

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 1840 of 2012

ANIL KUMAR, Son Of Sri Mahesh Thakur, Resident Of Village Ramdiri,
P.S. Matihani, District Begusarai

... .. Petitioner/s

Versus

1. THE UNION OF INDIA through the Director General, Border Security Force, Block No 10, CGO Complex, Lodi Road, New Delhi
2. The Inspector General, 111 Battalion, Border Security Force, S.H.Q. Panbari, Shillong (Meghalaya)
3. The I.G. B.S.F., FTR H.Q. 2C-Masimpur
4. The D.I.G./P.S.O. Office Of The I.G. B.S.F., FTR H.Q. M.I.G. Masimpur
5. The Commandant 111 BN B.S.F. C/O 99 A.P.O.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr Dharendra Kumar Jha, Advocate
For the Respondent/s : Mr Rajesh Kumar Verma, ASG

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 18-11-2019

Heard learned counsel for the petitioner and the learned Assistant Solicitor General appearing for the Union of India.

2 Writ petition has been filed seeking quashing of an order dated 19.10.2005 whereby the petitioner has been dismissed from service. The statutory petition of the petitioner against the said order has also been rejected by order dated 06.09.2011. The same is also assailed in the instant proceedings.

3 The brief facts leading to filing of the instant writ petition is that petitioner has been absent without any leave from the Border Security Force (for brevity, *BSF*) from 25.04.2005 to



19.10.2005. The petitioner was working as a Constable in the BSF. The petitioner had earlier approached this Court by filing a writ petition (Annexure 6). The writ petition had been filed in 2008 much after the petitioner's dismissal in 2005. CWJC No 3132 of 2008, filed by the petitioner, was also limited to seeking a direction for consideration of his representations against order of dismissal which he allegedly filed on 11.10.2007 and 04.12.2007.

4 The fact of filing the said two representations dated 11.10.2007 and 14.12.2007 has specifically been denied by the Union of India in its counter affidavit. It has been stated that no such representations had ever been received by the respondent-BSF and for the first time, the same was submitted to the Authorities in Annexure 7 which is a representation dated 11.07.2011 filed pursuant to order of the Hon'ble Court. The said fact stated on affidavit has neither been denied nor disputed by the petitioner as no rejoinder to the counter affidavit has been filed. Thus, admitted position that emerges is that petitioner had not even filed any representation prior to filing CWJC No 3132 of 2008.

5 Be that as it may, Authorities, however, proceeded to consider the petitioner's claim in his representation filed after disposal of his earlier writ petition.



6 This Court has also gone through the representations allegedly submitted which is Annexure 4. The petitioner, in order to justify his admitted unauthorized absence, has submitted that he had to rush home on account of lodging of a criminal case being Matihani Police Station Case No 42 of 2005 wherein his family members were implicated and involved. Injuries are said to have been sustained in the event and that the petitioner had to attend to his injured family members. It is submitted that in the meantime, another criminal prosecution, namely, Matihani Police Station Case No 62 of 2005 was instituted against petitioner's brother. He has submitted that he was very much disturbed by these events and, thereafter, he had also suffered with Hepatitis B disease.

7 In support of his claim for being treated for the disease of Hepatitis B, he has placed on record some prescriptions of one Dr Ram Naresh Singh. No reliable material has been placed on record of any Government Hospital to certify the illness/treatment for the said period. The petitioner, in his letter, has also made a reference to the Communication sent by the Authorities dated 07.08.2007. He has submitted that for the first time, he came to know that he had been dismissed from service when he received a Communication dated 07.08.2007 wherein he was referred to as a *Dismissed Employee*.



8 The defence of the petitioner clearly indicates that in between 25.04.2005 till receiving of Communication dated 07.08.2007, the petitioner was never in touch with the Authorities. The said period is over two years. It is only much later that all of a sudden, alleging that he had sent two representations, the petitioner has sought a direction from this Court merely for disposal of the representations. Even, at that stage, no endeavour was made to ascertain or challenge the order of dismissal, though dismissal has been acknowledged by the petitioner in his representation.

9 The prayer of the petitioner, in the earlier proceedings, has been recorded in the order dated 04.07.2011 passed in CWJC No 3132 of 2008. Even in the said writ petition, there is no prayer assailing the order of dismissal. That apart, Authorities have placed on record copies of communications sent to the petitioner by registered post asking him to resume duties. All the communications, which have been sent by the Authorities are on the same address which the petitioner has indicated in the affidavit filed in the instant proceedings. The communications were sent through registered post in accordance with the legal procedure.



10 Apart from that, conduct of the petitioner, while seeking a direction for disposal of representations in the earlier in the writ proceedings, shows that the petitioner had no intention of joining the BSF for at least two years. The Authorities have also placed on record the fact that petitioner has repeatedly been absent from his duties and that at least on five occasions, he has been awarded some punishment or the other in the past for overstaying leave or for unauthorized absence. All these pleadings, which have been placed on record in the counter affidavit filed by the Authorities, have not been denied or disputed as no rejoinder has been filed by the petitioner. The Authorities have also conducted a Court of Enquiry as per Section 62 of BSF Act. After completion of the same, when it was found that the petitioner had illegally absented himself without leave. Disciplinary action was, accordingly, recommended against the petitioner. The Authorities have thereafter also communicated the proposed order of dismissal to the petitioner dated 06.08.2005 seeking his comments on the proposed dismissal of service, which too has been sent by registered post. Copy of the same is Annexure R-9. Petitioner chose not to respond or avail even this opportunity. Such averments made in the counter affidavit have not been replied by the petitioner. The facts and circumstances, which are undisputed



and not denied and which are arising out of the pleadings, leave a lot to be desired from the petitioner in the background of the facts that he was serving in the Armed Forces and is required to maintain high degree of integrity and commitment in discharge of his duties.

11 Petitioner's counsel has relied upon two judgments to submit that the Authorities were required to look into the medical documents and that ex parte order of dismissal could not have been passed. Two judgments relied upon are in the cases of *Prem Kumar -Versus – Union of India & Others, 2008 (3) PLJR 202* and *Dr Ramesh Chandra Tyagi -Versus- Union of India & Others, (1994) 2 Supreme Court Cases 416*.

12 The petitioner has chosen not to respond to the various correspondences and queries. He has absented himself from the duties and chose not to avail the opportunity to state his defence or comment on his proposed punishment. Such conduct of the petitioner in light of judgment in the case of *Board of Director, Himachal Pradesh Transport Corporation & Another -Versus- K C Rahi, (2008) 11 Supreme Court Cases 502* amounts to waiver of natural justice as the Apex Court has held that natural justice cannot be applied as straight jacket formula. Both the judgments, relied upon by the petitioner, therefore, in the facts and



circumstances of the given case, do not come to the aid of the petitioner.

13 There is no occasion for this Court to exercise jurisdiction in favour of the petitioner in view of the facts and circumstances and legal position.

14 writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.11.2019
Transmission Date	NA

