

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : February 02, 2011*

+ **W.P.(C) 4818/2010**

PRATHAM SINGH RANA Petitioner
Through: Mr.Narender Dutt Kaushik,
Advocate for Mr.Arun Bhardwaj,
Advocate.

versus

UOI & ORS. Respondents
Through: Mr.Khalid Arshad, Advocate for
Mr.Neeraj Chaudhari, CGSC with
Asstt.Cmdt.Bhupinder Sharma, BSF
for UOI.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Pertaining to a complaint that at the time of enrolment as a constable with BSF the petitioner had given false information of no criminal cases pending against him, Record of Evidence was ordered on 17.6.2005 and was completed on 2.7.2005. The next stage was for the Commandant of the Unit to consider the Record of Evidence and take a decision on the further course to be adopted as per the provisions of the BSF Act 1968. Before the Commandant proceeded to consider the

matter further petitioner sought for and was granted leave from 5.7.2005 till 11.7.2005 as he stated that he had to meet his father who was stated to be unwell. The petitioner did not report back for duty on 12.7.2005 and since reminder sent to join back remained unresponded a show-cause notice dated 11.9.2005 was issued to the petitioner stating therein that the Commandant was satisfied that the trial of the petitioner was inexpedient but also impracticable and drawing attention to petitioner's continued absence, was called upon to show-cause as to why the petitioner be not dismissed from service.

2. No reply being filed by the petitioner to the show-cause notice a reminder was sent on 17.10.2005 stating therein that the Commandant had heard nothing from the petitioner. No reply being received even to the said notice, on 14.11.2005, the Commandant inflicted the penalty of petitioner being dismissed from service and directed that the period 12.7.2005 till 14.11.2005 be treated dies-non.

3. Petitioner claims to have reported to the unit on 20.9.2007 i.e. after 1 year and 10 months after he was dismissed from service and pleads that it was only then he learnt his being dismissed from service and hence filed an Appeal to the Appellate Authority questioning his dismissal without an inquiry and drew attention of the Appellate Authority to the fact that his father was unwell and when he telephonically informed this to the Unit and sought leave to be extended he was verbally told that he should look after his father and should not worry about the job and therefore he did not join back.

4. The Appeal was rejected on 5.11.2007 and against which we find that the petitioner filed a statutory petition on 18.5.2009 which was rejected on 28.8.2009. Instant writ petition was filed on 14.7.2010.

5. It may be noted that petitioner admits that his father died on 30.5.2006.

6. From the facts noted above it is apparent that pertaining to the stated allegation of petitioner giving false information when he joined service, record of inquiry was completed on 2.7.2005. Petitioner took leave from 5.7.2005 and 11.7.2005. He never submitted any application for leave to be extended. He did not respond to the show-cause notice dated 11.9.2005 as also to the notice dated 17.10.2005. Order dismissing him from service was passed on 14.11.2005. His father died on 30.5.2006 and the petitioner ostensibly went for duties on 20.9.2007.

7. It strikes the reader as to what was the petitioner doing for 1 year and 4 months after his father died, assuming he had a valid ground not to report for duty on account of his father's sickness.

8. Petitioner's Appeal dated 20.9.2007 was rejected on 5.11.2007 and we find that the petitioner preferred the Statutory Petition on 18.5.2009 i.e. after more than 1 year and 6 months of 5.11.2007.

9. Thereafter, after receiving the order dated 28.8.2009 rejecting the Statutory Petition, it took the petitioner 11 months to approach this Court.

10. It is apparent that at each stage the petitioner has been

sleeping over his rights and his conduct disentitles him to any discretionary relief. At each stage belated steps are being taken.

11. The supine indifference of the petitioner is not innocent for the reason he was under a cloud evidenced by the fact that a Record of Evidence had been completed against him for having given false information at the time of employment and the petitioner was fully aware that there was every likelihood of departmental action being taken against him and thus absconded to evade and avoid the process of law.

12. The story of the petitioner that he telephonically informed the Unit about his father's sickness and he was comforted to stay back and serve his father is wholly unacceptable to us for the reason petitioner knew very well that if he had to overstay the leave, he had to apply in writing. He did so when he availed leave from 5.7.2005 till 11.7.2005. That is proof of the fact that the petitioner knew the procedures of the law.

13. That apart, nobody can sit back in his house to serve an ailing parent for 1 year. The petitioner had no business to keep on sitting in his house till his father died on 30.5.2006. Assuming that the petitioner had a cause to not join back on account of his father being unwell, the cause having evaporated when the father died on 30.5.2006, there is no justification for the petitioner to continue to sit back for another 1 year and 4 months.

14. The petitioner has not disputed having received the notices dated 11.9.2005 and 17.10.2005. Not a word has been

stated in the petition as to why the petitioner did not respond to the same. It is apparent that the petitioner had no contemporaneous justification and has now cooked up a story.

15. Legal contention urged that under Rule 22 of the BSF Act an trial has to be dispensed with only if there are grounds to justify it being inexpedient or impracticable and in the instant case no fact justifying dispensing with the trial has been stated in the show-cause notice issued and thus the proceedings are tainted by law, is rejected by us for the reason petitioner's absence from duty was an admitted fact and whether it was a trial or a response to the show-cause notice it was for the petitioner to have justified the reason for the absence. It was only then, depending upon the justification given, could one have appreciated whether a question of fact was raised by the petitioner which required evidence and then alone could the petitioner have urged that keeping in view his defence, a trial ought to have been conducted.

16. The power to dispense with the trial exists.

17. We dismiss the writ petition on account of the fact that there is enough material to justify the inference that the petitioner absconded mala-fide to avoid a trial with respect to the Record of Evidence proceedings pertaining to the allegation against him that while joining service he gave false information that he was neither an accused nor faced any trial and the fact of the matter is that in the instant writ petition the petitioner admits of being tried twice at a criminal trial, but claims to have been acquitted. Now, the Record of Evidence pertained to the allegation of the petitioner not even disclosing

that he was an accused in 2 offences. Further, the mala-fide of the petitioner is reinforced by the fact that he never sought leave to be extended in writing and did not respond to the notices dated 11.9.2005 and 17.10.2005. The mala-fide gets further reinforced that even after his father died on 30.5.2006 he sat home, as per his own admission, till 20.9.2007. His subsequent conduct, as noted herein above of taking belated actions at each stage thereafter pertaining to the Statutory Petition filed and thereafter the writ petition filed in this Court establishes that the petitioner is simply wanting to keep a dead issue alive.

18. The writ petition is dismissed, but we refrain from imposing costs inasmuch as the petitioner is without a job.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

FEBRUARY 02, 2010
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