

(2006) 02 DEL CK 0137
In the Delhi High Court
Case No : WP (C) 7770 of 2003

Rajpal Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 127 DLT 664

Hon'ble Judges : Mukul Mudgal, J; H.R. Malhotra, J

Bench : Division Bench

Advocate : Beenashaw N. Soni, for the Appellant; Anurag Mathur, for the Respondent

Final Decision : Dismissed

Judgement

1. Rule D.B. With the consent of the counsel for the parties the writ petition is taken up for final hearing.

2. The petitioner who was working with CRPF as a constable applied for leave in July, 2001 to visit his ailing mother. The petitioner had been granted 10 days leave from 11th July, 2001 to 22nd July 2001 but according to the petitioner he had eventually reported at the transit Camp in Jammu in the month of February 2002 where he was informed that his services stood terminated. The counsel for the petitioner has averred that the petitioner was seriously ill and was suffering from Tuberculosis of spine while his wife was suffering from epileptic fits and the petitioner's new born son died and those are the reasons for his prolonged absence. The case of the petitioner is that he had been sending leave applications and presumed that since no response were forthcoming from the respondent leave must have been granted. The Respondent has contended in the counter affidavit that a notice under registered cover on 28.7.2001 was sent to the petitioner to report on duty. Thereafter even a complaint to the Chief Judicial Magistrate was made about the absconding of the petitioner on 8.8.2001. Accordingly on 8.8.2001 the petitioner was declared to have deserted from the

force. Thereafter an enquiry was constituted and the petitioner was sent 3 notices to attend but as he failed to respond consequently on 3.2.2003 his services were terminated and the petitioner has approached this court directly without filing an appeal. The respondents have also averred in the counter affidavit that none of the representations said to be made by the petitioner were received by the respondent. The counter affidavit also avers that the petitioner's residence at Najafgarh, Delhi, is only 1 K.M. away from the official base Hospital of CRPF and all medical facilities were available there, it has thus been submitted that in the light of this fact the resort to private doctors and clinics by the petitioner casts serious doubts on the credibility of the petitioner's alleged ground for overstay. This plea has also not been denied. We are, Therefore, satisfied that the petitioner could not take on upon himself to presume that his leave was granted merely because he has sent applications. We are also not satisfied that these applications have actually been sent particularly when such applications are only supported by certificates of postings and the averment in the counter affidavit about non receipts of such applications remains un rebutted.

3. Other circumstances, which shows that the petitioner's averments about his illness are incapable of belief on account of non-denial of the averment that the base Camp hospital was situated 1 K.M. away from the petitioner's residence and in such a situation, we fail to understand why the petitioner resorted to private doctors and this clearly demonstrates that the pleas of the petitioner are not worthy of belief and Therefore, this is a matter where no interference is called for under Article 226 of the Constitution.

4. The writ petition is dismissed accordingly.