

(2012) 12 DEL CK 0111

In the Delhi High Court

Case No : Writ Petition (C) 6268 of 1999

Mukesh Kumar Sharma

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 11-12-2012

Acts Referred:

Border Security Force Act, 1968 — Section 11(2), 19(b)
Constitution of India, 1950 — Article 226

Citation : (2012) 12 DEL CK 0111

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Avnish Ahlawat, for the Appellant; Bhupinder Sharma, BSF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Exercising power conferred by Rule 22 read with Rule 177 of the BSF Rules and Section 11 (2) of the BSF Act,

after serving a show cause notice upon the petitioner, his services were terminated. On the subject whether such administrative termination was

recognized by law, as per decision dated March 21, 2006 dismissing WP(C) 6577/2002 Ct. Akhilesh Kumar v. D.G. BSF & Ors. it was

observed by a Division Bench of this Court as under:-

Considering the facts and circumstances of this case we are of the considered opinion that ratio of the aforesaid decisions of this Court as also of

the Supreme Court are squarely applicable to the facts and circumstances of this case as in the present case also the independent power vested in

the Commandant u/s 11(2) read with Rule 177 was exercised after issuing show cause notice to the petitioner in terms thereof. Therefore we hold

that no further inquiry was required to be held in view of the fact that the petitioner has failed to file any reply to the show cause notice and to deny the allegation in the process.

In a recent decision of the Supreme Court in *State of Rajasthan and Another Vs. Mohammed Ayub Naz*, the Supreme Court after referring to

many other precedences has held that absenteeism from office for prolong period of time without prior permission by the Government servant

has become a principal cause of indiscipline which have greatly affected various Government services. It is also held that in order to mitigate the

rampant absenteeism and wilful absence from service without intimation to the Government the Government has promulgated a rule that if the

government servant remains willfully absent for a period exceeding one month and if the charge of willful absence from duty is proved against him,

he may be removed from service. The Supreme Court held that the order of removal from service passed in the said case was the only proper

punishment to be awarded in view of the fact that Government servant was absent from duty for long period without intimation to the Government.

Ram Pal (supra) is also a case where action was taken by the respondents under the provisions of Section 11(2). In the said decision it was held

that once a show cause notice is issued recording tentative opinion as required, nothing further was required to be done in the said case as the

employee did not reply to the notice. Therefore it was held that as there was no denial of the allegation nor was there any request for holding an

inquiry, therefore the action taken is justified.

Facts of the said cases are similar to the facts of the case in hand and therefore we are bound by the ratio of the aforesaid decisions which laid

down the law. In terms of the said decisions, we have no other option but to hold that the petitioner has failed to make out any case for

interference under Article 226 of the Constitution. We find no merit in the petition and the same is dismissed.

2. Facts of aforesaid case were that the petitioner therein had continuously absented himself from duty and in spite of call up notice issued did not

report back. On his own he came back and was awarded punishment for an offence u/s 19 (b) of the BSF Act and the period of absence was

regularized. There were past instances of unauthorized absence. He repeated the

misdeemeanor of once again absenting himself from June 1, 2000

and once again call up notices were issued as also the apprehension roll. He was neither found in his house nor he responded to the notices. A

show cause notice was thereafter issued at his permanent address requiring him to respond as to why on account of continued unauthorized

absence and thus his further retention in service being undesirable, his services be not terminated. No reply was received resulting in services being terminated.

3. As regards the instant writ petitioner the record would reveal that he joined service as a temporary Constable on October 15, 1984 and was confirmed w.e.f. October 16, 1986.

4. The petitioner availed earned leave due to him each year and reported back on time till the year 1988. Thereafter, in each year he over stayed

leave. Put in a tabular form, the data would reveal as follows:-

5. The aforesaid leave was regularized by adjusting the earned leave, casual leave, half paid leave, extra-ordinary leave, extra-ordinary leave on medical grounds etc.

6. In the year 1994 the petitioner was sanctioned 15 days casual leave from June 7, 1994 to June 24, 1994 requiring him to join back on June 25,

1994 but he joined after over staying leave for 58 days on September 4, 1994. This was regularized by once again adjusting half paid leave.

7. The petitioner started absenting himself once again from October 17, 1994 and as per the record he just left the Unit Lines.

8. Call up notices were sent in the first and second week of October, 1994. An apprehension roll was issued on December 10, 1994 but the

petitioner could not be found at his house. A Court of Inquiry was held on December 15, 1994 to ascertain the whereabouts of the petitioner but

except for reporting that he was found absent, where was he could not be found. Show cause notice was issued to him on December 28, 1994 to

answer i.e. respond by giving an explanation against the proposed action to terminate his services. He did not respond resulting in his services

being terminated vide order dated January 30, 1995 against which the petitioner availed the appellate remedy and we highlight that in the appeal

filed the petitioner has made a reference to the contents of the show cause notice sent to him, meaning thereby that he had received the same.

9. The plea taken in the writ petition that the show cause notice was never served upon the petitioner is thus negated by us. Even otherwise from

the record we find that the show cause notice was sent by Regd. Post and at the correct address. The same was not received back and thus there

is a presumption of service.

10. As regards the remainder i.e. the power of the Commandant to pass the impugned order, the issue is no longer res integra. We have extracted

hereinabove the view taken by a Coordinate Bench of this Court and we find that the view is premised on the decision of the Supreme Court

reported as Gouranga Chakraborty Vs. State of Tripura and Another, and 1996 2 SLR 297 UOI v. Ram Pal.

11. We would only highlight the fact that the petitioner remained continuously absent for 209 days from July 20, 1991 to February 13, 1992 and

thereafter for 260 days from June 19, 1992 to March 5, 1993 and even in the year 1994, apart from availing 15 days casual leave, remained

absent firstly for 58 days and thereafter from October 17, 1994. He never reported back and as a matter of fact continued to remain absent till

when the order was passed on January 13, 1995. We find no merit in the writ petition which we dismiss but without any order as to costs.