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

+ W.P.(C) 1407/2018 & CM No.5840/2018

NEERAJ KUMAR

..... Petitioner

Through: Mr.Raj Singh Phogat, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms.Shiva Lakshmi, CGSC with
Ms.Sakshi Agarwal &
Mr.Ruchir Ranjan Rai,
Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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15.02.2018

1. The petitioner is aggrieved by the order dated 03.03.2015, passed by the Commandant, 3rd Battalion, ITBP, removing him from service w.e.f. 03.03.2015, on account of his being a 'Deserter' and treating the period of his absence from 28.09.2014 to 02.03.2015 i.e. for 156 days as dies non for all purposes.

2. The petitioner is also aggrieved by an Office Memorandum dated 11.10.2017, issued by the DIG, Regional Headquarter, Bareilly, ITBP informing him that he had been removed from service vide order No.3945 dated 03.03.2015 and as per the provisions of Rule 28 of ITB Police Rules 1994, he ought to file an appeal, if aggrieved, within 90 days from the date of his removal from service, which in this case

had expired on 01.06.2015, whereas he had submitted an appeal only on 27.09.2017, which was hopelessly belated and accordingly rejected.

3. The brief facts of the case, as mentioned in the order dated 03.03.2015, passed by the Disciplinary Authority are that the petitioner was sent to the 39th Battalion on 22.09.2014, for working on the occasion of the 53rd Force Raising Day Parade-2014. However, the petitioner had absented himself on 27.09.2014, without any prior information and permission from the competent authority. The respondents made efforts to search for the petitioner within the camp premises. When he could not be found, an absent report of the petitioner from the camp was registered with the local police station Greater Noida, U.P. vide letter dated 27.09.2014.

4. The petitioner continued remaining absent thereafter due to which Memorandums dated 14.10.2014, 15.10.2014 and 28.10.2014 were despatched at his residential address calling upon him to report for duty with immediate effect but he had failed to do so; nor did he addressed any letter to the respondents explaining the reasons of his absence. Due to the persistent absence of the petitioner, the respondents addressed a letter dated 27.10.2014 to the Superintendent of Police, District Bhiwani, Haryana informing about his absence and requested that he be arrested and handed over to the ITBP at Gautum Budh Nagar, U.P. It was also stated in the letter that no steps had been taken by the police to arrest the petitioner and nor did he report back to the 39 Battalion or his parent Battalion Headquarter at Bukhara Camp, Bareilly (UP).

5. Due to his continuous absence for over thirty days, without permission or leave from the competent authority, a Judicial Enquiry Committee was constituted on 15.10.2014, under Section 74(1) of the Indo-Tibetan Border Police Act, 1992. The Judicial Enquiry Committee declared the petitioner as a 'Deserter' due to his absence w.e.f. 27.09.2014 and recommended that disciplinary action be taken against him. On the recommendations of the Judicial Enquiry Committee the petitioner was declared as a 'Deserter' from 27.09.2014, in accordance with Section 74(2) of ITBP Act, 1992. Further, a copy of the Deserter order was despatched at the petitioner's home address, leave address, as also at the address of his next kin i.e. father. Additionally, the said Deserter notice was despatched by the registered post to all concerned including the Civil Administration.

6. On 15.01.2015, a Show Cause Notice was issued to the petitioner, calling upon him to report for duty within 15 days and explain his position in writing as also his absence. Contemporaneously, a letter was sent to the Assistant Media Executive, DAVP Directorate, New Delhi on 17.01.2015, requesting that a notice be published on 30.01.2015 in the local and prominent newspapers in Haryana including 'Hari Bhomi', published from Rohtak, giving an opportunity to the petitioner to report for duty to the 3rd Battalion Headquarter of the Respondent/ITBP or submit documents in his favour, within thirty days from the date of issuance of the said notice, failing which, it will be presumed that he had nothing to state in his defence and appropriate orders would then be passed against him. Despite such an opportunity being granted to the

petitioner, neither did he report for duty, nor did he put forward any explanation.

7. In this factual background the impugned order dated 03.03.2015 was passed by the Disciplinary Authority, removing the petitioner from service w.e.f. 03.03.2015, in terms of Rule 17, read with Rule 20 of the ITBP Rules, 1994. The period of absence of the petitioner from 28.09.2014 to 2.3.2015 i.e. for 156 days was treated as dies non for all purposes.

8. The petitioner did not prefer any appeal against the order dated 03.03.2015, within the stipulated time i.e. within 90 days. Instead, after waiting for almost 2 ½ years, he submitted a representation to the Appellate Authority on 27.09.2017, which was rejected by Office Memorandum dated 11.10.2017, stating *inter alia* that the appeal was hopelessly belated.

9. Learned counsel for the petitioner has sought to assail the impugned order dated 03.03.2015, passed by the Disciplinary Authority by submitting that the Commandant, 3rd Battalion, ITBP is not the competent authority to pass such an order. The said submission is, however, not borne out from the relevant Rules.

10. Annexed to Rule 17 of the ITBP Rules, that deals with termination of services, is a table that specifies the authorities competent to pass a dismissal order or remove, discharge, retire or release a member of the Force. In the present case, the petitioner was recruited as a Constable in the respondent/ITBP and as per Column 6 of said Rules, the competent authority to enrol and remove a Constable guilty of misconduct, is the Commandant, ITBP. This

being the legal position, the submission of the learned counsel for the petitioner that the Commandant, ITBP was not the authority competent to dismiss the petitioner from service, is falsified.

11. We may note here that there is not a whisper in the present petition for explaining the absence of the petitioner who deserted the 39 Battalion on 27.09.2014 and literally vanishing into thin air, till he resurfaced after three years to submit a representation dated 27.09.2017, before the Appellate Authority. The petition is absolutely silent on this aspect. The petitioner has badly averred that he went home due to an 'urgent piece of work' without leave. A person as indisciplined as the petitioner, who abandoned his place of posting without seeking leave and did not turn up for several months thereafter, does not deserve to remain in a disciplined Force like the ITBP.

12. In the above facts and circumstances, we do not see any illegality or infirmity in the impugned order that warrants interference.

13. The present petition is accordingly dismissed, as devoid of merits, along with the pending application.

HIMA KOHLI, J.

PRATIBHA RANI, J.

FEBRUARY 15, 2018

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