

WPA 28014 of 2022**Ex-Ct. Sk Rakesh Ali**
Vs.
Union of India & Ors.

Ms. Priyanka Mondal

....for the petitioner

Mr. Sauvik Nandy

....for the Union of India

The petitioner was working as a constable with the Border Security Force (in short, BSF). The petitioner tendered notice of resignation on October 22, 2020 due to serious domestic issues. The petitioner prayed for resignation with effect from November 7, 2020. Such prayer of the petitioner was accepted by the Commandant, BSF vide order dated November 7, 2020 without any pensionary or financial benefits.

The petitioner made an application purportedly on January 30, 2021 for reinstatement in service. The said application was received by the authorities concerned on February 24, 2021 after 104 days from the date of resignation of the petitioner on November 7, 2020. The said application was posted on February 17, 2021 and received by the unit on February 24, 2021.

Ms. Mondal, learned counsel appearing on behalf of the petitioner submits that the petitioner

has made a prayer for reinstatement in accordance with the office memorandum dated June 10, 2019, within 90 days from the date of resignation. Therefore, the authorities acted arbitrarily and with ulterior motive in not accepting the said prayer for reinstatement

Mr. Nandy, learned counsel appearing on behalf of the respondent authorities draws the attention of this Court of office memorandum dated June 10, 2019. From Clause 2(c) of the said memorandum it appears that the period of absence from duty between the date on which the resignation became effective and the date on which the petitioner is allowed to resume duty as a result of grant of permission to withdraw the resignation cannot be more than 90 days. He submits that even though the prayer for reinstatement was made on February 17, 2021 it was backdated as January 30, 2021. Therefore, the said prayer of reinstatement having been made after 90 days of resignation cannot be considered.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the petitioner's prayer for reinstatement was made by a letter that was posted on February 17, 2021 and received by the

authorities concerned on February 24, 2021 after a lapse of 90 days from the date of resignation.

Explanation sought to be given by the petitioner for such delayed posting of that letter cannot be accepted by this Court. It cannot be accepted that the petitioner had given the said letter to be posted by a trusted relative who due to Covid situation could not post the same on February 1, 2021 and posted the same on February 17, 2021 without any intimation of delayed posting to the petitioner. Such a submission regarding lack of knowledge of the petitioner appears to be completely unmeritorious, and in the nature of an afterthought after perusing the statements made in the Report-on-Affidavit.

In the light of the discussions hereinabove, this Court finds that there is no perversity in the decision making process of the respondent authorities. There is no error apparent on the face of the records. There is no procedural impropriety since the authorities concerned have sought to base their decision on the office memorandum dated June 10, 2019 issued by the department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, Government of India.

Accordingly, **WPA 28014 of 2022** is **dismissed.**

All parties are to act on a server copy of this order downloaded from the official website of this Hon'ble Court.

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(Lapita Banerji, J)