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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.24464 of 2015

Date of decision: January 13, 2016

Sandeep Kumar Yadav

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Mukesh Yadav, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari challenging the show-cause notice dated 28.03.2013 (Annexure P-1) and orders dated 30.05.2013 (Annexure P-3) and 17.04.2015 (Annexure P-6).

The case of the petitioner, in brief, is that he was selected as a Constable in Border Security Forces ('BSF' for short) on 11.07.2009. Petitioner successfully completed the training course. Petitioner applied for leave from 22.06.2012 to 07.07.2012. The said leave was duly sanctioned by the competent authority. Petitioner was declared as "deserter" as he had failed to report for duty after the expiry of his leave period for more than thirty days. Show-cause notice was issued to the petitioner on 28.03.2013 proposing

punishment of dismissal from service. Petitioner filed his reply to the said show-cause notice on 01.05.2013. Vide order dated 30.05.2013, petitioner was ordered to be dismissed from service by respondent No.4. Petitioner preferred an appeal against the said order, but the same was dismissed by the Appellate Authority vide order dated 17.04.2015.

Learned counsel for the petitioner has submitted that the mother of the petitioner was ill and due to this reason, he could not report for duty after the expiry of his leave period. Petitioner had not been granted opportunity to enable him to present his case.

In the present case, petitioner had been sanctioned leave from 22.06.2012 to 07.07.2012. However, petitioner did not report for duty after the expiry of his leave period. Hence, show-cause notice dated 28.03.2013 (Annexure P-1) was issued to the petitioner by respondent No.4. It was averred in the show-cause notice that the petitioner had absented from duty w.e.f. 08.07.2012 and in case, he had to say anything in his defence, he could do so within thirty days of the receipt of the show-cause notice. Petitioner submitted his reply to the show-cause notice, wherein, he averred that his father had expired in the year 2003. His mother was not well and there was some family dispute and he may be granted three months to enable him

to solve his family dispute and report for duty. Annexure P-3 is the order dated 30.05.2013 passed by the punishing authority. A perusal of the said order reveals that the petitioner had overstayed leave granted to him and the Department had waited for nine months period to allow the petitioner to join duty out of sympathy but the petitioner had failed to do so. Consequently, petitioner was ordered to be dismissed from service w.e.f. 20.04.2013. Appeal filed by the petitioner against the said order was dismissed by the Appellate Authority vide order dated 17.04.2015 (Annexure P-6).

In the present case, petitioner was appointed in BSF. Petitioner was granted leave from 22.06.2012 to 07.07.2012. However, he failed to report for duty for more than nine months. In these circumstances, respondent No.4 was left with no other alternative, but to order the dismissal of the services of the petitioner.

No ground for interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India, is made out.

Dismissed.

**(SABINA)
JUDGE**

January 13, 2016
mahavir