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

% **Decided on: 08.01.2016**

+ **W.P.(C) 1268/2014**

REGLT. NO. 950250801 CONT/MAIL JAGPAL SINGH

..... Petitioner

Through: Mr.D.S.Kauntae, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Manish Mohan, CGSC for UOI
with Mr.Shivam Chanana, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

C.M.No.613/2016 (for delay)

For the reasons mentioned in the application, the delay in re-filing the application for restoration of the writ petition is condoned.

Application stands disposed of.

C.M.No.612/2016

The application is allowed.

The writ petition is restored to its original number.

W.P.(C) 1268/2014

1. The petitioner is aggrieved by the action of Indo Tibet Border Police Force (ITBP) in treating him as having deserted and consequently struck him off the roll by terminating him from the service.

2. The brief facts are that the petitioner joined ITBP as Constable in 1995. Whilst on duty he was ordered to be moved from Battalion location Amritsar to report to the Commandant Battalion T.H.Q. (Tactical Headquarter), Bhilai Steel Plant, Chattisgarh for further duties vide movement order dated 31.03.2010. He accepted the movement order and boarded the concerned train for his onward journey. He claims to have met with an accident on 01.04.2010 at Ghaziabad Railway Station and fell down on the platform and sustained injuries. He claims to have thereafter being evacuated to the District hospital in the early hours of 02.04.2010 and consequently underwent treatment. He claims to have reported for duties but not permitted to rejoin on 26.12.2010. In support of this, the petitioner relies upon a hand written complaint to the police to that effect bearing the seal of the local police station i.e. Barela, Jabalpur, M.P.

3. The petitioner in support of his submissions has relied upon certain medical records i.e. certificate of the MMG Hospital, Ghaziabad to the effect that he was suffering from acute hunleago for the period from 02.04.2010 to 20.12.2010. Other than this there is no material in support of his contention that he was hospitalised or that he was suffering from such an acute condition of such severity so as to prevent him from rejoining duty – or at any rate, at the very least severe enough to impair him from communicating his condition to his employer. The respondent in the counter affidavit refutes the petitioner's allegations and states that despite being ordered to report to Chhattisgarh, the petitioner neglected to do so. It is submitted that

the petitioner's reliance on medical records is misleading because contrary to his averments in the pleadings, the records do not pertain to the district hospital but of some private hospital. Additionally, the petitioner was receiving OPD treatment. In any case, submits the respondent, nothing prevented the petitioner from communicating with them in a timely manner, detailing the reasons which prevented him from reporting, as well as volunteering to undergo medical examination at the appropriate stage.

4. It is argued on behalf of the petitioner that his dismissal was unjustified and that the respondents were duty bound to comply with some discernible procedure mandated by law i.e. issuance of a notice initiating disciplinary proceedings culminating in the findings of guilt. In the absence of any such proceeding the action of the respondents – terminating the petitioner's employment, cannot be sustained. The respondents counter this while submitting that the petitioner himself firstly abandoned the employment and failed to intimate them the reason for his absence for over eight months. They deny that he had ever reported for duties and also submitted that he is a habitual absentee. They adverted to past instances and rely upon service records which reveal that on at least three previous occasions the petitioner had been reported as overstayed.

5. The above factual narrative would show that the respondent sought recourse to dismiss the petitioner on account of absence for more than 60 days. The petitioner concededly did not communicate with the respondents at any point of time before 26.12.2010. He was

asked to join the unit at Chhattisgarh from Amritsar where he was previously posted on 01.04.2010. Even a movement order was issued. He claims to have fallen at the railway platform and sustained injuries. If so, there is no explanation why for eight long months the petitioner did not intimate the respondent authorities in writing. Even the reliance placed upon the so called police report made in Jabalpur, in the opinion of the court, is of no assistance. The petitioner was fully aware that he was to report to his unit at Chhattisgarh on 01.04.2010. If indeed his explanation had some credibility the least he would have done would be to, within reasonable time of sustaining the injuries he claims to have sustained, have written a letter or sent a communication to his Commanding Officer or the Unit. His failure to do so, in the opinion of the Court, renders his explanation without any credence. Furthermore, the insistence of the petitioner in these circumstances that some departmental enquiry ought to have been conducted cannot be countenanced given that this was a clear case of unauthorised absence. The respondents have stated that a Court of Inquiry was in fact conducted in accordance with the rules and he was declared a deserter on 18.11.2010. It is further contended that the result of the Court of Inquiry was forwarded to the SSP, Gautam Budh Nagar and was served upon him. They rely upon notice dated 15.09.2010 served upon the petitioner by the Commandant of the Battalion requiring him to join within 15 days. Apparently, even that notice was published in a local newspaper in spite of which, he chose not to respond to the respondents and was consequently dismissed on

23.11.2010. Having regard to all these circumstances, this is not an appropriate case for exercising discretion and entertaining the writ petition. It is therefore dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JANUARY 08, 2016
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