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

+ **W.P.(C) 3263/2018**

JAYPAL SINGH

..... Petitioner

Through: Mr. Bajrang Vats, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Mr. R.V. Sinha, Mr. Amit Sinha &
Mr. Sharauya Sinha, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

11.07.2019

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1. The petitioner has preferred the present writ petition to assail the order of dismissal dated 07.11.2015, and the order dated 23.02.2016, whereby his departmental appeal has also been rejected.

2. The petitioner joined the respondent/ Border Security Force (BSF) as CT/GD on 04.04.2012. He states that he applied for leave on the ground of 'domestic problems' w.e.f. 05.05.2015 to 01.06.2015, which was sanctioned by the Competent Authority. He proceeded on the said leave and did not re-join his duties at the end of the leave period. He states that he was visited with the termination order dated 07.11.2015, and aggrieved thereby, he preferred a petition under Rule 28A of the BSF Rules, 1969 before the IG, BSF, North Bengal and DG, BSF, Lodhi Road, New Delhi. By the second

impugned order dated 23.02.2016, petitioner's dismissal was confirmed. The petitioner has, accordingly, preferred this petition raising several grounds.

3. The first submission of learned counsel for the petitioner is that the unauthorised absence without leave constitutes an offence under Section 19 of the BSF Act. However, the respondents have not adopted the procedure prescribed under Section 19 and have not convened a Security Force Court.

4. He further submits that Section 62 provides for an inquiry to be conducted in respect of a person subjected to the act being absent without leave. He submits that no inquiry was conducted in terms of Section 62 of the Act. Pertinently, the petitioner does not dispute the fact that the petitioner has been on unauthorised leave. However, his explanation is that he did not report for duty on account of domestic problems and his own medical condition. He seeks to rely on some medical record in that regard.

5. The respondents have filed their reply. It is pointed out by the respondents that the petitioner is habituated to overstay leave and remaining absent without leave. From the petitioner's service record, it is revealed that while undergoing basic recruit training, the petitioner proceeded on four days earned leave w.e.f. 04.02.2013 to 07.02.2013 on the ground of his marriage but he failed to re-join duties in time and reported on 09.02.2013, i.e. after two days of overstay leave. He again proceeded on seven days leave w.e.f. 21.02.2013 to 28.02.2013. However, he re-joined on 05.03.2013. He again proceeded on thirty days leave w.e.f. 25.03.2013 to 24.04.2013. On this occasion as well, he failed to join duty on time and reported only on 06.05.2013, i.e. after twelve days overstay leave. The

period of absence was regularised by the Competent Authority taking a lenient view in the matter with a warning to him not to repeat the same in future. The petitioner again absented himself without leave from Battalion Headquarters on 27.05.2014. Only after several reminders, he reported in his Battalion on 14.07.2014, i.e. after absenting for 49 days. Yet again, the petitioner proceeded on thirty days leave w.e.f. 09.10.2014 to 07.11.2014. However, he failed to report on time and reported on 15.01.2015, i.e. after 69 days of overstay leave. The petitioner again proceeded on 26 days leave w.e.f. 06.05.2015 to 31.05.2015 but thereafter did not join duties. In a short span of 3 years and 7 months service, the petitioner remained absent from duty for 315 days.

6. The respondents have pointed out that the petitioner has also been subjected to following punishments and warnings:

- “(i) 14 days rigorous imprisonment in force custody w.e.f. 17/07/14 to 30/07/2014 for committing offence U/s 19 (a) of BSF Act, 1968 for AWL of 49 days w.e.f. 27/05/14 to 14/07/14.*
- (ii) 28 days rigorous imprisonment in force custody from 06/04/15 to 03/05/15 for committing offence U/s 19 (b) of BSF Act, 1968 for OSL of 69 days w.e.f. 08/11/14 to 15/01/15.*
- (iii) Written warning was issued on 18th May, 2013 for his OSL period from 25/04/13 to 06/05/13.”*

7. The petitioner has, therefore, proved himself to be undisciplined and he does not deserve sympathy. The petitioner does not dispute the aforesaid situation.

8. The submission of learned counsel for the petitioner that the respondents should have proceeded under Section 19 of the BSF Act and

could not have dismissed him from service by issuing the impugned dismissal order on 07.11.2015, has no merit. The unauthorised absence from duty not only constitutes an offence under the Act but also constitutes serious misconduct. Merely because he may not have been proceeded under Section 19 of the Act, does not mean that he did not indulge in the misconduct, or he cannot be departmentally proceeded. The petitioner himself points out that he was issued a show-cause notice dated 31.08.2015 by the respondents, which reads as follows:

“SHOW CAUSE NOTICE

Based on the reports available, it is noticed that you have been overstaying from leave w.e.f. 01.06.2015 (FN). The proceedings of the Court of Inquiry held in accordance with Sec 62 of BSF Act to investigate into the said illegal absence has also found and declared that you had been illegally overstaying from leave w.e.f. 01.06.2015 (FN).

2. Having considered the matter of your continued illegal absence from duty, I am satisfied that you trial by a Security Force Court is impracticable but I am of the opinion that you further retention in the service is undesirable. Accordingly, in the exercise of the power vested in me by Sub Sec(2) of Sec 11 of the BSF Act read with Rule 177 of the BSF Rules and in conformity with Sub Rule(2) of Rule 22 of BSF Rules you are hereby called upon to show cause why you should not be dismissed from the service for your aforesaid act.

3. If you have anything to urge in your defence against the proposed dismissal from the service, you may do so within 30 days of the receipt of this notice failing which it will be assumed that you have nothing to urge in your defence against proposed action and further decision in the matter will be taken.

4. A copy of Court of Inquiry (and other report) referred to in Para 1 above are enclosed for your reference.

5. *Please acknowledge receipt of this show cause notice.*”

9. On a query by the Court, he does not dispute the fact that he did not respond to the show-cause notice. Yet, he contends that no Court of Inquiry was conducted against him under Section 62 of the BSF Act and that he was not provided with a copy of the Court of Inquiry. Not having responded to the show-cause notice, in our view, it is not open to the petitioner to now contend that no Court of Inquiry was held, or he was not provided with a copy thereof.

10. His submission that he has not been granted an opportunity of being heard, is also not correct. He neither participated in the Court of Inquiry, nor availed of the opportunity granted to him vide the show-cause notice dated 31.08.2015 to explain his circumstances.

11. The BSF is a disciplined force and the tendency of the petitioner to take his job casually is glaringly evidenced in the aforesaid circumstances. It is unfortunate that while he is well-aware of his rights, he is completely unmindful of the duties which are attached to his office as a part of a disciplined force.

12. We, therefore, find no merit in this petition. Dismissed.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

JULY 11, 2019

B.S. Rohella