

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10870 of 2021

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Kusum Tiwari W/o-Lalan Tiwari Resident of Village-Mahuaari, Ps-Buxar
Mufasil Chausa, District-Buxar.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary Ministry of Home Affairs Govt. of India, New Delhi
2. D.G. BSF, CGO Complex New Delhi.
3. Sh Sandeep Rawat (HOO), STC BSF Chakur, Maharashtra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ebrahim Kabir, Adv with Ms Shruti Sinha, Adv.
For the UOI	:	Mr. Awadhesh Kumar Pandey Sr. CGC Mr. Lokesh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 26-09-2023

Heard learned counsel for the petitioner and learned
counsel for the Union of India.

2. The writ application has been filed seeking a direction to the respondents to make an inquiry in terms of the petitioner's representation dated 10-02-2021, and to take action against Respondent No. 3 for his illegal acts and discrimination against the petitioner's son. The petitioner seeks that the respondent No. 3 should be removed from his post/place and his promotion be withheld.

3. The petitioner's son was enrolled in the Border Security Force (for brevity 'BSF') under Compassionate



Appointment Scheme on 09-01-2020. Less than two months thereafter i.e., on 02-03-2023, he complained of pain and swelling in his knee and was advised rest for two days, and some other tests to be conducted. Thereafter he proceeded on leave from 07-03-2020 to 15-03-2020, for availing treatment, and on the ground of his sister's marriage. He, thereafter, applied for extension of leave for a further period of 15 days, which was declined by the competent authority and he was informed to report back by communication dated 04-04-2020 by the Assistant Commandant (Training) (Annexure- R/1 to the counter affidavit filed on behalf of the respondents). He, thereafter, continued to overstay the leave unauthorizedly and repeatedly sent communications for release of salary, extension of leave, etc. Disciplinary action was also contemplated against him. Thus, a departmental representative was sent to his home address to ascertain the facts for his unauthorized overstayal from leave. Certain Medical documents were handed over to the Authorities. They, thus, decided to constitute a Medical Board at Hazaribagh in the State of Jharkhand, close to the petitioner's home town, for ascertaining his medical condition.

4. The petitioner, thus, was directed to report to the Hazaribag Centre for assessment of his Medical condition by



duly constituted Medical Board. Copy of thirteen (13) such intimations issued to the petitioner, have been annexed at Annexure- R/8, to the counter affidavit. The petitioner, however, paid no heed to these directions and did not report for Medical assessment by the Medical Board.

5. On seeing the prolonged overstayal, he was issued a show cause notice dated 30-09-2021, giving him an opportunity to submit his defense against the proposed dismissal. The petitioner submitted his reply dated 17-10-2021, which was found unsatisfactory to justify his illegal prolonged absence of 23 months. Such absence, being contrary to expected norms and detrimental to the discipline in the force, were considered to have rendered petitioner's further retention in the force as undesirable. He was, thus, dismissed from service w.e.f. 27-11-2021. The dismissal order dated 27-11-2021 has been annexed to the counter affidavit as Annexure -R/12. The petitioner has not assailed the order of dismissal, obviously for the reason that the same has been passed after filing of the instant writ petition.

6. The nature of relief claimed in the instant writ proceedings at the instance of the petitioner, seeking to espouse cause of her son, who was the member of Force, appears to be



thoroughly misconceived. The petitioner has made factual assertion regarding what transpired at the place of her son's posting, though it is not her case that she was present with him to witness the events, as asserted in the writ petition. She cannot be said to be an aggrieved person. If at all her son was aggrieved by the action, it was for him to pursue remedies in accordance with law against the members of the Force regarding whom allegations have been made. It has not been stated in the writ petition, whether petitioner's sons has assailed the order of dismissal dated 27-11-2021 or not.

7. In view of these facts and circumstances, this Court is not inclined to exercise discretionary writ jurisdiction in favour of the petitioner to direct for any inquiry against the Respondent No. 3. The Court would only observe that the instant order may not be deemed to be an expression of this Court on the merits of the dismissal order dated 27-11-2021.

8. The writ petition is dismissed.

(Madhuresh Prasad, J)

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