

\$~4

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

+ **Date of Decision: 08.08.2019**

% **W.P.(C.) No. 8432/2019**

SONU KUMAR Petitioner

Through: Mr.Girijesh Pandey, Advocate

Versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Vikrant N. Goyal, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J. (ORAL)

W.P.(C) No. 8432/19

1. Issue notice. Counsel for the respondents accepts notice. We have heard learned counsels for the parties, perused the record, and we proceed to dispose of the petition at this stage itself.

2. The petitioner has filed the present Writ Petition with the prayer to issue a writ of mandamus, or any other appropriate writ or direction to set aside order dated 22.10.2018 passed by respondent No. 2, and to issue a writ of mandamus or any other appropriate writ or direction to set aside order dated 13.06.2018 passed by the respondent No. 3.

3. The relevant facts of the case are that the petitioner-who was a Constable of 0-8 Bn. SSB was granted 30 days earned leave from 14 October 2017 to 12 November 2017, and two days additional leave on 13th and 14th November 2017 by Army Sector HQ Malkangiri, but he

did not report at the place of his duty after expiry of the leave period. Thereafter the petitioner remained absent from his duty from 15 November, 2017 to 13 June 2018 (211 days).

4. The 8th Bn. Vide order No. Estt/Dise/CT/GD Sonu Kumar/8 Bn BSF/18/6544-60 dated 13 June 2018 conducted the proceedings as per rules and thereafter the petitioner was dismissed from the service on 13 June 2018 (A/N). The petitioner, against his dismissal, filed an application No. Zero dated 17 August 2018 for his reinstatement after 2 months and 12 days, before Inspector General SSB North Bengal Frontier, who vide his order dated 22.10.2018, dismissed the said application being devoid of merit. The relevant extracts of the order dated 22.10.2018 are as follows:

“5. Keeping in view the continuous absence of the applicant from duty the Commandant of 8th Bn issued one show cause notice for suspension of the above personnel through letter No. 4218-19 dated 14 April 2018 in which the applicant was afforded 30 days time to submit my defence side against the proposed action but no reply was received from the side of the personnel. Thereafter on date 7th May 2018 the 8th B, SSB deputed one special representative No. 011221672 Ct. Samrajeet Kumar Seel to the house of the personnel to ascertain the reason for my absence and simultaneously he was also directed to serve the copy of above notice to the applicant. The said constable arrived at the house of the applicant on date 9th May 2018 and handed over the show cause notice to the applicant. Even after that the applicant neither reported for my duty nor made any correspondence. After completing all the formalities, after my continuous absence for total 211 days after the leave the 8th Bn. SSB vide order No. Estt/Disc/CT/GD Sonu Kumar/8 Bn BSF/18/6544060 dated 13 June 2018 dismissed the Ex.

Ct. No. 090010372 Sonu Kumar from service from date 13 June 2018.

The application submitted by the applicant for my reinstatement in the service has been considered sympathetically by the competent authority and the all the documents concerning to this case and facts and circumstances of the case has been considered minutely. The facts stated by the applicant in my above application are found to be false, fabricated and concocted and no concrete/solid reason has been found which may justify my continuous absence from duty without permission/leave. Hence due to non finding of any cogent reason in my application for my reinstatement in the service, therefore the Inspector General SSB North Bengal Frontier has dismissed the application being devoid of merit.” (emphasis supplied)

5. Aggrieved by the orders dated 13.06.2018 and 22.10.2018, the petitioner has preferred the present writ petition.
6. We have heard the submissions of the Ld. counsels and given our due consideration to the matter.
7. It is argued by the Ld. Counsel for the petitioner that the respondent No. 3 proceeded without any material against the petitioner, and passed the order dated 13.06.2018 arbitrarily. He further urged that the respondent has not complied the procedure under Rule 22 (2) of the BSF Rules 1969, and neither any adverse report against the petitioner was available with the respondent No. 3 nor supplied to the petitioner, so in these circumstances, the removal of the petitioner is vitiated. He further urged that the respondent No. 1 has not given any reply to the representation sent by the petitioner till date.

8. On the other hand, it is urged by the Ld. Counsel for the respondents that the department has conducted the proceedings as per rules before the dismissal of the petitioner from the service. He further urged that there is no infirmity in the impugned orders dated 13.06.2018 and 22.10.2018 and the same deserve to be upheld.

9. In the instant case, the grounds taken by the petitioner for non joining of his duties after the expiry of his leave period are that as soon as his leave expired, his wife had fallen ill, due to which he had to send application for extension of his leave for further 15 days, but no information of the same was received by him. It is pertinent to mention that nothing has been mentioned by the petitioner as to from what kind of illness his wife was suffering from. The petitioner has not placed on record any medical certificate of his wife to support his contention regarding the said illness of his wife. Moreover, mere submission of a leave application does not amount to grant of leave. Unless leave is granted, the employee cannot assume that his application has been, or would be granted and on that basis avail of leave even before it is granted.

10. The next ground taken by the petitioner is that due to quarrel raised from the side of his in-laws he had to cancel his train reservations and consequently, the letter sent by the Bn. was not received by him. Further, due to the marital quarrel he was under mental tension so, he could not report at the place of his duty in time.

11. Here, it is pertinent to mention that the nature of quarrel has not been explained by the petitioner. Nothing has been mentioned by the

petitioner, as to on what pretext the quarrel had taken place. He has also not mentioned the dates of his reservation and cancellation and no document in this regard has been placed on record. So, the grounds taken by the petitioner seems to be vague and baseless. That apart, the aforesaid excuses- even if true, do not vest any right in the employee to get leave.

12. As far as the contention of the Ld. counsel for the petitioner that the respondent has not complied the procedure under Rule 22 (2) of the BSF Rules 1969 and no adverse report against the petitioner was available nor supplied to the petitioner is concerned, we find that this argument is baseless, as the perusal of the record shows that after the expiry of the leave period of the petitioner he did not report for duty so, keeping in view his absence as per rules, the 8th Bn. SSB informed him by sending letters by registered post bearing No. 3638-43 dated 28 December, 2017, 3705 dated 30 December 2017 and 174 dated 5th January 2018 at the residential address of the petitioner, informing him that of his continuous unauthorised absence without permission after the expiry of leave period on 15 November 2017, and simultaneously he was directed that he should report forthwith, otherwise disciplinary action shall be taken against him under the rules of SSB. But neither any reply was received from the petitioner, nor he reported his presence before the HQ.

13. A perusal of the record further shows that due to continuous absence of the petitioner, as per the provisions of Section 62 of SSB Act 1968 one member court of inquiry was constituted and after completion

of the court inquiry proceedings, the petitioner was found guilty for remaining absent without any permission/leave and as per the provisions contained in Section 61 of the SSB Act 1968, the 8th Bn SSB vide letter No. 3103-04 requested the SP Distt. Haridwar (Uttarakhand) for issuing apprehension roll for arresting the petitioner and for handing him over to the nearest Battalion of SSB but even after the expiry of sufficient time the petitioner neither joined his duties, nor any reply was received from the concerned police authority.

14. A perusal of the record further shows that the Commandant of 8th Bn also issued one show cause notice for suspension of the petitioner through letter No. 4218-19 dated 14 April 2018 vide which the petitioner was afforded 30 days time to submit his defence against the proposed action, but again no reply was received from the side of the petitioner. Thereafter on 7th May 2018, the 8th Bn., SSB deputed one special representative No. 011221672 Ct. Samarjeet Kumar Seel, who arrived at the house of the petitioner on 9th May 2018 and handed over the show cause notice to the petitioner but even after that the petitioner neither reported on his duty nor made any correspondence with the department.

15. Thereafter, the petitioner was dismissed from his service on 13.06.2018. He moved an application for his reinstatement against dismissal on 17 August 2018 i.e. after more than 2 months of his dismissal that too without any plausible explanation for this delay.

16. Therefore, in view of the above discussions, we are of the opinion that ample opportunity at every stage of the proceeding was afforded to the petitioner to put fourth his defence before the respondent, but the

same were not availed of by the petitioner and he kept on absenting himself from his duties.

17. Being the member of a disciplined force, it was the prime duty of the petitioner to report on his duty after the expiry of leave period, but he failed to report on his duty and kept on absenting himself from his duty on one pretext or the other for a period of 211 days. The grounds mentioned by him for his absence do not appear to be satisfactory and substantiated. In any event, they cannot lead to assumed grant or extension of leave by the Competent Authority, and condone the misconduct of unauthorized absence from duty. He has even preferred his application for reinstatement after more than 2 months of his dismissal and that too without any explanation for this delay. This shows the callous attitude of the petitioner towards his job. Therefore, in these circumstances, the impugned order dated 13.06.2018 passed by the Commandant 08 BN BSF and the impugned order dated 22.10.2018 passed by the Inspector General SSB North Bengal Frontier cannot be said to be arbitrary, unreasonable, without any basis, or not borne out from the record and we do not find any infirmity in the same. The petition is, therefore, dismissed being meritless.

RAJNISH BHATNAGAR, J.

VIPIN SANGHI, J.

AUGUST 8, 2019

Sumant