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

+ **W.P.(C) 8948/2005**

Decided on 11.02.2016

IN THE MATTER OF :
ARVENDER SINGH

..... Petitioner

Through : Mr. Dhanjay Kumar Singh and
Mr. Pratyush K. Yadav, Advocates with
petitioner in person.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Ms. Saahila Lamba, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

HIMA KOHLI, J. (Oral)

1. The petitioner has filed the present petition praying *inter alia* for quashing the dismissal order dated 27.4.2004 issued by the competent authority under Section 11 (2) of the BSF Act read with Rule 177 of the Rules (in short '**the Act & Rules**') dismissing him from service w.e.f. 26.4.2004 on the ground that he had remained unauthorizedly absent for a period of 158 days (between 21.11.2003 to 26.4.2004), by over stayal of leave.

2. In a nutshell, the facts of the case are that the petitioner was enrolled as a constable in the respondent/BSF on 20.8.2001. On 29.9.2004, the petitioner's unit (Battalion No.126) was moved to Dabla,

Jaisalmer, Rajasthan. On 1.10.2004, a Movement order was issued to the petitioner directing him to report for duty at Dabla on 10.10.2004. However, the petitioner reported for duty at Dabla 9 days later, on 19.10.2004. Due to delay in reporting to duty, the petitioner was tried summarily under Section 19(b) of the Rules and awarded a punishment of 14 days rigorous imprisonment in force custody by the Unit Commandant on 22.10.2003. During the intervening period, while undergoing rigorous imprisonment, the petitioner had requested that he be granted twenty days' earned leave due to the serious illness of his father, which was duly granted to him w.e.f. 1.11.2003 to 20.11.2003.

3. After expiry of twenty days' earned leave, the petitioner failed to report to the Battalion Head Quarters. The respondent dispatched two registered letters on 24.11.2003 and 13.12.2003 to the petitioner at his native place calling upon him to report to duty with immediate effect, but to no avail. As a result, an inquiry was conducted to look into the petitioner's disappearance. The Court Inquiry concluded that the petitioner had overstayed the period of leave granted to him without any sufficient cause.

4. On 20.1.2004, the Commandant, BSF issued a show cause notice to the petitioner requiring him to report for duty on 20.2.2004 and he was informed that failing to report would attract disciplinary action against him. On receiving the said show cause notice, the petitioner dispatched a

letter dated 17.3.2004 to his superiors stating *inter alia* that he was unable to join duty on account of his own sickness. It is the version of the respondents that the petitioner did not enclose any medical certificate along with the aforesaid letter to evidence his sickness.

5. On 1.4.2004, the respondents again dispatched a letter to the petitioner, calling upon him to report to duty within a period of fifteen days from the date of receipt of the said letter, but he neither reported for duty, nor responded to the said letter. As a result on 26.4.2004, the Commandant being the competent authority, in exercise of his powers under Section 11(2) of the BSF Act, dismissed the petitioner from service, on the ground of over stayal of leave for a period of 158 days.

6. Aggrieved by the aforesaid dismissal order, the petitioner had filed an appeal before the competent authority stating *inter alia* that he could not report for duty during the aforesaid period on account of his sickness and that he had personally appeared before the Commandant on 19.4.2004, but was not allowed to join duty and instead, was dismissed from service. The petitioner's appeal was however dismissed by the competent authority, vide order dated 4.12.2004. Aggrieved by the dismissal order, the petitioner has filed the present petition.

7. Learned counsel for the petitioner assails the impugned order by submitting that the petitioner's absence from duty without leave was for valid reasons and the punishment of dismissal inflicted on him for

misconduct is very harsh and disproportionate to the nature of offence. He states that the petitioner had been regularly forwarding his medical certificates to the respondent that showed that he was suffering from acute jaundice and advised bed rest, which were not given any weightage by them.

8. Ms. Lamba, learned counsel for the respondents states that this is the second running occasion when the petitioner had absented himself without leave and that too during the period when he was already undergoing rigorous imprisonment for his overstaying between 11.10.2003 to 20.10.2003. Despite the same, the respondents had acceded to his request for grant of twenty days' earned leave due to the serious illness of his father, but the petitioner had misused the indulgence granted to him and had remained unauthorizedly absent for a prolonged period of 158 days. She further states that the contention of the petitioner that he had partaken a meal in the mess at the 126 Battalion on 19.4.2004, is not denied but the procedure prescribed in the BSF is that every force personnel reporting after leave/temporary duty and courses, etc., is to be interviewed by the Commandant/Staff Officers in the office and their entry is made in the General Diary Register (Roznamcha), which the petitioner had failed to do. In fact, without following the above procedure, the petitioner had directly proceeded to the mess and had of his own stayed overnight within the unit's premises.

She submits that it is in this background that the competent authority had passed the dismissal order against the petitioner.

9. In the course of arguments, learned counsel for the petitioner states, on instructions, that the petitioner would be satisfied if the punishment of "dismissal from service" inflicted on him is substituted with "removal from service".

10. Having regard to the aforesaid submission made by learned counsel for the petitioner and in view of the facts of the present case as noted above, it is deemed appropriate to convert the order of "dismissal from service" passed against the petitioner into "removal from service".

11. The writ petition is disposed of with no order as to costs.

(HIMA KOHLI)
JUDGE

(SUNIL GAUR)
JUDGE

FEBRUARY 11, 2016
sk/ap