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

% *Date of Decision : January 28, 2015*

+ **W.P.(C) 6534/2014**

DHARAMBIR ..... Petitioner

Represented by: Mr.Raj Kumar Sherawat, Advocate

versus

UNION OF INDIA & ORS ..... Respondents

Represented by: Mr.Manish Mohan, Advocate with  
Ms.Suparna Srivastava and  
Mr.Kumar Harsh, Advocates for R-1  
and R-2

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**PRADEEP NANDRAJOG, J. (Oral)**

1. The petitioner prays to the Court that the orders dated July 08, 2014 and July 19, 2014, declaring him to be an absconder be quashed. He be permitted to resumed duties. All punishments levied upon him in the past be declared illegal and hence quashed. Consequential benefits including back wages be directed to be paid.

2. Relevant facts to be noted would be that the petitioner was enrolled as a Constable (GD) in the Border Security Force on April 01, 1988 and at different points of time was attached to the different battalions of the Border Security Force. Attached with the 92<sup>nd</sup> Bn., on compassionate grounds, on June 18, 2009 the petitioner was posted to the 33<sup>rd</sup> Bn. of the Border Security Force which was then stationed at Hissar in the State of Haryana.

The 92<sup>nd</sup> Bn. was stationed at Nadia in the State of West Bengal. When relieved from the 92<sup>nd</sup> Bn., granting him journey period time and 10 days earned leave the petitioner was required to report to the Battalion Headquarter of the 33<sup>rd</sup> Bn. at Hissar on August 25, 2009. He did not do so in spite of the two registered letters being sent at his permanent address on October 15, 2009 and October 26, 2009. Overstaying leave by 65 days the petitioner reported to the Headquarters of the 33<sup>rd</sup> Bn. at Hissar on October 29, 2009. Before the matter could be processed concerning the leave overstayed by the petitioner, without obtaining any leave or permission from the Commandant of the Battalion, the petitioner left the Unit to which he was attached on November 09, 2009. A letter was sent on November 19, 2009 at the permanent address of the petitioner requiring him to report for duty.

3. An order to apprehend the petitioner and produce him before the nearest Battalion of the BSF was issued to the Superintendent of Police, Jhajjar, for the reason the permanent address of the petitioner is Village Silani, District Jhajjar in the State of Haryana. The said order could not be executed as the petitioner was not to be found at his residence. Another order requiring petitioner to be apprehended and produced before the nearest Battalion of the BSF was issued on December 07, 2009. Various apprehension orders were issued which could not be executed. Petitioner joined duty on April 28, 2010. He was absent without leave for 129 days.

4. This being a violation of Section 19(a) of the BSF Act an offence report was put up to the Commandant of the 33<sup>rd</sup> Bn. who, after hearing the petitioner, found him guilty and awarded him a sentence to undergo rigorous imprisonment in force custody for 28 days on January 10, 2011. The period of unauthorized absence of 129 days was treated as dies non.

5. Past service record of the petitioner would show propensity to repeatedly overstay leave, and put in a tabular form, the same would be as under:-

| S.No. | From     | To       | Type of Absence | Total Days | Type of disposal of absence period     |
|-------|----------|----------|-----------------|------------|----------------------------------------|
| 01    | 15.03.90 | 28.03.90 | OSL             | 14 days    | Regularised                            |
| 02    | 24.03.93 | 28.04.93 | OSL             | 64 days    | Regularised                            |
| 03    | 14.06.93 | 22.06.94 | OSL             | 09 days    | Regularised                            |
| 04    | 01.09.02 | 19.12.02 | AWL             | 110 days   | Regularised                            |
| 05    | 06.07.03 | 22.09.03 | OSL             | 79 days    | Regularised                            |
| 06    | 22.03.04 | 20.07.04 | OSL             | 103 days   | Regularised                            |
| 07    | 10.06.06 | 01.09.06 | OSL             | 84 days    | Regularised                            |
| 08    | 07.08.08 | 20.09.08 | OSL             | 45 days    | Regularised                            |
| 09    | 25.08.09 | 28.10.09 | AWL             | 65 days    | Regularised                            |
| 10    | 09.11.09 | 26.11.09 | AWL             | 18 days    | Regularised                            |
| 11    | 27.11.09 | 19.12.09 | AWL             | 23 days    | Regularised                            |
| 12    | 20.12.09 | 27.04.10 | AWL             | 129 days   | Dies Non + 28 days RI in Force custody |
| 13    | 08.09.13 | 18.10.13 | AWL             | 41 days    | Regularised                            |
| 14    | 04.12.13 | 30.12.13 | OSL             | 27 days    | Regularised                            |
| 15    | 06.03.14 | 25.03.14 | OSL             | 19 days    | Regularised                            |
| 16    | 17.06.14 | 08.11.14 | AWL             | 145 days   | Case is pending                        |

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6. On January 01, 2014 the petitioner submitted an application to the DG BSF levelling all and sundry allegations against his superior officers in the 33<sup>rd</sup> Bn. of the BSF. A staff court of inquiry was ordered. The findings returned were that the allegations levied by the petitioner were frivolous and thus on June 07, 2014 he was issued a warning letter directing him to desist from levelling false allegations in future.

7. During an annual changeover of the various Battalions of the BSF, the 32<sup>nd</sup> Bn. which was located at Akhnoor in the State of Jammu & Kashmir was to be replaced by 33<sup>rd</sup> Bn. which was located at Hisar requiring a personnel of the 33<sup>rd</sup> Bn. to proceed to Akhnoor. The personnel were scheduled to move from Hissar Railway Station to Samba Railway Station on June 15, 2014. The petitioner as also the other personnel were issued the movement order on June 14, 2014. The personnel reached Samba Railway Station, which included the petitioner, by a special train on June 16, 2014. The petitioner suddenly disappeared with his belongings when, proceeding from the Railway Station at Samba, the personnel of the Battalion reached Akhnoor.

8. It was under these circumstances that the orders dated July 08, 2014 followed by the order dated July 19, 2014 were issued declaring the petitioner to be an absconder.

9. Investigation revealed that along with other force personnel the petitioner got down at the Samba Railway Station he withdrew six times money from the ATM of State Bank of India in Jammu.

10. Aforesaid facts would evince that the petitioner is a habitual

absconder. He was rightly declared to be an absconder. The penalty levied on January 10, 2011 cannot be challenged by the petitioner by filing a writ petition after 3 years and 9 months of the penalty levied. The facts noted hereinabove justify issuance of the orders dated July 08, 2014 and July 19, 2014.

11. For record we may note that the petitioner has since joined the Battalion at Akhnoor and for his act of absconsion the department is in the process of initiating departmental action against the petitioner; which is the right of the department to so do.

12. Needless to state if the petitioner has any issue concerning the penalty if levied upon him with respect to the misdemeanour of absconding from Samba Railway Station he would be entitled to remedy as per law.

13. The writ petition is dismissed but without any order as to costs.

CM No.15588/2014

Dismissed as infructuous.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(PRATIBHA RANI)**  
**JUDGE**

**JANUARY 28, 2015**  
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