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

+ **W.P.(C) 10650/2016**

MANOJ KUMAR

..... Petitioner

Through Mr. Ramashankar, Mr. Shivam Garg,
Ms. Kamlesh, Ms. Renu & Mr.
Sourabh, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through Mr. Arun Bhardwaj, Advocate along
with Mr. R.C. Arvind, Army Deputy
Commandant, BSF.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

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11.11.2016

CM No. 41742/2016 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

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In this writ petition, the petitioner has challenged an Order No. Estt/Court-Case/CT/Manoj/83 Bn/2012 7430-38 dated 16.04.2012 passed by the Commandant, 83rd Battalion, BSF ordering the dismissal of the petitioner from the Border Security Force in exercise of power under Rule 23A of the Border Security Force Rules, 1969.

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Section 23A of the Rules provides as follows:

*“23A. Termination of service on conviction on a criminal charge.-
When a person subject to the Act is convicted of a civil offence the
competent authority may dismiss or remove him from service without
holding any inquiry or issuing a show cause notice.”*

It is not in dispute that the petitioner was convicted by a Criminal Court on the charge of murder under Section 302 of the Indian Penal Code read with Section 34 of the IPC and is undergoing life imprisonment.

It is the case of the petitioner that the petitioner filed an appeal against the order of conviction which is pending. Admittedly, the conviction and the sentence imposed on the petitioner have not yet been interfered with.

Until and unless the sentence and the conviction are set aside, there is no question of interference with the impugned order. The writ petition is pre-mature. The dismissal of this writ petition will not prevent the petitioner from moving appropriate proceedings in accordance with law, if so advised before the Competent Forum, in the event, his appeal ultimately succeeds. The writ petition is disposed of.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

NOVEMBER 11, 2016

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