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

+ W.P.(C) 8515/2015

RAJ KUMAR

..... Petitioner

Represented by: Mr.Yajur Bhalla, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.Amit Mehta, Advocate for
Mr.Anil Soni, Advocate with
Mr.Arvind Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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01.08.2016

W.P.(C) 8515/2015

1. The counsel who drafted the writ petition has just not understood the scheme of the BSF Act, 1968 and the Rules framed thereunder in the year 1969.
2. The Rules envisage that if a misdemeanour is reported concerning an enrolled member of the BSF, an offence report containing the charge is put up before the Commandant.
3. The Commandant summarily deals with the same and if he opines that case is made out for evidence to be recorded an order is passed to said effect. A charge-sheet is prepared and supplied to the enrolled member of the Force. Keeping in view the charge-sheet the officer deputed to record the

evidence summons the witnesses, who are examined in the presence of the accused. The accused is given a right to cross-examine the witnesses. The accused is entitled to make a statement in defence and lead defence evidence. The record of evidence is placed before the Commandant who considers the same and if he opines that there is sufficient evidence to try the accused another charge-sheet is prepared and served upon the accused directing the accused to be brought before the Security Force Court for a trial.

4. The counsel who drafted the petition has spoken of double jeopardy principle being violated. Evidence recorded during record of evidence is being treated as evidence at the trial. There is utter confusion. Issue of delay and latches also arises which has not been properly explained.

5. The petitioner was dismissed from service being found guilty at the Security Force trial on March 07, 2002. The petitioner placed reliance upon he being acquitted by the Court of Session but overlooks the nature of the acquittal and the point distinguished in the charge at which the petitioner was tried at the Security Force Court and the charge before the criminal Court.

6. Faced as aforesaid, learned counsel for the petitioner seeks leave to withdraw the writ petition with right to file a fresh petition on the same cause.

7. Granting liberty as prayed for we dismiss the writ petition but note at this stage the stand of the respondent that on account of the delay in filing the writ petition the record of trial has been weeded out because it was no longer needed and the period for which the record has to be maintained was over. This aspect could be looked into if the petitioner was to file a fresh

petition on the same cause.

8. No costs.

CM Nos.27337/2016 & 27356/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

AUGUST 01, 2016

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