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

+ W.P.(C) 14312/2021 & CM APPL. 45139/2021

RAJESH KUMAR KUSHRAM

..... Petitioner

Through: Mr.George Thomas, Advocate.

versus

**UNION OF INDIA THROUGH SECRETARY
& ORS.**

..... Respondents

Through: Mr.Anshuman, Advocate with
Mr.N.K.Srivastava, Advocate.

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Date of Decision: 15th December, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. Present writ petition has been filed by the petitioner seeking to quash the order dated 4th March, 2021 passed by Deputy Inspector General, whereby the representation of the petitioner seeking to reinstate him in service was rejected. The petitioner also seeks a direction to the respondents to reinstate the petitioner in 26th Battalion as a Constable).
2. Learned counsel for the Petitioner states that the Petitioner sought casual leaves on account of illness of his ailing mother from 5th February, 2018 to 25th February, 2018 and his leaves were sanctioned with a direction to resume duty from 25th February, 2018.
3. He points out that the mother of the petitioner was suffering from hypertension and hemiparesis and on 15th February, 2018, she fell seriously ill.

4. He admits that the Petitioner's unit sent multiple letters to the Petitioner dated 20th March 2018, 27th March 2018 and 05th April 2018, directing the Petitioner to report back and resume duty.
5. He states that on 25th April, 2018, a one-man Court of Inquiry was ordered wherein it was found that the Petitioner had overstayed his leave without sufficient cause and, therefore, the Respondent decided to take action against the Petitioner in accordance with BSF Act and Rules. He states that the Petitioner in response to the Show Cause Notice dated 16th July 2018, intimated that he could not resume his duties due to compelling domestic problems.
6. He points out that the Court of Inquiry, without considering the Petitioner's mother's medical situation, dismissed the Petitioner from service vide order dated 28th September, 2018.
7. He states that the Petitioner preferred a representation dated 10th December, 2020 seeking reinstatement which was rejected vide the impugned non-speaking order dated 4th March 2021 passed by the Deputy Inspector General for DG, BSF, North Bengal Frontier, which led to the filing of the present writ petition.
8. He contends that the Petitioner was hopeful that the condition of his mother would improve and he would be able to return to the battalion within time. However, since the condition of the Petitioner's mother became worse and she was advised complete bed rest by the doctors, the Petitioner could not return to his unit.
9. A perusal of the paper book shows that the impugned order is neither non-speaking nor unreasoned. In fact, the Deputy Inspector General in the impugned order has given cogent reasons for rejecting the representation of

the petitioner. The relevant portion of the impugned order is reproduced hereinbelow:

“3. Seeing the absence of the Applicant, as per Rules, vide Registered Letters No. Estt/676/26 Bn/2018/4906-08 dated 20.04.2018, Estt./676/26 Bn/2018/5277-79 dated 27.03.2018 and letter Number Estt./676/26 Bn/2018/5969 dated 05.04.2018 by the 26th Battalion B.S.F., by corresponding at the address given in his leave Application, he was directed that he should report for duty in the Battalion at the earliest, but neither any reply was received from the Applicant nor he reported at Battalion Headquarter. As per the provisions of Sections 62 of the Border Security Act, 1968, for examining the reasons regarding remaining absent continuously by the Applicant without any authority/leave, 26th Battalion constituted a one Member Couft of Inquiry. After completion of the proceedings of the Court of Enquiry, the Court of Enquiry found the aforesaid employee guilty of remaining absent without any authority. Leave, thereafter, under Section 61 of the Border Security Force Act, 1968, 26th Battalion Border Security Force's letter Number Estt./Disc/26 Bn/2018/8830 dated 18.06.2018. Apprehension Roll was issued for arrest of the aforesaid employee. Even after lapse of the specified period, neither the aforesaid employee joined his duties nor any reply was received from the concerned Police Authority. Keeping in view the continuous absence from duty by the aforesaid employee, the Commandant, 26th Battalion vide Registered letter Number Estt/Disc/26 Bn/18/10370-72 dated 16.07.2018 issued a Show Cause Notice regarding proposed dismissal from service, in which the Applicant was granted 30 days' time to submit the defence aspect from the proposed action. But neither any reply was received from the employee nor the Applicant came present in 26th Battalion, B.S.F. upto dated 28.09.2018. Hence, after completing all the legal formalities, after absence of 215 days' continuous leave, as per 26th Battalion B.S.F.'s Order Number Estt/Disc/26 Bn/2018/13189-98 dated 28.09.2018,

Number 153201541 Ex-Constable Rajesh Kumar Kushram was dismissed from service on dated 28th September 2018 (A.N.).

4. The Applicant Ex-Rajesh Kumar Kushram, in his Representation for reinstatement submitted to the Additional Director General, Eastern Command, Border Security Force, Kolkata, has mentioned that, "Due to the reason of worsening the health of my mother, I went on Casual Leave from 05.02.2018 to 25.02.2018. I was distressed/ perplexed due to the ill health of my mother and by not reaching in the Battalion in time, I became late. As I became late, the Battalion started issuing letters to me, but due to deterioration of the health of my mother, we went out from our home and later on some letters were received, but I was unable to submit reply to the same. In my house, except my mother and father, there is no other person. Due to ill health of my mother and due to weakness of my father, because of both these problems, I could not submit reply to the letters sent by the Battalion. Whereas the Applicant has mentioned in the Application for Casual Leave of 15 days from 01.02.2018 the purpose for going on leave was relating to resignation from service.

5. That the Application for reinstated in service has been submitted by the Applicant after a delay more than of 02 years 02 months. But the competent Officer has seriously and sympathetically considered the same and all the documents, facts and circumstances connected to the case of employee were deeply considered. On examining all the aspects of the case, it has been found that the Battalion has taken the entire action of his dismissal, after granting full opportunity to him and as per Rules. In the Application submitted by the Applicant for his reinstatement, no concrete reason/cause has been found, which can justify the continuous absence of the Applicant from duty without any authority/ leave. Hence, there being no merit in the Applicant for reinstatement in service submitted by the Applicant, the Director General, Border Security Force,

Uttar Bengal Frontier has rejected the same being devoid of merit.”

10. This Court also finds that the petitioner had taken casual leaves in February, 2018 for the purpose of resigning from service. Subsequently, the petitioner had remained absent without authorisation from 26th February, 2018 to 28th September, 2018 (215 days). He had not even sought extension of his leaves. Also the petitioner had failed to furnish replies to the Show Cause Notice dated 15th July, 2018 as well as multiple letters sent to the petitioner on 20th March, 2018, 27th March, 2018 and 5th April, 2018 by the respondents. Consequently, this Court is of the opinion that the present writ petition is bereft of merit.

11. Accordingly, present writ petition along with pending application stands dismissed.

MANMOHAN, J

NAVIN CHAWLA, J

DECEMBER 15, 2021
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