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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 03.10.2023

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W.P.(C) 12878/2023

S JANARDHANAN

..... Petitioner

Versus

UNION OF INDIA & ORS

....Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Abhay Kumar Bhargava and Mr. Satyarth B. Sinha,
Advocates.

For the Respondents: Mr. Akshay Amritanshu, Mr. Ashutosh Jain and Mr.
Samyak Jain, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 20.04.2014, whereby petitioner has been dismissed from service on account of overstaying leave granted to him.

2. Petitioner was repatriated from the Special Protection Group (SPG)



to the Border Security Force (BSF) and at the time of repatriation, he was granted 60 days' Earned Leave with effect from 01.04.2013 to 30.05.2013. However, he failed to join duty and was accordingly sentenced to dismissal from service on 20.08.2014.

3. Learned counsel for petitioner submits that there was infraction of the policy dated 22.11.2011 laid down by the BSF which, *inter-alia*, stipulates that in case of overstay and the member of the Force pleading sickness, he should be directed to send supporting documents and report to the nearest BSF Hospital and the medical documents should be verified through the concerned hospital/medical officer with regard to his ailment. He submits that in the case of petitioner, said procedure was not followed. He submits that a legal notice was issued on 21.07.2022 pointing out the infirmity, however, the request of the petitioner has been rejected by the DIG, Sector Headquarter, BSF, Kolkata.

4. Learned counsel for respondents submits that petitioner has approached this Court after a lapse of over nine years from the date of his dismissal. He submits that petitioner had overstayed leave and even a Head Constable was sent to the petitioner's home town to verify the reason of his absence. He submits that the petitioner had taken a plea of injury to his wife, which was considered by the Summary Security Force Code and the punishment of dismissal from service was awarded to the petitioner with effect from 20.08.2014. Learned counsel submits that even if the medical documents of the wife of the petitioner were to be taken on their face value, they did not constitute sufficient reason for not reporting to duty.



5. Perusal of the order of dismissal shows that petitioner was sanctioned leave at the time of his repatriation and was to report back on 30.05.2013 (Afternoon), however, he failed to join duty. The record of evidence shows that a Head Constable was sent to the home town of the petitioner on 22.07.2014. He could not meet the petitioner and was informed that petitioner was living with his father-in-law and his wife, who had received injuries in a motorcycle accident, was under treatment.

6. Petitioner has placed on record a medical certificate of his wife dated 04.03.2014 (Annexure P-7) (Colly.) at page 39, which certifies that the wife of the petitioner was suffering from S/P multiple abrasions all over her face, right wrist and hand, right ankle and was advised monitoring for a period of ten months. Further document also shows that she had sustained abrasions on her face and hands.

7. Petitioner was to report back for duty on 30.05.2013 and the accident involving his wife took place in October, 2013. There is no explanation by the petitioner as to the reason for his absence with effect from 30.05.2013 till the date of accident in October, 2013. Furthermore, the wife of the petitioner was living at her father's house where there were family members who could have taken care of her and there is no explanation forthcoming from the petitioner as to why he did not inform his Unit with regard to any incapacity for reporting for duty. It may also be noticed that petitioner had pleaded guilty to the charge during trial.

8. The Summary Security Force Code after following the due procedure and giving opportunity to the petitioner to defend himself



awarded the sentence of dismissal from service after he pleaded guilty.

9. Reliance placed by learned counsel for petitioner on the procedure stipulated by policy dated 22.11.2011, particularly clause h, is misplaced for the reason that in case the medical documents were to be verified, they can be verified in the immediate proximity of the date of the documents. Requiring the respondents to verify the documents after a lapse nine years may not be possible. Further, even if the documents filed by the petitioner were to be taken on their face value as correct and duly verified, the same do not constitute sufficient reason for not reporting for duty for over one year and two months. It may also be noticed that the leave of the petitioner expired on 30.05.2013 and the accident took place in October, 2013.

10. Accordingly, we find no irregularity in the proceedings and infirmity in the order of punishment imposed on the petitioner of dismissal from service. Needless to state that the petition filed by the petitioner is also highly belated having been filed after a lapse of over nine years from the date of the impugned order of dismissal.

11. In view of the above, we find no merit in the petition. The petition is consequently dismissed.

SANJEEV SACHDEVA, J

OCTOBER 03, 2023
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MANOJ JAIN, J