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

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Date of decision: July 14, 2022

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W.P.(C) 7090/2022

EX. RECRUIT/CONSTABLE DEEPAK KUMAR Petitioner

Through: Ms. Archana Ramesh, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Avnish Singh, SCGC with Kapil
Dev Yadav and Mr. Govil Upadhyay,
Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (oral)

1. After being enrolled as a Constable with the Border Security Force (henceforth referred to as "BSF") on 04.04.2012, the petitioner was detailed for basic training at BSF Bhaidsi. Within the first year of his training at Bhaidsi the petitioner absented himself twice, once from 14.04.2013 and rejoined after 40 days and thence again on 20.06.2013. This led to issuance of a Show Cause Notice on 23.09.2013 by the respondents. As the petitioner failed to respond thereto, he was dismissed from service with effect from 31.10.2013 by the respondents. Petitioner then submitted a letter dated NIL seeking his reinstatement, which was rejected vide order dated 17.07.2015 by the respondents.



2. In view thereof the petitioner has approached this court, after a serious lapse of almost *seven years*, and by virtue of the instant petition seeking the following reliefs:

*A. Issue directions to the Respondents to issue a Writ of Certiorari to quash and set aside the Government of India, Ministry of Home Affairs Order dated 17 July 2015 assailed as the Impugned Order and placed as **Annexure P - 3** to meet the ends of equity, justice and fairplay;*

*B. Issue directions to the Respondents to issue a Writ of Mandamus to the Respondents to medically re - examine the Petitioner at any BSF Hospital in and. around Delhi and place the medical report before the Hon'ble Delhi High Court expeditiously and if the Petitioner is found FIT by the medical authorities, then the consequential action to direct the Respondents for a follow up action for the re - enrolment of the Petitioner as a Constable in the Border Security Force as was done in the case of Constable Kapil Dev by the Hon'ble Delhi High Court the Judgment of which is placed as **Annexure P - 6** to meet the ends of justice and fair play;*

C. Pass such other further orders/directions as deemed just and proper by this Hon'ble High Court in the circumstances of the case to meet the ends of equity-justice and fair play.

3. During the course of arguments, the learned counsel for the petitioner took us through all the documents filed and relied upon by her, specifically the two medical certificates, one dated 02.09.2014 to contend that as the petitioner was diagnosed to be suffering from pyres and jaundice due to which he was unable to join duty therefore, he was considered absent from duty with effect from 02.09.2013 till 02.09.2014 and another dated 28.07.2015 to contend that as the petitioner was diagnosed to be suffering from jaundice, fever, UTI he was once again unable to join duty accordingly he was again considered absent from duty with effect from 03.09.2014 till



27.07.2015. Learned counsel submits that the petitioner should be re-enrolled back as a Constable in the BSF in view of para 143 of The Defence Services Regulations for the Army, 1987 and further the judgments of this court entitled *Constable Kapil Dev Vs. Union of India & Ors. W.P.(C) No.19178/2006*, *Krishan Kumar Vs. Union of India W.P.(C) No.5774/2013*, *Vikash Kumar Vs. Union of India W.P.(C) No.3389/2015*, *Shivank Chaturvedi Vs. Union of India W.P.(C) No.717/2016* rendered by the co-ordinate bench/s of this court to contend that the said judgments are squarely applicable to the facts of the instant case of the petitioner.

4. After hearing the learned counsel for the petitioner and perusing the aforesaid documents on record we find that the instant petition is liable to dismissed at the threshold with costs for the reasons that, *admittedly*, the petitioner was found unauthorizedly absenting from service without sanctioned leave on two occasions, once from 14.04.2013 for a period of 40 days and thence again from 20.06.2013 but he has failed to either provide any explanation or produce any document/s explaining the reasons of his unauthorizedly absenting from service without sanctioned leave during that period. Further, the two purported medical certificates filed by the petitioner before this Court were never brought to the notice of the respondents at any stage prior to filing the present petition. In any event the said medical certificates cannot come to the rescue of the petitioner as these certificates do not pertain to the aforesaid period when he was unauthorizedly absenting from service without sanctioned leave, twice in the year 2013 and instead pertain to a subsequent period. Moreover, when the said certificates pertain



to ailments of simple nature, however for a period of one year, which is generally unheard of.

5. Further the reliance of the petitioner upon para 143 of the Regulations for the Army, 1987 is completely misplaced as the same only pertains to “*Re-enrolment of ex-servicemen medically boarded out*” and not to ex-servicemen like petitioner, who was dismissed from service on being found unauthorizedly absenting from service without sanctioned leave.

6. Further upon going through all the judgments relied upon by the petitioner, we find that none of them came to his aid as the said judgments are not applicable to the facts of the present case and the reliance thereupon is totally misconceived. We will now deal inter-alia with each of the aforementioned judgments filed and cited by the learned counsel for the petitioner.

7. The judgment of the co-ordinate bench in the case of **Constable Kapil Dev** (*supra*) is not applicable as the petitioner in that case was found to be suffering with the serious ailment “.....*problem of Anxiety Neurosis with Reactive Depression*.....” and was thus “...*boarded out of service*.....” whereas the petitioner herein is suffering from minor ailments and was dismissed from service as he was unauthorizedly absenting from service without sanctioned leave. Similarly the judgment of the co-ordinate bench in the case of **Krishan Kumar** (*supra*) is also not applicable as the petitioner in that case was already found medically fit after being examined by the Army Hospital (R & R), Delhi whereas the petitioner herein is asking for his medical re-examination as he has not yet been declared medically fit. Similarly the judgment of the co-ordinate bench in the case of **Vikash**



Kumar (supra) is also not applicable as the petitioner in that case was found to be stammering and the court after interactive dialogue with him found that probably because of his humble background, the petitioner therein had a mild hesitation while conversing maybe due to nervousness whereas the petitioner herein has approached this court belatedly after his dismissal from service on account of being found unauthorizedly absenting from service without sanctioned leave. Lastly the judgment of the co-ordinate bench in the case of *Shivank Chaturvedi (supra)* is also not applicable as in that case a Review Medical Board was constituted as the court found favour with the contentions of the petitioner therein whereas the petitioner herein has been unable to stand on his own legs, much less prove his own case.

8. Another reason why this petition is not maintainable and is liable to be dismissed on the threshold without issuing notice is as the same is barred on the ground of delay and laches. It is a matter of fact that the petitioner has belatedly approached this court to challenge the order dated 17.07.2015 passed by the respondents after an inordinately unexplained delay of almost seven years after suddenly waking up from a deep slumber more so when the petitioner never approached the respondents at any point of time during that period. Delay defeats equity, it is trite law that this court cannot and does not come to the aid of such a person approaching belatedly without according any reasons for such delay.

9. In view of the aforesaid we hold that the petitioner was rightly dismissed from service by the respondents with effect from 31.10.2013 as he was illegally found absenting from work without sanctioned leave and as his brazen acts, twice within the very first year of his enrolment speaks volumes



of his (mis)conduct to say the least. More so, whence the same was contrary to the accepted norms and detrimental to the discipline of the Armed Forces, in this case the BSF and was thus undesirable under any circumstance.

10. In view of the aforesaid and as the petitioner has wasted the valuable time of this court, although this is a fit case for imposition of costs, however, in the interest of justice and seeing the background of the petitioner and his being an ex-serviceman this court is taking a lenient view and refraining from imposing any costs upon the petitioner.

11. As a result the instant petition is dismissed in the above terms.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

JULY 14, 2022/So