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W.P.No.23420 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

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S.Kannan

..... Petitioner

Vs.

1.The Director General

Indo Tibetan Border Police Force-ITBP
Block No.II, CGO complex, Lodhi Road
New Delhi-600 003.

2.The Commandant

31st Battalion,
Indo Tibetan Border Police Force-ITBP
c/o.99-APO.

..... Respondents

Prayer: Writ Petition filed under Article 226 of the Indian Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other Writ, Order or Direction in the nature of Writ of Certiorarified Mandamus to call for the proceedings of the 2nd Respondent in 31st Battalion/Indo Tibetan Border/Place-02/Bhagauda (Head Constable/Driver S Kannan)/10-8137-50, dated: 04.10.2010, quash the same and direct the respondent to reinstate the Petitioner to his post (Head Constable-Driver).

For Petitioner : M/s.A.Jenasenan



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For Respondents : Mr.Madhanagopal Rao,
Senior Government Standing Counsel

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 2nd Respondent in 31st Battalion/Indo Tibetan Border/Place-02/Bhagauda (Head Constable/Driver S Kannan)/10-8137-50, dated: 04.10.2010, quash the same and consequently, direct the respondent to reinstate the Petitioner to his post (Head Constable-Driver).

2. The case of the petitioner is that he joined the Indo-Tibetan Border Police Force (Respondent) in 1988 as Constable and has served in the service for more than 23 years with an amicable record and the petitioner was awarded on several occasions by the respondents for his exemplary duty. The petitioner had also had the honour of serving the country even during the Kargil war during which time he was stationed in Jammu and Kashmir executing his duty courageously. In fact the petitioner after putting in 20 years of service has an option of voluntary retirement for his sustenance/aid. The petitioner rather than retiring from service had decided



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to continue in the service has he was physically fit and wanted to continue serving for the country. In February 2010, the petitioner applied permission to go on leave in order to attend his hailing father who was staying at Kodavasal, Tiruvarur District. Accordingly, the respondent granted permission to the petitioner to go on leave starting from 07.10.2010 till 14.04.2010. Subsequently in lieu of the deteriorating health of his father, the petitioner sought for extension of leave period. The 2nd Respondent was also pleased to extend the leave period till 20.05.2010.

3. Learned counsel for the petitioner would submit that during the extended leave period, the petitioner's father expired, the petitioner had to attend all rites and rituals expected of him. While the petitioner was attending to the letter he has received that his elder brother was involved in a road accident, in Banruti and he was gravely injured. The petitioner who was still reeling from the death of his father had to immediately rush to meet his brother who was admitted in local hospital. The petitioner while on his way to meet his brother also involved in a road accident caused due to stray cattle in the road. After some days of the accident, the petitioner due to acute pain



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had to be admitted by his family in Hospital in Manarkudi wherein he was diagnosed to be suffering from "Acute Disc Prolapse". The petitioner was medically advised not to move and to be under complete rest. The petitioner has also obtained necessary medical certificate to show that he was under medical care from 05.10.2010 till 09.07.2012.

4. Learned counsel would further submit that the petitioner tried to send regarding petitioner's condition and his inability to join duty vide fax and even tried to call the respondent authority to inform them about the petitioner. Unfortunately, the petitioner's family were not able to reach the respondent successfully. The petitioner's family also addressed letters to the respondent dated 22.05.2010 and 13.06.2010 informing them that the petitioner will not be able to join duty immediately due to his heal condition. It is further submitted that the petitioner was in hospital for four months and was eventually discharged in Nov' 2010 with specific medical instructions to be at complete rest at home till the petitioner is able to resume/capable of performing his duty/day to day activities and the petitioner was not able to travel distances till he was completely healed. In July' 2011, the petitioner returned to his home in Kodavasal and he was shocked and surprised to see



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an order in 31st Battalion/Indo Tibetan Border Police/Place-02/Bhagauda
(Head Constable/Driver S Kannan/ 108137-50 dated 04.10.2010 issued by

the 2nd respondent stating that the petitioner has been removed from service and all benefit withdrawn/terminated, in terms with the Indo-Tibetan Border Police Force Act 1992 and Indo-Tibetan Border Police Force Rules of 1994. The petitioner having been translated the said order which was in Hindi came to understand that the petitioner had been treated/declared as a "Deserter" under the Act on 01.07.2010 and eventually has had his service services terminated vide the impugned order. It was also stated in the impugned order that the 2nd Respondent had also effected a notification in the local police ("Dinamani" and 'New Indian Express') dated 17.09.2010 and the petitioner was unaware of this notification. The petitioner managed to procure a copy of the local daily/notification which states that the petitioner had absented himself from duty without permission and that the 2nd respondent had directed local (Tamil Nadu) Police Dept to apprehend the petitioner and produce him before the respondent. The notification also proceeds to state that in the light of the non-appearance of the petitioner, he was declared as a "Deserter" and in the notification it is also stated that the



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petitioner is given another opportunity to join duty within 15 days from the date of this notification failing which action will be initiated against the petitioner under Rule 20(2) of the Indo-Tibetan Border Police Force Rules of 1994.

5. Learned counsel would further submit that the petitioner was unaware of any of the aforesaid proceedings and the petitioner was not residing in his own home while he was recovering and moreover the above proceedings which had been originally sent to Salem (place of residence of Petitioner, on official records) and then redirected to Kodavasal where received on behalf of the petitioner but the same was not brought to his attention while he was undergoing treatment in the hospital in Manarkudi. It is only upon his return to Kodavasal that the petitioner found that the above events occurred and he was always willing to join duty and perform his service to the fullest extent with honour and diligence. The petitioner is a victim of unforeseen and unfortunate circumstances. Hence, he approached this Court by way of filing the present petition.

6. Learned counsel would further submit that the respondent passed



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the order without providing proper opportunity to the petitioner and there has been no response/reference to the letters addressed by the petitioner to the respondent. The order of the respondent has not taken into account, the service rendered by the petitioner and rather than providing him an opportunity to continue his service has terminated his services along with the terminal benefits. The order of the respondent has been passed without proper application of mind and against the principles of natural justice.

7. Section 20 of the Act refers to a "Deserter" as a person who intentionally acts in order to return/report to duty. The order of the respondent deeming the petitioner as a Deserter suffers from non-application of mind as the petitioner has made it clear that he has not intentions of avoiding his duty and to return to his post. Learned counsel would further submit that the petitioner has even acquired the necessary medical service to show the reasons for his absents from service. In such circumstances, an opportunity may be given to the person to work efficiently and prove his excellence. It is also understood by the petitioner that similar personnel who had been held 'Deserters' had been accorded a second opportunity and had allowed to rejoin duty and the same benefit may be extended to the



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petitioner in the light of his long service to the country. Learned appearing for the petitioner would also draw the attention of this Court in regard to the death certificate of the petitioner's father K.Saminatha Thevar who died on 20.08.2010 and date of death certificate issued by the Revenue Department, Government of Tamilnadu vide Na.Ma.No.1377/2017/A7 dated 30.11.2017.

8. The counter affidavit was filed on behalf of the respondents on 28.01.2013. It is stated in the counter affidavit that the petitioner was granted 60 days of earned leave with effect from 07.02.2020 to 14.04.2020 and petitioner failed to report back to duty date and no information whatever was ever communicated by him and he was also applied for any leave before the expiry of earned leave granted to him. On 24.04.2010, a telegram was received from him requesting for extension of 45 days of Earned leave stating that his father was serious and that he was admitted in hospital. Though the petitioner had not sent any formal letter seeking extension of leave enclosing therewith documents to substantiate his alleged claim for extension of leave, his leave was extended for a further period of 30 days leave and the same was communicated to him by express Telegram. The petitioner was also specifically intimated that he should report back for

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duty on 14.05.2010 failing which the disciplinary proceedings will be initiated against him. But the petitioner did not report back to duty on the due date, namely, 14.05.2010. Neither there was any communication from him extending the reasons as to why he was unable to join duty. The petitioner had also not stated as to what exactly is the date of death of his father and had not produced the death certificate of his father to show the date of death of his father. In regard to the accident of the petitioner's brother, the petitioner would have at least produced the FIR register to show that there was actually an accident in which his brother was injured but no documents have been produced to substantiate the same. The two letters dated 22.05.2010 and 13.06.2010 purporting to have been written by his petitioner's wife stating that her husband has been admitted in hospital on account of his illness that he is suffering very much because of the same and that he will be joining duty after his treatment is over and pleaded that her husband may not be dismissed from service. No postal receipts to show that those two letters were really posted from Mannargudi or any acknowledgement cards were not produced since two letters are fabricated to suit the petitioner's convenience and curiously noted that that the copies



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enclosed in the typed set of papers does not reveal as to whom they were

addressed. The letter dated 01.10.2010, written by the petitioner's wife

addressed to the 2nd respondent and delivered on 19.10.2010, It can be easily understood that the petitioner's wife has then left the matrimonial home due to the petitioner's ill-treatment. In the said letter dated 01.10.2010, she did not even whisper about her father-in-laws death or the so called accidents involving her brother-in-law or her husband's hospitalization at Mannargudi at any point of time. On 03.10.2010, the above said letter dated 01.10.2010 was received through Fax also from the petitioner's wife, stating that she is not in good relationship with her husband since February 2010, that petitioner tortured her after consuming liquor from morning to late night and that due to such domestic problems she left to her parents' house at 8/4, Dhanalaxmi Street, Postal Nagar, Nemilicheri High Road, Chromepet, Chennai and is staying there and that her husband is staying at Iruppalai Village, Edapadi Taluk, Salem district, Tamil Nadu State. She had also pleaded that severe action against her husband may not be taken considering her plight and that of her children undergoing school education at a school located in Namakkal District. If the petitioner was really hospitalized as



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stated by him, he would have produced the records relating to his hospitalization and post discharge treatment and he did not even mention as to what was his ailment. The name of hospital where he took treatment as inpatient, for how many days and such other relevant details are not given since the petitioner's intention is only to make his averments appear as true.

9. Learned Senior Central Government Standing counsel would further submit that the petitioner was directed to report to duty immediately under Telegram No.3943 dated 18.05.2010 and Memo No.4339 dated 31.05.2010 addressed to the petitioner at his address Near amman Koil, Eruppali Post, Edappadi Taluk, Salem District, Tamilnadu State. However since the petitioner failed to report to duty as directed, the Superintendent of Police, Salem District was requested to apprehend and hand over the petitioner to the second respondent under letter dated 11.06.2010. The Superintendent of Police, Salem District vide letter No.RC.J1/638/23144/10 dated 13.09.2010 intimated the second respondent that the petitioner had informed him, that he is on medical leave as his brother met with a motor accident. The Superintendent of Police, Salem District along with above letter enclosed the statement said to have been given by the petitioner.

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Obviously the contents of the said statement are false and contradictory to the various claims made by the petitioner. It is further submitted that the Indo-Tibetan Border Police Force is a Central Armed Police Force of the Union of India and a very high standard of discipline is expected of and is required by the Police personnel. The court of inquiry was ordered by the competent Authority in accordance with the Indo-Tibetan Border Police Force Act, 1992 and Indo-Tibetan Border Police Force Rules and the competent authority after completion of the court of inquiry vide order No.5400-25 dated 01.07.2010 declared the petitioner as a Deserter and the copy of the said letter was sent to the petitioner on 07.07.2010 through Registered Post and the same was received by the petitioner. On receipt of the said order petitioner did not sent any representation and had not sought for a review of the same before the Appellate Authority or other hierarchy of superior officers. But even after receipt of the said order, he did not report to duty nor communicated to the competent authority the reasons, if any, for his overstaying of leave.

10. It is further submitted that a show cause notice vide letter



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No.6236-39 dated 28.07.2010 was issued to the petitioner seeking his defense/explanation for his overstaying the leave. The Superintendent of Police, Salem District and the Police Officer In-charge of Royapet Police station, Chennai-14 were requested to inform him about the show cause notice and to paste the same on the wall of his house. A copy of the show cause notice was also sent to the address of petitioner's father namely Swaminathan at Masic Amani Road, Royapet, Chennai-14 Tamil Nadu with a direction to ask his son to report to duty with all relevant documents regarding his overstaying of leave. But the petitioner did not report back on duty even after the said show cause notice.

11. Learned Senior Central Government Standing Counsel would further submit that the petitioner has availed 62 days Leave with effect from 11.02.1999 to 13.04.1999, without prior approval of the competent authority and was punished with 07 days extra drill and his 62 days absence was treated as dies non according to Section 21(A) of Indo-Tibetan Border Police Act & Rules, 1992 under TPT Bn order No.7951-52 dated 08.05.1999. He was granted 60 days Earned leave with effect from 11.12.1999 to 08.02.2000. But he overstayed the leave for 36 days of absence was treated



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as dies non vide 21st Bn Force Order No.26/2000 dated 24.05.2000. He was sent to CBI on deputation while was service in 21st Bn, ITB Police. But he was sent back to his parent battalion by the CBI charging that he got a cooking Gas connection by practicing fraud. The petitioner was warned that he shall not repeat such type of misdeeds vide TPT Bn order No.12195-97 dated 15.07.1999. These will go to show that the petitioner indulges in habitual misdeeds and repeatedly overstayed leave without any just causes or reasons.

12. It is further submitted that despite repeated opportunities having been given to him for joining duty he neither reported to duty nor submitted any reasons as to why he could not join duty or that he was in such circumstances that were beyond his control which prevented him from joining duty along with documentary proof in support of his reasons suggested by him. The petitioner committed an act of misconduct by overstaying leave and failed to join duty ever after repeated requests/reminders/directions. All the due procedures as laid down in the relevant laws were followed and complied with scrupulously. The competent



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authority declared the petitioner as “Deserter” from 11.05.2010(AN) vide 31st Bn letter order No.5400-25 dated 01.07.2010 after a duly conducted court of inquiry. There was no response from the petitioner for the repeated requests/reminders/directions, the Competent Authority/Commandant of 31st Bn was forced to consider this case in accordance with Section 10 of Indo-Tibetan Border Police Force Act, 1992 read with Rules 17 & 25 of Indo-Tibetan Border Police Force Rules, 1994 and after taking into consideration his past conduct and service records, had passed the impugned order No.1837-50 dated 04.10.2010. Neither any violation of principles of natural justice in passing the order dated 04.10.2010 nor any procedural irregularity or illegality or infirmity in the conduct of the proceedings can be attributed. The Competent Authority had considered all aspects of the case before withholding the terminal benefits. There is no arbitrariness or excessive exercise of power can be imputed against the authority in this regard.

13. Learned Central Government Standing Counsel further submitted that the petitioner is entitled to file a statutory appeal against the order passed by the competent authority removing him from service under Rule 28



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of the Indo-Tibetan Border Police Force Rules of 1994 which is an effective alternative remedy available under the law. Hence, this Writ Petition is therefore not maintainable since the petitioner had not exhausted the alternative remedy available to him in law.

14. Heard both sides and perused the materials available on records.

15. In this case, the petitioner was granted 60 days earned leave with effect from 07.02.2010 till 14.04.2010 and the petitioner failed to report back to duty on the due date and the same was not communicated to the respondents. On 24.04.2010, he sent telegram request for extension of 45 days of earned leave stating that his father was serious and that father was admitted in the hospital. Though the petitioner had not stated any formal letter seeking extension of leave enclosing therewith documents to substantiate his claim for extension of leave. His leave was extended for further period of 30 days and the same was communicated to the petitioner by express telegram and it was also specifically intimated that he should report back for duty on 14.05.2010. Thereafter, he did not report back to duty on 14.05.2010 neither there was any communication sent by him

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seeking extension of leave or explaining the reasons why he was unable to join duty to the respondents. The reason given by the petitioner for overstaying beyond the leave granted up to 14.05.2010 is that his father died and his brother met with an accident and he himself met with an accident. But no documents were filed to substantiate or to prove the same before the respondents before this Court.

16. Learned counsel appearing for the petitioner has filed the death certificate of the petitioner's father namely K.Swaminatha Thevar issued by the Revenue Department, Government of Tamil Nadu vide Na.Ma.1377/2017/A7 dated 13.11.2017 **and it is pertinent to note that the date of the death of his father was mentioned as 20.08.2010. Hence the first reason given by the petitioner for overstaying beyond 14.05.2010 that is due to the death of his father is false and the same baseless for the simple reasons in the death certificate, the date of the death of his father is mentioned is 20.08.2010. In regard to the second reason that his brother met with an accident as contended by the respondent in their counter affidavit, no FIR copy was filed to substantiate or to prove the same.**



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17. It is also pertinent to observe or note from the discharge summary issued by Vinodhagan Memorial Hospital (P) Ltd, Tanjore in which it is mentioned as follows:-

- i) Date of admission - 10.04.2010
- ii) Date of surgery - 11.04.2010
- iii) Date of discharge - 15.04.2010

And the same is within the leave which has been extended by the respondents upto 14.05.2010. Hence, the second reason given by the petitioner is also not true.

18. In regard to the third reason that the petitioner he himself met with an accident, the medical certificate is dated 09.07.2011 given by one Dr.P.Rajagopal, Retd. Senior Civil Surgeon, Government Hospital, Mannargudi in which he had stated that the petitioner has undergone treatment for severe acute disk prolapse from 05.05.2010 to 09.07.2011 and the same is not believable for the reason the treatment period is for nearly 14 months and medical certificate is not supported by any medical prescription, admission in hospital or what is the treatment



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given to the petitioner. All these vital informations are missing in the above medical certificate and the genuineness of the medical certificate itself is doubtful.

19. The above three documents in regard to the death of the petitioner's father, accident of the petitioner's brother and the accident of the petitioner himself has been filed before this Court by the learned counsel appearing for the petitioner by way of additional type set of papers dated 23.02.2020 after duly serving the same to the learned Senior Central Government Standing Counsel appearing for the respondents. It is also pertinent to note as contended by the respondents that the two letters dated 22.05.2010 and 13.06.22010, there is no postal receipts or acknowledgment card to prove that the same has been sent or dispatched to the respondent. The letter dated 01.10.2010 written by the petitioner's wife to the second respondent and delivered on 19.10.2010 that her husband is staying along at Iruppalai Village, Edapadi Taluk, Salem District, Tamil Nadu State and not to take severe action against her husband considering the plight that her children undergoing School Education at a School situated in



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Namakkal District.

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20. In order to give one more opportunity to the petitioner, he was directed to report to duty on 14.05.2010 immediately under Telegram No.3943 dated 18.05.2010 and Memo No.4339 dated 31.05.2010 addressed to the petitioner's address near amman Koil, Eruppali Post, Edappadi Taluk, Salem District, Tamilnadu State which is the address given by the petitioner that he will be staying during the leave period and the same was also stated in the letter written by the wife of the petitioner dated 01.10.2010 addressed to the second respondent. The Superintendent of Police, Salem District was requested to apprehend and hand over the petitioner to the second respondent under letter dated 11.06.2010 and he in turn vide letter dated 13.09.2010 intimated the second respondent that the petitioner had informed him that he is on medical leave as his brother met with motor accident and also enclosed a statement to that effect said to have been given by the petitioner. This also goes to prove beyond doubt that the petitioner is always making false statement before the respondent authorities as well as to the police authorities. The petitioner has committed the same misconduct even previously which is evident from the counter affidavit filed by the

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respondent and the same is extracted here under:-

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“He was granted 60 days Earned leave with effect from 11.12.1999 to 08.02.2000. But he overstayed the leave for 36 days of absence was treated as dies none vide 21st Bn Force Order No.26/2000 dated 24.05.2000. He was sent to CBI on deputation while was service in 21st Bn, ITB Police. But he was sent back to his parent battalion by the CBI charging that he got a cooking Gas connection by practicing fraud. The petitioner was warned that he shall not repeat such type of misdeeds vide TPT Bn order No.12195-97 dated 15.07.1999. These will go to show that the petitioner indulges in habitual misdeeds and repeatedly overstayed leave without any just causes or reasons.”

21. Indo-Tibetan Border Police Force is a Central Armed Police force of the Union of India. No doubt a very high standard of discipline is expected of and is required by the Police personnel. The respondents have followed the procedures as contemplated in Indo-Tibetan Border Police Force Act, 1992 and Indo-Tibetan Border Police Force Rules of 1994. The order of the competent authority duly conducted court of inquiry declared the petitioner as “Deserter” from 11.05.2010 (AN) by order vide 31st Bn No.5400-25 dated 01.07.2010. There was no response from the petitioner for the repeated requests/reminders/directions, the Competent



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Authority/Commandant of 31st Bn was forced to consider this case in accordance with Section 10 of Indo-Tibetan Border Police Force Act, 1992 read with Rules 17 & 25 of Indo-Tibetan Border Police Force Rules, 1994 and after taking into consideration his past conduct and service records, had passed the impugned order No.1837-50 dated 04.10.2010 and there is no violation of principles of natural justice nor any procedural irregularity or illegality or infirmity in the above order.

22. In view of the above factual matrix of the case, this Court is of the considered view that the order passed by the second respondent in 31st Battalion/Indo Tibetan Border Police/Place-02/Bhagauda(Head Constable/Driver S. Kannan) 10-8137-50,dated 04.10.2010 does not warrant any interference by this court and the same is confirmed.

23. In the result, the writ petition stands dismissed. There shall be no order as to costs in this writ petition.

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Speaking Order : Yes (or) No

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J.SATHYA NARAYANA PRASAD, J.

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To

- 1.The Director General
Indo Tibetan Border Police Force-ITBP
Block No.II, CGO complex, Lodhi Road
New Delhi-600 003.
- 2.The Commandant
31st Battalion,
Indo Tibetan Border Police Force-ITBP
c/o.99-APO.

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