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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4682/2018**

FORCE NO 120041255 CONT/GD VIKAS KUMAR

ITBP

..... Petitioner

Through: Mr. A. K. Singh, Advocate.

Versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Rajesh Kumar, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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03.09.2019

1. The Petitioner has filed the present petition with the following prayer

“(I) Issue a writ in the nature of mandamus or any other order/writ thereby directing the Respondent to quash the impugned termination order dated 24.06.2016 and 26.06.2016 and further direct the Respondent to reinstate the petitioner to the post of Constable/GD in ITBP since the year 2016 with all consequential and monetary benefits.

(II) issue such other or further writ/order/direction in the nature as appropriate as this Hon'ble court may deem fit and proper in the facts and circumstances of this case.

2. The facts of this petition are that the Petitioner joined the Indo-Tibetan Border Police (ITBP) on 4th February, 2012 as Constable/GD. On 13th November, 2015, the Petitioner applied for casual leave of fifteen days from 13th November, 2015 to 1st December, 2015. After expiry of the said leave

the Petitioner was supposed to report back on his duty at the 47th battalion ITBP, Sambha (J&K).

3. As per the Petitioner, in December, 2015 he suddenly become seriously ill and was admitted in Sri Sai Nath Hospital, Nawada, Bihar and he remained admitted in the said hospital till 8th August, 2016. A letter was issued from the office of Superintendent of Police, Nawada on 8th April, 2016 to SHO, PS Akbarpur to declare the Petitioner as 'Deserter'. A show cause notice dated 26th April, 2016 was issued at the native address of the Petitioner by Commandant of 47th Bn. ITBP by which the Petitioner was informed that since the Petitioner failed to resume his duties, accordingly, Petitioner was declared deserter from the force. An *ex parte* order was passed on 24th June, 2016 by Respondents awarding him punishment of dismissal from service with effect from 23rd June, 2016.

4. By a further order dated 26th June, 2016 the salary and allowances of the Petitioner were stopped. The Petitioner made a representation to Deputy Inspector General, Sector Headquarter, Ladakh, ITBP for his reinstatement on the ground of his illness. On 16th March, 2017 the said representation was rejected.

5. The present petition has been filed on the ground that the Petitioner was prevented from joining his duties due to serious ill health and continuous hospitalisation; the Petitioner belongs to a remote village in Bihar where means of communication are very rare; the show cause notice dated 26th April, 2016 published in *Times of India* and *Dainik Jagran* never reached

the Petitioner; the letters/notices sent to Petitioner had little meaning as the mother of the Petitioner is an illiterate person and the Petitioner had never received any communication calling for his rejoining the duties or declaring his desertion of job and removal from service and principle of natural justice was not followed while passing an *ex parte* order of dismissal against him; moreover the punishment of dismissal of service can be awarded only for acts of grave nature and the punishment is shockingly disproportionate to the act of alleged overstay/misconduct.

6. Alongwith this petition the Petitioner has enclosed certain prescriptions of Sri Sai Nath Hospital, Nawada. The first prescription is dated 1st December, 2015 mentioning therein that the patient is a case of Pyrexia with chill and rigor headache, nausea and vomiting and he was advised to visit the doctor after thirty days. On 1st January, 2016 it has been mentioned that patient had improved but fever persisted and he was advised to revisit after one month. Further visits were shown as on 2nd February, 2016, 4th March, 2016, 4th April, 2016, 4th May, 2016, 4th June, 2016, 4th July, 2016 and on 8th August, 2016 patient was declared as physically fit.

7. It is pertinent to mention here that that claim of the Petitioner is that he was admitted in the said hospital as indoor patient on 1st December, 2016 to 8th August, 2016 whereas Annexure P2 (Collectively) show that he was being treated as an outdoor patient and he was not admitted in hospital even for one single day. A Petitioner who has not to come to Court with clean hands, deserves no sympathy. His further claim that the letters which were sent at his address could not be read by his mother who was illiterate also is

a false assertion as during entire period from 1st December, 2015 onwards he was either at his residence or some other place but not confined to bed as claimed by him. He could have and he was in the knowledge of all the letters/communication being sent from time to time by the Respondents.

8. In the counter affidavit it is mentioned that proceedings were initiated against the petitioner for remaining absent from 1st December, 2015 to 24th June, 2016 without prior intimation/permission/sanction of the competent authority and the Petitioner did not inform any reason to anyone about his continued unauthorised absence. Various opportunities were given to Petitioners to resume/join the duties but he neglected the same. Show cause notices were published in two newspapers published from Patna, Bihar. The State police also visited his home to communicate him to join the duty. But even during the visit of the police it was not informed that the Petitioner was ill or he was under treatment. The medical documents submitted by the Petitioner are related with OPD treatment and even as per him he was regularly visiting the hospital but he did not think it proper to inform his senior officers in this regard and the story that the Petitioner was bed-ridden is a concocted story. Even the Hon'ble Supreme Court has held in ***Mithilesh Singh v. Union of India and Others AIR 2003 SC 1724*** that absence from duty without prior intimation is indicated to be a grave offence warranting removal from service.

9. As per Respondents, there is no error of law or perverse findings which requires interference by this Court. All the communications made to the Petitioner were not received back undelivered meaning thereby that these

communications were duly delivered to the Petitioner. All the enquiry/ proceedings conducted against the Petitioner were as per the Act and Rules of ITBP and sufficient chances and opportunities were given to the Petitioner but he failed to avail the same.

10. In the rejoinder filed by the Petitioner it was submitted that due to unavoidable circumstances as the Petitioner was seriously ill he was not able to inform the competent authority about his absence and he did not get the opportunity to clarify this position and moreover he never received any communication from the Respondent No. 2 to join duty. He was not aware of any communication made by the State police to his family members. He has denied that the medical records are not authenticated, but the competent authority cannot reach to the said conclusion without verifying the authenticity of the medical record. In any case even if there is any fault on the part of the Petitioner even then a minor penalty can be imposed upon him.

11. We have heard learned counsel for the parties. As mentioned hereinabove, the medical certificate and prescriptions submitted by the Petitioner do not inspire any confidence and rather they are contrary to his own stand that he was bed-ridden and admitted to hospital whereas all the said prescribed slips and certificate show that he was being treated as an outdoor patient. The Petitioner himself has mentioned about the communications received from the Respondents at his residential address, but he chose not to reply to any of them.

12. The Respondent had no other option but to proceed against him ex-parte in the disciplinary proceedings and pass the impugned orders dated 24th June, 2016 and 26th June, 2016 and no fault can be found in the said orders as Petitioner has himself failed to show any genuine cause for not joining his duty after completion of his leave period and further for not responding to the communications sent by the Respondents calling upon him to join his duties and later on to show cause as to why he be not declared as a Deserter and why his services be not terminated. In these circumstances this Court has no option but to dismiss the present writ petition. However, there shall be no order as to costs.

S. MURALIDHAR, J

TALWANT SINGH, J

SEPTEMBER 03, 2019

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