



2024:DHC:8303-DB



\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 25.10.2024

+ W.P.(C) 12968/2024
SHRI SUMIT KUMARPetitioner
Through: Mr.Tushar Sharma, Adv.

versus

DIRECTORATE GENERAL BORDER SECURITY FORCE
.....Respondent
Through: Mr.Manish Rohilla, SPC,
Mr.Vidur Dwivedi, GP with
Mr.Hemendra Singh, DC

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner praying for a direction to the respondents to reinstate the petitioner in service as a Constable/GD.
2. It is the case of the petitioner that the petitioner joined the service with the respondents as Constable/GD on 11.03.2013. On 17.10.2018, the petitioner was transferred from the 27th Battalion to the 39th Battalion. The petitioner received a call from his home informing him that his mother had been seriously ill for several days. The petitioner, therefore, went directly home to care for his mother. The petitioner himself admits that he received a letter from the 39th Battalion instructing him to report for duty as soon as possible.



2024:DHC:8303-DB



However, the petitioner claims that due to his mother's worsening health, he did not join the duty. The petitioner further admits that on 31.05.2019, Constable Rajender Prasad from the 39th Battalion visited the petitioner's home. The petitioner claims that at that time he was attending to his severely ill mother. The petitioner claims that Constable Rajender Prasad threatened the petitioner with arrest if he did not comply with or ignored the direction of the authority to join his duty. The petitioner claims that under pressure, he signed certain documents and gave a statement. Curiously, the petitioner does not mention in the petition anything about the nature of these documents or the statement given.

3. The petitioner was eventually dismissed from service *vide* Order dated 03.07.2019. The petitioner admits that he received the information of the same by way of post on 13.07.2019.

4. The petitioner claims that on his mother's health improving, the petitioner reported back to the 39th Battalion on 03.08.2019, but was refused permission to rejoin. On 07.08.2019, he submitted an application to the Inspector General, South Bengal Frontier, Border Security Force, Kolkata, seeking reinstatement in service, but the said representation was rejected *vide* Order dated 20.12.2019.

5. The petitioner claims that as the mother of the petitioner was receiving treatment and was severely ill, the petitioner could not take further action, and only on 17.10.2023, wrote another letter to the Hon'ble Home Minister of India seeking reinstatement. Representation was also made on the CPGRAM portal on 21.11.2023. The said representation, however, has been rejected.



2024:DHC:8303-DB



6. The petitioner claims that the petitioner could not re-join the service due to the ill health of his mother. He claims that his family is in dire need of his service, and therefore, the respondent should take a sympathetic view.

7. The learned counsel for the petitioner submits that in terms of Section 11(2) of the Border Security Force Act, 1968, an officer below the rank of Deputy Inspector-General is not authorized to dismiss any person under his command. In the present case, the Impugned Order dated 03.07.2019 has been passed by the Commandant 39th Battalion and not by the DIG, therefore, is illegal and without authority.

8. He submits that merely because the petitioner has delayed approaching this Court, it cannot be a ground to dismiss the present petitioner and deny him the relief.

9. On the other hand, the learned counsel for the respondent submits that in spite of the petitioner being warned that he must report for duty, the petitioner chose not to do so. He, in fact, addressed a letter dated 31.05.2019, stating that he does not wish to join the Force/his duty. Faced with this, the respondent has rightly dismissed him from service *vide* Order dated 03.07.2019. His statutory petition against the same was also rejected *vide* Speaking Order dated 20.12.2019. The petitioner chose not to avail of his remedy at that stage, and it is only belatedly that the petitioner has now first filed representation and then approached this Court.

10. As far as the plea of lack of jurisdiction of the Commandant, 39th Battalion to pass the Impugned Order is concerned, the learned counsel for the respondent relies upon Rule 177 of BSF Rules, 1969,



2024:DHC:8303-DB



to submit that the Commandant has been empowered as the Prescribed Officer, to order dismissal or removal from service any person under his command. He submits that the mere family condition of the petitioner cannot be a ground to take a sympathetic view, especially in light of the conduct of the petitioner himself.

11. We have considered the submissions made by the learned counsels for the parties.

12. As noted hereinabove, it is an admitted case of the petitioner that the petitioner went to his home without obtaining any leave from the respondent. He also received a letter from the 39th Battalion instructing him to report for duty. In spite of the same, he chose not to do so. Thereafter, Constable Rajender Prasad visited him from the 39th Battalion to advise him to report back to duty. He again chose not to do so, and instead, addressed a letter dated 31.05.2019 stating that he does not wish to join the duty/Force. Faced with this conduct, the respondent clearly had no option but to dismiss him from service, which they did *vide* Impugned Order dated 03.07.2019. It is only at this stage, that the petitioner realizing his fault, filed a statutory petition to the respondent which was also rejected by Order dated 20.12.2019. The petitioner again went into a slumber and did not take any remedial measure till admittedly 17.10.2023, that is, a period of almost four years. He filed the present petition on or about 07.08.2024. From the conduct of the petitioner, it clearly is evident that the petitioner is not serious and has never been serious about performing his duties with the respondent. The petitioner cannot at his own free will and desire seek reinstatement or employment with the



2024:DHC:8303-DB



respondent. The respondent being a disciplined Force, discipline in all its officers is a paramount quality and qualification to remain in service. Any sympathetic view in this kind of dereliction of duty, can, in fact, be counterproductive and can in no manner be countenanced.

13. As far as the plea of the petitioner that the impugned Order dated 03.07.2019, not having been passed by the DIG, is illegal, Rule 177 of the BSF Rules is a complete answer, which reads as under:

*“177. Prescribed officer under Section 11(2)-
The Commandant may, under sub-section (2)
or Section 11, dismiss or remove from the
service any person under his command other
than an officer or a subordinate officer.”*

14. In view of the above, we find no merit in the present petition. The same is accordingly dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 25, 2024/Arya/DG

Click here to check corrigendum, if any