



GAHC010120012021

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

Case No. : WP(C)/3983/2021

BRAJ RAJ SINGH
S/O SRI RAMRAKSHA SINGH, RESIDENT OF VILLAGE GOPI, PO PAKARI
NAUNYA, PS KOTWALI, DIST MAHARAJGANJ, UTTAR PRADESH, 273303

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME , GOVT.
OF INDIA, NEW DELHI

2:THE DIRECTOR GENERAL
SASHASTRA SEEMA BAL

EAST BLOCK V
R.K PURAM
NEW DELHI 110006

3:THE INSPECTOR GENERAL
FRONTIER HEADQUARTERS
SASHASTRA SEEMA BAL
KHANAPARA
GUWAHATI 781022
ASSAM

4:THE DEPUTY INSPECTOR GENERAL
SASHASTRA SEEMA BAL

SECTOR HEADQUARTERS
BONGAIGAON
UID NO. 11200001
ASSAM 783380



5:THE COMMANDANT
15TH BATTALION
SASHASTRA SEEMA BAL
KAJALGAON
CHIRANG
ASSAM 78338

Advocate for the Petitioner : MR. O P BHATI

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

JUDGMENT & ORDER (Oral)

Date of hearing : 30.11.2023.

Date of judgment : 30.11.2023.

Heard Mr. O. P. Bhati, learned counsel appearing on behalf of the writ petitioner. I have also heard Ms. B. Sarma, learned Central Government Counsel appearing on behalf of the respondents.

2. The writ petitioner herein had joined the Sashastra Seema Bal (SSB) as a Constable (General Duty) on 22.07.2006 at the 22nd Battalion of the SSB at Ranidanga. After serving at various places the petitioner was posted at Kajalgaon under the 15th Battalion of the SSB at Kajalgaon in the district of Chirang on 19.06.2017. While serving at Kajalgaon, the petitioner had applied for 31 days earned leave w.e.f. 10.01.2019 to 09.02.2019 with permission to avail suffix on 10.02.2019 for medical treatment of his ailing mother, who, at the relevant point of time, was



suffering from liver cancer. The mother of the petitioner was residing at his native place in Uttar Pradesh. The leave application of the petitioner was sanctioned and accordingly, the petitioner proceeded on earned leave. However, after the completion of the leave period, the petitioner did not join back in duty. As per the case projected in the writ petition, the mother of the petitioner had to be admitted in Homi Bhabha Cancer Hospital, Varanasi on 07.01.2019 by the family members of the petitioner and though she was subsequently discharged from the hospital, yet, on several occasions, she had to be re-admitted and/or see the doctors for review of her treatment. Not only that, the petitioner's case is also to the effect that he, with the assistance of his elder sister, had to take his mother to the Tata Memorial Hospital, Mumbai from time to time for the treatment. Around the same time, the father of the petitioner, who was a heart patient and was overaged, had to be looked after as a result of which, the entire family along with the petitioner was in distress. During that time, notices were sent to the writ petitioner by his employer, while he had failed to respond as a result of which, the petitioner was declared as a "deserter" within the meaning of Section 74 of the Sashatra Seema Bal Act, 2007.

3. The petitioner had admitted that the notices sent by his employer, before issuing the order of dismissal from service dated 17.06.2019, had been received in his village address but since at the relevant point of time the petitioner was frequently travelling to Varanasi and Mumbai and was also under serious mental stress due to the ailment of his mother, he could not respond to the letters/notices issued by the authorities. Subsequently, the impugned order dated 17.06.2019 dismissing the



petitioner from service was issued by the Commandant of 15th Battalion of the SSB at Kajalgaon i.e. the respondent No.5.

4. Aggrieved by the order dated 17.06.2019, the petitioner had preferred an appeal by narrating the factual background and the circumstances under which he had failed to either join back in service on expiry of the leave period or to respond to the notices sent by the department. However, by the order dated 18.11.2019, the appellate authority had rejected the appeal and had affirmed the order of dismissal from service. Hence, this writ petition.

5. Mr. O. P. Bhati, learned counsel for the petitioner submits that the punishment of dismissal from service, in the facts and circumstances of the case, is shockingly disproportionate since it is not a case where the petitioner was negligent in reporting back in duty but was unable to do so under compelling circumstances as he was discharging his moral duties by trying to get medical help and physical comfort for his ailing mother. According to Mr. Bhati, the aforesaid aspect of the matter was not at all considered by the appellate authority and to that extent none of the grounds stated in the appeal memo filed by the petitioner was even considered, far less dealt with by the appellate authority in the order dated 18.11.2019. It is also the submission of Mr. Bhati that the appellate authority had passed the order dated 18.11.2019 without giving any opportunity of being heard to the petitioner and therefore, the said order is bad on account of violation of the principles of natural justice as well.

6. The learned counsel for the petitioner further submits that the order dated 18.11.2019 has been issued in a most mechanical manner by merely reiterated



and/or reproducing the order passed by the disciplinary authority i.e. the respondent No.5 and therefore, there was no proper application of mind by the appellate authority. On such grounds the learned counsel for the petitioner has prayed for setting aside the order of dismissal from service dated 17.06.2019 as well as the order passed by the appellate authority on 18.11.2019 by contending that the failure on the part of the appellate authority to exercise his statutory duty, enjoined under Rule 29 of the Sashashtra Seema Bal Rules, 2009 has vitiated the order dated 18.11.2019.

7. Ms. B. Sarma, learned Central Government Counsel, on the other hand, submits that repeated attempts on the part of the authorities to secure the attendance of the petitioner had not only ended in failure but the petitioner had also failed to respond to the notices sent to him by the departmental authorities at his permanent address. Under the circumstances, the authorities had no other option but to issue the order of dismissal from service as otherwise the same would lead to complete anarchy and indiscipline in a force like SSB. The learned Central Government Counsel further submits that the impugned order was passed on the basis of materials available on record. However, the learned Central Government Counsel has fairly submitted that the order dated 18.11.2019 passed by the appellate authority does not clearly reflect as to in what manner, the grounds taken by the petitioner in his appeal memorandum has been dealt with in his case.

8. I have considered the submissions advanced at the bar and have also gone through the materials available on record.

9. There is no dispute about the fact that the earned leave application



submitted by the petitioner was granted by the authorities pursuant where to, he had proceeded on leave but the leave of the petitioner was sanctioned only till 09.02.2019. After expiry of the leave period, the petitioner had neither applied for extension of the leave nor did he return back in duty. It is also the admitted position of fact that around that time, the mother of the petitioner was suffering from terminal illness (liver cancer) requiring him to take her for advanced medical treatment at Homi Bhabha Cancer Hospital, Varanasi as well as at Tata Memorial Hospital, Mumbai. Around that time, the father of the petitioner was also suffering from heart disease. It is in such factual backdrop, this Court is called upon to consider as to whether, the disciplinary proceeding initiated against the petitioner by treating him as a "deserter" was justified in the facts and circumstances of the case and if so, whether the order of dismissal from service was shockingly disproportionate in the facts and circumstances of the case as well as the gravity of the misconduct.

10. In so far as the first question is concerned, Section 10 read with Section 11 of the Sashastra Seema Bal Act, 2007 permits the authorities to impose the penalty of termination from service or dismissal, removal or reduction in rank in accordance with the provisions of the Act. By invoking the jurisdiction under Rule 21 read with Rule 18 of the Sashastra Seema Bal Rules, 2009, the respondent No.5 had issued the order of dismissal from service to the petitioner. If the petitioner was absent from duty after expiry of his leave period and he had neither submitted any application for leave nor did he inform the authorities as to the reason for which he was unable to join back in service it was not only justified for the disciplinary authority to initiate the aforesaid proceeding against the petitioner but such proceeding, in the opinion of this Court,



was also conducted by following the due process of law. What is, however, significant to note herein that when the order of dismissal from service dated 17.06.2019 was issued, the disciplinary authority was not fully aware of the complete reality and the facts and circumstances of the case for which the petitioner had failed to join back in duty or to respond to the notices sent by the department. Such facts were, however, brought before the appellate authority wherein the petitioner had narrated in details, in his memorandum of appeal the facts and circumstances. Therefore, if not for deciding as to whether the proceeding so initiated against the petitioner was valid in law, at least for considering as to whether the penalty of dismissal from service was justified having regard to the gravity of misconduct, is a matter which definitely ought to have arisen for consideration before the appellate authority. But from a perusal of the order dated 18.11.2019, this Court finds that there was no proper consideration of the explanation furnished by the petitioner for his failure to report back to duty by the appellate authority.

11. Rule 29(3) of the Sashastra Seema Bal Rules, 2009 not only empowers the appellate authority to set aside an order of dismissal, removal or retirement issued under the Rule but also vests sufficient power/jurisdiction upon the appellate authority to pass such other orders as may be necessary in respect of the period of absence from duty of the person whose dismissal, removal or retirement has been set aside. Whether it is a fit case to set aside or modify the order of penalty imposed upon the petitioner is a matter, which ought to have been considered by the appellate authority, by keeping in mind the background facts and circumstances as well as the explanation furnished by the appellant. However, as has been noted herein above,



no such exercise appears to have been carried out by the appellate authority while issuing the appellate order dated 18.11.2019. If that be so, the appellate remedy, being a statutory remedy provided to the petitioner, this Court is of the view that it is a clear case where the statutory right of the petitioner under Rule 29 of the Sashastra Seema Bal Rules, 2009 has been violated.

12. The appellate authority, having been enjoined with a statutory duty, must perform the same upon due application of mind on the facts and circumstances of the case and not merely mechanically affirming an order of penalty. Jurisdiction exercised by the appellate authority in such matter is quasi judicial in nature. Therefore, the order passed by the appellate authority ought to be clothed with proper reasonings and the same must be passed after due consideration of all relevant materials placed before it. Failure to do so, in the opinion of this Court, would amount to improper exercise of statutory jurisdiction, thus having a vitiating effect on the order itself.

13. For the reasons mentioned herein above, the order dated 18.11.2019 passed by the appellate authority is hereby set aside. The matter is remanded back to the appellate authority to reconsider the materials placed before it and pass a fresh order after giving an opportunity of being heard to the petitioner. The aforesaid exercise be carried out and completed as expeditiously as possible, but not later than 03 (three) months from the date of receipt of a certified copy of this order. In doing so, the appellate authority may also consider whether the facts and circumstances of the case would justify imposition of any other penalty short of



dismissal from service, upon the petitioner. If the petitioner continues to remain aggrieved in the matter even thereafter, it will be open for him to approach this Court once again, by filing a fresh writ petition.

With the above observation, the writ petition stands disposed of.

JUDGE

T U Choudhury/ Sr.PS

Comparing Assistant