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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*
- D *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*
- E *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).*

Allowing the appeal, the Court

HELD: The appellant had contacted his Unit Adjutant for

- F *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*
- G *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*
- H *completes the requirement of pensionable service. [Para 7][769-A-F]*

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

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. Shoeb 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 Force¹ 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

¹ BSF H

- 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 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."
- C
- 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 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 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 to Unit Adjutant."
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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.

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