

D/L. 19.
January 5, 2024.
MNS.

WPA No. 18229 of 2023

Niraj Kumar
Vs.
Union of India and another

Ms. B. Gayatri

... for the petitioner.

Mr. Amitabha Nayak

...for the respondents.

1. Learned counsel for the petitioner contends that the impugned order of the Appellate Authority under the Border Security Force Act, 1968 ("the BSF Act") is fraught with violations of principles of natural justice.
2. It is argued that a show cause notice was given to the petitioner, who has been a member of the armed forces, that is, the BSF on May 15, 2020. Subsequently, by an order dated June 20, 2020, the petitioner was terminated from service, apparently for overstaying his leaves. It is also argued that the said process was carried out in the thick of the Covid period. As such, the petitioner did not receive the notices in time and hence could not respond appropriately. Even

thereafter, when the petitioner preferred an appeal, the appeal was ultimately decided on December 24, 2020, also during the Pandemic period. Due to repeated non-receipt of notices by the petitioner, who lives in Champaran, in due time the petitioner could not effectively contest his case, leading to the termination being affirmed by the appellate authority.

3. It is argued that the petitioner sought for extension of his leave on justified reasons. The wife of the petitioner was suffering from post-pregnancy complications and there was nobody else than the petitioner to look after his wife. As such, on humanitarian ground as well as reasons beyond the control of the petitioner, the petitioner could not report for service in time. Hence, the impugned orders ought to be set aside. Further, since the petitioner did not get any effective opportunity of hearing in view of the intervening Pandemic period, the petitioner's case ought to have been dealt with in a sympathetic manner.
4. Learned counsel for the respondent authorities submits that the Border Security Force is a disciplined force and as such, the

standards of the petitioner are to be seen in a much higher light than some other services. The petitioner, it is alleged, is in the habit of overstaying his leaves.

5. Learned counsel for the respondent authorities cites several instances all along during the service period of the petitioner, when the petitioner overstayed his leaves. The petitioner was given sixty days half-pay leave from August 13, 2019 to October 11, 2019, which was again extended from October 12, 2019 to December 10, 2019. However, all through, the petitioner did not report back for service but merely went on making applications for extension of his leave. Several notices were sent to the petitioner prior to the commencement of the Pandemic, that is, in the month of December, 2019.
6. The authorities, it is contended, took a lenient view in the petitioner's case and granted the petitioner earned leave, paternity leave, casual leave as well as regular leave etc. for several terms. However, when the petitioner failed to report back even after the leave period was over, the respondent authorities sought to serve notices on the petitioner and

ensure his reporting back to service through police authorities. However, the police authorities failed to ensure the same. As such, in view of the recalcitrant attitude of the petitioner, it is argued that the impugned order was justified.

7. Learned counsel for the respondent authorities also points out that the documents produced by the petitioner with regard to OPD treatment of his wife merely showed that there was uneasiness and lethargy of the petitioner's wife, which could not be a valid criterion for granting further leave to the petitioner or such an emergent situation that the petitioner could not report back for service.
8. Heard learned counsel for the parties.
9. It transpires from the order dated December 24, 2020 passed by the Appellate Authority that the said authority took into consideration all the relevant circumstances.
10. Apart from taking note of the occasions when the petitioner did not join duty and wrote repeated letters and extensions of the leave was granted, the said authorities also took note of the fact that the show cause notice issued to the petitioner was delivered to the

home address of the petitioner on May 29, 2020.

11. Hence, the show cause notice dated May 15, 2020 was observed to be served on the petitioner on May 29, 2020, that is, one month prior to the order of termination dated June 29, 2020. There is no document on the part of the petitioner to rebut such presumption of correctness of service.

12. Even otherwise, the Appellate Authority took into consideration that on examination of the medical documents, it was revealed that the wife of the petitioner was not suffering from any serious illness but she was under follow up treatment in OPD for pregnancy. As such, the Appellate Authority held that since the petitioner was not having any valid justification for his overstay of the leave, neither did he join his unit nor he replied to the show cause notice, taking into consideration such cumulative circumstances, the petitioner's dismissal from service was affirmed.

13. The appellate authority also took into consideration the fact that during the petitioner's eight years and one month of service, he had been punished twice, his

overstay of leave period was regularized twice and leave was extended thrice in the past.

14. Although the petitioner is somewhat justified in arguing that since the previous leaves of the petitioner's were regularised by the authorities, those could not be relied on by the authorities to dismiss the petitioner, the fact remains that while considering the conduct of the petitioner, his past records in service are a valid circumstantial consideration.

15. Since the respondent authorities did not terminate the petitioner on the ground of the previous leaves which had been regularised but took into consideration such circumstances only as grounds to explore the conduct of the petitioner, such act on the part of the respondent authorities cannot be faulted.

16. In any event, in view of the observation in the order of the Appellate Authority that the show cause notice was shown to be delivered to the petitioner's home address on May 29, 2020, the pretext of the petitioner for not appearing before termination hearing is invalidated.

17. That apart, it is well-settled that the Border Security Force is a disciplined force and the

conduct of a member of such force has to be of a higher standard than any other usual service.

18. Keeping in view of such perspective, this court cannot find any fault with the decision taken by the appellate authority affirming the petitioner's termination from service.

19. Accordingly, WPA No. 18229 of 2023 is dismissed on contest.

20. There will be no order as to costs.

21. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)