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

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DINESH KUMAR

W.P. (C) 11447/2016

..... Petitioner

Through: Mr. Arun Srivastava, Advocate.
versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms Barkha Babbar, Advocate for
UOI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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26.04.2019

1. The Petitioner, an Inspector with the Border Security Force ('BSF'), has in this petition questioned the impugned signal No. R/3428 dated 4th December, 2014 of the Frontier Headquarters ('FHQ'), BSF [communicated to him in February, 2015 by signal No. A/7003], rejecting his plea that the injuries sustained by him in a bomb blast on 25th February, 2005 were attributable to the *bonafide* government duty. Consequently, the Petitioner seeks directions to the Respondents to pay him the applicable disability benefits.

2. The Petitioner joined the BSF as Constable in 1998. In 2005, during the Bihar Assembly elections, the Petitioner was working then as 2nd In-Charge ('2IC') with the 68th Battalion, BSF, Company-D of Shillong IV and was deputed for patrolling duty at District Sitamarhi in Bihar, close to the Indo-Nepal border.

3. The case of the Petitioner is that these were Maoist affected areas where BSF's strength is tested and the members of the force have to display the highest levels of courage and discipline.

4. It is stated that after the most of the polling was over on 25th February, 2005 at around 1030 hours, the troops of the D-Company were awarded an unofficial out-pass for about three hours to visit the local market at Sonbarsha, which is 3 km from the Indian check post at the Nepal border. According to the Petitioner, the Company Commandant of the D-Company called the Petitioner when some of the troops had not returned till 1530 hours. The Petitioner was assigned the secret task of bringing back the remaining troops because the area was Maoist affected.

5. The Petitioner states that he took the permission from Inspector (Tech) Mr S.K. Nair for the above purpose. According to the Petitioner, some of the other officers, including Sub-Inspector ('SI') Inderjeet, who was from another Company of 68th Bn Shillong-IV, to which the Petitioner also belonged, showed interest to go to the local market across the border in Nepal. According to the Petitioner, the course of searching for their men across the border, to reach the market, they encountered a block on the road set up by the Maoists. The Petitioner asked the vehicle to take a u-turn and then they de-boarded to answer nature's call. While returning from a small bush area at a distance of 50 yards, the IED planted by the Maoists exploded. The Petitioner suffered grievous injuries on his whole body, particularly on his face. There were severe injuries to both eyes. The Petitioner was

evacuated to Patna for treatment on 26th February, 2005. Later he was brought to New Delhi for treatment at AIIMS.

6. To ascertain the attributability of the injuries suffered by the Petitioner, a Staff Court of Inquiry ('SCOI') was ordered. The report of the SCOI was submitted on 4th June 2005, after recording statements of several witnesses. The findings that were recorded, *inter alia*, were as under:

- (i) On 25th February, 2005 at around 1330 hours, three officers, i.e. Inspector S.K. Nair, SI Amardeep and the Petitioner, left for the local Sonbarsha market in a civil jeep for purchasing some essential items and to bring back the personnel who had been sent there on an out-pass.
- (ii) The Petitioner asked the driver of the jeep to take them to the Malangawa Market in Nepal after crossing the border from the SSB Check Post at Hanuman Mandir. They were in civil dress.
- (iii) The three officers, i.e. Inspector S.K. Nair, SI Amardeep and the Petitioner, crossed the border, without seeking permission from the seniors. They had been permitted only to go to the Sonbarsha local market in India
- (iv) After reaching the Malangawa Market in Nepal, which is 2 kms from the Sonbarsha local market and after completing their purchases, the three officers, decided to have a cup of tea nearby. The Petitioner suggested that they should go further in Nepal for that purpose.
- (v) After reaching 5 km away from the Malangawa Market, further into Nepal, they came across a tea stall. While two of the officers, i.e. SI Amardeep and the Petitioner, got down from the jeep, the other

officer Inspector S.K. Nair remained in the jeep along with the driver. It was around 1500 hours at this time.

- (vi) After taking tea, the officers proceeded further towards the open field side for nature's call and there were few sand bags filled with sand and red clothes. It is at that time that a low intensity blast occurred at the site during which SI Amardeep and the Petitioner were both injured. The Petitioner fell down on the road itself, after his eyes were badly injured. SI Amardeep received minor facial injuries and his eyes were also injured.
- (vii) On hearing the sound of blast, Inspector S.K. Nair brought both injured officers in the jeep, the CMO, BSF attended to both of them, gave them first aid and referred them at Sitamarhi District Hospital, which they reached at around 1800 hours.

7. The SCOI noted that there had been an order from the Commandant, Shillong-IV that nobody would visit Nepal without prior permission. This was also announced in the roll call. The officers, including the Petitioner, had been permitted only to visit the local market, but all of them went to Nepal by crossing the border. The SCOI recommended that a Medical Board be set up at a later stage to ascertain the disability of the Petitioner.

8. It must be noticed here that as many as 12 witnesses were examined in the SCOI. The complete proceedings of SCOI are available. Witness No.8 had categorically stated that the three officers, including the Petitioner, were granted verbal permission to visit Sonbarsha local market and told to come back as early as possible. The stand of the Respondents is that the disability

of the Petitioner has no causal connection to his government service which had been suffered during his visit to Nepal without permission. Consequently, the injuries suffered by him on account of the IED blast in Nepal was not attributable to government service. He was accordingly not entitled to extra-ordinary pension (EOP).

9. Reference is made by the Respondents to Rule 3-A (1) (a) of the CCS (Extraordinary Pension) Rules, 1939, which reads as under:

“3-A

(1) (a): Disablement shall be accepted as due to Government service provided that it is due to wound, injury or disease which—

(i) is attributable to Government Service, or

(ii) existed before or arose during Government service and has been and remains aggravated thereby.

(b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by—

(i) a wound, injury which was attributable to Government service, or

(ii) the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.

(2) There shall be a causal connection between-

(a) disablement and Government service; and

(b) death and Government service.

for attributability or aggravation to be conceded.”

10. Learned counsel for the Petitioner repeatedly urged that since the injuries suffered by the Petitioner were severe and he otherwise had an unblemished service, a more lenient view ought to be taken and the benefit of EOP should not be denied to him. He submitted that there was a valid explanation for the Petitioner's visit to Nepal along with his two colleagues. The border between India and Nepal was such that no visa was required and, in any event, they were going to locate the troops who had not yet returned, after having been granted permission to visit the Sonbarsha market. There was also no restriction on the force personnel going in a civil dress and this had routinely happened. It was accordingly submitted that it was unjust and unfair to deny EOP to the Petitioner since there was indeed a causal connection between the injuries suffered by the Petitioner and his active government service.

11. This Court is unable to accept the plea of the Petitioner that he was on active government service when he suffered the injuries as a result of the IED blast. The Petitioner has not been able to dispute that:

- (i) The blast occurred beyond the Indian border and in the territory of Nepal;
- (ii) When the Petitioner suffered injuries, he was in Nepal;
- (iii) He had no permission to travel to Nepal; and
- (iv) Permission had been granted to them only to visit the Sonbarsha local market, which was 3 kms away from the Indo-Nepal border in India.

12. The Petitioner's case that they crossed the border to locate the troops, who had been granted permission to visit only the Sonbarsha market, has not been believed by the SCOI. The report of the SCOI clearly states that the

three officers crossed the border of their own and travelled well into Nepal and even beyond the local market there i.e. Malangawa Market for having tea.

13. The SCOI has returned a factual finding about the Petitioner having suffered the bomb blast injuries inside Nepal, which he had no permission to visit. Treating the injuries therefore having been suffered while he was on active government service is therefore, difficult.

14. Consequently, the Court is not persuaded to interfere with the impugned decision of the Respondents, declining to accept the plea of the Petitioner that the injuries suffered by him was while on active government service and to grant him EOP and the disability benefits on that basis.

15. The petition is accordingly dismissed. No costs.

S.MURALIDHAR, J.

I.S.MEHTA, J.

APRIL 26, 2019

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