



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: February 26, 2024

+ W.P.(C) 10345/2022

(26) ROHIT ..... Petitioner

Through: Mr. Pradeep Gupta, Advocate.

Versus

UNION OF INDIA AND ORS. .... Respondents

Through: Mr. Dev Bhardwaj with Mr. Dhruv Kothari, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**SAURABH BANERJEE, J. (ORAL)**

1. The petitioner, after enrolling in Border Security Force<sup>1</sup> as a Constable on 13.06.2012 and being posted in 42 Battalion<sup>2</sup>, BSF, was granted *thirty days* of Earned Leave<sup>3</sup> from 23.01.2018 to 21.02.2018 and was to join duty on 22.02.2018. Since, the petitioner failed to do so within the stipulated time, the respondents sent three notices dated 23.02.2018, 03.03.2018 and 12.03.2018 calling upon him to resume services, however, neither did he join back nor did he respond to any of the said notices.

2. Subsequently, in a Court of Inquiry<sup>4</sup> conducted under Section 62 of the Border Security Force Act, 1969<sup>5</sup>, the petitioner was held to be

<sup>1</sup> Hereinafter referred as "**BSF**"

<sup>2</sup> Hereinafter referred as "**Bn**"

<sup>3</sup> Hereinafter referred as "**EL**"

<sup>4</sup> Hereinafter referred as "**COI**"

<sup>5</sup> Hereinafter referred as "**BSF Act**"



overstaying his leave on his own accord without sufficient cause, whereafter, an apprehension roll was issued to concerned District Magistrate to apprehend the petitioner vide Bn L/No. Estt.142 Bn/OSL2018/6824-26 dated 08.04.2018.

3. Despite thereto, as the petitioner failed to resume services, the Commandant, 42 Bn, BSF<sup>6</sup> under Section 11 BSF Act read with Rule 22 of the Border Security Force Rules, 1969<sup>7</sup> issued Show Cause Notice<sup>8</sup> dated 09.05.2018 to him alongwith copy of the COI. As the SCN was received back undelivered, on 14.07.2018, a representative from the 42 Bn was sent to the address of the petitioner to deliver a copy thereof as also to know the reasons of his overstay, but the petitioner was not found at his home. As such, the petitioner was dismissed from service with effect from 26.07.2018 under Rule 22(2) of BSF Rules vide 42 Bn vide Order No. Estt/Dismiss-order/42Bn/2018/15590-620 dated 27.07.2018 for overstaying his leave for 155 days without sufficient cause.

4. Thereafter, the petitioner armed with a medical fitness certificate reported to his unit almost a month later on 24.08.2018, when he was informed about his dismissal from service on 27.07.2018. Thereafter, he belatedly submitted a statutory petition under Section 117(2) BSF Act, 1969 on 17.05.2020 to set-aside the dismissal order which was dismissed by the Director General, BSF<sup>9</sup> vide order dated 23.12.2021.

5. Aggrieved thereby, the petitioner has preferred the present petition seeking setting aside of the order dated 23.12.2021 passed by the

<sup>6</sup> respondent no.3

<sup>7</sup> Hereinafter referred as "**BSF Rules**"

<sup>8</sup> Hereinafter referred as "**SCN**"

<sup>9</sup> respondent no.2



respondent no.2, also order dated 20.11.2018 passed by DIG (PSO), IG, Frontier, HQ, BSF, Guwahati dismissing his appeal and reinstatement back into service.

6. Learned counsel for the petitioner on the strength of a medical certificate, submits that the petitioner was suffering from acute depression from 15.02.2018 to 24.08.2018 and that the same was ignored by the respondents. He also submits that the punishment of dismissal from service was for reasons beyond the control of the petitioner as also that the case of the petitioner is squarely covered by the judgement of this Court in *Sanjeev Chaudhry vs Director General, Indo Tibetan Border Police Force & Ors.* 2015:DHC:66789-DB.

7. *Per-Contra* learned counsel for the respondents submits that even after being given adequate chances and ample opportunities, the petitioner neither reported to Bn, HQ nor submitted any /correspondence for extension of his leave, thus, as per Rule 22 of the BSF Rules, the petitioner was rightly dismissed from service, furthermore, the appeal of the petitioner was considered and dismissed by a well-reasoned order.

8. We have heard the learned counsel for the parties and have perused the documents on record.

9. As apparent from the aforesaid, the repeated conduct of the petitioner is replete with negligence as he has all throughout been way too casual in his approach. The same is certainly not expected, rather unexpected from someone like the petitioner belonging to the Armed Forces, especially when he is on frontier duty serving the Nation. *Firstly*, he remained absent from duty for a period of 155 days, and that too despite having been sanctioned leave for *thirty days* only; and *secondly*,



neither did he respond to as many as three notices nor to the SCN sent by the respondents, so much so, he was also not found at his address when a representative from the respondents' side was sent later; and *thirdly*, he reported back to resume services almost after a month of his dismissal from service; and *fourthly*, he preferred a statutory petition under Section 117(2) BSF Act, belatedly almost after *ten months* of his dismissal from service; and *fifthly*, he took almost 48 *months* to file the present petition, though there is no limitation to do so, however, the same is also a vital factor for consideration by this Court.

10. This Court is neither sitting in appeal nor in review of the orders passed by the respondents and is required to interfere only when there is some infirmity in the actions of the respondents or the procedure followed by the respondents is incorrect or the respondents have failed to follow the principles of natural justice or there is a violation of any of the statutory provisions, acts, rules, regulations or like and ought not to likely interfere in every case, particularly, which are of the present nature.

11. Under these circumstances, this Court finds no fault with any of the aforesaid by the respondents, furthermore there is very miniscule scope of interference in the present petition under Article 226 of The Constitution of India. More so, whence the allegations made coupled with the grounds taken by the petitioner are vague, unsubstantiated and bald, being very general and basic in nature, this Court, finds no need for going into the merits of the matter. This is especially whence the respondents have passed a well-reasoned order at both instances after thoroughly considering the factual position involved.



12. Therefore, in view of the aforesaid discussions as also the reasoning therewith, especially seeing the negligent attitude of the petitioner and the settled position of law qua interference by High Court in the matters of present nature as also qua judicial review under Article 226 of The Constitution of India, this Court finds no merit in the present petition.

13. The petition is accordingly dismissed, leaving the parties to bear their respective costs.

**SAURABH BANERJEE, J.**

**V. KAMESWAR RAO, J.**

**FEBRUARY 26, 2024/akr**