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

+ W.P.(CRL) 1373/2014

Decided on 12th January, 2015

DURGA NAND JHA

..... Petitioner

Through: Mr. Anil Kumar Jha, Adv.
versus

U.O.I & ORS

..... Respondent

Through: Mr. Ankur Chhibber, Adv. for R-1 &
R-2.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.(ORAL)

1. Petitioner is resident of State of Bihar. He is father of Sgt. S.K. Jha, who went missing from Pathankot in State of Punjab since November, 2004, where he was posted as Flight Engineer in the Indian Air Force. On 7th November, 2004 Sgt. S.K.Jha was assigned temporary duty at 28 Wing, Hindon Air Force Station situated in Ghaziabad, Uttar Pradesh. He was required to report back to his parent unit at Pathankot on 16th November, 2004. He was last seen by a Senior Non Commissioned Officer at Air Force Mess, Pathankot on 15th November, 2004 at 07:50 pm. However, Sgt. S.K. Jha did not report for duty on 16th November, 2004. Accordingly, an absentee report was prepared on 16th November, 2004 and petitioner was

informed on 17th November, 2004. A letter was also sent to Police Station City Division No. II, Dhangu Road, Pathankot on 22nd November, 2004 for lodging an FIR as a case of desertion of Sgt. S.K. Jha. Pursuant to the said complaint, DD No. 10 was lodged on 24th November, 2004 in the police station Dhangu Road, Pathankot.

2. A Court of Inquiry was ordered on 16th December, 2004 to enquire into the circumstances under which Sgt. S.K. Jha had absented himself without leave with effect from 16th November, 2004. On 4th January, 2005 Court of Inquiry concluded that Sgt. S.K. Jha had illegally absented himself without leave from the Air Force Station Pathankot with effect from 16th November, 2004. Vide letter dated 13th January, 2005 petitioner was informed about the desertion of his son under intimation to the SHO P.S. Pandaul District Madhubani, Bihar.

3. Vide letter dated 21st June, 2005 Air Force authorities requested the Superintendent of Police, Pathankot to inform about the progress of investigation regarding missing report dated 24th November, 2004. Thereafter, second Court of Inquiry was convened on 24th November, 2005 and completed on 4th February, 2006.

4. Smt. Mamta Jha, wife of Sgt. S.K. Jha, filed a writ of habeas corpus

bearing Crl. W.J.C. No. 679/2006 before the High Court of judicature at Patna which was dismissed on 11th October, 2006. It was observed that matter was pending investigation in the State of Punjab, inasmuch as, Air Force authorities were also making efforts to locate husband of Smt. Mamta Jha. Thereafter, Smt. Mamta Jha filed C.W.P. 17170/2008 before the Punjab and Haryana High Court on 24th September, 2008 for quashing of order dated 21st November, 2007 passed by the Joint Director (Employment) of Air Force and also for her appointment on compassionate ground. She also challenged the order passed by the Air Force authorities whereby Sgt. S.K. Jha was declared as 'deserter'. This writ petition was disposed of vide order dated 1st December, 2009, which reads as under :

Accordingly, present petition is disposed of as it is expected that the findings of Court of Inquiry will be approved and the petitioner will be eligible for all benefits which she is entitled to as wife of a missing soldier."

5. By this writ petition, petitioner has approached this Court seeking direction against Ministry of Defence and Air Force Department, that is, respondent nos. 1 and 2 respectively to get the matter regarding missing of Sgt. S.K. Jha investigated from respondent no. 3, that is, Central Bureau of Investigation.

6. Sgt. S.K. Jha was posted at Pathankot where he was last seen by a

Senior Non Commissioner Officer in SNCO's Mess, Air Force Station, Pathankot. Sgt. S.K. Jha has gone missing from Pathankot within the State of Punjab, inasmuch as, missing report was filed in the Police Station City Division No. II, Dhangu Road, Pathankot. No offence or part of offence has been committed nor any cause of action has arisen in Delhi, thus, in my view, this Court has no territorial jurisdiction to entertain this petition. Merely because Ministry of Defence and Air Force Headquarters are in Delhi would not be sufficient to vest jurisdiction in this Court to entertain the present petition more so, when no cause of action has arisen in Delhi.

7. Writ petition is dismissed for want of jurisdiction.

A.K. PATHAK, J.

JANUARY 12, 2015

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