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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 9005/2015

Date of decision: 16th October, 2017

JAPAN SINGH

..... Petitioner

Through: Mr.Bharat Bhushan and Mr.Anish
Kulshrestha, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Arun Bhardwaj, CGSC.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

The petitioner is Ex-Head Constable who was charge sheeted under the Border Security Force Act for deserting service between 14.12.2006 and 03.09.2008 and for doing an act with intent to cause wrongful gain for self.

2. The petitioner vide order dated 28.12.2008, which has not been placed on record, after trial in the Summary Security Force Code, was

dismissed from service.

3. The petitioner filed an appeal which was dismissed vide order dated 24.08.2009. This order records that the offence of overstay for very long duration of 628 days was with the ulterior motive to avoid trial on the serious offence of smuggling and an in-disciplined person was unfit to be retained in a force like BSF.

4. Learned counsel for the petitioner submits that the petitioner was held to be guilty for the second charge i.e. for doing a thing with the intent to cause wrongful gain to himself, however, the finding of guilty was reversed by the DIG, Reviewing Officer, vide order dated 16.02.2009. This fact was duly noticed in the order dated 24.08.2009 passed by the Appellant Authority. The fact that the petitioner has been held not guilty for the second charge would not per-se make the finding of the Appellant Authority on the first charge null and void or bad in law.

5. The petitioner, it is apparent before us, had accepted the order of dismissal and did not challenge the same for nearly 7 years till the present writ petition was filed on 17.08.2015.

6. The petition is clearly bad on account of delay and laches as well as acquiescence. The writ petition does not set out and give reasons as to why the petitioner could not approach the Court between the period 2009 to 2015, to challenge his dismissal.

7. The charge against the petitioner was of desertion and unauthorized absence for 628 days, which as per the findings recorded, was with the malafide intention and ulterior motive to avoid trial in the charge of smuggling which the petitioner was then facing. The petitioner had faced the trial in which dismissal order was passed after he was apprehended by

the police. In light of the charge, we are not inclined to overlook and condone the delay.

8. Learned counsel for the petitioner prays that time may be granted for filing additional affidavit explaining the delay. It is submitted that the petitioner was unwell. This writ petition has remained at the stage of admission from 25.09.2015 and has been adjourned at the petitioner's request from time to time. It was once also dismissed in default and then restored vide order dated 10.01.2017. Thus, we find that enough time and opportunity was given to the petitioner. In case the petitioner had any ground or reason and good explanation for the delay, the same should have been set out and given in the writ petition with relevant documents in support.

9. In view of the aforesaid, we find no merit in the writ petition. The same is dismissed with no order as to cost.

SANJIV KHANNA, J

NAVIN CHAWLA, J

OCTOBER 16, 2017/vp