

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7556 of 1998

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Bashishth Narayan Singh son of late Baijnath Singh of village and P.O.
Ashoknagar(sakkadi) P.S. Jalapur, District-Saran

.... Petitioner/s

Versus

1. Union of India through the Secretary, Ministry of Home Affairs, N. Delhi
2. The Director General of B.S.F., New Delhi.
3. The Commandant, 84 Bn., B.S.F., West Bengal, Calcutta.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Singh

For the Respondent/s : Mr. Anjani Kumar Sharan (C.G.C.)

Mr. Raj Kamal

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 26-03-2015

1. This is an application seeking quashing of an order dated 30.06.1995 passed by the Commandant, TAC, Headquarter, 84 Bn. B.S.F./C/o 56 A.P.O. whereby the petitioner has been dismissed from service without pension with effect from 30.06.1995 in exercise of power conferred under Section 11(2) of the Border Security Force Act, 1968 (hereinafter referred to as the 'Act') read with Rule 177 of the Border Security Force Rules, 1969 (hereinafter referred to as the Rules) . The said order has been passed as the petitioner, who was Head Constable in B.S.F. absented himself without leave for 328 days from 07.08.1994. The period during which the petitioner remained absent has been ordered to be treated as *Dies Non*.

2. It seems from the pleadings on record that on 07.08.1994, the



petitioner was ordered to proceed on GD No. 43 to join Srinagar, from which date he absented himself. He was communicated by the Respondents at his home address directing him to join duty vide letter dated 15.01.1995. A letter was also sent to the Superintendent of Police, Chapra (Bihar) to apprehend the petitioner. The Respondents thereafter, received a letter from the petitioner on 29.01.1995 stating that he should be granted leave for his absence for the period 09.08.1994 to 31.12.1994 on account of his illness. No medical document, however, was attached with the said application for leave, in support of his plea that he was unwell. Upon receiving the said letter of the petitioner dated 29.01.1995, the Respondents again sent him a letter on 08.02.1995 asking him to resume the duties. Thereafter, a Court of enquiry was ordered by order dated 11.02.1995 in order to investigate the circumstances under which the petitioner had been absenting himself without leave. The Court of enquiry issued show-cause notice to the petitioner dated 10.03.1995 through registered post, tentatively proposing to dismiss him from service and by giving him an opportunity to put his defence against the proposed penalty within thirty days. The petitioner did not respond and did not avail this opportunity of reply to show-cause notice. As the Competent Authority did not receive any communication, in exercise of power under Section 11(2) of the Act read with Rule 177 of the



Rules passed the order of dismissal dated 30.06.1995, which is impugned in the present application. The petitioner preferred an appeal before the Inspector General, Border Security Force against the order of dismissal. It has been communicated to the petitioner through letter dated 24.12.1998, issued by the Directorate General, Border Security Force, New Delhi that the appeal has been dismissed by the Competent Authority being devoid of merit.

3. It is the petitioner's case that on 07.08.1994, while he was on way to join duties, he became senseless and was brought to his home. He was, thereafter, admitted in the private clinic of a doctor at Chapra where he was treated, since proper facilities were not available for treatment in government hospital. It is his case that he sent medical certificates on 03.09.1994, 04.10.1994, 07.11.1994 and 08.12.1994 for extension of leave under certificate of posting and on 08.01.1995, 21.01.1995 and 31.01.1995 under registered cover. It is the petitioner's case that the Respondents dismissed the petitioner from service without following the principles of natural justice and without taking into account the genuine grievance of the petitioner that he was not well to join duties.

4. A counter affidavit has been filed on behalf of the Respondents. In the counter affidavit, the Respondents have stated, inter alia, that no medical document, in support of the application



received from the petitioner for grant of leave, was ever submitted by the petitioner along with such applications. As regards letters dated 03.09.1994, 04.10.1994, 07.11.1994 and 08.12.994 which according to petitioner, were sent under certificate of posting, it has been stated in the counter affidavit that such letters were never received by the concerned Unit. It has, however, been stated that on 29.01.1995, 03.02.1995 and 06.02.1995 letters were received by the Unit seeking grant of leave for his absence from 09.08.1994 to 31.12.1994. It has further been stated that in response to the letter sent by the petitioner, he was again asked to resume his duties but he failed.

5. Mr. Rajeev Kumar Singh, learned counsel appearing on behalf of the petitioner has submitted that the impugned order has been issued in breach of principles of natural justice. He has further submitted that wrong averment has been made in the counter affidavit that the medical documents were not submitted along with the petitioner's application for grant of leave. He has relied upon Annexure-3 to the writ application which is said to be a copy of the application for grant of leave sent by the petitioner to the Commandant, 84 Bn., Border Security Force. He has also drawn my attention to medical documents brought on record by way of Anenxure-1 series in order to submit that there being no averment in the counter affidavit that these documents are forged or fabricated,

genuineness of these documents cannot be disputed. He submits that the petitioner could not respond to the show-cause notice because of the illness which he was suffering from and the Commandant passed the impugned order without waiting for the petitioner to recover from his ailment and reply to the show-cause notice.

6. Before I entering into the petitioner's case on merits, questioning the legality of the order passed by the Commandant dated 30.06.1995, I must indicate that while going through the pleadings in the writ application with reference to the Annexures attached therewith, I noticed that the petitioner has made a false statement in the paragraph No. 5 of the writ application. As per the averment made by the petitioner in paragraph No. 5, he was admitted in a private clinic at Chapra. In support of this averment, a photo copy of the medical prescription and medical certificate have been annexed as Annexure-1 series. From the medical prescription and medical certificate so issued by the doctor, it does not appear that he was ever admitted in the private clinic of the said doctor for any period, whatsoever. The medical prescription dated 09.08.1994, shows that he was suffering from giddiness, insomnia, vomiting tendency, loss of appetite and hearing impairment.

7. It is manifest from the statement made in the writ application, read with the averments made in the counter affidavit filed on behalf



of the respondents that the petitioner did not, in fact, send medical certificate in support of his claim that he was suffering from any ailment and in order to make out a case he has made a false statement in paragraph No. 5 of the writ application, in the present proceeding under Article 226 of the Constitution of India so as to persuade this Court that he was genuinely ill and was, therefore, not able to resume his duties and reply to the show-cause notice merely to obtain an order in his favour. In order to support his claim that along with his application for grant of leave, the petitioner had sent photocopies of the certificate of the medical practitioner as regards his illness, a letter is said to have been written to the Commandant 84 Bn., B.S.F., which has been annexed as Annexure-3 to the writ application. Annexure-3 is undated and there is no averment as regards the mode through which the said letter was sent to the Commandant.

8. The conduct of the petitioner in approaching this Court in a proceeding under Article 226 of the Constitution of India by making false statements, in my opinion, disentitles him of any relief in a proceeding under Article 226 of the Constitution of India as such proceedings are adjudicated upon on the basis of averment made on the affidavits by the respective parties. A party, in my opinion, cannot be allowed to twist or misrepresent the essential facts to persuade this Court to grant relief in exercise of power under Article 226 of the

Constitution of India.

9. I may refer, in this regard, to Supreme Court decisions reported in (2010) 4 SCC 728 (Oswal Fats and Oils Limited Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and others) and (2012) 6 SCC 430 (A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and Ors.)

10. In case of Oswal Fats and Oils Limited (supra), the Supreme Court held in paragraph No. 20 as follows:-

“20. It is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.”

11. In case of A. Shanmugam (supra) Supreme Court held as follows:-

“43.1. It is the bounden duty of the court to uphold the truth and do justice.

43.2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.

43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it

has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

43.5. It is the bounden obligation of the court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.”

12. Now coming to the merits of the case, it is admitted that the petitioner absented himself continuously for a period of 328 days from 07.08.1994 till passing of the order on 30.06.1995. It is the case of the Respondents that the petitioner was given an opportunity to show cause vide registered letter dated 09.04.1995. The petitioner has asserted in the writ application that he relied upon a medical certificate issued by a doctor at Chapra dated 20.02.1995 according to which, he was fit to resume duties on that date. There is no averment in the writ application as to why he did not resume duties thereafter. As a matter of fact, it appears that the averments made in the writ application are full of contradiction and falsehood and, therefore, the plea that the petitioner did not receive the show-cause notice on behalf of the petitioner, cannot be accepted.

13. Mr. Rajeev Kumar Singh, learned counsel appearing on behalf of the petitioner has vehemently submitted that in exercise of power under Section 11(2) of the Act read with Section 177 of the Rules, Commandant did not have the authority to impose punishment of dismissal without pensionary benefits. He has submitted that the petitioner cannot be denied the pensionary benefits by virtue of an

order passed by the Competent Authority in exercise of power under Section 11(2) of the Act. He has also submitted that the impugned orders have been passed in violation of principles of natural justice.

14. Learned counsel for the petitioner has lastly submitted, relying upon an order of this Court dated 17.09.2014 passed in C.W.J.C. No. 2595 of 1998 (Rameshwar Singh Vs. Union of India and Ors.) that the matter be remanded back to the Appellate Authority for re-consideration of his case on the question of quantum of punishment as according to him, the petitioner had no record of any past disobedience or negligence in duty. In my opinion, however, The conduct of the petitioner as, noted above, is such that no relief can be granted in the present proceeding.

15. In the facts and circumstances of the case, I am of the opinion that the petitioner is not entitled for any relief in a proceeding under Article 226 of the Constitution of India as such exercise of power is equitable in nature. From the facts, it appears to me that the petitioner was given enough opportunity to urge in his defence before the Competent Authority. The petitioner miserably failed to avail such opportunity. Even on the basis of the pleadings in the writ application, no relief can be granted to the petitioner as it cannot be said that the petitioner was not given an opportunity of hearing. Issuance of show-cause notice to the petitioner by the Commandant

satisfied the requirement of principles of natural justice as held by the Supreme Court in case of Union of India Vs. Ram Phal reported in (1996) 7 SCC 556 and since the petitioner failed to reply to the show-cause notice, there was no denial before the Disciplinary of the allegation that the petitioner remained absent for a long period without any authority.

16. In the facts and circumstances of the case, I do not find any reason to interfere with the impugned order.

17. I would have considered imposing exemplary cost upon the petitioner for having made false averments on oath in the writ application. However, keeping in mind the status of the petitioner, I have restrained myself from doing so.

(Chakradhari Sharan Singh, J.)

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