

Suresh Kumar Vs. Border Security Force and anr.

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Court : Delhi

Decided On : Apr-16-2014

Judge : Pradeep Nandrajog

Appellant : Suresh Kumar

Respondent : Border Security Force and anr.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on : April 01, 2014 Judgment Pronounced on : April 16, 2014 + W.P. (C) No.5440/2002 SURESH KUMAR Represented by:Petitioner Mr.Jasbir Singh Malik, Advocate versus B

ORDER

SECURITY FORCE & ANR. Respondents Represented by: Ms.Anjana Gosain, Mr.Pradeep Desodhya and Mr.Arvind Sharma for UOI CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR.JUSTICE JAYANT NATH PRADEEP NANDRAJOG, J.

1. The factual backdrop leading to the filing of the above captioned petition is that on August 11, 1988 the petitioner was enrolled as a Constable in Border Security Force.

2. The petitioner availed earned leave due to him in the year 1989 and reported back in time. Thereafter, on several occasions the petitioner overstayed leave or

proceeded on unauthorized leave. Put in a tabular form, the data would reveal as follows:Sl. No.1. Period of overstay/ Duration of overstay/ unauthorized leave unauthorized leave February 23, 1990 to March 01, Seven days 1990 2.

3. 4.

5. 6.

7. 8.

9. 10.

11. 12.

13. 14.

15. 16.

17. 18.

19. 20.

21. 22. March 12, 1990 to March 19, 1990 September 21, 1990 to November 06, 1990 January 08, 1992 to January 15, 1992 June 05, 1992 to June 16, 1992 November 21, 1992 to November 24, 1992 December 08, 1992 to December 10, 1992 February 16, 1993 to February 20, 1993 April 03, 1993 to April 05, 1993 September 24, 1993 to October 07, 1993 November 19, 1993 to December 07, 1993 April 09, 1996 to June 12, 1996 October 17, 1996 to December 07, 1996 February 24, 1997 to April 09, 1997 December 05, 1998 to January 27, 1999 July 20, 1999 to July 31, 1999 September 20, 1999 to September 24, 1999 April 19, 2000 to June 23, 2000 July 24, 2000 to September 13, 2000 October 13, 2000 to October 22, 2000 November 14, 2000 to January 08, 2000 January 15, 2001 to February 14, 2001 WP(C) No.5440/2002 Eight days Forty seven days Eight days Twelve days Three days Three days Five days Two days Fourteen days Nineteen days Sixty five days Fifty two days Forty four days Fifty four days Twelve days Two days Sixty six days Fifty days Ten days Fifty six days 3. The aforesaid leave(s) were regularized by adjusting the earned leave, half paid leave, extra-

ordinary leave, extra-ordinary leave on medical grounds etc. due to the petitioner.

4. As is evident from the afore-noted table, the petitioner remained absent from duty for a period of thirty one days from January 15, 2001 to February 14, 2001. It is the case of the department that armed with some medical documents the petitioner reported for duty on February 15, 2001. In view of the medical documents submitted by him the petitioner was examined at the Unit MI Room. The doctor who examined the petitioner at the Unit MI Room concluded that the petitioner was suffering from Bipolar Affective Disorder and referred him to Institute of Human Behaviour and Allied Sciences (hereinafter referred to as the IHBAS), Shahdara, Delhi for further treatment, where the petitioner was admitted on February 15, 2001. It is further the case of the department that the petitioner was got discharged from IHBAS by his brother Azad Singh on February 16, 2001.

5. When the petitioner did not join duty after getting himself discharged from IHBAS or was got discharged by his brother nor sent any intimation to the department regarding his absence, call up notices were sent at the residential address of the petitioner on March 09/19, 2001. Petitioner did not respond.

6. An Apprehension Roll was issued with a request to the Superintendent of Police, District Jind, Haryana since the petitioner resided in a village in District Jind, to apprehend the petitioner and hand him over to the Battalion Head Quarter, but no response was received from the police in said regards.

7. A Court of Inquiry was ordered which opined that in the absence of any communication received from the petitioner his absconding amounted to willful absenting from discharging duties i.e. unauthorized absence without sufficient cause. Suitable action was directed to be taken.

8. Since the petitioner had gone missing the Commandant opined that it would not be feasible to try the petitioner at a Security Force Court and thus a show cause notice dated June 02, 2001 was sent to the petitioner at his permanent residential address requiring the petitioner to show cause as to why he should not be dismissed from service. Being relevant, we note the contents of the show cause notice dated June 02, 2001 issued to the petitioner:

You have been absenting without leave from 2100 hrs on 16.02.2001. After considering the reports relating to your absence, I am satisfied that your trial by a Security Force Court is inexpedient and impracticable but am of the opinion that your further retention in service is undesirable. I, therefore, tentatively propose to dismiss you from the service. If you have anything to urge in your defence against the imposition of the proposed penalty, you may do so within 30 days of the receipt of this letter. In case no reply is received within the stipulated period, it would be presumed that you have no defence to put forward and ex-parte decision will be taken into the matter.

9. The petitioner did not respond to the show cause notice dated June 02, 2001 and as a result thereof on August 18, 2001 the Commandant passed an order dismissing the petitioner from service on account of his prolonged unauthorized absence from duty.

10. Thereafter the petitioner submitted an appeal to the Appellate (i) Commandant ought not to have dismissed the petitioner from service without conducting an enquiry into the matter and giving a reasonable opportunity to the petitioner to defend himself; (ii) Petitioner was not unauthorizedly absent from duty for the period from February 16, 2001 to August 18, 2001 but was undergoing treatment for his mental ailment in various hospitals such as BSF Hospital, IHBAS, Safdarjung Hospital, PGIMS Hospital and Swami Dayanand Hospital during said period, which fact was very much in the knowledge of Commandant of petitioner; (iii) Commandant who was infuriated with the petitioner as the wife of petitioner had complained to the superior authorities that Commandant was pressurizing and harassing the petitioner to work as Orderly had staged the whole thing and shown the petitioner as missing and unauthorizedly absent from duty despite fully knowing that the petitioner is undergoing treatment at various hospitals for his mental ailment between the period from February 16, 2001 to August 18, 2001. Furthermore, the petitioner was got discharged from IHBAS on February 16, 2001 by two members of the Force at the instance of his Commandant; and (iv) Show cause notice dated June 02, 2001 which might have been sent by the Commandant to his wife at his native address was never received by the petitioner as he i.e. the petitioner was not present at his native address but was undergoing

treatment at various hospitals in National Capital Region (NCR) around the time the show cause notice is stated to have been dispatched by the Commandant at his native address.

11. Vide order dated March 01, 2002 the Appellate Authority dismissed the appeal submitted by the petitioner.

12. Aggrieved by the aforesaid, the petitioner has filed the above captioned petition under Article 226 of Constitution of India on August 27, 2002.

13. During hearing of the present petition following two submissions were advanced by the counsel for the petitioner: A. In the decision reported as (1996) 7 SCC 546 Union of India & Others vs. Ram Phal it was held by the Supreme Court that for exercising power under Section 11(2) of the BSF Act, 1968 an enquiry is required to be held and considering the nature of the Force and the utmost necessity of maintaining discipline giving a show cause notice cannot be regarded as sufficient compliance with the principles of natural justice. Such being the legal position, the Commandant of petitioner was duty bound to conduct an enquiry before passing the order dated August 18, 2001 dismissing the petitioner from service in exercise of his power under Section 11(2) of the BSF Act, 1968. Since no enquiry was conducted by the Commandant of petitioner before passing the order dated August 18, 2001 the same i.e. order dated August 18, 2001 stands vitiated and deserves to be quashed. B. Petitioner was not unauthorizedly absent from duty for the period from February 16, 2001 to August 18, 2001 but was undergoing treatment for his mental ailment in various hospitals such as BSF Hospital, IHBAS, Safdarjung Hospital, PGIMS Hospital and Swami Dayanand Hospital or working as runner to Commandant Y.H. Hindral during said period. Commandant Y.H. Hindral who was infuriated with the petitioner as the wife of petitioner had complained to the superior authorities that the Commandant was pressurizing and harassing the petitioner to work as an Orderly had staged the whole thing and shown the petitioner as missing and unauthorizedly absent from duty despite employing him as his runner and fully knowing that the petitioner was undergoing treatment at various hospitals for his mental ailment between the period from February 16, 2001 to August 18, 2001. Furthermore, the petitioner

was got discharged from IHBAS on February 16, 2001 by two members of the Force and it was wrongly recorded in the records of IHBAS that the petitioner was got discharged by his brother Azad Singh at the instance of his Commandant. To demonstrate that the recording contained in the records of IHBAS that the petitioner was got discharged by his brother Azad Singh is wrong, counsel drew our attention to a certificate dated June 04, 2003 stated to have been issued by Karnal Co-operative Bank Ltd, Karnal, Haryana recording therein that Azad Singh, brother of petitioner, is working as Branch Manager with the Bank and that he was on duty on February 16, 2001 and remained in the bank in the night on that day. Counsel argued that the brother of the petitioner was in Karnal, Haryana on February 16, 2001 as recorded in the certificate and thus could not have got the petitioner discharged from IHBAS which is situated in Delhi on February 16, 2001 as claimed by BSF. According to the counsel, the aforesaid chink which has appeared in the claim of department/BSF that it was the brother of petitioner who had discharged the petitioner from IHBAS on February 16, 2001 lends credence to the version of the petitioner that the whole thing was stage managed by Commandant Y.H.Hindral who was nursing a grudge against the petitioner.

14. In dealing with first contention advanced by the petitioner, it would be most relevant to note Section 11 of the BSF Act, 1968 and the same reads as under:

11. Dismissal, removal or reduction by the Director-General and by other officers -
(1) The Director-General or any Inspector-General may dismiss or remove from the service or reduce to a lower grade or rank or the ranks any person subject to this Act other than an officer. (2) An officer not below the rank of Deputy Inspector-General or any prescribed officer may dismiss or remove from the service any person under his command other than an officer or a subordinate officer of such rank or ranks as may be prescribed. (3) Any such officer as is mentioned in sub-section (2) may reduce to a lower grade or rank or ranks any person under his command except an officer or a subordinate officer. (4) The exercise of any person under this section shall be subject to the provisions of this Act and rules.

(Emphasis Supplied) 15. In exercise of powers conferred upon it by sub-sections (1) and (2) of the BSF Act, 1968 the Central Government has framed BSF Rules,

1969. Rule 177 whereof reads as under:

The Commandant may, under sub-section (2) of Section 11, dismiss or remove from the service any person under his command other than an officer or a subordinate officer.

16. In the decision reported as (1989) 3 SCC314Gouranga Chakraborty vs. State of Tripura & Another the appellant therein, enrolled as a Constable with BSF, was dismissed by his Commandant in exercise of the power under Section 11(2) of the BSF Act, 1968 for having remained unauthorizedly absent from duty for a prolonged period. The order dismissing the appellant from service was assailed mainly on the ground that said order was not made in accordance with the provisions of BSF Act and Rules framed thereunder, inasmuch as the appellant was neither tried nor awarded punishment by the Security Force Court as required under the BSF Act. It was contended that unless and until the offence of absence without leave or overstaying leave granted to a member of the Force, without sufficient cause, is tried by the Security Force Court and punishment is awarded therefore as provided in Sections 48 and 50 of the BSF Act, the impugned order of dismissal from service of the appellant passed by the Commandant is illegal and liable to be quashed. It was further contended that the power of Commandant under Section 11(2) of the Act read with Rule 177 of the Rules is subject to sub-section (4) of Section 11 i.e. the exercise of this power is subject to the provisions of the Act and Rules, that is to say, the Commandant is not competent to dismiss a member of Force from service unless the Security Force Court has tried him and awarded punishment in accordance with the procedure prescribed by the Act and Rules framed thereunder.

17. The aforesaid contention(s) were repelled by the Supreme Court in the following terms:

We have scrutinized the relevant provisions of the BSF Act as well as the BSF Rules framed thereunder and we have no hesitation to hold that the power under Section 11(2) of the Act empowering the Prescribed Authority, i.e. the Commandant to dismiss or remove from service any person under his command other than an officer or a subordinate officer read with Rule 177 of the said Rules

is an independent power which can be validly exercised by the Commandant as a prescribed officer and it has nothing to do with the power of the Security Force Court for dealing with the offences such as absence from duty without leave or overstaying leave granted to a member of the Force without sufficient cause and to award punishment for the same. The provision of sub-section (4) of Section 11 which enjoins that the exercise of the power under the aforesaid section shall be subject to the provisions of the Act and the Rules does not signify that the power to dismiss a person from service by the Commandant for his absence from duty without leave any reasonable cause or for overstaying leave without sufficient cause and holding them as undesirable cannot be exercised unless the Security Force Court has awarded punishment to that person in accordance with the procedure prescribed by law. The Prescribed Authority i.e. the Commandant is competent to exercise the power under Section 11(2) of the said Act and to dismiss any person under his command as prescribed under Rule 177 of the BSF Rules. In this case though no procedure has been prescribed by the Rules still the Commandant duly gave an opportunity to the appellant to submit his explanation against the proposed punishment for dismissal from service for his absence from duty without any leave and overstaying leave without sufficient cause. The appellant did not avail of this opportunity and he did not file any show cause to the said notice. Thus the principle of natural justice was not violated as has been rightly held by the High Court.

(Emphasis Supplied) 18. Then came the decision of Supreme Court reported as (1996) 7 SCC 546 Union of India vs. Ram Phal. In said case, the respondent was enlisted as a Constable in BSF. On December 21, 1983 respondent was found absent in the Coy Roll. He was not to be found in the Unit lines as well. When he did not report for duty for a prolonged period, on January 01, 1984, a notice was sent to him directing him to report for duty forthwith but he did not turn up. One more notice was sent to respondent but there was no response from him. Thereafter, an enquiry was ordered under Section 62 of the BSF Act and ultimately respondent was declared to be a deserter. On account of his continuous absence, on April 20, 1984, a show cause notice was issued to the respondent calling upon him to show cause why he should not be dismissed as his further retention in service was considered undesirable, which notice was not responded

to by the respondent. Thereafter, on April 05, 1984, the Commandant passed an order under Section 11(2) of the BSF Act dismissing respondent from service. The order of dismissal was essentially challenged by respondent on the ground that it was not within the competence of the Commandant to pass dismissal order and that the penalty of dismissal from service could not have been imposed without holding a trial by the Security Force Court in the manner prescribed by the Act and the Rules. After noting its earlier decision in Gourangas case (supra), the Court held that the contentions advanced by respondent that order of dismissal could not have been passed without first holding a trial by the Security Force Court and that the Commandant had no authority to pass an order dismissing respondent under Section 11(2) of the BSF Act, 1968 are fallacious.

19. Thereafter, the Court noted that earlier there was no provision in the BSF Act and Rules indicating the circumstances and manner in which power conferred under Section 11(2) of BSF Act is to be exercised, but in the year 1996 such a provision was incorporated in Rule 20 of the BSF Rules. The Court then proceeded to note the relevant portion of Rule 20. Significantly, the relevant portion of Rule 20 quoted by Supreme Court reads as under:- (1) Where in the opinion of Director General a person subject to the Act has conducted himself in such manner whether or not such conduct amounts to an offence, as would render his retention in service undesirable and his trial by Security Force Court inexpedient, the Director General may inform the person concerned accordingly. (2) The Director General shall further inform the person concerned that it is proposed to terminate his services either by way of dismissal or removal. (3) The Director General shall furnish the particulars of allegations and the report of investigation (including the statements of witnesses, if any, recorded and copies of documents, if any intended to be used against him) in cases where allegations have been investigated: Provided that where the allegations have not been investigated, the Director General shall furnish to the person concerned the names of witnesses with a brief summary of the evidence and copies of documents, if any, in support of the allegations. (4)- (5) * * * (6) The person concerned shall within seven days from the receipt of information furnished to him under sub-rule (3) inform, in writing, the Director General: (a) his acceptance or denial of the allegations; (b) any material or evidence he wishes to be considered in his

defence; (c) names of witnesses he wishes to cross-examine; and (d) names of witnesses whom he wishes to examine in his defence. (7) Where the person concerned has expressed a wish to cross-examine any witness or to produce witnesses in defence, the Director General shall appoint an enquiry officer who shall be an officer superior to the person against whom it is proposed to take action and had not taken any part previously in the investigation into the matter.

(Emphasis Supplied) 20. In view of provisions of Rule 20 noted by it, particularly clause 7 thereof, Supreme Court held that after introduction of Rule 20 in the Rules it cannot be validly contended that no enquiry be held while exercising the power under Section 11(2).

21. The Supreme Court then proceeded to consider whether the procedure prescribed for exercising power under Section 11(2) was followed by the Commandant in said case. In said regards, it would be most apposite to note the following observations made by the Court:

We will now examine if the prescribed procedure was followed in this case. The show-cause notice clearly appears to have been issued in terms of sub-rule 1 of Rule 20. It reads as under:

You have been absent without leave with effect from 21-12-1983. I am of the opinion that because of this absence without leave for such a long period, your further retention in service is undesirable. I, therefore, tentatively propose to terminate your service by way of dismissal. If you have anything to urge in your defence or against the proposed action, you may do so before 45-1984. In case no reply is received by that date, it will be inferred that you have no defence to put forward.

8. The first sentence in the notice that You have been absent without leave with effect from 21-12-1983 satisfied the requirements of sub-rule (3). When it further stated that I am of the opinion that because of this absence for such a long period, your further retention in service is undesirable it complied with the requirement of sub-rule (1) and as required by sub-rule (2) it was further stated therein that I, therefore, tentatively propose to terminate your service by way of dismissal. The

respondent was called upon to show cause within seven days as required by sub-rule (6). No further enquiry was held; but we find that nothing further was required to be done in this case. The respondent did not reply to the notice. There was no denial of the allegations and no request to hold an enquiry. Therefore, it was not incumbent upon the Director General to appoint an enquiry officer to conduct an enquiry in the manner prescribed by Rule 21. Thus the prescribed procedure was followed before passing the dismissal order. The courts below have failed to appreciate the correct position of law and the facts. It was therefore wrongly held that the order of dismissal was illegal as it was not in accordance with the provisions of the Act and the rules.

(Emphasis Supplied) 22. In a nutshell, the ratio laid down by the Supreme Court in Ram Phals case (supra) is as follows: It is incumbent upon a prescribed officer to conduct an enquiry before dismissing/removing a person in exercise of his power under Section 11(2) of the BSF Act, 1968 only when the concerned person had responded to the show cause notice issued to him and denied the allegations leveled against him. (The aforesaid ratio is based upon the premise that Rule 20 of the BSF Rules, 1969 as noticed by Supreme Court envisaged conduct of an enquiry in case where the person issued with show cause notice denies the allegations leveled against him).

23. As already noted hereinabove, on August 18, 2001 in exercise of his power under Section 11(2) of the BSF Act, 1968 the Commandant dismissed the petitioner from service.

24. On the date of dismissal of petitioner from service i.e. August 18, 2001, the procedure for exercise of power under Section 11(2) of the BSF Act, 1968 was laid down in Rule 22 of BSF Rules, 1969, which reads as under:

22. Dismissal or removal of persons other than officers on account of misconduct -
(1) When it is proposed to terminate the service of a person subject to the Act other than an officer, he shall be given an opportunity by the authority competent to dismiss or remove him, to show cause in the manner specified in sub-rule (2) against such action: Provided that this sub-rule shall not apply(a) where the service is terminated on the ground of conduct which has led to his conviction by a

criminal court or a Security Force Court; or (b) where the competent authority is satisfied that, for reasons to be recorded in writing, it is not expedient or reasonably practicable to give the persons concerned an opportunity of showing cause. (2) Where after considering the reports on the misconduct of the person concerned, the competent authority is satisfied that the trial of such a person is inexpedient or impracticable, but, is of the opinion that his further retention in service is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence: Provided that the competent authority may withhold from disclosure any such report or portion thereof, if, in his opinion, its disclosure is not in public interest. (3) The competent authority after considering his explanation and defence if any may dismiss or remove him from service with or without pension: Provided that a Deputy Inspector-General shall not dismiss or remove from service, a Subordinate Officer of and above the rank of Subedar. (4) All cases of dismissal or removal under this rule, shall be reported to the Director-General.

25. Rule 22 of BSF Rules, 1969 noted above or any other provision under the BSF Act or Rules envisage conduct of enquiry for exercise of power under Section 11(2) of BSF Act, 1968. The ratio laid down by Supreme Court in Ram Phals case (supra) that it is incumbent upon a prescribed officer to conduct an enquiry before dismissing/removing a person in exercise of his power under Section 11(2) of the BSF Act is premised upon the fact that Rule 20 of the BSF Rules, 1969 as noticed by Supreme Court envisaged conduct of an enquiry in case where the person issued with show cause notice denies the allegations leveled against him, which is not the case with Rule 22 applicable in the instant case. In view thereof, the first submission advanced by the petitioner that the Commandant ought to have conducted an enquiry before dismissing the petitioner from service in exercise of his power under Section 11(2) of the BSF Act is clearly fallacious and therefore rejected.

26. At this stage we need to highlight that when the decision was pronounced by the Supreme Court in Ram Phals case (supra) Rule 20 as it existed before it was substituted on May 29, 1990 was noted by the Supreme Court. As of today, the substituted Rule reads as under:

20. Termination of service of officers by the Central Government on account of misconduct(1) When it is proposed to terminate the service of an officer under section 10 on account of mis-conduct, he shall be given an opportunity to show cause in the manner specified in subrule

(2) against such action:Provided that this sub-rule shall not apply:(a) Where the service is terminated on the ground of conduct which has led to his conviction by a criminal court or a Security Force Court; or (b) Where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an officers misconduct, the Central Government or the Director General, as the case may be, is satisfied that the trial of the Officer by a Security Force Court is in-expedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Director General shall so inform the officer together with particulars of allegation and report of investigation (including the statements of witnesses, if any, recorded and copies of documents if any, intended to be used against him) in cases where allegations have been investigated and he shall be called upon to submit, in writing, his explanation and defence: Provided that the Director General may withhold disclosure of such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

(3) In the event of explanation of the Officer being considered unsatisfactory by the Director-General, or when so directed by the Central Government, the case shall be submitted to the Central Government with the Officers defence and the recommendations of the Director-General as to the termination of the Officers service in the manner specified in sub-rule (4).

(4) When submitting a case to the Central Government under the provision of sub-rule

(2) or sub-rule(3), the DirectorGeneral shall make his recommendation whether the Officers service should be terminated, and if so, whether the officer should be(a) dismissed from the service; or (b) removed from the service; or (c) retired

from the service; or (d) called upon to resign.

(5) The Central Government, after considering the reports and the officers defence, if any, or the judgement of the Criminal Court, as the case may be, and the recommendation of the Director-General, may remove or dismiss the officer with or without pension, or retire or get his resignation from service, and on his refusing to do so, the officer may be compulsorily retired or removed from the service with pension or gratuity, if any, admissible to him.

27. This takes us to the second submission advanced by the petitioner.

28. Whereas the case of department is that after he was discharged from IHBAS by his brother Azad Singh on February 16, 2001, the petitioner neither reported for duty nor sent any intimating regarding his absence, the case set up by the petitioner is that the whole thing is a sham and was stage managed by/at the instance of the Commandant of petitioner, who was infuriated with the petitioner. The petitioner pleads that on February 16, 2001 he i.e. the petitioner was discharged from IHBAS not by his brother Azad Singh but by two BSF Constables at the instance of the Commandant. Between the period from February 16, 2001 to August 18, 2001 when he was dismissed from service the petitioner was either undergoing treatment at various hospitals or worked as a runner to his Commandant. However, the Commandant wrongly showed the petitioner as absent from duty for the period from February 16, 2001 to August 18, 2001. The petitioner further pleads that show cause notice dated June 02, 2001 was never received by him. To prove his version, the petitioner places strong reliance upon the certificate dated June 04, 2003 stated to have been issued by Karnal Cooperative Bank Ltd, Karnal, Haryana.

29. If the certificate dated June 04, 2003 is genuine, it would go a long way in ascertaining the veracity of the version of petitioner. The moot question is: Whether the certificate dated June 04, 2003 is genuine?.

30. We think not.

31. The petitioner was dismissed from service on August 18, 2001. Petitioner filed an appeal challenging his dismissal on November 17, 2001. No certificate regarding the whereabouts of his brother Azad Singh on February 16, 2001 was annexed by the petitioner along with his appeal. The instant writ petition was filed by the petitioner on August 27, 2002. Yet again, no such certificate was annexed by the petitioner along with the present petition. Thereafter, rejoinder was filed by the petitioner on May 29, 2003, again sans any such certificate. There are no pleadings in the petition or the rejoinder concerning the certificate in question. On July 16, 2005 the certificate dated June 04, 2003 was filed by the petitioner along with an additional affidavit.

32. It takes no rocket science to figure that certificate regarding the whereabouts of the brother of petitioner on February 16, 2001 was the best evidence whereby the petitioner could prove his version. Despite thereto, the petitioner did not produce such a certificate along with his appeal or the instant petition. More than three years after the filing of the present petition lighting dawned upon the petitioner and he filed the certificate regarding the whereabouts of his brother on February 16, 2001. The timing of the filing of the certificate dated June 04, 2003 by the petitioner raises strong doubt about the veracity of the genuineness of said certificate. It could be procured at any stage.

33. Further, a careful look at the version of the petitioner reveals that there are chinks in his version.

34. The petitioner has annexed OPD slips issued by various hospitals relating to the period February 16, 2001 to August 18, 2001 along with the present petition to show that he was undergoing treatment during said period.

35. If we were to accept aforesaid OPD slips at their face value, at best, they would prove that the petitioner was availing treatment as an outpatient. The question which would then arise would be: What prevented the petitioner from reporting to his unit when he was availing treatment as an out-patient?. Perhaps, to avoid answering said question, the petitioner has taken a stand that he was very much present in his unit between the period from February 16, 2001 to August 18, 2001 and working as a runner to his Commandant during said period. But, we find

such a statement/assertion conspicuously missing in the appeal filed by the petitioner. The omission of the petitioner to state in his appeal that he was very much present in his unit between the period from February 16, 2001 to August 18, 2001 and working as a runner to his Commandant during said period raises strong doubt about the veracity of said claim made by the petitioner. Besides, why should the Commandant resort to a strategy of contrivance?. The question looms large without a convincing answer. That the Commandant did so because petitioners wife had complained to senior officers is too tenuous a reply. Besides, from the chart we have prepared in paragraph 2 above we have good evidence of the fact that the petitioner was suffering from some ailment which would keep him away from work at regular intervals. The petitioner himself admits that he was suffering from a mental ailment and in support whereof he has filed photocopies of OPD slips. The one at page 36 of the writ record would reveal that the petitioner was referred to psychiatric OPD; it appears to be a case where the doctors were of the opinion that the so called physical illness evidenced by the petitioner was the result of his psychosomatic condition. This falls in line with the departmental version with proof that the petitioner was got admitted at IBHAS from where his brother got him discharged.

36. Pertaining to the show cause notice dated June 02, 2001, we note that it was sent at the permanent residential address of the petitioner. The petitioner denies having received the said show cause notice.

37. A perusal of the record brings out that the show cause notice dated June 02, 2001 was sent under Registered Post. The same was not received back and thus there is a presumption of service. Further, we find that like the show cause notice dated June 02, 2001, the order dated August 18, 2001, dismissing the petitioner from service was sent at the same permanent residential address of the petitioner. The petitioner admits having received the order dated August 18, 2001. Why the selective receipt by the petitioner of documents sent at his permanent residential address?. The plea urged by the petitioner that the show cause notice dated June 02, 2001 was never received by the petitioner is thus negated by us.

38. All the aforesaid chinks appearing in his version compels us to hold against the petitioner.

39. We dismiss the instant petition but refrain from imposing costs. (PRADEEP NANDRAJOG) JUDGE (JAYANT NATH) JUDGE APRIL16 2014 skb

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