

(2020) 10 DEL CK 0160

In the Delhi High Court

Case No : Civil Writ Petition No. 8358 Of 2020

Madan Lal Srivastava

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 22-10-2020

Acts Referred:

Citation : (2020) 10 DEL CK 0160

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Vishal Tewari, Nidhi Raman

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

CM APPL. 27151/2020 (of the petitioner for exemption from filing certified and original copies of the impugned order and Annexures as filed hereto)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) 8358/2020

3. The petitioner, an Ex. Constable in the respondents Border Security Force (BSF), has filed this petition; (i) impugning the order dated 11th December, 2018 of the respondents BSF rejecting the petitioner's petition for reinstatement/re-enlistment; (ii) impugning the Certificate of Discharge dated 25th January, 1992 of the petitioner from the respondents BSF; and, (iii) seeking mandamus directing the respondents BSF to reinstate/re-enlist the petitioner in its service OR grant to the petitioner compulsory retirement, making the petitioner eligible to receive pension from the respondents BSF.

4. It is the case of the petitioner (i) that the petitioner enrolled as a Constable (GD) in the respondents BSF on 29th April, 1986; (ii) the petitioner, between the

years 1989-1990 complained to the Deputy Inspector General (DIG) Headquarters, of mental trauma caused and his exploitation by the Company Commander; (iii) that on such complaint of the petitioner, a Court of Enquiry was constituted; (iv) however the trauma and exploitation of the petitioner continued; (v) on 12th August, 1991, the petitioner was sent to Headquarters National Security Guard (NSG) at R.K. Puram, on deputation but after only two months was sent back due to non-possession of ID card and on return, was asked to undergo the same training as he had already undergone with his batch, which discriminated him in this respect; (vi) that the petitioner was disqualified from NSG and returned to his Company; (vii) the payment of salary was also stopped thereafter and the petitioner was discharged from his services vide certificate dated 25th January, 1992; (viii) that the petitioner has been mentally unstable for 25 years; (ix) on 10th May, 2017, the petitioner filed an appeal against the discharge and for reinstatement in the respondents BSF; (x) the petitioner, by response dated 29th July, 2017 was informed that he had in fact resigned from the respondents BSF on 25th January, 1992; (xi) the petitioner earlier filed Civil Writ Jurisdiction Case No. 12363/2017 in the High Court of Patna (however the relief claimed in the said petition is not pleaded and the copy of the petition also not filed before this Court); (xii) however on 19th April, 2018, after some arguments and faced with the issue of delay and laches since the petitioner had approached the court after lapse of 25 years of passing of the order of discharge, the said writ petition was withdrawn with liberty to exercise any other remedy available to the petitioner in law; and, (xiii) that the petitioner thereafter on 25th July, 2018 preferred an appeal/petition to the respondents BSF and which was dismissed vide impugned order dated 11th December, 2018.

5. The counsel for the respondents BSF alongwith Deputy Commandant Vinod Kumar, Law Officer of the respondents BSF appear on advance notice.

6. The counsel for the petitioner, during his arguments has emphasized on the harassment of the petitioner and of the delay being on account of mental trauma from which the petitioner suffers and which is stated to continue.

7. We may in this context notice that the petitioner, alongwith the petition, as Annexure P-9 thereto has filed the Report dated 3rd May, 2019 of the Institute of Human Behavior and Allied Sciences (IHBAS) and wherefrom it appears that the petitioner is married and when he went to IHBAS, complained that he was suffering from psychiatric illness from the previous 27 years and has been on continuous treatment from different hospitals and had shown improvement but some symptoms still continued. The petitioner also informed IHBAS that he was having disturbed interpersonal relationship with his spouse and poor occupational functioning. IHBAS has reported that the petitioner, during assessment was generally cooperative and was able to comprehend instructions though lacked the motivation and indulged in irrelevant communication and expressed grandiose ideas and asked unnecessary questions. IHBAS has further reported, that (i) petitioner's visual motor integration skill is adequate alongwith other cognitive

abilities including visual form perception, organizing, planning and executing motor actions; (ii) that he has intelligence quotient (IQ) of 71, indicating Borderline Intelligence; (iii) that the petitioner tends to be bothered by poor will control and has little regard for social demands; (iv) that the petitioner is not overly considerate, careful or painstaking though tends to be restrained, reticent and introspective and sometimes pessimistic; (v) that he tends to be emotionally mature, stable and realistic about life; (vi) that his visual motor integration skill is average; (vii) he possesses adequate attention, organization and planning skills though is able to less decipher complex stimuli; (viii) his tolerance for stress is lower than usual; (ix) he finds difficult to make decisions; and, (x) he is less socially mature and is disposed to experience frequent difficulties when interacting with the environment especially interpersonal relationships.

8. We are afraid, the aforesaid report of IHBAS, rather than helping the petitioner, shows the petitioner to be capable of understanding what is good or bad and not in such a state as to be incapacitated to take remedial action with respect to his discharge as far back on 25th January, 1992, if illegal.

9. The petitioner, alongwith the petition has not filed the single other document of any illness at the time of discharge or prior to his visit to IHBAS comparatively recently, only in May, 2019. The assessment of IHBAS of the petitioner is thus of May, 2019 and what is recorded therein of the past, is the history as disclosed by the petitioner himself.

10. IHBAS has not mentioned having perused any other medical documents produced by the petitioner.

11. The only argument of the counsel for the petitioner, for the long delay, is of the petitioner's incapacity and which as aforesaid is not supported by the documents produced by the petitioner himself.

12. Not only so, the petitioner claims to have initiated action against his discharge, way back on 10th May, 2017 and on failing therein, on receipt of response dated 29th July, 2017, having approached the Patna High Court, from where the petitioner withdrew the petition when faced with the aspect of delay. Once the petitioner was not able to satisfy the Patna High Court on the aspect of delay, the petitioner, by indulging in forum shopping, is abusing the process of law.

13. We may further record that the petitioner was informed almost 2 years ago, on 11th December, 2018, of the dismissal of the appeal/petition preferred by him to the respondents BSF pursuant to the withdrawal of the writ petition earlier filed before the Patna High Court. The only explanation therefor, of counsel for the petitioner is of the petitioner's illness and which contention already, as aforesaid, stands negated.

14. The petitioner, as per the orders of the respondents BSF, resigned from the BSF for personal family reasons and the entire endeavour of the petitioner is to,

without rendering the requisite service in the respondents BSF, earn pension and which attempt has to be condemned.

15. There is no merit in the petition.

16. Dismissed.