

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 24135-2022

Date of Decision: 16.11.2022

Pawan Kumar

.....Petitioner

Vs.

Union of India and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Saurav Bhatia, Advocate,
for the petitioner.

Ms. Anita Balyan, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (ORAL)

The challenge in the present Civil Writ Petition is to the order dated 11.12.2018 (Annexure P-8) whereby the services of the petitioner are dismissed on account of the fact that he was absent from duty without any sufficient cause and OSL (overstaying leave) granted to the petitioner which is on the ground that he was absent to rejoin duty from 06.08.2013 and only voluntarily rejoined duty at the Battallion Headquarter, 21 Assam Rifles (Agartala) on 12.08.2018. Thus, the total period of absence was 05 years and 07 days (1853 days), as per the charge-sheet (Annexure P-3).

The challenge also have been raised to Rule 167 of the Assam Rifles Act and Rules, 2010, being ultra vires of Article 21 and 22 of the Constitution of India on account of the fact that the proviso stipulates that the friend of the accused shall not examine or cross-examine witnesses or address the Court.

Learned counsel for the petitioner has tried to convince us to go into the legality of the provision.

Apparently, we do not propose to do so as there are various legal hurdles before we reach the stage where the petitioner can be entitled as such for consideration.

Apparently, the order was passed on 11.12.2018 where the petitioner choose not to challenge the same and firstly, filed a writ petition after a period of 03 years being Civil Writ Petition No. 18039 of 2021 which was disposed of on 18.07.2022, with liberty to file a fresh petition to challenge the vires of the above said Rule, if considered appropriate, but in accordance with law.

It apparently escaped to the notice of learned Single Judge that the writ petition was belated at that stage also having been filed almost after a period of 03 years. Settled principles are that the termination of the order has to be challenged within a short period at the first instance itself and the extraordinary jurisdiction is not liable to be exercised where the litigant is indolent, which is a classic case herein. Even otherwise we are of the considered opinion that it is the case of the absence of the duty for 05 years and a perusal of the the writ petition would go on to show that it is the case of the petitioner himself that his absence was on account of the death of his brothers and he was under depressions and also in litigation with his wife. In such circumstances apparently the petitioner being a uniformed personnel remained away for 05 years from service after having completed only 13 years of service. A perusal of the impugned order would also go into show that it is not the first time it is happened and he

has also been awarded 14 days R.I. on 06.01.2009 under the Army Act on account of OSL (over staying leave). Similarly, he was awarded 28 days R.I. and 14 days detention in AR custody on 29.10.2012 for the same reason.

In such circumstances, we are of the considered opinion that it is not a fit case for examining the provisions which are sought to be challenged in view of the peculiar facts and circumstances.

The writ petition is consequently, dismissed.

(G.S. SANDHAWALIA)
JUDGE

November 16, 2022
nitin

(HARPREET KAUR JEEWAN)
JUDGE