

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2594 of 2016

Kamleshwar Thakur Son of Sakal Deep Thakur, R/o Village - Karihon,
Bhorahan, P.O. - Hasanpur, Bhadwas, P.S. - Mahua, District - Vaishali.

... .. Petitioner

Versus

1. The Union Of India through the Director General, THQ BSF, Block- 10 C.G.O. Complex Lodhipur, Road, New Delhi.
2. The Inspector General, frontiners Head Quarter North Bengal Border Security Force, P.O. - Kadam Tola, District Darjeeling WB Pin Code No. 734011
3. Deputy Inspector General Regional Head Quarters, B.S.F., District - Kishanganj.
4. The Commandant 109 B.N., B.S.F. Madhopur P.B.,
5. The Inspector General Head Quarter B.S.F. Block 10, C.G.O. Complex Lodhi Road, New Delhi.
6. The Additional Deputy Inspector Zonal F.H.Q. Kadam Tala, BSF Dept. District - Lalpaigori West Bengal
7. The Deputy Inspector General Regional Head Quarter Kupvara, B.S.F. Dept. Jammu and Kasmir.
8. Branch Manager, State Bank of India, Sumer Gananj Post Salempur, Dumariya, Via - Mahua, District - Vaishali
9. Branch Manager State Bank of India Jogiyal Pathan Kot., Punjab.
10. The Chairma, State Bank of India, State Bank Bhawan, Madan Kama Road, Mumbai.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Anil Prasad Singh, Advocate
For the Union of India	:	Mr. S.D Sanjay Addl. Soc. Gen.
		Mr. Ram Anurag Singh, CGC

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 07-03-2019 Heard learned counsel for the petitioner as well as
learned counsel for the Union of India.

Writ petition has been filed in the year 2016
challenging the order of dismissal dated 24.12.2011. Petitioner
as per order was allowed opportunity to place his case before
the authorities. Show cause notice dated 23.11.2011 against the
proposed punishment was also issued to the petitioner, however
the petitioner has not availed of the liberty granted by the



authorities while inflicting punishment of dismissal from service for his long unauthorized absence from 11.7.2011 to 24.12.2011 (167 days). Petitioner was a constable in the Border Security Force (BSF for short).

Without availing of the opportunity granted to the petitioner the writ petition has been filed belatedly alleging that in the year 2009 he had submitted representations requesting for his transfer from his posting in the battalion on the ground of apprehension of threat to his life. Representation in this regard was given by the petitioner's wife, however since he was not transferred in spite of representation made to all the authorities, he could not join at the place of posting.

Respondent Union of India has submitted that the writ petition is not only suffering from delay, laches but also from the lack of territorial jurisdiction inasmuch as the order impugned has been issued by the authorities at Kupwara in Jammu & Kashmir, however the writ petition has been filed before Patna High Court which does not have the territorial jurisdiction to consider the case of the petitioner.

This Court would find that the writ petition, apart from being barred by delay and laches, also suffers from lack of territorial jurisdiction. This Court would also observe that in



spite of opportunity granted to the petitioner by issuing a show cause notice to him before infliction of punishment, the petitioner has not availed of the same and the instant case is one of laches also. It is also apparent that the order of dismissal also afforded opportunity to the petitioner to present a petition before the Inspector General, BSF within three months, however said opportunity was not availed of by the petitioner within time and much later wife of the petitioner submitted a representation.

The petitioner has not availed of the opportunity granted to him. In this circumstance, having waived the plea of natural Justice the petitioner is estopped from alleging violation thereof in the instant proceedings. In this regard, this Court would refer to the judgment in the case of **Himachal Pradesh Transport Corporation & Anr. Vs. K.C. Rahi reported in (2008) 11 SCC 502.**

For the reasons indicated hereinabove, writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

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