

(2022) 09 UK CK 0119
In the Uttarakhand High Court
Case No : Special Appeal No. 78 Of 2019

Union Of India And Others

APPELLANT

Vs

Milap Singh

RESPONDENT

Date of Decision : 20-09-2022

Acts Referred:

Border Security Force Rules, 1969 — Rule 22
Constitution Of India, 1950 — Article 226

Citation : (2022) 09 UK CK 0119

Hon'ble Judges : Vipin Sanghi, CJ;Ramesh Chandra Khulbe, J

Bench : Division Bench

Advocate : Pankaj Chaturvedi, M.S. Pal, Sachin

Final Decision : Disposed Of

Judgement

Vipin Sanghi, CJ

1. This present special appeal is directed against the order dated 04.05.2018, passed by the learned Single Judge in WPSS No. 1847 of 2012. By the impugned order, the learned Single Judge allowed the writ petition preferred by the respondent/writ-petitioner and directed his reinstatement into service.

2. The respondent/writ-petitioner joined the Border Security Force on 22.07.1971. He was found to be suffering from Tuberculosis. He was under treatment in various hospitals. He remained absent for over 300 days. On account of his unauthorized absence, a court of inquiry was held against him, which found that he was overstaying on leave since 15.07.1990. The court of inquiry recommended that the respondent should be declared a 'Deserter' and be dismissed from service. The petitioner was sent a notice at his home address on 04.07.1991. He was required to furnish his reply on or before 10.07.1991, and on 12.07.1991, he was dismissed from service.

3. The petitioner, for the first time, preferred a writ petition, to assail his dismissal, being WPSS No.272 of 2006. In that writ petition, the petitioner

challenged the order dated 31.01.2006, by which, the respondent was dismissed from service w.e.f., 12.07.1991, and which was communicated on 31.01.2006. That writ petition was dismissed as withdrawn by the Court on 18.12.2012 with liberty to file afresh. Thereafter, the petitioner preferred the writ petition, in which, the impugned order has been passed.

4. The learned Single Judge allowed the writ petition with the reasoning that the respondent/writ-petitioner was not dealt with, in accordance with the Service Rules by giving a sufficient opportunity to put up his defence. Notice was issued to him on 04.07.1991 at his home address situated in Pithoragarh. The service of the notice itself would take about ten days. Therefore, it was not fair to call for his reply on or before 10.07.1991 and thereafter to dismiss from the service on 12.07.1991.

5. The learned Single Judge while passing the impugned order, observed as follows:-

"There is a detailed procedure and manner in which the petitioner was required to dealt with under The Border Security Force Rules, 1969. Rule 22 of the Rules, provides that the delinquent has to be issued show cause notice and after the reply, penalty can be imposed by the Disciplinary Authority.

The Court can take judicial notice of the fact that though show cause notice was issued to the petitioner on 04.07.1991, it could not reach Pithoragarh before ten days. The purpose of giving show cause notice is to enable the incumbent to project his case before the authorities concerned. Once the notice is issued, reasonable time should be granted to the delinquent to file the reply. It was impossible for the petitioner to file a reply to the show cause notice, since he could not receive it within the stipulated time i.e. on 10.07.1991. The petitioner has been dismissed though served for more than 17 years in Border Security Force after the order dated 12.07.1991 in utter haste.

The Court is not oblivious that it is dealing with the case of the incumbent, who has served in Para Military Force. However, authorities concerned must be sympathetic and should have adopted a humane approach, while dealing with the lower combatant serving in the Border Security Force, coupled with the fact that he was suffering from Tuberculosis. The opportunity granted to the petitioner cannot be termed as sufficient opportunity to enable him to file reply within the stipulate period.

The petitioner has approached this Court by way of filing Writ Petition (S/S) No. 272 of 2006 by taking a plea that neither he was served with dismissal order nor any notice was served upon him. The writ petition was withdrawn on 18.12.2012. Thereafter, present petition was filed by the petitioner, specifically, challenging the dismissal order dated 12.07.1991. Of course, there is delay in filing the petition.

However, fact of the matter is that there is negation of principle of natural

justice. Order dated 12.07.1991 is void ab initio. The petitioner belongs to lower strata of the society. It would be difficult for him to approach this Court repeatedly.

Accordingly, the writ petition is allowed. Impugned Annexure dated 12.07.1991 is quashed and set aside.”

6. The submission of learned counsel for the appellants is that the writ petition itself was grossly barred by delay and laches. The respondent has been dismissed from service on 12.07.1991. He filed a writ petition only after 15 years of his dismissal. The respondent remained on unauthorized leave for over 300 days before action was initiated against him. Even thereafter, he did not bother to report. Learned counsel further submits that it was not for the Writ Court to dole out a charity to the respondent while exercising its jurisdiction under Article 226 of the Constitution of India.

7. On the other hand, learned counsel for the respondent submits that the respondent was never served with the notice issued to him as well as the dismissal order. He submits that the dismissal proceedings were not in accordance with the relevant Rules.

8. We have heard learned counsel for the parties and we are of the view that the impugned order cannot be sustained. The respondent remained on unauthorized leave for over 300 days before action was initiated against him. If the respondent had ever reported for work, before approaching this Court in the year 2006, he would have learnt that he had already been dismissed. The respondent would have been aware of the fact that he had been dismissed in July, 1991 when he would have stopped receiving his salary. The respondent, however, slept over the matter and did not take any step to assail his dismissal, or even to show that he was absent for sufficient cause. The respondent was a member of a disciplined force. Remaining absent for not only 300 days unauthorisedly, but remains incommunicado for 15 years even after his dismissal, speaks volumes about his commitment to his service. He was not deserving of the sympathy shown to him.

9. This Court, while exercising jurisdiction under Article 226 of the Constitution of India, cannot let sympathy overtake the law. We, therefore, set aside the impugned order passed by the learned Single Judge, and dismiss the writ petition.

10. The special appeal stands disposed of accordingly.