

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.1446 of 2015
Date of decision:28.01.2015**

Joginder Pal

...Petitioner

Versus

The Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Gagandeep Singh, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Present writ petition is directed against the order dated 20.7.2012 (Annexure P-2), whereby petitioner was dismissed from service and also the order dated 7.6.2013 (Annexure P-5), whereby appeal of the petitioner was dismissed, upholding the order of dismissal from service.

Learned counsel for the petitioner submits that petitioner absented from service because of compelling circumstances which were beyond his control. He was facing adverse circumstances at home, because of which he remained mentally upset. He next contended that when the petitioner appeared before the respondent authorities, mentioning the above-said material facts, the same were not taken into consideration, while passing both the impugned orders. He prays for setting aside the impugned orders, by allowing the present writ petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the

considered opinion that in the given fact situation of the present case, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that during his entire service of 8 years and about 7 months, petitioner absented himself without leave as many as on nine occasions. He overstayed leave on four occasions. Petitioner had to undergo rigorous imprisonment on eight occasions for committing various offences under the BSF Act and statutory rules made thereunder. Even an FIR was lodged against the petitioner. He was directed to resume his duty by issuing an official communication by way of registered A.D. Post but the petitioner did not respond. Petitioner was a member of disciplined force. Having considered the above-said undisputed facts, this Court feels no hesitation to conclude that the respondent authorities committed no error of law, while passing the impugned orders and the same deserve to be upheld.

It is neither pleaded nor argued case on behalf of the petitioner that anyone out of the respondent authorities was having any prejudiced approach against him. Petitioner has not alleged any mala fide against any of the respondent authorities. It has also not been argued on behalf of the petitioner that the respondent authorities violated the basic principles of natural justice, while dealing with the petitioner at the time of conducting departmental enquiry against him. On the other hand, it is clearly established on record that the respondent authorities ensured meticulous compliance of the principles of natural justice, while conducting

departmental enquiry against the petitioner, associating him in the said enquiry at every relevant point of time, granting him due opportunity to defend himself.

Under these circumstances, it can be safely concluded that the petitioner has been rightly found to be an incorrigible employee, who was not at all interested in serving the respondent department. Petitioner has not been found to be a willing worker. Learned counsel for the petitioner failed to point out any arbitrariness in either of the impugned orders passed by the respondent authorities and the same deserve to be upheld, for this reason also.

A bare perusal of the appellate order would show that the appellate authority again re-appreciated the facts of the case with open mind and considered each and every relevant aspect of the matter. The relevant part of the impugned order reads as under:-

“Finally, as mandated vide Section 62 of BSF Act, 1968, a Court of inquiry was ordered and completed by 148 Bn BSF to enquire about his continuous absent without leave. In the meantime the applicant rejoined 148 Bn BSF voluntarily on 14-05-2012 after absent without leave for 87 days.

Thereafter, disciplinary action was initiated against the petitioner under statutory provisions of BSF Act and Rules. Accordingly he was heard by his Commandant on 17-05-2012 and Record of Evidence (ROE) was ordered. On completion of ROE, the delinquent (Petitioner) was tried on 20-07-2012 by holding Summary Security Force Court (SSFC) by Shri Mathew Varughese, the then Commandant for two charges framed under Section 19(a) of the BSF Act, 1968 for 'ABSENTING HIMSELF WITHOUT LEAVE' for 17 days from 30-01-2012 to 16-02-2012 and 87 days from 18-02-2012 to 20-07-2012. The SSFC after hearing the evidence adduced

through prosecution witnesses as well as the petitioner, found him 'Guilty' of both the charges and thus awarded punishment to be 'dismissed from service'.

During his entire service of 08 years 06 months 21 days i.e. from the date of enrolment on 30-12-2003 to date of his dismissal on 20-07-2012, he remained absent without leave in 09 occasions, overstayed from leave in 04 occasions. During his 08 years and 04 months of service the petitioner had underwent Rigorous imprisonment under force custody on 08 occasions for various offence committed by him under BSF Act and Rules. It is evident from above facts that the entire service of the petitioner is manifested with punishments and absenteeism. The petitioner has conspicuously displayed veteran indisciplined character throughout his tenure in BSF.

In view of the facts and circumstances of the case, the Inspector General, BSF Bangalore Frontier has examined the petition dated 26-11-2012 in detail and has rejected the petition for re-instatement, being devoid of any merit.”

During the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality in either of the impugned orders passed by the respondent authorities, so as to persuade this Court to interfere, while exercising its writ jurisdiction. In fact, the respondent authorities granted many chances to the petitioner to improve himself but he failed. Being a member of the disciplined force, it was least expected from the petitioner to be sincere to his duty. Petitioner failed to show any improvement in his conduct and proved himself to be a habitual absentee as well as an incorrigible employee. In this view of the matter, no fault can be found with the impugned orders and the same deserve to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present writ petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the instant writ petition stands dismissed, however, with no order as to costs.

28.01.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE