



2025:DHC:99-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 07.01.2025

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W.P.(C) 47/2025 & CM APPL. 148-49/2025

EX CONST CREW DEEPAK KUMAR YADAV

.....Petitioner

Through: Mr.S.S. Pandey & Mr.Roshan
Kumar, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms.Avshreya Pratap Singh
Rudy, SPC with Ms.Usha
Jamnal & Ms.Harshita
Chaturvedi, Advs.

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 the following reliefs:

“(a) Issue a Writ of Certiorari calling for the records including the Court of Inquiry which was finalized illegally and used against the Petitioner to pass Impugned Order dated 02.12.2021 vide which Petitioner was dismissed from service and the records based on which Impugned Orders was passed rejecting his representation against such order of termination and thereafter quash all such orders including the Court of Inquiry.

(b) Issue a Writ of Mandamus further, by directing the Respondents to permit the petitioner to the issuance of the Writ in the nature of Mandamus by directing the



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Respondents to permit the petitioner to rejoin services with all consequential benefits”

2. The Impugned Order dated 02.12.2021 has been passed by the Officer Commanding, Water Wing, BSF, Rajarhat Action Area, New Town, Kolkata, striking off the petitioner from the strength of the Water Wing, BSF, Rajarhat with effect from 02.12.2021, *inter alia* observing as under:-

“3. Under the provision of Rule 17 of the BSF Rules-1969, No 160801020 Const (Crew) Deepak Kumar Yadav of Water Wing, BSF, Rajarhat was given an opportunity to show Cause vide this HQ Letter No. WW/Estt/5797 /2021/3369 dated 23.06.2021 against his proposed termination from service His reply to the show cause notice dated 04.10.2021 has been examined by the undersigned and I am not satisfied with the explanation offered by him and consider his further retention in the force to be undesirable. Hence in exercise of the powers vested upon me under section 11(2) of the BSF Act, 1968, No 160801020 CT(Crew) Deepak Kumar Yadav of Water Wing BSF Rajarhat is hereby dismissed from the service under Rule 17 of the BSF Rules, 1969 w.e.f. 02 Dec 2021 (AN).”

3. The order having been passed at Kolkata, we enquired from the petitioner as to how he invoked the jurisdiction of this Court for entertaining the present petition. In response, the learned counsel for the petitioner submitted that as the Impugned Order places reliance on the Court of Inquiry that was conducted at Delhi and which had found that neither the Swimming Experience Certificate (Reference No.06/7/15 dated 08.07.2015) was issued to the petitioner by the Adventure and Coaching Center, Jaipur Road, New Aadars Nagar,



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Kotputli, Distt. Jaipur (Rajasthan), nor the Mechanised Fishing Boat (ref. No 0031 of 22/12/14) was issued to him by Dhana Laxmi Water Wing Mechanised Fishing Boat, Chinnamavari Street, Visakhapatnam, basis whereof the petitioner had obtained appointment in the BSF, this Court would have the jurisdiction to entertain the present petition.

4. We do not find any merit in the submissions made. The petitioner for invoking the jurisdiction of this Court, in the writ petition has pleaded as under:

“19. That the petitioner have the cause of action to approach this Hon'ble Court because he not only the Inquiry was finalized in Delhi but even the received such decision to terminate him was issued from Delhi though the orders of dismissal was passed orders in Delhi but even the entire process of selection has been carried out in Delhi. Therefore, the petitioner have approached this Hon'ble Court by way of present Writ Petition.”

5. Apart from the fact that the Impugned Order dismissing the petitioner from service has not been issued at Delhi, it is trite law that “cause of action” means a bundle of facts which is necessary for the petitioner to prove in order to succeed in the proceedings. It does not completely depend upon a character of the relief prayed for by the petitioner. A small part of the cause of action arising within the territorial jurisdiction of a High Court may not be considered as a determinative factor compelling the High Court to decide the matter on its own merits. In such a case, the doctrine of *forum non*



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conveniens shall apply.

6. In the present case, before passing the Impugned Order, a Show Cause Notice had been issued to the petitioner at Kolkata, and the reply of the petitioner to the same is stated to have been considered before passing the Impugned Order at Kolkata. The petitioner is aggrieved by the Impugned Order dated 02.12.2021, which had terminated his service. The said order, as noted hereinabove, has been passed at Kolkata. Therefore, the major cause of action has arisen at Kolkata merely because the cause of inquiry was ordered at Delhi, it will not make this Court a *forum conveniens*.

7. Applying the principle of the doctrine of *forum non conveniens*, therefore, we are of the opinion that this Court would not be the appropriate/convenient Forum. Accordingly, we decline to entertain the present petition in exercise of the discretion vested in as under Article 226 of the Constitution of India.

8. The petition and the pending applications are dismissed while reserving the liberty of the petitioner to approach the jurisdictional High Court.

NAVIN CHAWLA, J

SHALINDER KAUR, J

JANUARY 7, 2025/rv/DG

Click here to check corrigendum, if any