

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2202 of 2020

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Prahlad Kumar, Son of Late Ramashish Prasad, Resident of Mirjaganj
Indupur, Cinema Hall, Ward No. 19, P.O. and P.S.-Barahiya, Distt.-Lakhisarai.
... .. Petitioner

Versus

1. The Union of India through the Ministry of Home Affairs, New Delhi.
2. The Director General, Border Security Force, CGO Complex, Lodhi Road,
New Delhi, Pin-110003.
3. The Inspector General, Border Security Force, HQ, Tripura Frontier BSF,
Salbagan.
4. The Deputy Inspector General, Border Security Force, HQ, Tripura Frontier
BSF, Salbagan.
5. The Commandant, 66 BN BSF, Kadamtala, Siliguri, Distt-Darjeeling (WB).
... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Mukesh Kumar
For the Respondent/s : Mr.S. D. Sanjay (Adsg)
Mr. Ravindra Kumar Sharma, CGC

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 31-01-2020 Heard learned Counsel for the petitioner and the learned
Counsel for the respondent Union of India.

On 13.11.2015 the petitioner joined as Constable (GD)
under the respondent organisation (Border Security Force). The
petitioner, as per averments made in the writ petition, without giving
any information abandoned his post on 23.6.2016 never to return.
The facts starring in the petitioner's face is that thrice notices were
issued to him seeking his response in respect of his absence from
duty. The three notices issued from the office of the Commandant
were dated 25.6.2016, 5.7.2016 and 18.7.2016. Admittedly the same
have not been responded to by the petitioner, but for the fact of his
mother's continued illness. The order of dismissal in the said
circumstances came to be passed by the Commandant on 6.3.2017.
The same was on account of his unauthorised absence from
23.6.2016 to 6.3.2017, a total of 257 days. Absence was treated as
"DIES NON" for all purposes.



The said order as per extant provisions was appealable within three months. The petitioner, however, has approached the Deputy Inspector General of the Force much later i.e. in the month of August 2018.

The conduct of the petitioner leaves a lot to be desired from a member of the armed para military force wherein a high degree of devotion to duty and discipline is paramount. Apart from that the petitioner admittedly has failed to avail of the opportunity granted to him at least thrice before he was removed from the force.

The law in this regard is settled by now. A person who chooses not to avail opportunity of natural justice granted in a proceeding as in the instant case, cannot be heard to say that the action pursuant to the proceeding is in any way bad. There is an admitted waiver of the opportunity of natural justice as per decision of the Apex Court in the case of ***Board of Directors, Himachal Pradesh Transport Corporation vs. K.C.Rahi*** reported in ***(2008) 11 SCC 502***.

Relevant extract from para 7 and 8 of judgment in the case of ***K.C.Rahi (supra)*** is applicable to the facts of this case. This Court would consider it useful to reproduce the same.

“7. The principle of natural justice cannot be put in a straitjacket formula. It’s application depends upon the facts and circumstances of each case. To sustain a complaint of non-compliance with the principle of natural justice, one must establish that he has been prejudiced thereby for non-compliance with principle of natural justice.

8. In the instant case we have been taken through various documents and also from the representation dated 19.10.1993 filed by the respondent himself it would clearly show that he knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such event plea of principle of natural justice is deemed to have been waived and he is estopped



from raising the question of non-compliance with principles of natural justice.”

Apart from waiver of the principle of natural justice occasioned on account of petitioner’s conduct, taken note of hereinabove, this Court would also notice that the petitioner has approached the Appellate Authority after much delay. The petitioner was required to file his petition under Rule 28A of the Border Security Force Rules, 1969 hereinafter referred to as BSF Rules, against the order of punishment to the appropriate authority within three months from the date of the order or from the date of its receipt whichever came later. The petition under Rule 28A of the BSF Rules in the instant case was filed in August 2019 (one year five months after the date of his dismissal from service). The same is apparent from the order of the DIG BSF dated 28.12.2018 disposing of the petitioner’s petition under Rule 28A.

In the writ petition there is no pleading to the effect as to the date on which the order of dismissal was served on the petitioner. The petitioner has also not disputed the fact that the appeal was filed one year five months after the date of order of dismissal. There is no whisper in the writ petition regarding any reason whatsoever for approaching the Appellate Authority after such a delay.

Considering the aforesaid facts based on averments made in the writ petition itself as well as submission of the Counsels representing the parties this Court would observe that no enforceable claim has been made out for exercise of jurisdiction under Article 226 of the Constitution of India in favour of the petitioner.

The writ petition is dismissed.

(Madhuresh Prasad, J)

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