

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

%

Date of decision: 8th September, 2020

+

W.P.(C) 6094/2020

NIKAM VIKRAM ANANDRAO

.... Petitioner

Through: Mr. A.K. Singh, Adv.

Versus

UNION OF INDIA & ORS.

...Respondents

Through: Mr. Naginder Benipal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, a Constable General Duty (GD) in the respondents Sashastra Seema Bal (SSB), has filed this petition impugning the order dated 11th September, 2019 of termination of his services as well as the order dated 21st February, 2020 of dismissal of his departmental appeal against the order of termination; axiomatically mandamus for reinstatement of the petitioner to the post of Constable Cook in respondents SSB, since 11th September, 2019, with all consequential and monetary benefits, is also claimed.

2. It is the case of the petitioner, that (i) he joined the respondents SSB as a Constable GD, on 4th May, 2012; (ii) the wife of the petitioner is also a woman constable in the respondents SSB; (iii) both, the petitioner and his wife, since the year 2017 are posted at Delhi, at Ghitorni; (iv) the petitioner, without sanctioned leave, on 10th May, 2019 went to Satara, Maharashtra, for

the wedding of his sister scheduled on 19th May, 2019; (v) though the petitioner had applied for leave from 6th May, 2019 to 5th June, 2019 but was advised to take leave with effect from 13th May, 2019; (vi) on 18th June, 2019, a Court of Inquiry was ordered against the petitioner and on 8th August, 2019, a show cause notice issued to the petitioner; (vii) on 23rd August, 2019, a second show cause notice was issued to the petitioner; (viii) the show cause notice was published in the newspapers of 25th and 26th August, 2019; and, (ix) on 11th September, 2019, the petitioner was dismissed from service and on 21st February, 2020, the departmental appeal preferred by him was dismissed.

3. The petition is sketchy and disjointed and lacks in continuity and clarity. A reading of the first show cause notice dated 8th August, 2019 issued to the petitioner and copy whereof has been filed by the petitioner shows that (a) the petitioner, posted in the Company at R.K. Puram, New Delhi, was directed to report at Battalion Headquarters, Ghitorni, on 4th May, 2019 at 1415 hours; (b) the petitioner absconded enroute, at his own will and did not assume his duty despite repeated reminders; (c) communications directing the petitioner to assume duties were issued at the home address, on 13th May, 2019, 21st May, 2019 and 1st June, 2019 but the petitioner failed to assume duties; (d) a Court of Inquiry was ordered on 18th June, 2019, after expiry of 30 days of absence without sanctioned leave; (d) on receipt of report of the Court of Inquiry, the Disciplinary Authority was satisfied that there was no justification for absence of the petitioner without leave and without inventory of government property in his possession; (e) apprehension roll was issued to the police authority on 26th July, 2019 to

apprehend the petitioner; (f) the petitioner had neither surrendered before police authority nor had been apprehended and was on 5th August, 2019 declared a 'deserter'; and, (g) the petitioner, by the said notice was being called upon to assume duties within a period of 15 days after receipt of notice failing which he shall be dismissed from service.

4. The order dated 11th September, 2019 of termination of services of the petitioner, in addition states (i) that a second show cause notice was issued to the petitioner on 23rd August, 2019 and also published in the newspapers on 25th and 26th August, 2019, with direction to the petitioner to resume his duties within 15 days but the petitioner had failed to assume duties; and, (ii) accordingly, the petitioner was being dismissed from service with immediate effect and struck off from the strength of Unit with effect from 11th September, 2019 though would have liberty to prefer an appeal within 90 days.

5. A perusal of the departmental appeal preferred by the petitioner shows the petitioner to have therein admitted (a) service on him of the movement order dated 4th May, 2019 asking him to report to the Battalion Headquarter and to have pleaded that the marriage of his sister was fixed and he needed to leave from 6th May, 2019 but was told by the Sub-Inspector that there was shortage of staff in the Mess where the petitioner was posted and that the petitioner should apply for leave from 13th May, 2019; (b) the petitioner was forcibly removed from the mess duty and was being sent to the residence of an officer; (c) the petitioner requested for work in mess only, so that he and his wife could also take care of their child; (d) the petitioner was being harassed mentally because he had refused to work at the residence of

anybody and was told that his service will be terminated; (e) the petitioner was not a absconder; his wife was working in the same office and during departmental communications, he was staying with his wife at Mohammadpur, New Delhi and which address was known to the department as well as the local police; however the local police or the other personnel from the department never tried to find the petitioner at the address and all communications was made at the permanent residential address of the petitioner; (f) the petitioner was afraid to meet the senior officers; and, (g) the disciplinary action against him was for the reason of his refusal to work at the residence of officers.

6. A perusal of the order dated 21st February, 2020 of dismissal of the departmental appeal, in addition to the above records, that (i) the petitioner neither surrendered himself before the police authorities or the Unit nor was apprehended by the police; therefore he was declared as ‘deserter’ and show cause notice issued to him to assume his duties within 15 days; (ii) a second show cause notice was also issued to him and also published in the newspapers; (iii) ample opportunity had been given to the petitioner to join duties but the petitioner had failed to; (iv) the appellant as well as his wife had appeared in response to the opportunity of hearing given pursuant to the filing of the appeal; (v) the wife of the petitioner during the hearing confirmed that rejoining notices addressed to the petitioner were received by her and the petitioner was aware of the same; (vi) rejoining notices were sent to the petitioner at his permanent residential address as declared by him in his service record as well as local address at Delhi and were also handed over to his wife; (vii) notices were also delivered personally to the petitioner

but he did not bother to report for duty; (viii) the petitioner had applied for earned leave from 13th May, 2019 but which, till he absconded, had not been sanctioned; (ix) there was no record of the petitioner applying for leave from 6th May, 2019; (x) the movement order issued on 4th May, 2019 was for purposes of official duties but the petitioner did not comply with the same; (xi) a perusal of the service record of the petitioner showed that the petitioner, in seven years of his service, had absented / overstayed from leave on as many as five occasions and had been issued warning, awarded punishment of imprisonment for seven days and on another occasion punishment of fine upto 14 days pay in a month; (xii) if the petitioner had any grievance of being told to report at the residence of any officer, he should have projected them to the Commandant who is competent to take action; but the petitioner never did so and did not even report for duty inspite of several notices / opportunities aforesaid; (xiii) there is a proper grievance redressal mechanism in the force which could have been exhausted by the petitioner had he some grievance which needed to be redressed; (xiv) the petitioner had disobeyed the lawful command of his superior officer by not reporting to the Commandant on 4th May, 2019 as directed and not assuming his duties despite several notices; and, (xv) the petitioner is a habitual absentee and has a history of overstaying from leave.

7. What is significant is that the petitioner has neither controverted any of the aforesaid facts forming part of the termination order and the order of dismissal of his appeal nor anywhere pleaded that he, at any time in pursuance to the notices issued to him, reported for duty. It is thus not in dispute that the petitioner remained missing from 4th May, 2019 till his

termination on 11th September, 2019 i.e. for more than three months. It is also not controverted that the petitioner, in the past also has overstayed his leave and unauthorizedly absented on several occasions and for which he was warned and awarded punishment. The petitioner inspite thereof failed to correct himself and this time also absented for three months and which has resulted in termination of his service. No error requiring interference in exercise of jurisdiction under Article 226 is found in the order of termination of the petitioner or of dismissal of appeal thereagainst.

8. The counsel for the petitioner has laid emphasis only on the notices being sent at his permanent address and not at his local address. It is argued that there is contradiction in this respect in the cross-examination.

9. We have however enquired from the counsel for the petitioner that even if the notices were not served locally, once the case of the petitioner is that the petitioner, save for the time when he went for marriage of his sister, was at his local address, why did the petitioner not report for duty. It is not as if the petitioner required service of the show cause notice to report for duty or otherwise needed an invitation to perform the services for performance of which he had been engaged. No answer is forthcoming. All that is said that even the police could have apprehended the petitioner from his residence at Mohammadpur, New Delhi, where he was residing with his wife.

10. We may notice that it is not even the case of the petitioner that he was not aware through his wife of the notices / memorandums being issued to him. The petitioner himself, along with this petition has filed copies of all

the notices and there is no explanation that the said copies were obtained otherwise than in due course of service thereof on the petitioner. The petitioner has not said that the notices were not served on the petitioner. It is also not the case of the petitioner that intimation of the notices sent at the permanent address of the petitioner was not received by the petitioner. There is no explanation why the petitioner still chose not to report for work. Such conduct of the petitioner is indicative of nothing short of disobedience and scant regard for work for which he had been employed and being habituated to act as per his whims and fancies, at least in the matter of reporting for work and which cannot be tolerated, especially in a force like SSB.

11. Merit is found in the reasoning given by the Appellate Court that if the petitioner had any grievance of being asked to work at the residence of any officer and which the petitioner as per his service conditions was not required to do, the remedy of the petitioner was to invoke the redressal mechanism therefor and not to abscond.

12. The counsel for the petitioner inspite of asking has been unable to point out any complaint made by the petitioner in this regard or for that matter even any application submitted for leave from 6th May, 2019 to 5th June, 2019 or the order of refusal thereof.

13. The exercise of jurisdiction under Article 226 of the Constitution of India does not permit interference in disciplinary actions inspite of being in accordance with Rules, procedure and principles of natural justice and inspite of the punishment impugned being found in the facts, to be justified

and also does not permit showing undue sympathy and indulgence which will lead to elimination of fear of disciplinary action and indiscipline and inculcate in employees, assured of tenure of employment, a sense of laxity and lethargy, all at the cost of public works.

14. There is no merit in the petition.

15. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

SEPTEMBER 08, 2020

‘gsr’..

न्यायमेव जयते