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YASODHAR KAMAT

v.

THE DIRECTOR GENERAL, BORDER SECURITY  
FORCE AND OTHERS

B

(Civil Appeal No. 86 of 2020)

JANUARY 08, 2020

**[DR. DHANANJAYA Y CHANDRACHUD AND  
HRISHIKESH ROY, JJ.]**

C

*Service Law – Appellant, constable in the Border Security Force (BSF) was sanctioned leave from 10.02.2007 to 01.03.2007– Rejoined on 04.04.2007 – Dismissed on the ground of such misconduct – On appeal, held: Appellant contacted his Unit Adjutant for extension of leave – He furnished an explanation which was not rejected as either false or incorrect – Having regard to the facts that the appellant had nearly seventeen years of service by the date of the incident and the imposition of dismissal would be disproportionate, appellant be treated as having been discharged from service w.e.f the date on which he completes his pensionable service of twenty years – Arrears of pension to which the appellant is entitled be paid within three months from the date of receipt of certified copy of the present order – Border Security Force Act, 1968 – s.19(b).*

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**Allowing the appeal, the Court**

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**HELD: The appellant had contacted his Unit Adjutant for extension of leave and furnished an explanation for seeking a further extension. That explanation was not rejected as being either false or incorrect. The appellant had seventeen years of service. The imposition of the penalty of dismissal would be disproportionate having regard to the material which has emerged from the record. Instead of and in substitution of an order of dismissal from service, the appellant shall be treated as having been discharged from service with effect from the date on which he completes pensionable service of twenty years. However, the appellant will not be entitled to any back wages between the date on which he was originally dismissed and the date on which he completes the requirement of pensionable service. [Para 7][769-A-F]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 86 of 2020. A

From the Judgment and Order dated 11.08.2016 of the High Court of Judicature at Patna in Letters Patent Appeal No. 451 of 2014.

M. Shueb Alam, Mojahid Karim Khan, Advs. for the Appellant. B

Ms. Aishwarya Bhati, Sr. Adv., Ms. Aakanksha Kaul, Ms. Manjula Gupta, Prabudh S., B. Krishna Prasad, Advs. for the Respondents.

The Judgment of the Court was delivered by

**DR. DHANANJAYA Y CHANDRACHUD, J.** C

1. Leave granted.

2. This appeal arises from a judgment of a Division Bench of the High Court of Judicature at Patna dated 11 August 2016. While allowing a Letters Patent Appeal, the Division Bench reversed the judgment of a learned Single Judge by which the dismissal of the appellant from service was set aside and the proceedings were remitted back to the Director General of the Border Security Force<sup>1</sup> to examine the quantum of punishment afresh, subject to the caveat that the alternate punishment to be imposed should not either be a dismissal or removal from service. D

3. The appellant was enrolled as a constable in the BSF on 2 January 1990. He had 17 years of service by the date of the incident. The appellant applied for leave from 10 February 2007 to 1 March 2007, which was sanctioned. The cause of misconduct arose because he rejoined his duties on 4 April 2007. On 16 April 2007, he was charged with a misconduct under Section 19 (b) of the BSF Act 1968. Following the convening of a Summary Security Force Court, the appellant was dismissed from service. A statutory petition filed by the appellant was dismissed by the Director General, BSF on 13 June 2007. E F

4. The High Court was moved under Article 226 of the Constitution. On 29 July 2013, a learned Single Judge came to the conclusion that the dismissal of the appellant from service was contrary to law and accordingly the proceedings were remitted back for reconsideration of the quantum of punishment. This order of the learned Single Judge has been reversed by the Division Bench in appeal. G

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<sup>1</sup> BSF

A           5. From the order of the Director General, BSF on the statutory  
petition, it is evident that the appellant had contacted the Unit Adjutant  
for extension of leave on the ground that his niece had been abducted  
and that other pressing family circumstances necessitated an extension.  
This aspect has been recorded in the order dated 13 June 2007 in the  
following terms:

B           “It is on record that the petitioner while on leave had contacted  
the Unit Adjutant for extension of leave for searching his niece  
who was reportedly kidnapped. Shri V S Shekhawat, DC / Adjutant  
deposed in his statement in the ROE that the petitioner did talk to  
C           him on mobile for extension of leave and he in turn asked the  
petitioner to apply for extension of leave through telegram for a  
week or so.”

D           6. Moreover, the learned Single Judge, in the course of his  
judgment, extracted the oral statement of the appellant which had been  
noticed by the appellate authority. The oral statement was to the following  
effect:

E           “4..... “I was granted 15 days CL w.e.f. 10-02-07 to 1-3-07 due  
to my niece kidnapping. However, I had requested to my Offg  
Coy Comdr to grant 30 days EL. But I was granted 15 days CL  
only. When I reached at my native place, I tried my best to find  
out my niece; later on I came to know that she is staying in Delhi.  
I left for Delhi on 15- 02-07. I had given information about the  
kidnapping of my niece to Unit Adjutant Shri V S Shekhawat  
Dy Comdt on Mobile on 25, 26 Apr 07 and requested him for  
extension of leave. He told me that your CL will be converted into  
F           EL if you have not availed EL of this year. On 21-03-07, I sent a  
letter to Bn HQ regarding extension of leave. I could recover my  
niece on 27-02-07. It stayed 6 to 7 days at Delhi at the residence  
of my relatives with my niece. I reached at my home on 08 Mar  
with my niece. After settled down this problem I sent her to her  
husband’s house on 17-03- 07. On 25-03-07, the stomach operation  
G           of wife of my nephew was conducted. Medical documents  
alongwith discharge certificate I have already deposited to this  
HQ alongwith my application. There was no responsible person  
present at my home to settle down this problem. However, I  
overstayed only after getting assurance of extension from leave  
H           to Unit Adjutant.”

7. The position which emerges then is that the appellant had contacted his Unit Adjutant for extension of leave. The Division Bench observed that the appellant had submitted an application for extension of leave belatedly and that as a member of the disciplined force, his conduct could not be condoned. The appellant had furnished an explanation for seeking a further extension. That explanation has not been rejected as being either false or incorrect. The appellant had seventeen years of service. Undoubtedly, the record indicates that in the past he was penalized for being unauthorized absence without leave. His past conduct, in our view, would militate against the grant of an order of reinstatement in service which we decline to do. In fairness, we also note that this is not the submission of the appellant before the Court. However, having regard to the fact that the appellant had nearly seventeen years of service, we are of the view that, in the peculiar facts and circumstances of the case, an appropriate view needs to be taken so as to facilitate the appellant being granted pension after completion of twenty years of pensionable service. This is in view of the fact that the imposition of the penalty of dismissal would be disproportionate having regard to the material which has emerged from the record. We order and direct that instead of and in substitution of an order of dismissal from service, the appellant shall be treated as having been discharged from service with effect from the date on which he completes pensionable service of twenty years. However, the appellant will not be entitled to any back wages between the date on which he was originally dismissed and the date on which he completes the requirement of pensionable service. The arrears of pension to which the appellant is entitled shall be paid to him within a period of three months from the date of receipt of a certified copy of the present order.

8. The appeal is allowed in the above terms. There shall be no order as to costs.