

(2011) 09 DEL CK 0535
In the Delhi High Court
Case No : Writ Petition (C) 472 of 1999

Ram Pal Singh

APPELLANT

Vs

DG BSF

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0535

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Jai Mr. Raj, for the Appellant; Ankur Chhibber and Dy. Comdt. Bhupinder Sharma (Law Office), BSF, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—"A stitch in time saves nine" if understood by the Respondents, would not have led to the present situation in which the Respondents would find themselves.

2. Since pleadings are sketchy and certain relevant dates have not been highlighted therein, since relevant record has been produced for our perusal, with consent of parties we heard arguments with reference to the record produced so that the instant writ petition could be decided with fairness.

3. This is the second round of litigation. The earlier round was fought when WP(C) No. 3110/1992 filed by the Petitioner was disposed of by a Division Bench of this Court vide order dated 15.1.1998 noting that its previous order dated 16.11.1997 directing that on the strength of the order, the Petitioner would present himself before the Commandant of the 47th Bn. BSF (then stationed at Ajnala) who would permit Petitioner to join duties has been complied with.

4. The requirement of "a stitch in time saves nine", is now highlighted by us.

5. Joining BSF as a Constable, Petitioner was attached to its 47th Bn. and remained with the Battalion till an order dated 30.7.1990 was issued by the

Headquarter transferring Petitioner to the 25th Bn. of BSF. A signal was issued on 3.8.1990 informing the Commandant of the 47th Bn. that the transfer order dated 30.7.1990 was kept in abeyance. By said date Petitioner had not been issued a movement order which has to be issued pursuant to a transfer order. The signal dated 3.8.1990 was sent by the Headquarter to the 25th Bn., which in turn sent a signal to the Commandant of the 47th Bn. on 7.8.1990 that Petitioner should not be issued the movement order, but in spite thereof, on 14.9.1990 a movement order was issued by the Commandant of the 47th Bn. directing Petitioner to report to the 25th Bn.

6. It is obvious that the Petitioner had no role in the matter. It is obvious that some where the signals got lost.

7. After availing the reporting time which was granted to him as per the movement order, Petitioner reported to the Commandant of the 25th Bn. on 25.9.1990 and produced before him the movement order dated 14.9.1990, which obviously was issued inadvertently or for the reason the signal dated 7.8.1990 was not received by the Commandant of the 47th Bn.

8. Herein lies a dispute of what happened thereafter.

9. Petitioner claims that the Commandant of the 25th Bn. did not permit him to join duty. He reported back to the Commandant of the 47th Bn., who had still not received any signal and thus even he refused to let the Petitioner work.

10. Alleging that he ran from pillar to post and none paid heed to him, the Petitioner was constrained to file WP(C) No. 3110/1992, which as noted hereinabove resulted in an order dated 6.11.1997 being passed requiring the Commandant of the 47th Bn. to permit Petitioner to join under the strength of the order and the writ petition being disposed of in terms of the order dated 15.1.1998.

11. We are pained to note that counsel for BSF, when served with notice to show cause in WP(C) No. 3110/1992 did not make a statement to the Court that it appears that some inadvertence or lack of communication had resulted in the Petitioner being caught in the web of procedural wrangles. Had it been told so, the matter would have rested way back in the year 1992 and not lingered on till November, 1997.

12. When Petitioner was taken back on duty, he met retaliation in the form of a summary trial for the offence of having remained unauthorizedly absent from 25.9.1990 till 1.12.1997 i.e. 7 years and 2 months. Holding Petitioner guilty vide order dated 5.10.1998 he has been dismissed from service.

13. Suffice would it be to state that the Petitioner never absconded. The Petitioner never remained absent unauthorizedly. The facts noted hereinabove show that the Respondents are at fault. It is unfortunate that WP(C) No. 3110/1992 which hardly required 10 seconds for disposal remained pending for over 5 years. It appears to us that the Commandant of the 47th Bn. has

penalized the Petitioner for the obvious reason either he or his counterpart in the 25th Bn. would be answerable for the mess which was created. For either that the Commandant of the 25th Bn. did not ensure the signal dated 7.8.1990 being properly sent to the Commandant of 47th Bn. or it is a case of Commandant of 25th Bn. acting negligently. As regards the Petitioner, he was relieved by the Commandant of the 47th Bn. on the strength of the transfer order dated 30.7.1990. We highlight that the Petitioner was issued the movement order on 14.9.1990 ignoring the fact that vide signal dated 3.8.1990 the Headquarters had kept in abeyance the said transfer order.

14. Disposing of the writ petition we quash the order dated 5.10.1998 and issue a direction that the Petitioner be reinstated in service with all consequential benefits.

15. Since we do not know whether or not the Petitioner would have superannuated from service, as neither counsel is able to throw any light thereon, we direct that if Petitioner has attained the age of superannuation during pendency of the instant writ petition, aforesaid directions requiring salary to be paid would be self-limiting till the date Petitioner would have superannuated from service and thereafter he would be entitled to pension. In such circumstance the reinstatement order would be implemented notionally. If however, Petitioner has yet to attain the age of superannuation, he be reinstated in service within 4 weeks of receipt of a certified copy of the present order. Arrears be paid within same period.

16. Petitioner is held entitled to costs in sum of Rs. 11,000/- which shall be paid to him along with the arrears of salary.