

(2021) 03 DEL CK 0242

In the Delhi High Court

Case No : Civil Writ Petition No. 3034 Of 2021, Civil Miscellaneous Application
No. 9151 Of 2021

Rakesh Kumar

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 22-03-2021

Acts Referred:

Border Security Force Rules, 1969 — Rule 22, 28A, 177
Border Security Force Act, 1968 — Section 11(2)

Citation : (2021) 03 DEL CK 0242

Hon'ble Judges : Manmohan, J;Asha Menon, J

Bench : Division Bench

Advocate : Pankaj Sinha, Abhay Kumar Bhargav, Anshuman, BNP Pathak

Final Decision : Dismissed

Judgement

Manmohan, J

1. Present writ petition has been filed challenging the dismissal order dated 06th October, 2004 passed by the Commandant 33 BN BSF, the order dated 25th May, 2007 passed by the DG BSF, New Delhi and the order dated 31st January, 2017 passed by the IG (PSO) FTR HQ BSF Jammu, whereby the Petitioner's petition for reinstatement was rejected.

2. Petitioner also seeks directions to the Respondent to reinstate the Petitioner in service with all consequential benefits.

3. Learned counsel for the Petitioner states that the Petitioner was granted fifteen days casual leave from 28th May, 2004 to 15th June, 2004, since the Petitioner's mother met with an accident and subsequently the Petitioner left for Tundla. He states that though the Petitioner's mother was discharged from the hospital on 04th May 2006, yet her mental condition was not stable and subsequently, the Petitioner took her to the psychiatrist. He points out that the psychiatrist recommended that the Petitioner's mother should not be left alone

and hence the Petitioner had to stay back.

4. He states that the Petitioner sent a letter on 14th June 2004 by way of UPC to the Commandant 33 BN BSF wherein the Petitioner intimated the Commandant about the circumstances and requested for extension of leave. He states that the Petitioner's mother was taken to Kayamini Hospital Agra where she was further referred to AIIMS Delhi and her treatment lasted for almost a month. He states that the doctors at AIIMS advised that the Petitioner's mother should not be left alone because she was under mental trauma.

5. He further states that the Petitioner was directed to re-join duty immediately vide letter dated 05th July 2004, however the letter was received by the Petitioner's father who failed to inform the same to the Petitioner.

6. Learned counsel for the Petitioner states that subsequently, the Commandant ordered a Court of Inquiry against the Petitioner on 23rd July 2004 which was conducted in the Petitioner's absence. He states that the Court of Inquiry opined that the Petitioner has failed to communicate any reasonable cause for overstaying from the authorised leave of absence and therefore the Petitioner is liable for disciplinary proceeding.

7. He states that the Petitioner was dismissed from service vide impugned order dated 06th October 2004 under Section 11(2) of the BSF Act R/w Rule 177 and Rule 22 of the BSF Rules 1969 without a trial.

8. He further points out that the Petitioner sent representations to the DG BSF, Human Rights Commission, Ministry of Home Affairs, Prime Minister's Office, IG BSF and Ministry of Defence wherein the Petitioner requested reinstatement in service. He states that the representation of the Petitioner was rejected vide impugned letter dated 31st January 2007 by the IG (PSO) FTR HQ BSF Jammu.

9. Having perused the paper book, this Court finds that the present petition is barred by delay and laches as the cause of action to file the present writ petition arose on 06th October, 2004 or latest by 25th May, 2007 when IG, BSF rejected the petitioner's representation under Rule 28A of BSF Rules, 1969.

10. Further, this Court finds that no contemporaneous medical record of petitioner's mother has been placed on record.

11. At this stage, learned counsel for the Petitioner prays that the Petitioner be allowed to place on record the medical record of Petitioner's mother. However, the said prayer is declined as the Petitioner had ample time i.e. 17 years time before filing this petition. Further, the present writ petition has already been adjourned on two previous occasions at the request of learned counsel for the Petitioner. Consequently, the prayer for adjournment is declined.

12. Also no receipt of Petitioner's letter dated 14th June, 2004 has been placed on record except enclosing a UPC receipt which in itself does not inspire confidence.

13. In fact, the order passed by the IG (PSO), FTR HQ BSF, Jammu, reveals that despite sending Apprehension Roll dated 13th August, 2004 to Superintendent of Police, Agra, Petitioner could neither be apprehended nor traced at home or in Agra. In the said order, it has also been stated that representative of Superintendent of Police, District Agra, in his report dated 29th September, 2004 stated that Petitioner had left for duty after availing leave.

14. Consequently, the version put forward by the Petitioner inspires no confidence and is not borne out from the contemporaneous record.

15. Accordingly, the present writ petition along with pending application being bereft of merits as well as grossly barred by delay and laches is dismissed.