

24.01.2024.
Court No.13
Item No.449
ap

W.P.A. No. 11780 of 2021

**Sanjay Jaiswal
Versus
Union of India & Ors.**

Mr. Sambhunath Ray,
Mrs. Amrita Tewari,
Mr. Varun Raj Tiwari,
Mrs. Tuhina Parvin.

...For the petitioner.

Mr. Debapriya Gupta,
Mr. Sourav Mondal.

...For the UOI.

1. The petitioner is aggrieved by an order dated 26th April, 2021 passed by the DIG/PSO for Inspector General, Ftr HQ BSF, Meghalaya, confirming an order of dismissal from service passed by the Commandant, 11th Battalion of BSF at Shillong.
2. The writ petitioner was the Head Constable with the Border Security Force. He was last posted at Shillong in Meghalaya.
3. The facts leading to the impugned order were that the petitioner had proceeded on casual leave from 10th August, 2019 to 3rd September, 2019 on account of his wife's treatment. He did not join the duty after the expiry of the sanctioned leave. Vide letter dated 12th September, 2019 issued by the commandant BSF, the petitioner was asked to resume his duty which he did not.

4. An application dated 3rd September, 2019 was received by the respondents on 17th September, 2019 seeking extension of 30 days of Earned Leave on account of his wife's health. By two letters issued by the Battalion dated 27th September, 2019 and 30th September, 2019, the petitioner was asked to report to Shillong along with his wife where medical facilities were available for treatment.

5. In the event the petitioner was unable to commence journey from Kolkata, he was permitted to report to the nearest BSF Hospital at Tagore Villa Kolkata and asked to file medical document therefrom. The petitioner did not do so. He also did not send the medical document as required.

6. The Commandant thereupon, under the provisions of the Border Security Force Act, 1968 commenced the Court of Inquiry (in short 'COI') to investigate into the unauthorized absence of the petitioner from 4th September, 2019 onwards. An attempt was made to apprehend the petitioner as well.

7. The Border Security Force thereupon decided to commence disciplinary action against the petitioner. Since the petitioner was neither joining the duty nor willing to participate in the COI and there was no response from the police as regards the whereabouts of the petitioner, it was found that holding a trial against the petitioner was impracticable.

8. A show-cause notice was issued along with the Court of Inquiry proceedings on 30th November, 2019 to reply within 30 days, as to why he should not be dismissed from service for overstaying leave without sufficient cause.

9. The petitioner thereupon filed two several writ petitions before this Court.

10. The first writ petition being W.P. No. 17061 (W) of 2019 wherein the petitioner sought a direction on the respondents to constitute a Medical Board to permit him to retire on medical ground. The said writ petition was disposed of by an order dated 25th November, 2019 by a Co-ordinate Bench of this Court. The Court found that the petitioner did not produce any medical document to show his poor medical condition. He was, however, granted leave to appeal before the Authorities in accordance with the applicable Rules. The petitioner made a representation on 2nd December, 2019.

11. While the said representation was being considered, the petitioner filed a second writ petition being W.P. No. 24031 (W) of 2019 challenging the show-cause notice dated 30th November, 2019 as to why he should not be dismissed from service. The said writ petition was also disposed of by an order of Co-ordinate Bench dated 24th January, 2020 directing his representation dated 2nd December, 2019 in defence to

the show-cause notice dated 30th November, 2019 to be considered in accordance with law.

12. The respondents did so. It was found that the petitioner was overstaying his leave for a prolonged period and ample opportunity was given to him to resume his duty. He was also asked to report to the nearest BSF Hospital at Kolkata along with his wife which he did not. He continued to overstay his leave.

13. Despite finding misconduct on the part of the writ petitioner for prolonged period, the respondents considered his case sympathetically and vide an order dated 27th February, 2020 he was given a further opportunity to respond to the show-cause notice dated 30th November, 2019 and resume his duty within 15 days to enable him to have qualifying service for getting pension.

14. The petitioner neither joined duty nor respond to the show-cause notice.

15. By this time, the petitioner continued unauthorized and illegal absence for more than ten months.

16. The Commandant, 11th Battalion, BSF thereupon by an order dated 9th July, 2020 in terms of the powers conferred under Section 11(2) of the Border Security Force Act, 1968 read with Rules 22 and 177 of the Border Security Force Rules, 1969, dismissed him from service for 310 days of unauthorized absence and/or overstaying leave.

17. The petitioner then filed a third writ petition being W.P.A. No. 7354 of 2020 assailing the order of dismissal dated 9th July, 2020. The said writ petition was disposed of directing the petitioner to file a statutory appeal under Rule 28A of the Border Security Force Rules, 1969. The impugned order was passed on the said appeal.

18. This Court notes that the Appellate Authority has very carefully recorded the entire facts which led to the order of dismissal by the Commandant. Each and every ground taken by the petitioner has been carefully addressed. The conduct of the petitioner has been carefully scrutinized.

19. It is relevant for this Court at this juncture to see the past conduct of the petitioner. Between 27th August, 1997 to 26th December, 1997 the petitioner was overstaying his leave for 189 day. The respondents regularized a total period treating the same as dies non. Between 4th July, 1998 to 2nd August, 2017, the petitioner was absent for 7031 days. The same was adjusted towards extraordinary leaves, earned leaves and half pay leaves. Between 20th April, 2018 to 10th May, 2018 the petitioner was absent for 21 days which was regularized with half pay leave. Between 16th August, 2018 to 15th November, 2018 the petitioner was on unauthorized leave for 92 days that was regularized by granting extraordinary leave and commuted leaves. Between 18th January, 2019 to 31st

May, 2019. The petitioner was once again on unauthorized leave. He was severely reprimanded and the period was treated as dies non.

20. The unauthorized leave between 4th September, 2019 to 9th July, 2020 is the subject matter of the present writ petition.

21. This Court has carefully considered the order of the Appellate Authority. There is neither any violation of natural justice nor is the order perverse. All the relevant materials have been duly considered. The Appellate Authority has not gone into the past conduct of the petitioner in passing the impugned order. The order, therefore, calls for absolutely no interference whatsoever.

22. This Court, however, is shocked and in dismay at the causal attitude of the petitioner, who is a member of the disciplined force that mans the borders of this country. The petitioner appears to have taken his service for granted. The respondents were rather lenient towards him in not commencing against him criminal proceedings leading to imprisonment.

23. For the reasons recorded hereinabove, no interference whatsoever is called for against the impugned order. The writ petition fails and is hereby dismissed.

24. There will be no order as to costs.

25. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)