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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4156/2016**

SANJAY KUMAR Petitioner
Through Mr. U.Srivastava, Advocate

versus

UNION OF INDIA AND ORS Respondents
Through Mr. Dev P.Bhardwaj, CGSC with
Ms.Anubha Bhardwaj, Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
15.04.2019

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1. The Petitioner who is a Constable in the Border Security Force ('BSF') has challenged an order dated 24th May, 2013 issued by the Commandant, 99 Battalion, BSF (Respondent No.4) (the Disciplinary Authority) (DA) dismissing him from service. He has also challenged the order dated 9th April, 2014 passed by the Inspector General (IG) i.e. the Appellate Authority (AA) (Respondent No.3) rejecting his appeal against the dismissal order.

2. The Petitioner was proceeded against for over stay of leave ('OSL') from 1st September, 2012 without due authority. While the plea of the Petitioner was that he was suffering from infective Hepatitis, the report received from the Police Station (PS) Raipur which is his native place was that he was on OSL intentionally.

3. The admitted position is that the sanctioned leave of the Petitioner was

expiring on 31st August, 2012. On the ground that he was suffering from jaundice, the Petitioner did not join duty on 1st September, 2012. However, prior to his leave coming to an end, he did not consider it necessary to intimate the Respondents that he was indisposed and required an extension of his leave.

4. On the other hand, it is clear from the reply filed by the Respondents, which has not been controverted by the Petitioner, that despite repeated letters to him he did not report for duty. He was first asked to immediately report for duty by a letter dated 5th September, 2012 followed by another letter dated 21st September, 2012. There was a third one dated 2nd October, 2012 and the fourth one dated 7th November, 2012. The fifth letter dated 24th November, 2012 was marked to the PS concerned. In response to the letter dated 7th November, 2012 the PS Sonipat, Haryana informed the Respondents in writing that the Petitioner was present at his house and was not willing to rejoin duty. Further in response to a letter dated 23rd January, 2013 of the Battalion, the Superintendent of Police, District Sonipat also intimated that the Petitioner had been informed regarding his overstayal and despite that he did not join duty.

5. It appears that the Petitioner forwarded a photocopy of a medical certificate dated 25th September, 2012 issued by the general practitioner in Sonipat, Haryana stating that the Petitioner was suffering from infective Hepatitis and abdomen pain. Four other medical certificates were issued by the same general practitioner from time to time. However, the Respondents stated that on receipt of such medical certificates the Petitioner was again

asked to resume duty immediately with the medical documents. However, he failed to do so.

6. As far as the medical documents themselves are concerned, the Chief Medical Officer of the BSF, after examining them opined that they did not clearly indicate that the Petitioner was suffering from infective Hepatitis especially in the absence of prescription/OPD slips, investigation report, admission/discharge certificate etc. It was further pointed out that the Petitioner had not visited any Government Hospital either at Sonipat or even the BSF hospital at Delhi which was within 30-35 kms from Sonipat where he could have received specialist treatment free of cost.

7. In those circumstances, a Court of Inquiry was ordered on 15th October, 2012 and an additional Court of Inquiry on 30th January, 2013 to enquire into the circumstances of the Petitioner's absence. A representative of the 99th Battalion, BSF was sent to the native place of the Petitioner on 7th January, 2013 for ascertaining reasons for his absence and to ask him to rejoin his duties. After visiting the native place of the Petitioner, the representative of the BSF reported in writing that the Petitioner was not found at his house. Pointing out that he was at his sister's house, his mother and wife declined to receive the letter. The Gram Pradhan was approached for assistance and at her instance the Petitioner's wife received the letter but refused to sign the receipt. The representative got a receipt from the Gram Pradhan in token of letter having been handed over to the Petitioner's wife. The representative of the Respondents informed them that the Petitioner was fit and healthy and did not appear to be sick. When the representative met

the Petitioner near the Sonipat Railway Station and asked him to rejoin duty, the Petitioner refused stating that he was not in need of the BSF service and would join duty whenever he felt like, further stating that if the BSF would dismiss him from service he would have no objection.

8. It is in the above circumstances that the impugned order was passed on 24th May, 2013 by the DA *inter-alia* observing as under:-

“3. Considering the matter in its entirety I am satisfied that No. 001994070 Constable Sanjay Kumar has been illegally absenting without sufficient cause and over staying leave since 01/09/2012 (FN). I am also satisfied that the trial of No.001994070 Constable Sanjay Kumar is impracticable due to his prolonged absence. I am also satisfied that his aforesaid continued illegal absence is contrary to the expected norms and is detrimental to the Force discipline, which make his further retention in the Force as undesirable. I, therefore, direct that the said No.001994070 Constable Sanjay Kumar be dismissed from the service w.e.f 24/05/2013 (AN).”

9. This Court repeatedly asked counsel for the Petitioner whether he made any effort to inform the Respondents of his OSL on the ground of his suffering from jaundice. Learned counsel for the Petitioner could not dispute the fact that he had in fact sent no letter seeking extension of leave prior to 1st September, 2012. He was also not able to dispute the fact that at least four letters have been written by the BSF to him thereafter to rejoin duty. There was no explanation why the Petitioner did not respond to those notices.

10. Learned counsel for the Petitioner argued that this was not a case where

it could be stated to be impractical to hold an inquiry. It is submitted that without the basic inquiry being held the removal was in violation of the principles of natural justice.

11. The conduct of the Petitioner in the present case speaks for itself. Despite being the Constable in the Armed force like the BSF, the Petitioner could not have presumed that even without a formal letter seeking extension of leave, he could remain on leave indefinitely. Even assuming that he was suffering from jaundice, he had to produce some satisfactory medical evidence to substantiate such plea. Why he did not avail the offer to get specialised treatment at a Government hospital whether at Sonipat itself or at any place, free of cost, is again not explained by the Petitioner.

12. The impracticality of holding the inquiry at the given point in time was obvious because the Petitioner did not turn up for duty despite several notices. In these circumstances, holding of an inquiry was likely to be a futile exercise. Even now the Petitioner has no convincing answer for his long absence. In these circumstances, the impugned order of the DA dispensing with the inquiry and dismissing the Petitioner from service calls for no interference. The order passed by the AA confirming the dismissal order is also hereby affirmed. The petition is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 15, 2019/mw