

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15044 of 2013

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Navin Kumar S/O Late Dina Nath Rai Resident Of Village - Rajpura, P.O. : -
Hirdaychak, Tehsil: - Arwal, P.S. : - Kaler, District : - Arwal, Bihar

.... Petitioner/s

Versus

1. The Union Of India Through The Secretary, Ministry Of Home Affairs, New Delhi
2. The Director General , Indo-Tibet Border Police Force, Ministry Of Home Affairs, Government Of India, Block - No. 2, CGO Complex, Lodhi Road, New Delhi - 03
3. The Commandant, 37th Battalion, Indo-Tibet Border Police Force, Ministry Of Home Affairs, Government Of India

.... Respondent/s

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Appearance :

For the Petitioner/s : None

For the Respondent/s : Mr. N. A. Shamsi (A.S.G.)

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 23-11-2016

No one appears for the petitioner. Learned counsel for the Union of India is present.

In the present case, the petitioner is challenging an order dated 31.5.2013 passed by the respondent authorities declaring the petitioner as Deserter and the consequential letter dated 25.6.2013 issued against the petitioner for recovery of salary paid to the petitioner without issuing any show-cause notice, violating Article 14 & 21 of the Constitution of India and further made a prayer to give direction to the respondents to accept his joining forthwith and to restrain the concerned officers of the Battalion from harassing and ill-

treating the petitioner.



The petitioner was selected as a member of the Indian Tibet Border Police Force (I.T.B.P.F.) as a Constable bearing Force No. 070350899 C/J.D. on 9.7.2007 and, accordingly, he discharged the duty honestly and sincerely. The petitioner was posted with 12th Battalion at Uttarkashi and his leave was granted on 15.5.2012 and after leave period, he was to join the 37th Battalion at Leh on 31.5.2012. When he went to home, he developed serious illness and also received some problem in the left leg. He consulted the doctor, he was diagnosed with sciatic syndrome in the left leg, remained under the treatment of the doctor and, as such, he could not join the 37th Battalion at Leh on 31.5.2012 as the petitioner remained under treatment of doctor from 25.5.2012 to 10.6.2013 and when he became fit to join had gone to join the duty with the respondent authority but he was not allowed to join and returned back from Leh.

In the counter affidavit, it has been stated that after leave, he was to join the 37th Battalion at Leh but, the petitioner neither reported on duty nor had made any correspondence with the Unit. It has also been stated that in this regard letter No.17 dated 15.6.2012, No. 209 dated 24.7.2012, No. 682 dated 27.8.2012, No. 4171 dated 28.9.2012, No. 2552 dated 17.11.2012 and No. 9927 dated 3.2.2012 were sent to the petitioner by the Unit to reporting on duty

immediately but, he neither reported on duty nor responded through any letter. In the event of non-joining of the petitioner, a Court of Enquiry was ordered vide order no. 424 dated 24.5.2012 and, on the recommendation of the Court of Enquiry Board, the petitioner was declared Deserter from force.

Admittedly, the petitioner neither reported to the Unit nor made any correspondence with the Unit, continued to draw salary for one year without discharging any duty and remained absent unauthorizedly. I.T.B.P.F. is a very highly decorated paramilitary force, they are deputed basically at the border near to the China and if a person who is appointed as a member of I.T.B.P.F. has to follow the rule and regulation of the I.T.B.P.F. When the petitioner had remained absent for one year without any proper information to the Unit, in such a situation, declaring the petitioner Deserter cannot be said to be an invalid act.

In that view of the matter, this Court does not find any merit in this writ application and the same is, accordingly, dismissed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.11.2016
Transmission Date	