

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

% **Date of decision: 7th December, 2020.**

+ **W.P.(C) 9100/2020**

SASANKA SAHOO

..... Petitioner

Through: Mr. Abhav Kumar Bhargava, Adv.

Versus

**DIRECTOR GENERAL, BORDER SECURITY
FORCE & ORS.**

..... Respondents

Through: Mr. Rishabh Sahu, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No.29399/2020 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) No.9100/2020

3. The petitioner, a Constable in the respondents Border Security Force (BSF), has filed this petition (i) impugning the orders dated 23rd June, 2014 and 8th December, 2016 of his dismissal from the respondents BSF; (ii) seeking mandamus, directing the respondents BSF to recall the petitioner in service; and, (iii) to regularise the period of absence of the petitioner, with full pay and allowances.
4. The petition, as filed by Mr. Abhay Kumar Bhargava, Advocate for

the petitioner, is highly disjointed, incomprehensible and full of grammatical mistakes. However, what we have been able to understand from the annexures thereto is, (a) that the petitioner, illegally absented, without leave, with effect from 29th May, 2013; (b) that the proceedings of the Court of Inquiry held in accordance with Section 62 of the Border Security Force Act, 1968 to investigate into the said illegal absence, also found and declared that the petitioner had illegally absented, without leave, with effect from 29th May, 2013; (c) that considering the continued illegal absence from duty, the Commandant concerned of the respondents BSF was satisfied that the trial of the petitioner by a Security Force Court was not only inexpedient but also impracticable and that the petitioner's further retention in service was undesirable; (d) that accordingly, in accordance with the powers under Section 11(2) of the Border Security Force Act read with Rule 177 of the Border Security Force Rules, 1969 and in conformity with Rule 22(2) of the BSF Rules, the petitioner was called upon to show cause vide notice dated 17th December, 2013, why he should not be dismissed from service; (e) that a copy of the Court of Inquiry proceedings was enclosed to the said show cause notice; (f) that the said show cause notice was duly served on the petitioner, inasmuch as the petitioner has filed a copy thereof along with the petition and there is no explanation how else the petitioner got to lay hands on the copy thereof; (g) that the petitioner did not submit any reply to the same and a second show cause notice dated 23rd April, 2014 was issued to the petitioner and copy whereof has again been annexed to the petition, indicating that the same was also duly served on the petitioner; (h) that the petitioner did not reply to the second show cause notice either and was dismissed from service vide order

dated 23rd June, 2014, on the ground of prolonged absence from duty; (i) that the petitioner made an application dated 5th October, 2016 for reinstatement in service; (j) that vide order dated 8th December, 2016, after careful scrutiny of the facts and circumstances of the case, the said application for reinstatement in service was also rejected; (k) that the petitioner, after waiting for nearly one and a half years, in or about January, 2018, submitted his medical documents to the respondents BSF, to contend that he, from 25th August, 2013 to 4th September, 2017 underwent a prolonged treatment under Dr. Udit Roy, Medical Officer, Sub-Divisional Hospital and though was earlier not fit to join duty but had then been pronounced fit to join duty; (l) that however when verification was conducted with respect to genuineness of the said medical documents, Dr. Udit Roy, who the petitioner claimed had treated him, vide his communication dated 3rd February, 2018 denied that the petitioner was under his treatment or that the medical documents filed by the petitioner purporting to be issued by him, had been issued by him; (m) that accordingly, vide communication dated 6th March, 2018, the third representation dated 1st November, 2017 of the petitioner for reinstatement was also dismissed; and, (n) that the petitioner, in yet another attempt, filed yet another application in or about October, 2018 for reinstatement, along with a letter from Dr. Udit Roy *inter alia* to the effect that the medical documents earlier presented by the petitioner were indeed issued by him and he had mistakenly denied the same.

5. Along with the aforesaid document of Dr. Udit Roy, this petition has been filed.

6. The counsel for the petitioner in his arguments was reiterating the

facts as contained in annexures and reproduced above. On being told to argue on, what was the right of the petitioner to reinstatement, the counsel for the petitioner has contended that the dismissal of the petitioner could have been only for misconduct, by framing a charge and by constituting a Security Force Court, and no person was sent to the village of the petitioner to verify the facts, as was required to be done.

7. We are unable to agree. The petitioner, in the petition has himself pleaded that his relatives, during his illness, had sent a letter of resignation to the respondents BSF, which though was not accepted. On enquiry, why the letter of resignation was sent, it is argued that the relatives of the petitioner were informed that the Civil Police will apprehend the petitioner and send him to the respondents BSF and that is why the letter was sent. The same belies the plea of, no enquiry having been made and no person having been sent to check up on the petitioner. Moreover the petitioner was receiving the show cause notices aforesaid and there is no explanation why, even if the petitioner owing to his illness was unable to send any response, the relatives who had sent the letter of resignation on behalf of the petitioner, did not communicate with the respondents BSF about the illness, if any of the petitioner or apply for leave or extension of leave and in which case the petitioner would have been examined by the medical personnel of the respondents BSF to verify, whether he qualified to be on medical leave or not.

8. The petitioner not only has not served as a disciplined personnel of the Force but even otherwise has been sleeping over his rights and after a categorical denial of Dr. Udit Roy of having issued the medical documents on the basis whereof the petitioner was justifying his illness, the document

relied upon by the petitioner now purporting to be of Dr. Udit Roy cannot be trusted.

9. The counsel for the respondents BSF appearing on advance notice states that he has instructions to the effect that a team was sent to the address of the parents of the petitioner furnished by the petitioner as his home address, on 5th November, 2013 and met with the parents of the petitioner who stated that the petitioner was at his in-laws house but refused to give the address of the in-laws of the petitioner.

10. There is no merit in the petition.

11. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

DECEMBER 7, 2020

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