
(2006) 02 JH CK 0002
In the Jharkhand High Court
Case No : Writ Petition (S) No. 642 of 2005

Suresh Prasad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Border Security Force Act, 1968 — Section 62
Border Security Force Rules, 1969 — Rule 22

Citation : (2006) 1 JCR 422

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : Jitendra Nath, Pradeep Kumar and Sandhya Sahay, for the Appellant; M.A. Khan, Additional Standing Counsel Central Government, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard.

2. Petitioner had filed writ petition being W.P. (S) No. 5189 of 2004, for quashing his dismissal order No. 1039/ESH/18 BN Dismiss/2004/1745-1900 dated 6.2.2004 passed by Commandant 18 Battalion, Panisagar, Tripura. The objection to the territorial jurisdiction was raised by the counsel for the respondents. Petitioner submitted that his appeal is pending. In the facts and circumstances, this Court was not inclined to issue any specific direction. (Annexure I).

3. Again he has challenged the same order dated 6.2.2004 in this writ petition on merits. One of the ground of challenging the said order is that his appeal has not been disposed of. By filing a supplementary affidavit, petitioner has also challenged the order dated 28.4.2005, passed by D.I.G./ P.S.O. (Annexure 6) rejecting his appeal/ application.

4. Petitioner's case is that he overstayed the leave of two month, by six months as he was suffering from Lumbo Sciatica Syndrome. Relying on Rule 22 of the

Border Security Force Rules, 1969, it is submitted that departmental proceeding should have been initiated against him before passing the impugned order of dismissal. He relied on the judgment of this Court in *Lidha Oraon v. Heavy Engineering Corporation Limited and Ors.* 2001 (2) JCR 135 (Jhr).

5. According to the respondents, this writ petition is not maintainable in this Court as no cause of action has arisen within the jurisdiction of this Court. It is further submitted that the petitioner was granted earned leave for sixty days on 18.8.2003 and he was to resume his duty on 16.10.2003 but he over-stayed without any information. He was directed to report on duty vide letters dated 20th October, 2003 and 5th November, 2003, sent on his leave address but neither he reported for duty nor sent any information/reply to the said letters. As per Section 62 of the Border Security Force Act, 1968, Court of inquiry was ordered vide Officer Order No. 13271-76 dated 27.12.2003 and apprehension roll was also issued to the Superintendent of Police, Gopalganj. A show cause notice was served on the petitioner at his home/leave address by registered post with acknowledgement with a direction to submit his reply, but as no steps were taken by the petitioner, he was dismissed from service with effect from 6.2.2004. It is further submitted that while dismissing petitioner's appeal/application by Annexure 6, on merits, the authority has also noted that the petitioner is a habitual absentee.

6. Learned Counsel for the petitioner in reply submitted that the petitioner did not receive any notice and, therefore, the order of dismissal is bad as it has been passed without hearing him. He further submitted that as the petitioner was undergoing treatment at Ranchi, this Court has jurisdiction to entertain this writ petition.

7. The objection of the respondents about territorial jurisdiction is valid. Moreover, there is nothing to show that petitioner informed the concerned authority about his illness/treatment. It has also not been shown that he was suffering from such illness that it was not possible for him to inform the concerned authorities. In the facts and circumstances noticed above, the case relied by the petitioner is of no help to him.

8. Accordingly, I find no merit in the writ petition which is, accordingly dismissed.