

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1675 of 2019
In
Civil Writ Jurisdiction Case No.1840 of 2012

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Anil Kumar Son of Sri Mahesh Thakur, Resident Of Village Ramdiri, P.S. Matihani, District Begusarai

... .. Appellant/s

Versus

1. The Union of India through the Director General, Border Security Force, Block No. 10, C.G.O. Complex, Lodhi Road, New Delhi.
2. The Inspector General, 111, Battalion, Border Security Force, S.H.O. Panbari, Shillong (Meghalaya)
3. The I.G., B.S.F., FTR H.Q 2C-Masimpur
4. The D.I.R/P.S.O. Office of the I.G. B.S.F. FTR H.Q, M.I.G. Masimpur
5. The Commandant 11 Bn B.S.F.C/) 99 A.P.O.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharendra Kumar Jha, Advocate
For the Respondent/s : Mr. Rajesh Kumar Verma, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-06-2023

The petitioner's claim in the writ petition of 2012 was for setting aside an order dated 19.10.2005, whereby, the petitioner was dismissed from service, for unauthorized absence. The statutory petition filed by the petitioner was also considered, as directed by this Court, and rejected vide order dated 06.09.2011, which was also assailed in the writ petition.

The brief facts, necessary for the disposal of the appeal, are that the appellant, the writ petitioner, was working with the Border Security Force at the S.T.C. BSF, Churachandpur (Manipur). While he was on campus security



duty, he absented himself without leave on 25.04.2005; which according to the petitioner was due to news having been conveyed to him about an assault on his family members by a neighbor. The petitioner further states that he had to continue in his native place to look after his family, who were injured and then again his brother was fired upon; which affected his mental balance. The appellant also asserted that he had been afflicted with Hepatitis-B, which was the reason for his absence thereafter. In the meanwhile, the petitioner was proceeded with under the Court of Inquiry (COI) and dismissed from service by the impugned order in the writ petition. The petitioner alleged that this was done in total violation of principles of natural justice. The petitioner on the earlier occasion, when he approached this Court, produced two representations dated 11.10.2007 and 04.12.2007 and sought for consideration of the same. This Hon'ble Court vide order dated 04.07.2011 directed consideration of the said representations. The representations which were forwarded by a communication dated 11.07.2011 were treated as a statutory petition, which also stood rejected by order dated 06.09.2011. The order of dismissal and the order of rejection of the statutory petition were challenged in the writ petition.

The learned Single Judge found that the petitioner



has admitted his unauthorized absence and the reasons stated for his continuance on such absence were not justified. The petitioner had not even produced proof of his assertion that he was afflicted with Hepatitis-B. It was found that the petitioner, admittedly, had not communicated with the Department for over two years and that, the notices issued by the Department, in the address shown in the writ petition also were not responded to. Despite the order of dismissal having been communicated the same was not challenged in the earlier writ petition. The learned Single Judge found that the petitioner had failed to avail the various opportunities given to him, refused to challenge the order of dismissal within a reasonable time and had displayed undue reluctance and lethargy in reporting back for duty. The writ petition stood dismissed against which the appeal is filed.

Before us, the learned counsel for the appellant argued that the dismissal ought to have been by the Director General or an Inspector General as is provided under Section 11 of the BSF, Act, 1968. Section 48 is also relied upon to argue that the punishment awarded to the appellant was not in accordance with the above provision. It is prayed that the impugned judgment be set aside and the orders issued by the respondent authorities quashed so as to restore the appellant in his employment. The learned Central Government Standing



Counsel, however, refutes the claims of the appellant and seeks for upholding the order of the learned Single Judge. The counter affidavit of the respondents in the writ petition specifically referred to the petitioner having absented himself from employment, according to the respondent authorities, on 25.04.2005 and did not join duty thereafter.

The petitioner has a contention that he proceeded on leave and only in that circumstance, a railway warrant was issued to him, as is seen at Annexure-3. Even if it is accepted that the petitioner had proceeded on leave, the fact remains that he did not join duty after the sanctioned leave as was required of him. In fact, there were a number of directions issued to him at the residential address; specifically five in number, as is disclosed from Annexure-8 and the counter affidavit filed. There was no response to the said communications and the appellant refused to join duty despite repeated requests made by the authorities. In fact, it has to be noticed that immediately on his abandoning duty on 24.05.2005, on 26.05.2005 an F.I.R. was registered at the jurisdictional police station, as is seen from Annexure-R-2 specifically speaking of the appellant being untraceable. It was after this, the repeated communications were issued to him, which were not responded to.

Subsequently, a Court of Inquiry (for brevity COI)



as mandated under Section 62 of the BSF Act, 1968 was conducted to investigate into the circumstances under which the appellant absented without leave; which COI found the appellant to have illegally absented himself without leave. Disciplinary action was recommended under the provisions of the BSF Act and Rules and the Commandant 111 Battalion BSF, had also requested the Superintendent of Police, District-Begusarai, State of Bihar to arrest the petitioner, which did not evoke any response. The Commandant then issued a show-cause notice along with copy of COI proceedings specifically holding that his trial by a Security Force Court is neither expedient nor practicable. The petitioner was given an opportunity to urge his defense, if any, against the proposed action for dismissal from service; which also remained unresponded to. This led to the petitioner being dismissed from service with effect from 19.10.2005 vide order of the Commandant 111 Battalion BSF of even date.

This Court does not find any reason to interfere with the dismissal of the appellant and fully agrees with the judgment of the learned Single Judge. Section 11 does not require a dismissal by either the Director General or the Inspector General. Sub-section (1) of Section 11 only mandates that a Director General or an Inspector General may dismiss or



remove from service any person subject to this Act other than an Officer. Sub-section (2) enables a Deputy Inspector General or any prescribed officer to dismiss or remove any person from service under his command, other than an officer or a subordinate officer of such rank or ranks, as may be prescribed. Hence, even a Commandant would be entitled to dismiss a person in service, who is not an officer, if he is authorized so to do.

We do not see any such contention now argued before us having been taken in the writ petition or in the appeal memorandum; which disabled the respondent authorities from countering and substantiating their stand.

In the above circumstances, we deem it appropriate to consider the Commandant to be duly authorized to pass the impugned order. Section 48 also does not provide a clear mandate of awarding punishment by Security Force Courts alone since the word employed is that punishments 'may' be inflicted in respect of offences committed by persons subject to this Act and convicted by Security Force Courts.

The violation of statutory provisions as argued by the learned counsel for the petitioner cannot be countenanced.

We cannot but also reiterate that there is inordinate delay in challenging the dismissal order and, admittedly, the



petitioner had unauthorizedly absented himself for more than two years. Even according to the petitioner his first representation is in the year 2007 and at that point also no attempt was made to challenge the order of dismissal; even in the writ petition wherein disposal of such representation was sought for. We find absolutely no reason to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to come to the aid of the petitioner, now the appellant, who has by his very conduct, abandoned his employment and later turned around to challenge his dismissal by reason of such abandonment; that too, with inordinate delay.

We dismiss the appeal, leaving the parties to suffer their respective cost.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	
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