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

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+ **W.P.(C) 1998/2017**

RADHA CHARAN SHARMA

..... Petitioner

Through: Mr A.K. Gautam, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Vinod Diwakar, CGSC for UOI
with Mr Sayandeep Pahari,
Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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07.03.2019

1. The Petitioner, who is a Lance Naik with the BSF, is aggrieved by the finding and sentence dated 18th August, 2001 of the Summary Security Force Court ('SSFC') whereby he was dismissed from service. He has also challenged the orders dated 30th June, 2003 and 8th September, 2005 further dismissing his statutory petition against the order of dismissal.

2. The Petitioner was arrayed before the SSFC on the charge of over staying of leave (OSL). The Petitioner applied for 60 days earned leave ('EL') and was sanctioned 47 days EL from 15th January, 2001 to 2nd March, 2001. According to the Petitioner, he applied for EL to attend the marriage of his sister which had been fixed on 16th January 2001. According to the Petitioner, the marriage got postponed to 24th March, 2001 as the Petitioner could reach the place of marriage only on 15th January 2001 i.e. one day

before the initial date of marriage i.e. 16th January, 2001. According to him, immediately after the conclusion of the marriage of his sister on 24th March, 2001, he reported at his unit on 27th March, 2001. He had thereby overstayed the sanctioned leave by about 25 days.

3. The fact that the OSL was for 25 days is not in dispute. Therefore, as far as finding of the SSFC that the Petitioner was guilty of the charge of OSL is concerned, no fault can be found therewith.

4. The issue that remains is only regarding the proportionality of the punishment. In the counter affidavit filed in the present petition, the Respondents have in a tabular form indicated the previous instances where the Petitioner had been proceeded against for OSL as under:

S. No.	Leave Granted	Period of Leave	Period of OSL/AWL	No of days OSL/AWL	Remarks
1.	60 days EL	30.08.1991 To 28.10.1991	29.10.1991 To 18.11.1991	21 days	Regularized by granting 21 days EL.
2.	15 days EL	15.10.1994 To 13.11.1994	14.11.1994 To 25.12.1994	42 days	Regularized by granting 42 days EL/HPL.
3.	30 days EL	22.02.1996 To 22.03.1996	23.03.1996 To 20.05.1996	59 days	Regularized by granting 59 days EL/HPL.
4.	AWL	On 18.09.1996 at 1830 hrs.	19.09.1996 To 25.09.1996	7 days	Summarily tried and awarded the punishment of severe reprimand and AWL period of 07 days was treated as Dies-Non (Bad Entry No.1)
5.	10 days CL	21.04.1997	02.05.1997	71 days	Summarily tried and awarded the punishment of Reprimand and OSL period of 71 days was treated as Dies-Non. (Bad Entry No.2)

6.	60 days EL	21.04.1997 To 01.05.1997	02.05.1997 To 11.07.1997	38 days	Summarily tried and awarded the punishment of service Reprimand and 74 OSL period was treated as Dies-Non. (Bad Entry No.3)
7.	05 days CL	06.03.1998 To 13.03.1998	14.03.1998 To 18.04.1998	36 days	-do-
8.	60 days EL	13.08.1999 To 11.10.1999	12.10.1999 To 12.12.1999	61 days	OSL period of 61 days treated as Dies-Non.
9.	24 days EL	12.04.2000 To 05.05.2000	06.05.2000 To 22.07.2000	78 days	Summarily tried and awarded the punishment of severe Reprimand and 78 days of OSL period treated as Dies-Non. (Bad Entry No.4)
10.	47 days EL	15.01.2001 To 02.03.2001	03.03.2001 To 27.03.2001	25 days	Tried by SSFC and dismissed from service.

5. While the Petitioner does not dispute the above facts, which are a matter of record, his case is that his OSL on the last occasion was for a bonafide reason, viz., the postponement of his sister's marriage from 16th January, 2001 to 24th March, 2001. He, therefore, submitted that the the extreme punishment of dismissal from service was not called for.

6. Section 48 of the Border Security Force Act, 1968 ('BSF Act') sets out the punishments that can be awarded by the SSFC. One of the punishments is dismissal from service. The other punishments include reduction to a lower rank, forfeiture of seniority of rank and forfeiture of all or any part of service for the purposes of promotion, forfeiture of service for the purposes of increased pay or any other prescribed purpose. Under the BSF Act, there

does not appear to be any intermediate punishment between dismissal from service and the other punishments that had been referred to.

7. On the aspect of punishment for OSL, learned counsel for the Respondents has drawn attention of the Court to the decision of the Supreme Court of India in *Union of India v. Debasish Ghosh (2009)16 SCC 621*. The Supreme Court there was dealing with the punishment awarded to a constable in BSF for OSL. *Inter alia*, it was found that in a period of 9 years, the constable in question had overstayed his leave for 7 times and, therefore, had “probably developed a habit of not-joining in time after exhausting his leave”. In those circumstances, the Supreme Court was of the view that the punishment of dismissal was not “disproportionate to the misconduct on the part of the delinquent Respondent”. The plea that there could have been any other lesser punishment, including imprisonment was rejected.

8. In the present case, the Court finds that there had been 9 previous instances of OSL. Some of them were regularized, but even after accounting for those instances, the Court finds that there are at least 5 instances where the Petitioner was tried and awarded punishment for OSL. The periods of OSL were also substantial. Clearly, therefore, the past conduct of the Petitioner has weighed with the Respondents in awarding him the punishment of dismissal from service on this occasion.

9. In the circumstances, the Court is unable to be persuaded that the punishment awarded to the Petitioner by the Respondents is disproportionate.

10. Learned counsel for the Petitioner drew the attention of the Court to the Rule 41 of the CCS (Pension) Rules, which is applicable to the members of the BSF on the aspect of 'Compassionate Allowance'. The Court notes in this context that the Petitioner at the time of his dismissal from service had already completed 15 years of service. Given that his age at the time of his dismissal was around 36 years, he had at least two decades of service left.

11. In the circumstances, the Court is of the view that if the Petitioner makes a representation to the Respondents for grant of Compassionate Allowance under Rule 41 of the CCS (Pension) Rules, it should find favourable consideration in the hands of the Respondents. If the Petitioner makes a representation within the next four weeks, it will be dealt with on its merits by the Respondents and will be disposed of by a speaking order not later than eight weeks thereafter.

12. The petition is dismissed with the above directions. No costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

MARCH 07, 2019

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