

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WRIT PETITION (S) NO. 1071 OF 2017**

Rahul Singh, S/o Raj Kumar Singh, aged about 22 years, R/o House No. 124/F, New Jenys Road Liluah, Post & Tahsil- Belur, District Howrah (West Bengal)

**... Petitioner**

**Versus**

**1.** Union of India, through its Deputy Inspector General, SHQ (BGLR) ANO ITBP, Indo-Tibetan Border Police Force, MHA/Government of India, Flat No. 16, Near- 32 Bungalow Chowk, Sector-8, Bhilai, District Durg (C.G.)

**2.** The Deputy Commandant, 38-Bn, Indo-Tibetan Border Police Force, MHA/Government of India, P.O. - Kharora, District Raipur (C.G.)

**... Respondents**

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| For Petitioner  | : | Mr. Ravi Maheshwari, Advocate. |
| For Respondents | : | Mr. Ashwini Shukla, Advocate.  |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**03/03/2017**

**1.** Challenge through the present writ petition is to the order dated 4.3.2016, Annexure P-4, passed by the Commandant, 38 Battalion, Indo-Tibetan, Border Police Force, MHA/Government of India, Kharora, District Raipur.

**2.** Challenge also is to the order dated 14.9.2016, Annexure P-5, whereby the appeal preferred by the Petitioner against the order of termination has been rejected, holding that since the representation against the order of termination has not been submitted within 90 days the same cannot be forwarded further.

**3.** Grievance of the Petitioner is that, he was appointed as a Constable/ General Duty in the Indo-Tibetan Border Police Force with effect from 20.5.2014 and he was posted at Kharora, Raipur. On account of his own ill-health he had to go to the Medical College, Raipur, where he suddenly received an intimation that his father was seriously ill and therefore, according to the Petitioner, he moved an application seeking leave so that he could

attend his ailing father and left from Raipur itself to West Bengal which is his native place where his father was. According to the Petitioner, after about 20 days time he came back on 27.2.2016 and reported for duty, however, the Respondents refused to accept his joining and suddenly his services were terminated vide order dated 4.3.2016. The said order of termination was dispatched to the resident of the Petitioner and therefore it could not be received by him promptly and the moment he received the same he immediately made repeated representations before the Commandant for taking him back in services. The Commandant vide Annexure P-5, dated 14.9.2016, has refused to entertain the same or treat it as an appeal nor had he sent it to the Appellate Authority, on the ground that the same has been filed beyond the period of 90 days time which is the prescribed period for preferring an appeal.

**4.** The issue involved in the present case is that of termination of an employee of the Respondents who was on probation and who has worked for a period of about 2 years time. Because of some compelling circumstances he had to leave his duties without proper sanction or intimation to the higher authorities. Subsequently, he has reported back in employment after a period of about 20 days time as is alleged by the Petitioner in the petition.

**5.** Without entering into the merits of the case, since it is an order of punishment, considering the gravity of punishment, the Petitioner is entitled for an hearing by the Appellate Authority. Not sending or not forwarding his representation treating it to be an appeal by the Commandant only on the ground that it has been preferred after a period of 90 days would be too harsh a decision taken by the Commandant.

**6.** At this juncture, it would be trite to quash Annexure P-5, dated 14.9.2016, and direct that the Commandant treating the representations made by the Petitioner to be an appeal may refer the matter to the Appellate

Authority who in turn may consider the submissions made by the Petitioner in his representation and may take a decision treating it to be an appeal exercising the powers of Appellate Authority. The technicalities of the application not being addressed to the Appellate Authority, the subject matter not mentioning it to be a memo of appeal against the order of termination may not be strictly invoked.

7. At this stage, the Petitioner is also granted the liberty to submit a duly constituted memo of appeal to the Appellate Authority through proper channel, within a period of 21 days from today. In the event, if such a fresh appeal is filed it is expected that the Commandant shall forward the same also to the Appellate Authority who in turn should decide the matter in accordance with the rules governing the field.

8. With the aforesaid directions, the writ petition stands finally disposed of.

Sd/-  
**(P. Sam Koshy)**  
**Judge**