



GAHC010020842022

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

Case No. : WP(C)/753/2022

T. SEIMINTHANG HAOKIP
S/O LATE JANGMANG HAOKIP, R/O ZALENPхай VILLAGE, P.O. AND P.S.
CHURACHANDPUR, DIST. CHURACHANDPUR, MANIPUR-795129

VERSUS

THE UNION OF INDIA AND 2 ORS
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
NEW DELHI-110001.

2:THE DIRECTOR GENERAL OF INDO TIBETAN BORDER POLICE FORCE

GOVERNMENT OF INDIA
NEW DELHI-110003.

3:THE COMMANDANT

22RD BN. ITB POLICE
BLOCK- A/14 6TH FLOOR
GAME VILLAGE
GUWAHATI
ASSAM-78102

Advocate for the Petitioner : MR N S SINGH

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

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing : 07.09.2023

Date of judgment : 07.09.2023

JUDGMENT & ORDER

Heard Shri NA Singh, learned counsel for the petitioner. Also heard Shri AK Dutta, learned CGC appearing for all the respondents.

2. By means of this writ petition, the petitioner has put to challenge an order dated 06.06.2020 by which the petitioner has been dismissed from service on the ground of being a deserter.

3. The facts, as projected in the writ petition is that the petitioner was appointed as a Constable (GD) in the ITBP Force in the year 2014. While being posted at Guwahati, he had taken Earned Leave from 26.11.2019 to 14.01.2020. However, due to certain medical conditions, the said leave was extended from 15.01.2020 to 13.02.2020 and such extension was also permitted by the Office. Shri Singh, learned counsel for the petitioner has submitted that the petitioner was unwell and was suffering from "Anxiety Disorder" and in this connection, he has referred to a Medical Certificate dated 05.06.2021. As per the said Certificate, the petitioner was under the care of the concerned Doctor from 18.02.2020 to 05.06.2021. To show the *bona fide* of the petitioner, Shri Singh has also referred to a Bus Ticket dated 15.02.2020 on which date he had intended to come back to Guwahati to rejoin his duties. However, it is submitted that the petitioner fell ill and therefore he could not come to re-join.

4. Shri Singh, learned counsel for the petitioner has submitted that at no point of time he had received any communication from the Office directing him to rejoin the post and in this connection he has referred to the pleadings in paragraph 3 of the affidavit-in-reply dated 21.07.2023. It is accordingly submitted that the impugned order of dismissal be set aside and a direction be



granted for a fresh consideration of the case of the petitioner and to allow him to rejoin his service. It is emphasized that the petitioner was serving continuously since 2014 without any blemish.

5. *Per contra*, Shri Dutta, learned CGC has submitted that in a matter concerning a disciplinary proceeding, unless a case of blatant illegality or irregularity is made out, this Court may not interfere with such decision. He submits that in the instant case, all procedural safeguards were afforded to the petitioner and in fact, not only notices were issued to the petitioner repeatedly, there were paper publication also directing him to rejoin the services in spite of which the petitioner chose not to come back to the Office. Shri Dutta has referred to the communications dated 18.02.2020, 26.02.2020 and 04.03.2020. He submits that not only notices were issued to the petitioner but also copies of the same were also marked to his wife as well as Gaonbura and O/C of the concerned Police Station to intimate the petitioner about his rejoining. Though the petitioner in his rejoinder affidavit has denied receipt of any such Office Memoranda, the petitioner has himself issued a letter dated 24.04.2020 requesting to allow him to rejoin. However, it appears that in spite of such letter, the petitioner did not rejoin and in this regard another Office Memorandum was issued on 02.05.2020 directing the petitioner to rejoin. In the meantime, an order dated 27.04.2020 was passed after a Court of Enquiry holding the petitioner to be a deserter.

6. Shri Dutta submits that despite such declaration, another show-cause notice was issued on 06.05.2020 directing the petitioner to report for duty. On the same date, a communication was issued to the Director of Advertisement and Visual Publicity, New Delhi for paper publication of the notice. It appears from the communication dated 26.06.2020 which was a reply from the said

Directorate that notices were published in three newspapers having circulation at the place of residence of the petitioner. As there was no response from the petitioner, ultimately on 06.06.2020 the impugned order was passed whereby the petitioner was dismissed from service. The said order had also regularized 114 days of leave. Shri Dutta submits that after about a year and half, the petitioner had filed an application dated 17.07.2021 to allow him to rejoin which was replied to by the Department in the negative as in the meantime, even the period prescribed for preferring an appeal was over.

7. Shri Dutta, learned CGC also points out that the instant writ petition was also filed after a considerable delay on 01.02.2022 and therefore, the petitioner is not entitled to any relief.

8. It is a settled law that the jurisdiction of the writ Court is ordinarily confined to examine the decision making process. The Hon'ble Supreme Court in a recent case of ***Pravin Kumar Versus Union of India and Others*** reported in ***(2020) 9 SCC 471*** has reiterated the aforesaid proposition. For ready reference, the relevant paragraph of the said decision is extracted hereinbelow-

"25. Learned counsel for the appellant spent considerable time taking us through the various evidences-on-record with the intention of highlighting lacunas and contradictions. We feel that such an exercise was in vain, as the threshold of interference in the present proceedings is quite high. The power of judicial review discharged by Constitutional Courts under Article 226 or 32, or when sitting in appeal under Article 136, is distinct from the appellate power exercised by a departmental appellate authority. It would be gainsaid that judicial review is an evaluation of the decision-making process, and not the merits of the decision itself. Judicial Review seeks to

ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice; or in case of bias or gross unreasonableness of outcome.[Government of Andhra Pradesh vs. Mohd Nasrullah Khan, (2006) 2 SCC 373, 11.]"

9. In the instant case, it appears that the initial Earned Leave which was from 26.11.2019 to 14.01.2020 was extended from 15.01.2020 to 13.02.2020. In the writ petition, the petitioner has annexed a Medical Certificate dated 05.06.2021 whereby the period of treatment has been stated as 18.02.2020 to 05.06.2021. Apart from the fact that the ailment has been vaguely diagnosed as "Anxiety Disorder", there is no advice to remain in bed rest and not to attend duties. It is also not the case of the petitioner that he had ever intimated the Office about such ailment. This Court has also noticed that though the petitioner in his rejoinder has denied receipt of any Office Memoranda requiring him to rejoin his duties, the Department had also made paper publication in spite of there was no move of the petitioner to rejoin his duties.

10. The aforesaid conduct of the petitioner makes it clear that he had the intention to desert the Force and therefore, this Court is not in a position to find any fault with the findings arrived at vide order dated 27.04.2020 declaring the petitioner to be a deserter. This Court has noticed that even after such declaration, a further show-cause notice was issued on 06.05.2020 whereby the petitioner was directed to rejoin his duties and the said aspect was also published in the newspaper through the Directorate of Advertisement and Visual Publicity. The conduct of the petitioner in filing an application after almost one and half year after such dismissal also shows the lack of due diligence on the part of the petitioner.



11. Under those facts and circumstances, this Court is of the view that the petitioner was afforded proper and adequate opportunities and also to rejoin his duties which he failed to do and therefore, this Court is of the opinion that no case for interference is made out.
12. Accordingly, the writ petition stands dismissed.
13. No order as to cost.

JUDGE

Comparing Assistant