi*. In the absence of such intention, the offence of desertion cannot be said to be made out. On the other hand, absence without leave, contemplated under Section 10 of the CRPF Act, 1949, is a lesser misconduct, attracting comparatively milder penalties. The Legislature itself, by segregating these provisions and prescribing vastly different punishments, has recognised that every unauthorised absence does not amount to desertion.

31. The aforesaid principle has been authoritatively laid down by the Hon'ble Supreme Court in the case of **Union of India & Others v. Datta Linga Toshatwad (supra)**, wherein it was held that desertion postulates a complete repudiation of the obligation to serve and mere unauthorised absence, does not *ipso facto* constitute desertion unless accompanied by intention not to return. The Hon'ble Supreme Court observed as under:

> *"**8**……. A member of a uniformed force who overstays his leave 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. ....."*

32. The same principle was reiterated by Madhya Pradesh High Court in **N. Hanumantha (supra)**, wherein it was held that voluntary rejoining of duty is a strong circumstance negating the charge of desertion. The Court observed that once an employee

resumes duty on his own, the presumption of intention to permanently abandon service stands rebutted and the misconduct, if any, falls within the ambit of absence without leave. In the aforesaid, it was held as under:

> *"**9.** So far as first charge is concerned, it is in regard to desertion. How the term "desertion" would constitute under the Act, the provision of section 9(f) is required to be read. This section pertains to more heinous offences and in clause (f) desertion is there which reads as:—*
>
> > *"(f) deserts the Force."*
> >
> > *At this juncture it would be apposite to read section 10 which pertains to "Less heinous offences" and clause (m) speaks about an employee absents himself without leave, or without sufficient cause overstays leave granted to him. It would be profitable to read Rule 31(a) at this juncture only. This rule deals about "Desertion and Absence without leave" which reads thus:—*
> >
> > > *"**31.**Desertion and Absence without leave. — (a) If a member of the force who becomes liable for trial under clause (f) of section 9, or clause (m) of section 10 or for deserting the Force while not on active duty under clause (p) of section 10 read with clause (f) of section 9, does not return of his own free will or is not apprehended within sixty days of the commencement of the desertion, absence or overstayal of leave, then the Commandant shall assemble a Court of Inquiry consisting of at least one Gazetted Officer and two other members who shall be either superior or subordinate officers to inquire into the desertion, absence or overstayal of leave of the of fender and such other matters as may be brought before them."*
> >
> > *Thus it is dear that for the purpose of clause (f) of section 9 if a member of the Force who becomes liable for trial under this clause of section 9, or clause (m) of section 10 or for deserting the Force while not on active duty under clause (p) of section 10 read with clause (f) section 9, does not return of his own free will or is not apprehended within sixty days of the commencement of the desertion, absence or overstayal of leave, then the Commandant shall assemble a Court of Inquiry against him. Clause (c) of Rule 31 reads thus:—*
> >
> > > *"(c) The Commandant shall then publish in the Force Order the findings of the Court of Enquiry and the absentee shall be declared deserter from the Force from the date of his illegal absence, but he shall not thereby cease to belong to the Force. This shall, however be no bar to enlisting another man in the place of a deserter."*
> >
> > *On bare perusal of the imputation of misconduct, it is gathered that the petitioner remained absent w.e.f. 3-8-1999 to 2-9-1999. As per case of department the petitioner appeared on 3-9-1999 and if that would be the position, the view of this Court is that the petitioner cannot be said to be a deserter as envisaged in section 9(f) of the Act. Thus the charge against the petitioner is bad in law on bare perusal of sections 9(f), 10(m) and Rule 31(1) and (c). In this context I may profitably*

rely on the decision Capt. Virendra Kumar (supra) wherein the similar provisions of Army Act were there and the Supreme Court has clarified that who will be said to be a deserter.
10. So far as Charge No. II is concerned, there is sufficient force in the contention of learned counsel for the petitioner that past misconduct can be taken into consideration in order to inflict punishment. But, that itself cannot be made subject-matter of a charge. In the case of Satpal Singh (supra) it has been held that once the employee has been awarded punishment for his absence for the earlier period, the same cannot be made the subject-matter of the enquiry and he cannot be dismissed from service taking into consideration the earlier absence. I too do agree with the submission of learned counsel for the petitioner as well as decision of Satpal Singh (supra) and for this reason also the second charge is bad in law. Since both the charges are found to be bad in law, the punishment inflicted on the said charges cannot be allowed to remain stand."

33. In **Dharanidhar Kalita (supra),** the Gauhati High Court again reaffirmed the principle that every absence without leave or overstay of leave without sufficient cause may not *ipso facto* be desertion. For the purpose of desertion intent to permanently sever service is the *sine qua non* for desertion. The Gauhati High Court in the aforesaid case held as under:

"31. On a comparison between the two, it is fairly evident that while desertion is a more heinous offence, absence without leave or over-stay of leave without sufficient cause is a less heinous offence. Penal consequences for both the offences are different with former being extremely severe. Therefore, offence of absence without leave or overstay of leave without sufficient cause cannot be equated with the offence of desertion. For conversion of the offence of absence, without leave or over-stay of leave without sufficient cause to the offence of desertion would require something more as the two offences do riot stand on the same footing and cannot be equated. For an offence of absence Without leave or over-stay of leave without sufficient cause to become an offence of desertion, the authority must come to a definite conclusion that there, was intentional or willful absenteeism by the offender disobeying lawful, command of the superior authorities. Just because a member of the Force is absent Without leave or over-stays leave without sufficient cause would not automatically lead to the conclusion that he has deserted the Force. As noticed above, something more is required.

34. While every desertion would necessarily imply absence without leave or over-stay of leave without sufficient cause, the converse may not be true. Any or each and every absence without leave or over-stay of leave without sufficient cause may not ipso facto be desertion. For the latter to be desertion, there must be willful abandonment of duty with intention of never returning. The intention to quit duty permanently is essential to constitute desertion. Thus, animus deserendi, i.e., intention of deserting must be present to hold a member of the Force a

deserter. Therefore, the fine but clear distinction between desertion and unauthorized absence, must be understood contextually where intention to quit service or to avoid duty is of paramount consideration.

35. From the materials on record and in the context of the CRPF Act, it is clear that petitioner's Case is of over-stay of leave. In fact, the basic charge against the petitioner was of overstaying of leave w.e.f. 13.9.2003 without any permission/sanction of the competent authority. BUt from the number of applications and numerous medical certificates which have been placed oh record, it cannot be said that he had over-stayed leave without sufficient cause. Petitioner had attributed his overstay of leave because of adverse medical circumstances at home. As if, in a perverse way, to buttress the petitioner's plea of adverse medical circumstances at home which prevented him from leaving home, petitioner's wife died due to her heart ailment on 30.3.2007. In his applications, petitioner had all along stated that he would rejoin duty after he recovered from his illness or when things became manageable at home. There was thus no animus deserendi on the part of the petitioner in not rejoining the Force, w.e.f. 13.9.2003 to 25.4.2004. Petitioner had rendered service in the CRPF for long 33 years and was due for superannuation on 31.3.2008. For his earlier instances of leave overstay, he was either punished or leave was regularized. That could not have been brought and relied upon in the present case to condemn the petitioner as a deserter. Rather those instances only point out to the petitioner's intention of rejoining duty Therefore, declaration of the petitioner as a deserter in the contextual facts of the case is not at all justified. Accordingly, the Order dated 25.4.2004, declaring the petitioner to be a deserter cannot be sustained and is hereby set aside and quashed."

34. In the case of**, Krushnakant B. Parmar (supra)**, the Hon’ble Supreme Court has held that every absence from duty cannot be held as willful and in a departmental proceedings, the disciplinary authority is required to prove that the absence was willful and in absence of such finding, the absence will not amount to misconduct. The Hon’ble Supreme Court observed as under:

*"**17.** If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.*

***18.** In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.*

> ***19.*** *In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was wilful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.*
>
> ***21.*** *In the present case, the disciplinary authority failed to prove that the absence from duty was wilful, no such finding has been given by the inquiry officer or the appellate authority. Though the appellant had taken a specific defence that he was prevented from attending duty by Shri P. Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3-10-1995 addressed to Shri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office of telephone calls dated 29-9-1995, etc. but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the inquiry officer held the appellant guilty.*
>
> ***25.*** *Taking into consideration the fact that the charged officer has suffered a lot since the proceeding was drawn in 1996 for absence from duty for a certain period, we are not remitting the proceeding to the disciplinary authority for any further action. Further, keeping in view the fact that the appellant has not worked for a long time we direct that the appellant be paid 50% of the back wages but there shall be no order as to costs."*

35. Most recently, Jammu & Kashmir & Ladakh High Court in **Nasir Ahmad Parray (supra),** undertook an exhaustive review of precedents and held that a member of uniformed force, who overstays his leave and never reports for duties, must be treated as "deserter".

36. In the case of **Union of India & Others v. Ghulam Mohd. Bhat (supra)**, the Hon'ble Supreme Court has held that in the cases of absence of leave without sufficient cause, penalty of dismissal from service can be awarded.

37. Applying the aforesaid settled principles to the facts of the present case, it is evident that the charge-sheet itself records that the petitioner remained absent for approximately 20 days and thereafter voluntarily rejoined duty. There is no allegation, much less, proof of any intention on the part of the petitioner to permanently abandon service. The admitted act of resumption of duty completely negates the element of *animus deserendi*, which is

indispensable for constituting the offence of desertion. Thus, branding a short-term absence as desertion reflects non-application of mind and colourable exercise of power. The disciplinary authority must first correctly classify the misconduct before proceeding to punishment, failing which the entire action becomes arbitrary.

38. Therefore, subjecting the petitioner to a disciplinary enquiry on the grave and stigmatic charge of desertion under Section 9 of the CRPF Act, 1949, in the face of such undisputed facts, is manifestly perverse, legally unsustainable, and violative of settled law. At the best, the allegations disclose a case of absence without leave under Section 10 of the CRPF Act, 1949, but there is no finding that such absence was willful and without justification, therefore, there is no sufficient evidence on record to justify an extreme penalty, which cannot be countenanced in law.

39. In view of the above discussion, this Court holds that the charge-sheet suffered from a fundamental legal infirmity, the enquiry proceeded on a misconceived premise and the punishment imposed was the direct outcome of such flawed foundation.

40. Upon a careful scrutiny of the enquiry proceedings, this Court finds that the enquiry suffered from serious procedural infirmities. The petitioner was not supplied with copies of documents relied upon by the department, despite a specific demand. Documents for justifying the conduct produced by the petitioner, although taken note of by the Enquiry Officer, but no reason was assigned to disbelieve the same. The petitioner was denied effective opportunity to examine defence witnesses and the Enquiry Officer unilaterally decided that examination of all witnesses was "not

necessary". Such an approach strikes at the very root of fair procedure and violates the principles of *audi alteram partem*.

41. Assuming for a moment that Charge No.1 was not in respect of "desertion", but was relating to the allegation of unauthorised absence from 17.11.2001 to 05.12.2001, this Court finds that the petitioner produced cogent medical evidence demonstrating that he was suffering from acute renal colic and remained admitted in the Civil Hospital, Neemuch, followed by treatment at Badhwa Hospital and later, at the Community Health Centre, Bandikui. Medical certificates substantiating hospitalisation and medical advice for rest were placed on record. The illness of the petitioner's wife during the same period is also supported by documentary evidence. The enquiry report does not disbelieve these documents; rather, it ignores them altogether. Absence due to bona fide medical emergency, duly supported by medical records, cannot be equated with "willful misconduct" either of "desertion" or even of "willful authorised absence".

42. Further, Charge No.2, alleging that the petitioner resided outside the camp without permission, stands conclusively demolished by the respondents' own record. An order dated 20.08.2001 was passed by the respondents granting permission to the petitioner to keep his family outside the camp area for a period of three months. The existence of this permission is admitted. Once permission stood granted, the very foundation of Charge No.2 disappears. The finding of guilt on this charge is, therefore, patently perverse.

43. Furthermore, Charge No.3, relating to alleged lack of interest in training, bad character, quarrelsome behaviour and

disobedience, is similarly unsupported by evidence. The weekly progress reports and training records show that the petitioner secured highest marks and maintained good conduct. The alleged quarrel incident admittedly occurred during the petitioner's absence and involved his cook. The petitioner himself reported the incident to superior officers. In the absence of any independent or credible evidence establishing misconduct attributable to the petitioner, the partial proof recorded by the Enquiry Officer is based on conjecture rather than evidence.

44. As regard Charge No.4, from its bare perusal, does not reflect an independent charge in itself and appeared to have been framed only for the purpose of determining the quantum of punishment. Conclusion of the same by the Enquiry Officer is also nothing, but an assumption based upon on two earlier minor punishments, namely censure and reduction to a lower stage in time scale for a limited period. In the facts and circumstances of the case, where the above primary charges are not legally sustainable against the petitioner; the minor penalties already undergone by the petitioner, cannot be used to brand an employee as habitually indisciplined so as to justify imposition of harshest penalty of removal from service.

45. In the present case, the enquiry proceedings reveal a clear denial of reasonable opportunity. The non-supply of relied-upon documents and denial of defence witnesses vitiate the enquiry. The findings on Charge Nos. 1 and 2 are directly contrary to documentary evidence on record. The findings on Charge No. 3 is unsupported by any reliable evidence. Charge No. 4, in the circumstances of the present case, is legally unsustainable. Thus,

the enquiry report was clearly based on irrational consideration and perverse as well.

46. Thus, in view of above, there is apparent and manifest legal flaws in the decision making process. That apart, the disciplinary authority failed to apply independent mind to the petitioner's detailed reply and merely acted on dotted lines drawn in the findings of the Enquiry Officer. Order dated 27.07.2002 is bereft of reasons and does not disclose consideration of sustainability of charges, mitigating circumstances, past meritorious service, medical exigencies, or proportionality of punishment.

47. The appellate and revisional authorities further compounded the illegality. Their orders are cryptic, mechanical and non-speaking. They do not deal with the grounds raised in appeal or revision, nor do they analyse the evidence or findings. Such orders defeat the very purpose of statutory remedies and are unsustainable in law.

48. Further, the punishment of removal from service, imposed on a constable with a proven record of gallantry, dedication and appreciation, for alleged misconduct arising largely out of medical exigencies, is wholly disproportionate. Discipline cannot be enforced at the cost of fairness, reasonableness and humanity.

49. In view of above discussion, writ petition filed by the petitioner is hereby allowed. Impugned orders dated 27.07.2002, 08.11.2002, 01.01.2003, 21.03.2003 and 24.07.2003 are hereby quashed and set aside. The respondents are directed to reinstate the petitioner by maintaining continuity of service and seniority. However, the petitioner shall not be entitled for actual monetary benefits for the intervening period and the benefits of pay-fixation as

well as other benefits shall be granted to the petitioner only on notional basis. Necessary exercise shall be carried out by the respondents within a period of 60 days from the date of receipt of copy of this judgment.

30. Pending applications, if any, stand disposed of.

(ANAND SHARMA),J

MANOJ NARWANI /