

(2021) 08 DEL CK 0197

In the Delhi High Court

Case No : Civil Writ Petition No. 8817 Of 2021

Rohit Kumar Singh

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 24-08-2021

Acts Referred:

Border Security Force Act, 1968 — Section 19(b), 118
Border Security Force Rules, 1969 — Rule 45

Citation : (2021) 08 DEL CK 0197

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : Abhay Kumar Bhargava, Nidhi Raman, Zubin Singh, Kavindra Gill

Final Decision : Dismissed

Judgement

1. The hearing has been conducted through video conferencing.
2. Present petition has been filed challenging the dismissal order dated 17th August 2020 passed by the Respondent No.3. Petitioner further seeks directions to the Respondents under Section 118 of BSF Act, 1968 to reinstate him in service and to grant him arrears as well as damage for mental agony. Petitioner also prays for directions to the Respondents to fully pay the allowances until the absence of petitioner is regularized.
3. Learned counsel for the Petitioner states that the order in appeal passed by the Inspector General (BSF) dated 22nd May, 2021 is erroneous as it makes the petitioner suffer for the non-response of the local police authority to serve the Apprehension Roll issued by the Respondents. He states that the petitioner could not rejoin his service between 06th October, 2019 and 09th June, 2020 as the Petitioner's wife and father were seriously unwell. He emphasises that the Petitioner's father passed away on 29th September, 2020.
4. Learned counsel for the Petitioner further states that proper procedure had not been followed in the present case inasmuch as Petitioner had not been given any

document under Rule 45 of the BSF Rules.

5. Per contra, Ms. Nidhi Raman, learned counsel for respondents states that proper procedure had been followed in the present case and all documents had been placed on record and Court of Inquiry, ROE and SSFC had been conducted.

6. During the hearing, we had asked learned counsel for the Petitioner to show any document which would prove that the Petitioner's father or wife was admitted in a hospital during the period he was unauthorisedly absent. However, no document has been shown to us which would prove that the Petitioner's father and/or wife were admitted in a hospital between 06th October, 2019 and 09th June, 2020. In fact, the contemporaneous letter dated 11th March, 2020 written by the petitioner to his Commandant states that he was disturbed due to his domestic problem as he did not own a house and had taken loan of Rs. 6 lakhs from the bank which had to be repaid within three months. In the said letter there is no mention of father's or wife's illness. Consequently, this Court does not find any reason to interfere with the finding of the authorities below that the Petitioner had without sufficient cause overstayed his leave between 06th October, 2019 and 09th June, 2020 i.e. 247 days.

7. The Petitioner, who was a member of Central Armed Police Forces (CAPF), was obliged in law to report back on time. The Respondent-BSF was under no obligation in law to keep on issuing notices through local police to invite the Petitioner to rejoin his service! Consequently, this Court is of the view that the Petitioner has violated his solemn duty and responsibility to report back on time.

8. Moreover, a perusal of the paper book reveals that the Petitioner had previously also overstayed his leave for 134 days and had been awarded punishment of 28 days Rigorous Imprisonment in Force Custody for offences under Section 19(b) of the BSF Act.

9. It is thus clear that the petitioner is in the habit of overstaying his leave. Accordingly, the present writ petition being bereft of merit is dismissed.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.