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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 22.08.2024

+ W.P.(C) 2202/2020
PALYAM DELHI PRASADPetitioner
Through: Mr. Ashok Kumar Mohapatra, Adv.

versus

UNION OF INDIA AND ORS.Respondents
Through: Mr. T.P. Singh, SCGC for UOI
Mr. Naresh Kaushik, Mr. Anand
Singh, Mr. S. Kaushik and Mr. S.
Dwivedi, Advocates

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MS. JUSTICE SHALINDER KAUR

REKHA PALLI, J(ORAL)

1. By way of the present petition under Article 226 of the Constitution of India, the petitioner, who was enrolled as a Constable/GD in the Border Security Force (BSF) on 16.10.2008 and has been dismissed from service vide order dated 10.06.2023, seeks the following reliefs:

“i. set aside the dismissal order dated 10.06.2013 at Annexure -4 of the petition;

And

ii. Pass a writ of mandamus by directing the authority to reinstatement the petitioner to his post which is dignity and position with consequential benefits;

iii. And further pasas any other relief or order or writ in favour of the petitioner.”



2. The brief factual matrix as emerging from the records shows that upon an offer of appointment being issued to him on 30.09.2008, the petitioner joined the BSF as a Constable/GD on 16.10.2008. While he was posted with the 16 Bn BSF, Khagra Camp, Kishanganj, Bihar at the Frontier HQ, BSF, North Bengal, in September, 2012 he proceeded on a 30 days' earned leave for the period between 03.09.2012 to 02.10.2012 for the treatment of his wife. Though, he was required to rejoin duty on 03.10.2012, he did not report back and was consequently, issued three call letters on 08.10.2012, 22.10.2012 and 29.10.2012. However, despite receiving these letters, the petitioner still did not report back to duty and submitted a letter dated 20.10.2012 to the respondents stating therein that since he was required to remain at home to take care of his father, he would not rejoin duty.
3. In the light of this communication from the petitioner, the respondents proceeded to hold a Court of Inquiry (COI) under Section 62 of the BSF Act, 1968 so as to ascertain the circumstances under which he overstayed from leave w.e.f. 03.10.2012. Based on the findings of the COI, an apprehension roll was issued to the Senior Superintendent of Police, District- Chittoor, Andhra Pradesh on 12.12.2012 with a request to apprehend the petitioner and hand him over to the nearest BSF Unit. Despite efforts made by the police, the petitioner could not be apprehended and consequently a representative from the BSF was deputed to visit the petitioner's hometown to ascertain the factual reason as to why he was overstaying. The said representative however reported that though the petitioner was not available at his home, his



father submitted an application to the Commanding Officer 16th Bn informing him that due to his ill health, the petitioner would not be able to rejoin duty and will be returning his Identity Card and Health Card issued by the BSF.

4. In these circumstances, the Commandant of the 16 Bn in exercise of power under Sub Section (2) of Sec 11 of the BSF Act r/w Rules 22 and 177 of the BSF Rules, on 13.04.2013 issued a notice to the petitioner asking him to show cause as to why he should not be dismissed from service for overstaying leave without sufficient cause w.e.f. 03.10.2012. Vide this notice, the petitioner was also informed that he could raise his defence against the proposed dismissal from service by 20.05.2023, failing which it would be presumed that he had no defence. Since no reply was received from by the petitioner to this notice, the respondents, based on the findings of the COI, passed an order dated 10.06.2013 dismissing him from service.
5. A copy of this order was also forwarded to the petitioner informing him that he could avail of the remedy of filing a petition assailing the dismissal order before the Inspector General, HQ, BSF, North Bengal within three months from the date of receipt of the order. However, no such petition was filed by the petitioner during this period and it is only after a period of six years that the petitioner chose to submit an application to the Director General, BSF on 25.07.2019 seeking his reinstatement in service, which application was followed by a legal notice dated 15.11.2019. On 30.12.2019, the respondents passed an order dated rejecting the petitioner's request for reinstatement in service. Being aggrieved, the petitioner has approached this Court by



way of the present petition.

6. In support of the petition, learned counsel for the petitioner while not denying the factual position noted hereinabove, contends that dismissal of the petitioner from service was disproportionate to the charge of overstay against him. He submits that the petitioner is still a young man who is keen to serve with the BSF and has a large family to support and therefore, this Court ought to take a compassionate view by taking into account the compelling family circumstances due to which the petitioner had to overstay leave. He therefore, prays that the writ petition be allowed by modifying the penalty and directing the respondents to reinstate the petitioner in service with retrospective seniority.
7. Per Contra, Mr. T.P. Singh, learned counsel for the respondents seeks dismissal of the writ petition by contending that in the present case the petitioner has not only overstayed his approved leave for a period of more than 8 months, but had also given a specific written communication to the respondents clearly stating that he would not continue with his duty. Infact, a similar application was submitted by his father, clearly stating that the petitioner did not want to serve with the BSF. He contends that in the light of this admitted position the penalty of dismissal from service imposed on the petitioner was fully commensurate with his misconduct.
8. He further submits that, even otherwise the petitioner has approached the respondents by way of his application dated 25.06.2019 after a delay of more than six years from the date of his dismissal from service, that too without any explanation for this delay. The



respondents were, therefore, justified in rejecting the petitioner's application seeking reinstatement, He, therefore, pray that the writ petition be dismissed.

9. Having considered the submissions of learned counsel for the parties and perused the record, we find that there is no denial by the petitioner to the fact that though he was required to join duty on 03.10.2012, he did not report back and therefore, on the basis of a validly held COI, was dismissed from service on 10.06.2013 from service. There is also no denial by him that, both he and his father had submitted applications clearly stating that the petitioner did not want to continue with his service in the BSF. In fact, there is also no denial to the fact that despite the dismissal order dated 10.06.2013, having been served on the petitioner, he did not make any representation till 25.07.2019.
10. The only submission of the learned counsel for the petitioner is that the punishment of dismissal is disproportionate and the petitioner, who is still a young man, ought to be granted an opportunity to serve in the BSF. Taking into account the factual position, which as noted herein above, is undisputed, we find absolutely no merit in the petitioner's plea that the penalty imposed on him was disproportionate. The petitioner, who was a member of an Armed Force, was not expected to overstay leave for such a long period, and that too without any justifiable reason.
11. Further, not only had the petitioner submitted an application that he was not willing to serve any further with the BSF, he despite being informed about the dismissal order, chose to submit a representation



to the Director General after an inordinate delay of 6 years. It is thus evident that the petitioner was never serious about his employment with the BSF. In our view, such an employee certainly does not have a place in a disciplined force like the BSF and therefore, the respondents were justified in dismissing the petitioner from service.

12. In this regard, reference may be made to the decision in ***Union of India and Ors vs. Ghulam Mohd. Bhat*** (2005)13SCC228 wherein the Apex Court, while dealing with a case of a Constable serving with the CISF, who overstayed leave for 315 days, held as under-

“8. This Court had occasion to deal with the cases of overstay by persons belonging to disciplined forces. In State of U.P. v. Ashok Kumar Singh MANU/SC/0197/1996 : AIR1996SC736 the employee was a police constable and it was held that an act of indiscipline by such a person needs to be dealt with sternly. It is for the employee concerned to show how that penalty was disproportionate to the proved charges. No mitigating circumstance has been placed by the appellant to show as to how the punishment could be characterized as disproportionate and/or shocking. (See Mithilesh Singh v. Union of India and Ors. MANU/SC/0160/2003: [2003]2SCR377 . It has been categorically held that in a given case the order of dismissal from service cannot be faulted. In the instant case the period is more than 300 days and that too without any justifiable reason. That being so the order of removal from service suffers from no infirmity. The High Court was not justified in interfering with the same. The order of the High Court is set aside.”

13. Looked at from any angle, we do not find any reason to accept the petitioner's plea that the penalty of dismissal from service imposed on



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him was disproportionate. We cannot exercise any misplaced sympathy in favour of the petitioner, merely because he is a young man or has a large family to support.

14. The writ petition being meritless is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

AUGUST 22, 2024

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