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

+ W.P.(C) 12079/2016

TARA SINGH Petitioner

Through: Mr.R.K. Shukla, Adv.

versus

UNION OF INDIA AND ORS Respondents

Through: Mr.Rajesh Kumar & Ms.Santwana,
Adv.

Mr.Nishant Yadav, Deputy JAG,
ITBP.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

% **22.12.2016**

This writ petition is directed against an order dated 29th October 2015 whereby the period of absence of the petitioner from 6th August 2015 to 15th September 2015, i.e. 41 days, has been treated as extraordinary leave.

The petitioner is a Constable of the Indo-Tibetan Border Police Force. The petitioner who was posted in the 39th Batallion of the Indo-Tibetan Border Police Force stationed at Greater Noida was transferred to the 37th Batallion at Laddakh and directed to report for duty within 5th August 2015.

After the petitioner reported for duty on or about 15th September 2015, the impugned order was passed treating the period of absence of the petitioner as extraordinary leave. It is not in dispute that no application for leave on medical grounds was submitted till after the petitioner reported for duty. It appears that his application supported by medical prescription was submitted after about six months.

Learned counsel appearing on behalf of the respondents has drawn our attention to Section 21 of the Indo Tibetan Border Police Force Act , 1992 which provides as follows:-

“21. Absence without leave.-Any person subject to this Act who commits any of the following offences, that is to say,---
(a) absents himself without leave; or
(b) without sufficient cause overstays leave granted to him; or
(c) being on leave of absence and having received information from the appropriate authority that any battalion or part thereof or any other unit of the Force, to which he belongs, has been, ordered. on active duty, fails, without sufficient cause, to rejoin without delay; or
(d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or
(e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or
(f) when in camp or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or
(g) without leave from his superior officer or without due cause, absents himself from any school or training institution when duly ordered to attend there,
shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.”

It is well settled that no leave can be claimed as a matter of right. If leave is due to a member of the force, an application for leave may be considered. A member of the force cannot just remain absent and submit an application for leave afterwards at his own sweet will. In cases of medical emergency, where an application for leave cannot be submitted in advance, the application for leave would have to be made at the earliest feasible point of time. Intimation of illness would necessarily have to be sent to the authorities concerned.

In our view, the impugned order does not call for any interference whatsoever. The petitioner is fortunate to have his unauthorized absence without intimation converted into extraordinary leave. He has escaped without disciplinary proceedings for major penalty.

The writ petition is accordingly disposed of.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

DECEMBER 22, 2016
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