



GAHC010204592017

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7389/2017

JAYANTA NATH
S/O. SRI KANDARPA NATH, VILL. BARHARID, P.O. CHAK CHAKA,
BARPETA ROAD, DIST. BARPETA, STATE ASSAM, PIN-781317.

VERSUS

THE UNION OF INDIA and ANR.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF
DEFENCE, BORDER SECURITY FORCE, CGO COMPLEX, LODHI ROAD,
NEW DELHI-110003.

2:THE COMMANDANT
124 BN
BSF

KANPORA S C/O 56 APO
PIN-193223

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Ms. U. Das, Advocate.
Advocates for the respondents : Shri. S. S. Roy, CGC.

Date of hearing : **22.04.2024**

Date of Judgment : **22.04.2024**

JUDGMENT & ORDER

Heard Ms. U. Das, learned counsel for the petitioner. Also heard Shri S. S. Roy, learned CGC appearing for all the respondents.

2. The petitioner has put to challenge the action of the respondent authorities in not allowing him to join his duties as Constable in the Border Security Force (BSF).

3. The facts projected is that in the year 1999, the petitioner was appointed as a Constable and while working in the D' Coy of the Unit of 124 Battalion BSF Roop Nagar, New Cooch Behar in the State of West Bengal, he fell sick and had accordingly prayed for and was granted earned leave for the period from 25.09.2013 to 24.10.2013. It is the case of the petitioner that after coming to his native place in the district of Barpeta, he had further health problems as a result of which, he could not return for his duty. The petitioner alleges that he had both physical ailment as well as mental ailment for which he was treated.

4. Due to his absence, a show-cause notice was issued on 25.01.2014 directing him to submit his defense. The petitioner claims to have submitted a representation in response to the same which however has not been annexed to the petition. It is submitted that the reason for the same is not being able to trace out the copy of the said representation.

5. Ms. Das, the learned counsel for the petitioner has submitted that after getting the clearance from the Doctor, the petitioner had visited the office of the

respondent no. 2 with the necessary medical documents to resume his duties which however was not allowed and rather the petitioner was informed that he was dismissed from service for unauthorized absence. The learned counsel has submitted that the entire action was done behind the back of the petitioner without affording him a reasonable opportunity. The challenge is also based on the grounds of lack of transparency and fairness by which an adverse action has been taken against the petitioner without following the due process of law. The learned counsel accordingly submits that appropriate orders/directions be issued to allow the petitioner to resume his duties in accordance with law.

6. *Per contra*, Shri Roy, the learned CGC has submitted that the projection made by the petitioner are incorrect both on facts and in law. It is submitted that the petitioner had overstayed his leave and was unauthorisedly absent from duties. He submits that the nature of duties and the organization in which the petitioner was employed, is of utmost importance and directly related to the interest of the country.

7. Though the petitioner was granted Earned Leave from 25.09.2013 to 24.10.2013, he did not report for his duties. By drawing the attention of this Court to the averments made in paragraph 2 of the affidavit-in-opposition filed on 14.06.2018, the learned CGC has submitted that on the issue of the petitioner not having returned for resumption of his duties, various communications by registered post including letters dated 28.10.2013, 08.11.2013 and 16.11.2013 were issued to him which were not replied. Accordingly, as per Section 62 of the BSF Act, a Court of Inquiry was held to investigate the matter. An Apprehension Roll was also issued to apprehend the petitioner on 24.12.2013. However, no response was received from the concerned police authorities. In the Court of Inquiry, it was found that the



petitioner was over staying the leave without any valid reasons.

8. Accordingly, a show-cause notice was issued to the petitioner vide registered post on 25.01.2014 by which the petitioner was directed to submit his defense. Though the communication was received, no response was submitted.

9. Shri Roy, the learned CGC further submits that to give a further opportunity, a representative No. 86007276 ASI (GD) P. Bora of the Unit was sent to the residence of the petitioner in his home town to enquire about the petitioner and to ascertain as to whether the petitioner was willing to serve the organization or not. The representative on his visit was however informed by the petitioner that he was not willing to resume his duties or come back to the organization. It is thereafter by giving adequate time, an order was passed on 18.03.2014 dismissing the petitioner from service and the said order of dismissal was also communicated to the petitioner vide registered post.

10. It is submitted by the learned CGC that long thereafter the present writ petition has been instituted in the year 2017. He further submits that the services under the BSF which is a disciplined force cannot be neglected or treated in the instant manner and therefore no relief is entitled to the petitioner.

11. The rival contentions have been duly considered and the materials placed before this Court have been carefully examined.

12. The factual assertion made by the petitioner in the writ petition have been categorically denied in the affidavit-in-opposition filed by the respondent nos. 1 & 2 on 14.06.2018. No rejoinder has been filed by the petitioner. Ms. Das, the learned counsel for the petitioner however has fairly submitted that the

petitioner is not presently in touch and therefore such rejoinder could not be filed.

13. Be that as it may, the rival pleadings and the materials on record would show that the only reason which has been cited by the petitioner in the instant petition is suffering from certain physical ailment as well as mental ailment. What is however important to note is that though the petitioner has claimed to have replied to the show-cause notice dated 25.01.2014, copy of such reply has not been annexed to the writ petition and the ground assigned is that the same could not be traced out. Juxtaposed, the relevant pleadings in the counter-affidavit is that the petitioner never replied to the said show-cause notice. The show-cause notice along with the earlier communications noted above have been annexed to the affidavit-in-opposition and there is no response as indicated above. The respondents did not straightaway pass any adverse order but had further sent a representative to the residential home of the petitioner who had met the petitioner, wherein the petitioner had expressed his disinclination to continue in the service of the BSF. The aforesaid statements have not been denied. The dismissal order has been passed after about 6 months thereafter on 18.03.2014 which was also sent to the petitioner by registered post. The said dismissal order however is not the subject matter of challenge. The writ petition itself has been filed after about 3 years from the said date in the year 2017 and there is no cogent and acceptable reasons for the same. Though a statement has been made by the petitioner that he was suffering from ailment and certain documents have been annexed, in the opinion of this Court these are not sufficient and would rather appear to be made as an afterthought to cover up the lapses.



14. The exercise of jurisdiction under Article 226 of the Constitution of India has to be done in an equitable manner wherein the conduct of the rival parties is of paramount importance. In the facts and circumstances of the present case, this Court is of the view that equity would not be in favour of the petitioner.

15. The writ petition accordingly stands dismissed.

JUDGE

Comparing Assistant