



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2020

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD).No.21772 of 2015

B.Saravanan

... Petitioner

-Vs-

1.The Union of India,
Rep. by its Secretary to Ministry of
Home Affairs,
New Delhi.

2.The Inspector General, BSG,
FTR HQ, Border Security Force,
Bangalore-63.

3.The Commandant
Office of the Commandant,
THQ 120 BN BSF,
Laxmipur, Koraput,
Odisha.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent dated 19.10.2015 in N.Rectt/RE-INST/FTR BGLR/BSF/2015/3151-54 confirming the order passed by the third respondent in No.128/Estt/120 Bn/15/2367-86, dated 17.04.2015 quash the same as illegal and to direct the respondents to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.D.Malaichamy

For Respondents : Mr.D.Saravanan

ORDER

The order of dismissal as well as the appellate order confirming the order of dismissal, are under challenge in the present writ petition.

2.The petitioner joined the Border Security Force as Constable on 14.04.2011. After completion of the training at Bangalore, he was working at the office of the Commandant:120 BN BSF, Govindpur, Raiganj, West Bengal. The petitioner availed leave for solemnisation of his marriage from 23.08.2014 to 23.09.2014.



After his marriage, the petitioner states that he met with an accident, when he was travelling in a Motorcycle and suffered multiple grievous injuries on his left leg. The petitioner states that he had undergone treatment at Theni Hospital. The petitioner states that he sent a fax message to the third respondent seeking extension of leave period. Subsequently, there was no improvement in his health condition as the petitioner states that he had taken nativity medicine as well as allopathy medicine. The petitioner states the he was served with a Xerox copy of the dismissal order from service with effect from 17.04.2015 A.N., on the ground of illegal absence for 206 days from 24.09.2014 to 17.04.2015.

3.The contention of the petitioner is that he was not served with the communications and received the dismissal order. He has submitted an appeal to the second respondent to set aside the order of dismissal. However, the second respondent/appellate authority rejected the appeal on the ground that the grounds raised are devoid of merits. Thus, the petitioner is constrained to move the present writ petition.

4.The learned counsel for the petitioner reiterated that the petitioner met with an accident and had taken treatment through local physicians. He was taking some traditional treatment in his native place and therefore, he could not able to join duty immediately. His application to extend the leave was not responded and further communications were also not received by the petitioner. Thus, the petitioner is entitled for the relief as prayed for in the writ petition.

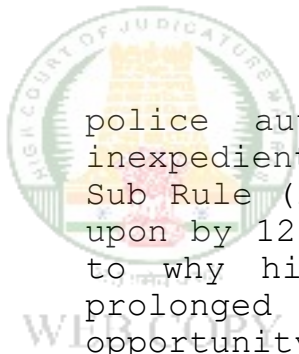
5.The learned counsel for the respondents objected to the allegations in entirety. The learned counsel for the respondents states that the procedures were followed scrupulously by the authorities competent. All the communications were sent to the address given by the petitioner. Finally a communication was sent through the Superintendent of Police, Theni District in order to apprehend the petitioner. Thus, the efforts taken by the respondents to provide an opportunity to rejoin duty went in vain. Therefore, the writ petition is devoid of merits.

6.Discipline in Uniformed Services is of paramount importance. Compromise in discipline is impermissible in public services in general and specifically, in Uniformed Services. In the event of any indiscipline, the morale of the forces would be disrupted and the Courts cannot take any lenient view or show misplaced sympathy in the matter of disciplinary aspects. In the event of showing any misplaced sympathy, it would result in disastrous consequences of demoralising the discipline amongst forces. Thus, the Courts are also expected to be cautious while dealing with the matter of discipline, more specifically, amongst the Uniformed Services. The Border Security Force is one of the



Security Force are striving hard to protect the long borders of our great Nation. Much importance in disciplinary aspects are to be provided in the matter of guarding the Nation. This being practical approach, this Court is of the considered opinion that the Constable, who remained unauthorisedly absent without any prior permission from the competent authorities, is not entitled to claim any leniency or misplaced sympathy for the purpose of reinstatement. It is not the question of providing opportunity, but it is the question of upholding the disciplinary rules.

7.As far as the respondents are concerned, they have filed a detailed counter affidavit establishing that the steps taken by the respondents administration went in vain in order to secure the presence of the petitioner. They have narrated the facts and circumstances as well as the communications sent to the writ petitioner through various notes. In spite of all those communications, the petitioner had not responded to the authorities competent. Regarding the accident, it is stated that the petitioner submitted an application seeking extension of leave for 20 days due to bike accident. However, the petitioner had not mentioned the date of accident in his application nor enclosed any medical documents to establish the accident or the treatment taken by him. In the absence of any medical records to establish the accident, the mere statement made by the petitioner cannot be trusted upon. Thus, the respondents had not considered the request of the petitioner. As rightly contended, in the absence of any medical documents, the request of the writ petitioner for extension of leave cannot be considered by the competent authorities. Accordingly, the authorities competent directed the petitioner to come to the office along with all relevant medical documents. The said communication, dated 23.09.2014 was sent to his permanent address through registered post with acknowledgment. But, there was no response from the writ petitioner. It is stated that it only takes a minimum of six hours to reach Bn HQ 120 Bn BSF from the home town of the petitioner i.e., District-Theni, Coimbatore. But, the petitioner neither reported 120 Bn BSF nor made any correspondence/communication with 120 Bn BSF at Coimabotore. At the outset, he has not contacted the officers concerned at Coimbatore or the place in which, he was working. As mandated under Section 62 of the BSF Act, 1968, the Court of inquiry ordered to find out the circumstances under which, the petitioner was over staying from granted leave since 23.09.2014. During Court of inquiry, the petitioner was found blameworthy for overstaying from granted leave without any valid/sufficient reasons. As per the remarks of the competent authority on the Court of inquiry proceedings, an apprehension roll was issued in the name of the Superintendent of Police, District-Theni (Tamil Nadu) through registered post with acknowledgement along with a copy to the Station House Officer Police Station, Allinagaram, with a request to make arrangement for apprehension of the petitioner, vide letter dated 09.01.2015. However, no reply/positive response was received from the concerned



police authorities. As trial of the petitioner had become inexpedient and impracticable due to his absence, in conformity with Sub Rule (2) of Rule 22 of the BSF Rules, the petitioner was called upon by 120 Bn BSF, vide letter, dated 02.03.2015, to show cause as to why his service should not be terminated on the ground of prolonged unauthorised absence with effect from 23.09.2014. An opportunity was provided to the petitioner to response. However, the petitioner had not responded. It was also intimated in the event of failure to reply, it would be construed as if the petitioner had no explanation and an ex-parte action would be taken. In spite of the said opportunity provided to the petitioner, he had not responded to the show cause notice and further, the copy of the show cause notice was also communicated to the Superintendent of Police, Theni District, vide proceedings, dated 02.03.2015. Accordingly, the petitioner was dismissed from service in proceedings, dated 17.04.2015 and it was served at his home address with registered post through acknowledgement due.

8.Though the petitioner states that he was not served with the copies of the communications including the show cause notice, the respondents stated that the registered post with acknowledgement due sent to the writ petitioner was not returned back by 120 Bn BSF un-delivered with the remarks of the concerned postal authorities. Therefore, the legal presumption would be that the show cause notice was served upon the petitioner. The respondents filed a typed set of papers, wherein, they have enclosed the leave application of the petitioner, cancellation of extension of leave order, communication of the respondents and show cause notice and in all the communications, the address is correctly stated. This apart, the petitioner being a Constable in Border Security Force is expected to be responsible in the matter of joining duty. Admittedly, he was sanctioned leave for solemnisation of his marriage. Thus, he would have joined duty after completion of the leave period. Contrarily, he was not only over stayed, but also he remained unauthorisedly absent for about 206 days. The unauthorised absence is not disputed by the petitioner. Contrarily, he says that he met with an accident and was taking local treatment. Even for such permission, no proof has been produced. It is pertinent to note that even before this Court in the present writ petition, the petitioner has not produced any document to show that he met with an accident and had taken treatment. If an accident occurred, a case would have been registered, because, the petitioner claims that he sustained grievous injuries and had taken treatment for several months. No such First Information Report has been filed before this Court. Even, the medical discharge summary and the nature of treatment taken by the petitioner are also not produced before this Court. Contrarily, a blanket statement has been given in the affidavit by stating that the petitioner had taken some traditional treatment in his native place. Such statements made for the purpose of defending the case can never be trusted upon. The petitioner was working in ~~Border Security Force~~. Discipline being the prime factor, he is expected



to submit proof or such circumstances or the medical treatment undergone by him. In the absence of these documents, the statement of the petitioner cannot be taken for the purpose of sanctioning leave by the authorities or to grant relief of reinstatement by this Court. This apart, the respondents have stated that the petitioner had a short span of service of four years. Even during the four years of service, he had over stayed for about five times and the details of the over stayed, are as under:-

"1. Based on the reports available, it is noted that you have been overstaying yourself from granted leave without sufficient cause from 23.09.2014 (AN). The proceedings of the Court of inquiry held in accordance with Section 62 of the BSF Act to investigate the said illegal absence had also found and declared that you have been illegally absenting yourself without leave from 23.09.2014 (AN) to till date.

2. Having considered the matter of your said continued illegal absence from duty, I am satisfied that your trial by a Security Force Court is not only inexpedient but also impracticable and that your further retention in the service is undesirable. Accordingly, in exercise of the powers vested to me under Sub Section (2) of Section 11 of the BSF Act read with Rule 177 of the BSF Rules and in conformity with Sub Rule (2) of Rule 22 of the 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 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 the proposed action and further decision in the matter will be taken.

4. A copy of the Court of inquiry referred to in Para 1 are enclosed for your reference.

5. Please acknowledgement receipt of this show cause notice."

9. In view of the fact that the petitioner remained unauthorisedly absent and the enquiry was conducted in accordance with procedures contemplated and even before this Court, the petitioner has not produced any record to establish the accident or the treatment taken by him, there is no reason to interfere with the order of dismissal as well as the appellate order, confirming the order of dismissal. Thus, the petitioner has failed to point out any acceptable ground for the purpose of granting the relief as sought for in the writ petition.



10. Accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(P & A)

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// True Copy //

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Sub Assistant Registrar(CS)

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+1 CC to Mr.D.MALAICHAMY, Advocate SR.No.25511

+1 CC to Mr.D.SARAVANAN, Advocate SR.No. 25500

W.P. (MD) .No.21772 of 2015
14.12.2020

SGS (CO)

TR(07.01.2021) 6P 3C