

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

**WPA 20137 of 2009
Chandra Sekhar Mandal
Versus
Union of India & Ors.**

For the petitioner	:	Mr. Sridhar Chandra Bagari Ms. Ankita Khatri
For the Union of India	:	Ms. Chandreyi Alam
Heard on	:	18.01.2024
Judgment on	:	18th January, 2024.

Raja Basu Chowdhury, J:

1. At the very outset Ms. Alam, learned advocate appearing for the Union of India submits that although, an affidavit in opposition was duly affirmed and a copy thereof, was duly forwarded to the petitioner, unfortunately, the same has been misplaced. She seeks leave, to place before this Court a copy of the aforesaid affidavit. Mr. Bagaria, learned advocate appearing for the petitioner confirms that the copy of the affidavit which Ms. Alam seeks to rely on is in fact the copy of the affidavit in opposition, which had been earlier supplied to him. On the basis thereof, the affidavit in reply has been prepared. In view thereof, let a copy of the affidavit in

opposition filed by Ms. Alam and the affidavit in reply filed on behalf of the petitioner in Court today be retained with the record.

2. The present writ petition has been filed, *inter alia*, in effect questioning the manner in which the respondents have purported to regularize the period of absence of the petitioner.
3. Shorn of unnecessary details, the facts are that the petitioner was enrolled in the Border Security Force (BSF) as a constable in the 8 Battalion, Kalyani, Nadia on 17th January, 2002. The petitioner contends that at the time of filling up of the requisite application form, the petitioner did not have proper instructions and as such, had made incorrect representation in Column no.12 thereof. The petitioner claims that on successful completion of his training, he was posted at the 124 Bn., BSF on 15th February, 2003. Unfortunately for the petitioner, upon the aforesaid unintentional irregularity being detected, a charge sheet dated 6th July, 2005 was issued under Rule 53(2) Appendix VI of the Border Security Force Rules, 1969.
4. The petitioner was, *inter alia*, charged with making false declaration in the enrolment form, as regards criminal proceeding pending against him. Pursuant to the aforesaid and on the basis of an enquiry conducted by the Summary Security Force Court (SSFC), the petitioner was dismissed from service by an order dated 31st August 2005 issued by the commandant of the 124th Bn., BSF.
5. The petitioner, however, claims that he was previously charged with trivial offence and a criminal proceeding was initiated. On the basis of a

joint petition of compromise filed by the parties, the offence was compounded and the petitioner was acquitted under Section 320(8) of the Code of Criminal Procedure, 1973, and was accordingly, discharged from bail bonds.

6. Being aggrieved with the order of dismissal, the petitioner had preferred a statutory appeal. Since, the said appeal was kept pending, the petitioner was constrained to move this Court by filing a writ petition, which was registered as WP no. 3761 (W) of 2006. By an order dated 22nd February, 2006, a Coordinate Bench of this Court was, *inter alia*, pleased to dispose of the said writ petition by directing the appellate authority to dispose of the appeal and to communicate a reasoned order to the petitioner.
7. Pursuant to the aforesaid the appellate authority, by an order dated 3rd May, 2006 by taking note of the fact that the petitioner had only spent 3 years 7 months and 14 days of service and had a clean record with one cash reward of Commandant and that the criminal case under trial having been compromised, was, *inter alia*, pleased to commute the sentence of dismissal from service which was awarded by the SSFC, to 3 months of rigorous imprisonment, in force custody. By a communication in writing dated 18th May, 2006, the Commandant of the 124 Bn., pursuant to the aforesaid order dated 3rd May, 2006, had called upon the petitioner to report for duty at the unit.
8. The petitioner, however, chose to challenge the order dated 3rd May, 2006, insofar as the same directed the petitioner to suffer 3 months of

rigorous imprisonment, by filing a writ petition before this Court which was registered as WPA 14610 of 2006.

9. On contested hearing, a Coordinate Bench of this Court vide its order dated 18th April, 2007 was of the view that the punishment, though in substitute of the order of dismissal, was actually a harsh punishment and therefore, directed the respondents to reconsider the same, in the context of Section 53 of the Border Security Force Act, 1968 (hereinafter referred to as the “said Act”).
10. Pursuant to and in terms of the aforesaid order dated 18th April, 2007, the appellate authority by reconsidering its previous order, by an order dated 13th July, 2007 had commuted the earlier sentence, to “28 days of rigorous imprisonment in Force custody”. By the self-same order, the petitioner was again directed to join his duties. Pursuant to the aforesaid order the petitioner reported to the concerned Commandant, whereupon, the Commandant by an order dated 4th November, 2007, by regularizing the period of his absence from duty in the manner provided therein, had confirmed that the petitioner, was taken on strength of the unit, with effect from 4th August, 2007 (hereinafter referred to as the “order of reinstatement”).
11. The petitioner is aggrieved by the manner in which the respondents have purported to regularize the period of absence.
12. According to Mr. Bagari, learned advocate appearing for the petitioner, once, a Coordinate Bench of this Court, by its order dated 18th April, 2007, had directed the respondents to review the order

imposing punishment on the petitioner and the respondents having, in compliance thereof, decided to inflict the penalty in the form of 28 days of rigorous imprisonment, the respondents could no longer deduct any part or portion of the petitioner's salary, for the period for which he was not on duty pursuant to the order of dismissal till his reinstatement as aforesaid.

13. He submits that the aforesaid constitutes double jeopardy. By drawing attention of this Court to Section 53 of the said Act, it is submitted that although, several minor penalties are provided for in the aforesaid section, which, *inter alia*, includes deduction of pay, the competent authority had imposed a penalty of imprisonment in Force custody up to 28 days. The said order does not mention deduction of pay of the petitioner. In view thereof, the respondents ought not to have, while regularizing the service of the petitioner, deducted the petitioner's pay. According to Mr. Bagari, the aforesaid deduction and the manner of regularization is bad in law and this Court may be pleased to set aside the same and direct the respondents to afford the petitioner with full pay benefits.

14. On the contrary, Ms. Alam, learned advocate appearing for the Union of India has, however, taken me through the records of the case and has submitted that despite the petitioner being called upon to report for duty pursuant to the order dated 3rd May, 2006, by a communication in writing dated 18th May, 2006, the petitioner did not report for duty. Instead, he had challenged a part of the said order. It was only pursuant

to the order dated 13th July, 2007 that the petitioner had reported for duty on 4th August, 2007. Immediately, upon the petitioner reporting for duty, the respondents had regularized his absence in the manner morefully indicated in the said order.

15. The competent authority, by the self-same order has also effected pay fixation of the petitioner and as such, there is no irregularity on the part of the respondents in regularizing the petitioner's pay in the manner provided therein. In the facts noted above, no relief can be afforded to the petitioner.
16. Heard the learned advocates appearing for the respective parties and considered the materials on record, *inter alia*, including the original records of this case which has been produced by Ms. Alam before this Court.
17. In this case it is noticed that since, the petitioner had made a false declaration in his enrolment form, he was charge-sheeted and subsequently, pursuant to the order passed by the SSFC, he was dismissed from service. On a statutory appeal being filed by the petitioner though belatedly, the appellate authority was, *inter alia*, pleased to commute the sentence of dismissal passed by SSFC to that of three months of rigorous imprisonment in Force custody. Pursuant to the aforesaid direction issued by the appellate authority on 3rd May, 2006, the Commandant of the 124 Battalion by a communication in writing dated 18th May, 2006 was, *inter alia*, pleased to direct the petitioner to report for duty. The petitioner, however, instead of reporting

for duty challenged the portion of the order insofar as the same directed the petitioner to suffer three months rigorous imprisonment in Force custody.

18. At the instance of the petitioner, on the basis of a writ petition filed before this Court, as noted above, a Coordinate Bench of this Hon'ble Court by an order dated 18th April, 2007 was, *inter alia*, pleased to observe that the punishment though, in substitution of dismissal was actually a harsh punishment and as such directed the respondents to reconsider the same in the context of Section 53 of the said Act. Pursuant to and in terms of the aforesaid order, the appellate authority having reconsidered the punishment by an order dated 13th July, 2007, while commuting the said punishment to 28 days of rigorous imprisonment in Force custody, directed the petitioner to report for duty. The petitioner had in compliance of the said direction reported for duty on 4th August, 2007 as would reflected from his service records. On the basis of the aforesaid by an office order dated 4th November, 2007, the respondents had regularized the leave of the petitioner in the manner noted hereinbelow.

ORDER

“ ...

2. *Consequent upon re-joining by the indvl on 03/08/2007 (AN) the intervening period from the date of dismissal to date of re-joining i.e. w.e.f. 31/08/2005 to 03/08/2007 is hereby regularized as under:-*
 - a) 31/08/2005 to 27/09/2005 - 28 days RI in Force Custody
 - b) 28/09/2005 to 26/12/2005 - 90 days E/Leave
 - c) 27/12/2005 to 09/03/2006 - 73 days HPL
 - d) 10/03/2006 to 03/08/2007 - 512 days EOL
3. *His basic pay as on 31/08/2005 was Rs.3275/- with date of next increment as 17/01/2006. After accrual of increment, his pay will be Rs.3350/- as on 17/01/2006. The date of increment is hereby*

*shifted from 17/01/2007 to 12/06/2008 due to 512 days EOL.
Hence date of next increment will be 12/06/2008.*

4. Individual taken on strength of this unit w.e.f. 04/08/2007 (FN).”

19. Although, it has been strenuously argued on behalf of the petitioner that the petitioner had been subjected to double jeopardy, I am afraid and I am unable to accept the same. I find that despite the order passed by the appellate authority on 3rd May, 2006, the petitioner did not report for duty instead had challenged the same. If the petitioner had intentionally stayed away by not reporting for duty, the respondents cannot be blamed therefor. It would be apparent from the aforesaid order dated 4th November, 2007 that on the petitioner reporting for duty the respondents have regularized the entire period of his absence and there appears to be no break-in-service at all. The petitioner's pay has also been revised by the aforesaid order.

20. Having regard to the aforesaid, I am of the view that no interference is call for. The writ petition fails and is accordingly dismissed.

21. There shall be no order as to costs.

22. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)