

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(@ SLP(C) No. 2568/2021)

COMMANDANT & ORS.

APPELLANT(S)

VERSUS

BASAVARAJ A.K.

RESPONDENT(S)

O R D E R

Leave granted.

The gravamen of the facts of the present case reads as under:-

The respondent was appointed as a constable, in Central Reserve Police Force (CRPF) on 17.03.2001 and was dispatched to C.H. Bangalore on 29.03.2010 as an Attendant of C.T./G.D. Bassappa.

On account of respondent having remained absent from duty from 17.04.2010 to 13.08.2010 (119 days), without any prior permission from competent authority, an Office Order came to be passed on 06.09.2010 regularising the absence as with 'no leave salary' (Annexure P-2).

It is pertinent to mention at this juncture itself that

the respondent has also had prior antecedents of Overstay from Leave (OSL) for the following period:-

- 26.03.2003 to 01.05.2003 (37 days)
- 01.01.2004 to 23.02.2004 (54 days)
- 06.03.2005 to 25.04.2005 (51 days)
- 26.03.2006 to 25.04.2006 (46 days)
- 26.03.2007 to 31.07.2007 (128 days)

After the Office Order referred to supra, came to be passed, the authorities issued a Memorandum, namely, the Commandant 185 Battalion, CRPF, initiated disciplinary or departmental inquiry, against the respondent on two charges, namely, unauthorized absence from CRPF for 25 days from 17.04.2010 to 11.05.2010, 12.05.2010 to 13.05.2020 and 13.05.2010 to 13.08.2010, without permission of competent authority, which is contrary to the discipline in the Rules of CRPF. The Inquiry Officer was appointed, who enquired into the charges levelled against the respondent, and submitted a report on 13.02.2011 holding that charges against the respondent stood proved. The disciplinary authority, by order dated 01.04.2011, dismissed the respondent from service with effect from 01.04.2011.

Being aggrieved by the aforesaid order of dismissal, an appeal came to be filed before the Deputy Inspector General of Police, CRPF, Srinagar, which came to be dismissed vide order dated

15.09.2011. Questioning the correctness of the same, a writ petition was filed in WP No.44300 of 2011 which came to be disposed of by granting liberty to file a revision petition before the revisional authority, as prescribed under Rule 29 of CRPF Rules 1955. The revision preferred thereafter also did not yield any result, or in other words, it came to be dismissed on 24.05.2012.

Aggrieved by the same, a writ petition bearing WP No.27593 of 2012 was filed which came to be dismissed vide order dated 14.08.2013 by observing that his plea of not medically fit or he was unwell was not acceptable and appellant ought to have obtained appropriate certificate from the hospital in this regard and produced before inquiry officer. The learned Single Judge also opined that it was not the case of the appellant that he was immobile, and as such, his plea was not required to be accepted. It was further opined by the learned Single Judge that findings of the Inquiry Authority cannot be re-appreciated in writ jurisdiction and the conduct of a personnel who is in a disciplined force, namely, the Defence Force is required to maintain sincerity and unauthorised absence from duty does not impose the confidence for being continued in service.

The delinquent employee, being aggrieved by the order of the learned Single Judge filed an Intra Court Appeal which found favour on the premise that the appellant had been visited with double jeopardy, namely, his unauthorised absence having been

regularized with 'no leave salary', amounts to punishment, and initiation of disciplinary proceedings, yet again would attract the doctrine of double jeopardy. On these grounds, the Appellate Court interfered with the finding of the Appellate Authority, Revisional Authority, and the learned Single Judge. Hence, this appeal.

It is the contention of the learned Additional Solicitor General appearing for the appellant that Division Bench of the High Court committed a serious error in arriving at a conclusion that the respondent herein has been prosecuted twice and the doctrine of double jeopardy was not attracted in the facts and circumstances of the case. He would elaborate his submissions by contending that regularizing leave of absence is an administrative requirement whereas imposing punishment on the basis of the charges of unauthorized absent from duty, was result of a serious misconduct. Hence, the finding of the Division Bench that once the period of absence has been regularized, initiating proceedings for the very same cause would not arise is an error in law. Relying upon the judgment of this Court in '*Om Prakash Vs. State of Punjab and Others*', reported in (2011) 14 SCC 682, he prays for the appeal being allowed.

Per contra, Shri Anand Sanjay Nulli, learned senior counsel appearing for the respondent would support the impugned judgment and contend that undisputedly, the unauthorized absence of 119 days came to be regularized with 'no leave salary' which

tantamount to imposition of punishment, and as such, taking note of this fact, the Division Bench rightly held that once the punishment has been imposed, initiation of disciplinary proceedings for the same charge would not arise, and such action having been taken by the employer has been rightly held to be causing double jeopardy to the respondent. Hence, he prays for dismissal of the appeal.

Having heard the learned advocates appearing for the parties, and on perusal of the entire case papers, we notice that the issue relating to the absence from duty and adjustment of a leave to a delinquent officer against any existing leave even if any, would not tantamount to condonation of his absence. This view gets fortified by the law laid down by this Court, in the case of *Om Prakash (supra)*, whereunder it came to be held as follows:-

“10. The next contention that is raised is that the period of absence of the appellant having been regularised, the aforesaid charge of unauthorised absence would fall through and, therefore, the order of punishment is required to be set aside and quashed. We are unable to accept the aforesaid contention as period of the unauthorised absence was not condoned by the authority but the same was simply shown as regularized for the purpose of maintaining a correct record.”

Keeping the aforesated principles in mind and the facts on hand are examined, it would leave no manner of doubt in the mind of this Court that High Court was in error in arriving at a conclusion that there has been double jeopardy. The finding of the High Court, so recorded, would not stand the test of law, and

accordingly, it is set aside.

Having said so, it requires to be noticed that the writ petitioner that is the respondent herein is having the past conduct of remaining absent unauthorisedly for several spells from 2003 to 2007 and he has remained absent or overstayed from the leave (OSL) as noted herein supra. CRPF is a disciplined force which requires not only maintenance of absolute sincerity but also absolute discipline. Going on unauthorized leave or overstaying with the leave does amount to indiscipline. However, the employer seems to have taken a benevolent view, as a model employer, in the instant case. As such, dismissal from service would be too harsh punishment for unauthorized absence of 119 days, particularly when for the period from 26.03.2007 to 31.07.2007 - 128 days, which is much more than the present one (119 days) having been condoned by the employer himself in whatsoever manner it may be, the fact remains that such unauthorized absence, or OSL has been condoned by the employer and no proceedings had been initiated.

In that view of the matter, it would be apt and appropriate to leave it to the wisdom of the employer to take a holistic view in imposing appropriate or suitable punishment, excluding the punishment from dismissal of service.

We also make it clear that in the event of the employer want to reinstate the petitioner, the principle of 'no work no pay' would squarely be applicable, and except to that extent, all other

benefits which flow from such reinstatement must necessarily follow, which we do hope and trust would be taken into consideration by the appellant - CRPF, while passing the order imposing suitable or appropriate punishment on the respondent.

Accordingly, the appeal is allowed. The impugned order stands set aside. The parties are directed to bear their respective costs.

It also made clear that aforesated entire exercise shall be undertaken by the appellant expeditiously, and be concluded preferably within a period of three months.

Pending application(s), if any, shall also stand disposed of.

.....J.
[ARAVIND KUMAR]

.....J.
[VIPUL M. PANCHOLI]

NEW DELHI;
23rd JANUARY, 2026

ITEM NO.53

COURT NO.15

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

**Petition(s) for Special Leave to Appeal (C) No(s). 2568/2021
 [Arising out of impugned final judgment and order dated 03-12-2019
 in WA No. 1702/2015 passed by the High Court of Karnataka at
 Bengaluru]**

COMMANDANT & ORS.

VERSUS

Petitioner(s)

BASAVARAJ A.K.

Respondent(s)

FOR ADMISSION and I.R.

Date : 23-01-2026 This petition was called on for hearing today.

**CORAM : HON'BLE MR. JUSTICE ARAVIND KUMAR
 HON'BLE MR. JUSTICE VIPUL M. PANCHOLI**

For Petitioner(s) Mr. Kanakamedala Ravindra Kumar, A.S.G.
 Mr. Siddhant Gupta, Adv.
 Mr. Devraj Bhattacharjee, Adv.
 Mr. Aditya Kumar Adv.
 Mr. Padmesh Mishra, Adv.
 Mr. Neelakshi Bhadauria, Adv.
 Mr. Sanjay Kr.Visen, Adv.
 Mr. P.v.yogeswaran, Adv.
 Mr. Arvind Kumar Sharma, AOR

For Respondent(s) Mr. Anand Sanjay M Nuli, Sr. Adv.
 Mr. Suraj Kaushik, Adv.
 Mr. Abhishek Singh, Adv.
 For M/S. Nuli & Nuli, AOR

**UPON hearing the counsel the Court made the following
 O R D E R**

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(SWETA BALODI)
 ASTT. REGISTRAR-cum-PS
 (Signed order is placed on the file)

(AVGV RAMU)
 COURT MASTER (NSH)