

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4478 of 2021

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Avinash Kumar Son of Late Arun Kumar Resident of Village- Kabeya, P.O.-
Bishanpur Dyodhi, P.S.- Dhamdaha, District- Purnea

... .. Petitioner/s

Versus

1. The Union of India Through the Principal Secretary, Ministry of Home Affairs, North Block Central Secretariat, New Delhi - 110001
2. The Directorate General, Border Security Force (BSF) Block No. 10, C.G.O Complex, Pragati Bihar Lodhi Road, New Delhi- 110003
3. The Inspector General (IG), BSF, Frontiers Headquarters (FtrHA), Punjab Frontier at Jalandhar Punjab Frontier at Jalandhar
4. The Deputy Inspector General (DIG), BSF, Ferozpur Sector Headquarters (SHQ), Punjab Punjab
5. The Commandant-116 Battalion, BSF, Moga Road, Ferozpur Cantt, Punjab Punjab.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sri Krishna Ranjan
For the Respondent/s : Dr.K.N.Singh (Asg)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 01-02-2022

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“A. For the issuance of an appropriate writ/writs in nature of certiorari for quashing /set aside the ex-parte order dated 28.02.2020 passed by Shri Om Praaksh, the Commandant-116 Battalion, BSF, Moga Road, Ferozpur Cantt, Punjab whereby and where-under the petitioner (No. 150802297 Const /GD ‘E’ Coy of 116 BN BSF), dismissed from the service of BSF, without giving any opportunity of hearing to petitioner against alleged charge of overstaying from sanction leave, which is contrary to the settled principle of



natural justice and rule and regulation prescribed under the Border Security Force Act, 1968.

B. For direction to reinstate the service of petitioner in BSF with all consequential benefit attached to said post, taking into consideration of fact that petitioner was appointed on compassionate appointment vide Order dated 07-10-2015 passed by the Commandant-03 Battalion BSF, Tagorevilla, Alam Bazar, Kol-35 (WB) and further respondent authority without considering the fact regarding the condition of health of petitioner due to infection of serious disease of Hepatitis at said relevant time period under which he was compelled to remain under treatment of Doctor from 20-10-2019 to 25-02-2020.

C. And for any other relief/reliefs for which the petitioner is found to be entitled under the provision of law involved in the present case.”

3. Petitioner without exhausting statutory remedy of appeal before the Appellate Authority has rushed to this Court. Thus, the present petition is premature in the light of Apex Court decision in the case of ***State of Jammu and Kashmir V/s. R.K.Zalpuri and others*** reported in **AIR 2016 SC 3006, Paragraph-20** which has held as under:

“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation V/s.Dosu Aardeshir Bhiwandiwalla and others {(2009) 1 SCC 168}, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) Adjudication of writ petition involves any complex and disputed question of facts and whether they can be satisfactorily resolved;

(b) The petition reveals all material facts;



(c) The petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) Person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) Ex facie barred by any laws of limitation;

(f) Grant of relief is against public policy or barred by any valid law; and host of other factors”

4. Accordingly, the present petition stands dismissed, reserving liberty to the petitioner to prefer an appeal before the Appellate Authority. If such appeal is filed, the Appellate Authority is hereby directed to decide the petitioner’s appeal within a period of three months.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

