

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.85 of 2015

IN

Civil Writ Jurisdiction Case No. 1761 of 2014

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Jay Kumar Paswan, son of Rajendra Paswan, resident of Village Maharajganj, PO Chakaram, Via Chopra Ramnagar, PS Janaki Nagar, District Purnia

.... Petitioner-Appellant

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi
2. The Director General of Police, Central Reserve Police force, CGO Complex, N Block, Lodi Road, New Delhi
3. The Inspector General of Police, Central Reserve Police Force, Bihar Sector, Bihar, Patna
4. The Deputy Inspector General of Police, Central Reserve Police Force, Muzaffarpur
5. The Commandant, Central Reserve Police Force, 95 Battalion, Anant Nag, Jammu & Kashmir

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kamala Kant Tiwary

For the Respondent/s : Mr. Sanjay Kumar, ASG

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 10-02-2015

I A No. 374 of 2015

This interlocutory application under Section 5 of the Limitation Act is filed with a prayer to condone the delay of 179 days in preferring the Letters Patent Appeal. In the petition it is stated that on account of his illness he could not pursue the matter rigorously. Hence, the delay occurred in preferring the appeal.

No counter affidavit has been filed, but the I.A. is opposed.

Having regard to the fact that the petitioner is a

dismissed employee of Para Military Force we are satisfied with the reasons assigned in the petition and inclined to condone the delay. It is ordered accordingly.

LPA No. 85 of 2015

The petitioner was employed as a Constable in the Central Reserve Police Force in the year 2003. He was posted in a unit in the State of Jammu & Kashmir. He was granted casual leave for fifteen days. After expiry of the leave period he did not report to duty, for 283 days and he remained absent from 21.7.2006. As provided under the Central Reserve Police Force Act and the Rules made thereunder, the respondents declared the appellant as a 'deserter' and initiated a departmental proceeding. Through order dated 30.5.2007 the disciplinary authority dismissed the petitioner from service. Revision and the appeal against the order of dismissal were also rejected. Hence the petitioner filed CWJC No. 1761 of 2014. The learned Single Judge dismissed the writ petition through order dated 7.2.2014. This Letters Patent Appeal is filed against the same.

Heard Sri Kamla Kant Tiwary, learned counsel for the appellant and Sri Sanjay Kumar, learned counsel for the respondents.

Recognizing the necessity of the appellant, the Head of the concerned unit granted him casual leave of fifteen days. If the circumstances at the place of his residence warranted his over-stay for any period, the appellant was expected to file necessary application. In case the appellant suffered any serious illness while on leave, he was required to report to the nearest Battalion of CRPF. He did not do any of these things and he had simply over-stayed for 283 days.

Though the Courts adopt a sympathetic approach in cases of unauthorized absence of employees in civil service, a

different approach is required, when it comes to the question of the armed or para military forces. Not only the day-to-day affairs of the Force are adversely affected on account of unauthorized absence of a member, but also the period of unauthorized absence is prone to be misused which may adversely affect the interest of the Force and thereby the security, in general.

Obviously for that reason, the Act and the Rules provide for declaration of a member as ‘deserter’ when he remains absent unauthorizedly beyond the period of sanctioned leave. Except taking the plea that, he was compelled to overstay the leave, due to his illness, the petitioner did not establish it nor did he justify his absence of about 10 months, from the place of his posting. Such act of indiscipline cannot be countenanced. The Supreme Court in *Union of India vs. Ghulam Mohd. Bhat [(2005) 13 SCC 228]* held that in matters of this nature, there is no place for sympathies and discipline in the Force is paramount consideration. Punishment of dismissal from service is not disproportionate, on the facts of the case.

We do not find any merit in this appeal. The appeal is dismissed.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

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