

GAHC010036882017



2024:GAU-AS:10135

**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/5205/2017

BANJIT DAS

S/O LATE UMESH CH. DAS, R/O VILL-HALAPAKURI, PO-HOWLY, DIST.
BARPETA, ASSAM, PIN-781316

VERSUS

THE UNION OF INDIA and 4 ORS.

REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, BLOCK-V EAST, R.K. PURAM, NEW DELHI-110066

2:THE DIRECTOR GENERAL SASHASTRA SEEMA BAL
BLOCK-V EAST
R.K. PURAM
NEW DELHI-110066

3:THE INSPECTOR GENERAL
FTR HQR GUWAHATI

4:THE DEPUTY INSPECTOR GENERAL

SHQ
SASHASTRA SEEMA BAL
BONGAIGAON
ASSAM

5:THE COMMANDANT
15TH BN
SASHASTRA SEEMA BAL
KAJALGAON
DIST. CHIRAN

Advocate for the Petitioner : MRS.A SARMA, MR.J P CHAUHAN,MR.K PAUL,MS.R VERMA
Advocate for the Respondent : ASSTT.S.G.I., C.G.C.,MR.M PHUKAN(R- 1-5)

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 11.09.2024

Date of Judgment: 04.10.2024

Judgment & Order(CAV)

Heard Mr. J. P. Chauhan, learned counsel for the petitioner. Also heard Mr. R. K. D. Choudhury, learned DSGI, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present proceeding, has presented a challenge to an order, dated 12.10.2010, removing the petitioner from his service with the Sashastra Seema Bal w.e.f. 12.10.2010. The petitioner has also challenged an order, dated 11.05.2010, by which the petitioner was declared to be a 'deserter'. Further, an order, dated 26.10.2016, rejecting the appeal so preferred by the petitioner, herein, against the order, dated 12.10.2010, is also assailed in this writ petition.

3. As projected in the writ petition; the petitioner was initially appointed as a Constable(GD) in the Sashastra Seema Bal and he joined his service on 25.04.2000 and was so posted at 15th Bn., Sashastra Seema Bal, at Bongaigaon. The petitioner had availed Earned Leave w.e.f. 05.10.2009 to 03.12.2009. However, on conclusion of his said period of leave, the petitioner did not rejoin his service. The petitioner contends that he was under treatment w.e.f. 30.11.2009 on account of mental illness as suffered by him at the relevant point of time.

4. The petitioner, not having rejoined his service after completion of the leave as availed by him w.e.f. 05.10.2009 to 03.12.2009; the Deputy Commandant, 15th Bn., Sashastra Seema Bal, Bongaigaon, had issued a communication, dated 25.05.2010, requiring the Superintendent of Police, Barpeta, to apprehend the petitioner, herein. In the said communication, dated 25.05.2010, it was contended that the petitioner, was, as per the direction of the Court of Inquiry, vide order, dated 27.04.2010, declared a 'deserter' from the Force w.e.f. 11.05.2010, under Section 74 of the Sashastra Seema Bal Act, 2007, and the Rules so framed thereunder.

5. It is seen from the materials brought on record that the petitioner, herein, was not apprehended by the police and the report as submitted by the jurisdictional Police Station reveals that the family members and the local people of the area, where the house of the petitioner is so situated; had contended that the petitioner had not come to his house for the last 2 years. The said report is dated 17.07.2010. The respondent authorities, thereafter, vide memorandum, dated 13.07.2010, noticing the fact that the petitioner was already declared a 'deserter' for his willful/unauthorized absence w.e.f. 11.05.2010, had required the petitioner to submit his stand in the matter before orders towards removing him from his service, was so issued in terms of the provisions of the Sashastra Seema Bal Act, 2007, and Sashastra Seema Bal Rules, 2009. There being no response from the petitioner, in the matter; the Commandant, 15th Bn., Sashastra Seema Bal, Bongaigaon, vide order, dated 12.10.2010, proceeded to remove the petitioner, herein, from his service by invoking the provisions of Section 11(2) of the Sashastra Seema Bal Act, 2007, *read with* Rule 18(ii) of the Sashastra Seema Bal Rules, 2009. The period of absence of the petitioner w.e.f. 04.12.2009 till 12.10.2010, i.e. 313 days, was treated as "dies non" for all intent and purpose.

6. The petitioner after a lapse of a period of around 5(five) years, proceeded to prefer an appeal on 05.12.2015, against the order, dated 12.10.2010, before the Deputy Inspector General, SHQ, Sashastra Seema Bal, Kokrajhar. It is to be noted that the said appeal so preferred by the petitioner, on consideration, came to be rejected by the Deputy Inspector General, SHQ, Sashastra Seema Bal, Kokrajhar, vide order, dated 19.01.2016. Thereafter, the petitioner again submitted an appeal on 25.07.2016, before the Director General, Sashastra Seema Bal. The said appeal of the petitioner was considered by the appellate authority and vide order, dated 25.10.2016, the appellate authority, on considering the contentions so raised by the petitioner in the said appeal; proceeded to reject the same.

7. Being aggrieved, the petitioner has instituted the present proceeding before this Court.

8. Mr. Chauhan, learned counsel for the petitioner, has submitted that the respondent authorities without affording an opportunity of hearing to the petitioner, herein, had proceeded to remove him from his service by invoking the provisions of Section 11(2) of the Sashastra Seema Bal Act, 2007, *read with* Rule 8(ii) of the Sashastra Seema Bal Rules, 2009. It is the specific contention of the learned counsel for the petitioner that the provisions of Rule 8(ii) of the Sashastra Seema Bal Rules, 2009, could not have been so invoked against the petitioner, herein, and on the said count itself; the said order of removal of the petitioner from his service, requires an interference from this Court.

9. Mr. Chauhan, learned counsel, by referring to the medical documents, as brought on record in the present proceeding, has contended that the

petitioner was suffering from psychological ailments and accordingly, he was not in a position to resume his service and/or to inform the departmental authorities of the reasons preventing him from resuming his service and accordingly, the respondent authorities although being apprised of the said position, ought to have re-considered the order of removal from service so imposed upon the petitioner and permitted the petitioner to resume his services.

10. It is contended by Mr. Chauhan, learned counsel for the petitioner, that the petitioner had been certified to be fit to resume his service only on 30.03.2016, and accordingly, the petitioner, admittedly, having been suffering from mental ailments; the impugned order, dated 12.10.2010, removing him from his service along with the consequential orders passed thereafter, would call for an interference from this Court.

11. Mr. Chauhan, learned counsel, by referring to the provisions of Rule 18(ii) of the Sashastra Seema Bal Rules, 2009, has contended that the provisions mandates that an enrolled member of the Force, can be removed from his service on account of unsuitability. The learned counsel by further referring to Rule 26 of the Sashastra Seema Bal Rules, 2009, has contended that if a person is to be so removed on account of unsuitability; such enrolled member of the Force, has to be informed and furnished with all particulars adverse to him and be, thereafter, granted an opportunity to place his stand in the matter and it is only, thereafter, that the Commandant, 15th Bn., Sashastra Seema Bal, would be empowered to pass appropriate orders, in this connection.

12. Mr. Chauhan, learned counsel, has contended that the respondent

authorities had not complied with the provisions of Rule 26 of the Sashastra Seema Bal Rules, 2009, prior to passing of the order, dated 12.10.2010, and accordingly, the said order, dated 12.10.2010, would not be sustainable and would call for an interference from this Court.

13. Mr. Chauhan, learned counsel for the petitioner, in support of his submissions, has relied upon the following decisions of the Hon'ble Supreme Court as well as this Court:

- (i). **(2016) 1 SCC 622**, reported in **Dulu Devi v. State of Assam & ors.**
- (ii). **(1998) 7 SCC 574**, reported in **Transport Manager, Pune Municipal Corporation Transport Undertaking v. Vasant Gopal Bhagwat**(dead) by lrs. & ors.
- (iii). **WP(c)30/2015**[**Vikramjeet Singh Chib v. Union of India & ors.**]
- (iv). **WP(c)6596/2014**[No. 8752543 NK/GD **Manik Daimary v. Union of India & ors.**]

14. Per contra, Mr. Choudhury, learned DSGI, has submitted that the petitioner, on completion of his sanctioned leave, not having rejoined his service w.e.f. 04.12.2009; notices came to be issued to him, at the address so recorded in his service book, requiring him to rejoin his service. The petitioner not having rejoined his service, the competent authority after 60 days of such overstay of leave period by the petitioner; directed for holding of a Court of Inquiry in the matter. On the basis of the opinion rendered by the Court of Inquiry; the petitioner, herein, was declared as a 'deserter' from the Force vide order, dated 11.05.2010, and the said order, dated 11.05.2010, was duly communicated to the petitioner at his residential address as recorded in his

Service Book. Thereafter, it is contended that an apprehension roll was issued against the petitioner for his apprehension from his home. However, the jurisdictional police authorities had informed that the petitioner was not present in his home address and his family members as well as the local people of the locality were not aware of his whereabouts for the last about 2 years i.e. 2 years prior to the date of the report which is of 17.07.2010.

15. Mr. Choudhury, learned DSGI, has further contended that under such circumstances; the Commandant, 15th Bn., Sashastra Seema Bal, Bongaigaon, had issued a communication to the petitioner on 13.07.2010, wherein, after explaining the developments taking place after the petitioner had overstayed his leave and the order so passed by the authorities in the matter; had required the petitioner to submit his response within 15 days from the date of the issuance of the memorandum failing which it was indicated that he would be removed from his service as per the Rules.

16. It was further contended by Mr. Choudhury, learned DSGI, that only after the said steps were so taken in the matter that the order, dated 12.10.2010, came to be issued removing the petitioner from his service. It is also contended that the petitioner had submitted an appeal on 05.12.2015, before the Deputy Inspector General, SHQ, Sashastra Seema Bal, Kokrajhar, and the same, on consideration, was so rejected vide order, dated 19.01.2016. The petitioner, thereafter, had again preferred an appeal on 25.07.2016, before the Director General, Sashastra Seema Bal, Force HQ, New Delhi. The said appeal was also given a due consideration and on such consideration; the same was also rejected.

17. Mr. Choudhury, learned DSGI, by referring to the affidavit filed by the

respondent authorities in the matter, has contended that the petitioner had also on earlier occasions overstayed his period of leave. However, by taking a sympathetic view earlier; the overstay of leave by the petitioner was regularized by the authorities either by grant of Earned Leave or Extra-ordinary Leave(EOL).

18. Mr. Choudhury, learned DSGI, has further contended that the medical documents as brought on record by the petitioner, does not inspire confidence and the same does not reflect that the petitioner was so incapacitated that he was even not in a position to intimate the Commandant, 15th Bn., Sashastra Seema Bal, Bongaigaon, about his inability to rejoin his service. The learned DSGI has further contended that the family members of the petitioner had also not informed the authorities about the ailments stated to be suffered by him during the relevant point of time. The learned DSGI has also contended that the medical documents so brought on record by the petitioner, herein, are all so brought, an afterthought only to justify the misconduct committed by the petitioner in overstaying his leave period.

19. Mr. Choudhury, learned DSGI, has further submitted that the communications so issued to the petitioner for resuming his service as well as the subsequent communications requiring the petitioner, to explain the reasons for his absence before the penalty of removal from service is imposed upon him, were so issued by registered post with A/D to the residential address of the petitioner as provided in his Service Book.

20. Mr. Choudhury, learned DSGI, has also submitted that the communication, dated 13.07.2010, was duly issued through the registered post with A/D at the residential address of the petitioner. However, the same

was returned back to the Unit on 29.07.2010, with the postal remark 'addressee is out of station and returned back to sender'. Accordingly, it is stated that the petitioner was duly issued with all requisite communications/orders.

21. Mr. Choudhury, learned DSGI, has submitted that a copy of the removal order, dated 12.10.2010, was also forwarded to the petitioner at his residential address by registered post with A/D and accordingly, the plea of the petitioner that he was not issued with the impugned orders; does not merit consideration of this Court.

22. In the above premises, Mr. Choudhury, learned DSGI, has contended that the orders impugned in the present proceeding by the petitioner; would not call for any interference by this Court.

23. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

24. At the outset, it is stated that the facts, as noticed hereinabove, are not in dispute. The petitioner was sanctioned Earned Leave for 60 days w.e.f. 05.10.2009 to 03.12.2009. However, the petitioner w.e.f. 04.12.2009, had not resumed his service and/or not made any intimation to the authorities with regard to the reasons which had prevented him from resuming his service. The petitioner not having resumed his service for a period of 60 days after completion of the period of his sanctioned Earned Leave; the respondent authorities had convened a Court of Inquiry in the matter vide order, dated 11.05.2010. Accordingly, invoking the provisions of Section 74 of the

Sashastra Seema Bal Act, 2007; basing on the opinion of the Court of Inquiry, vide order, dated 11.05.2010; the petitioner came to be declared as a 'deserter' from the Force. The said order, dated 11.05.2010, was duly forwarded to the petitioner at his residential address. However, there was no response from the petitioner to the said order, dated 11.05.2010. Thereafter, the authorities of the Unit of the petitioner vide communication, dated 25.05.2010, had required the Superintendent of Police, Barpeta, to apprehend the petitioner. In the said communication, dated 25.05.2010; the fact that the petitioner was already declared to be a 'deserter' under Section 74 of the Sashastra Seema Bal Act, 2007, was also disclosed. In response to the said communication, dated 25.05.2010; the Superintendent of Police, Barpeta, had forwarded a report from the Officer-in-Charge, Barpeta Police Station, wherein, it was contended that the police authorities of Howly Out-Post had tried to apprehend the petitioner on several occasions, however, the same was not possible on account of the absence of the petitioner from his house. It was also brought on record in the said report that the family members as well as the local people of the area where the house of the petitioner is so situated; had contended that the petitioner had not come to his house for the last about 2 years and the family members had no relationship with him. The said report is dated 17.07.2010. Thereafter, it is seen that the Commandant, 15th Bn., Sashastra Seema Bal, Bongaigaon, had vide communication, dated 13.07.2010, after recording the fact that the petitioner had overstayed his leave and for the reason of which, he was declared a 'deserter' vide order, dated 11.05.2010; had required the petitioner, herein, to resume his duty within 15 days from the date of issuance of the said memorandum failing which it was indicated that he would be removed from his service. Accordingly, the petitioner not having made any response to the said memorandum, dated 13.07.2010; the Commandant, 15th Bn., Sashastra Seema Bal, Bongaigaon, vide order, dated 12.10.2010, proceeded to remove the petitioner from his

service w.e.f. 12.10.2010. Further, the absence of the petitioner w.e.f. 04.12.2009 to 12.10.2010, was declared as "dies non".

25. The Commandant, 15th Bn., Sashastra Seema Bal, Bongaigaon, vide order, dated 12.10.2010, had removed the petitioner from his service by invoking the provisions of Rule 18(ii) of the Sashastra Seema Bal Rules, 2009. The provisions of Rule 18(ii) thereof, empowers the Commandant to impose the penalty of removal from service upon an enrolled member of the Force on the ground of unsuitability. The procedure for termination of the service of the enrolled member of the Force on account of unsuitability is provided under Rule 26 of the Sashastra Seema Bal Rules, 2009, which, being relevant, is extracted hereinbelow for ready reference:

"26. Termination of service of enrolled persons on the grounds of unsuitability.-

(1) Where a Commanding Officer not below the rank of Commandant is satisfied that an enrolled person is unsuitable to be retained in the Force, the enrolled person shall be-

- (a) so informed;***
- (b) furnished with the particulars of all matter adverse to him; and***
- (c) called upon to urge any reasons he may wish to put forward in favour of his retention in the service:***

Provided that Clauses (a), (b) and (c) shall not apply, if the Commanding Officer not below the rank of Commandant is satisfied that for reasons to be recorded by it in writing, it is not expedient or reasonably practicable to comply the provisions thereof:

Provided further that such competent authority may not furnish to the enrolled person any matter adverse to him, if in his opinion, it is not in the interest of the security of the state to do so.

(2) After considering the explanation, if any, the Commanding Officer not below the rank of Commandant, may call upon the enrolled person to retire or resign and on his refusing to do so, the enrolled person may be compulsorily retired or discharged from the service."

26. A perusal of Rule 26 of the Sashastra Seema Bal Rules, 2009, would go to show that the competent authority being satisfied that an enrolled member is unsuitable to be retained in service, such enrolled member shall be so informed about the matter along with furnishing to all particulars of the matter adverse to him and thereafter, he be called upon to put forward the reasons justifying his retention in service. It is after considering the explanation if any as submitted by the enrolled member the Commanding Officer not below the rank of Commandant may call upon the enrolled member to retire or resign and on his refusing to do so, the enrolled person may be compulsorily retired or discharged from service.

27. Mr. Chauhan, learned counsel for the petitioner, has strenuously contended that the provisions of Rule 26 of the Sashastra Seema Bal Rules, 2009, was not followed prior to issuance of the order, dated 12.10.2010.

28. Having noticed the purport of the provisions of Rule 26 of the Sashastra Seema Bal Rules, 2009, it is to be seen as to whether the procedure contemplated, therein, was complied with by the respondent authorities prior to issuance of the impugned order, dated 12.10.2010.

29. On a perusal of the materials brought on record, it is seen that the petitioner was declared a 'deserter' from the Force basing on the recommendations so made in the matter by the Court of Inquiry vide an order, dated 11.05.2010. Thereafter, steps were taken for apprehension of the petitioner through the District police. However, the same having not resulted in the petitioner resuming his service; the Commandant, 15th Bn., Sashastra Seema Bal, Bongaigaon, had, vide memorandum, dated 13.07.2010, after recording therein that the petitioner having overstayed his leave and he

having not responded to the notices issued to him to resume his service, he was declared as a 'deserter' vide order, dated 11.05.2010; the Commandant, 15th Bn., Sashastra Seema Bal, Bongaigaon, had granted a last opportunity to the petitioner to resume his duty within 15 days from the date of issuance of the said memorandum, failing which, it was indicated that he would be removed from his service.

30. It is seen that the petitioner had neither resumed his service nor submitted any response to the said communication, dated 13.07.2010. Accordingly, the Commandant, 15th Bn., Sashastra Seema Bal, Bongaigaon, vide order, dated 12.10.2010, after recording therein, the steps taken in the matter requiring the petitioner to resume his duty and the same not having resulted in the petitioner resuming his duty; proceeded to remove the petitioner from his service.

31. The steps taken in the matter requiring the petitioner to resume his service and the notices so issued, having been so issued in respect of the residential address of the petitioner so recorded in his Service Book; this Court is of the considered view that the provisions of Rule 26 of the Sashastra Seema Bal Rules, 2009, was duly complied with by the respondent authorities prior to the issuance of the impugned order, dated 12.10.2010. Accordingly, the order, dated 12.10.2010, would not call for any interference on the ground of the same being in violation of the provisions of Rule 26 of the said Rules of 2009.

32. Having drawn the conclusion that the impugned order, dated 12.10.2010, was so passed in conformity with the procedure as prescribed in

the Sashastra Seema Bal Rules, 2009; this Court would now examine the contention of the petitioner that the order, dated 12.10.2010, is not sustainable in-as-much as the communications preceding the issuance of the said communication as well as the communication of the order, dated 12.10.2010, was not so made to the petitioner, herein.

33. In this connection, Mr. Chauhan, learned counsel for the petitioner, has relied upon the decisions of the Hon'ble Supreme Court rendered in the case of ***Dinanath Shantaram Karekar***(supra) and ***Dulu Devi***(supra). The Hon'ble Supreme Court in the decisions rendered in the above-noted cases, had concluded that the Show Cause Notices issued, must be so served upon the delinquent officer and actual service of such Show Cause Notices is mandated to have been so effected. It also proceeded to hold that the order of penalty must also be actually served and such service, must be proved and established.

34. In the case on hand, it is seen that the petitioner was issued with communications requiring him to resume his duty after he had overstayed his leave. Such communications were, admittedly, sent to the residential address of the petitioner through registered post with A/D as recorded in his Service Book. The petitioner had not disputed the address so recorded in the notices issued towards requiring him to resume his service.

35. It is also seen that thereafter, the petitioner not having resumed his service; he came to be declared as a 'deserter' vide order, dated 11.05.2010 and the the said order, dated 11.05.2010, was also communicated to the petitioner by way of registered post with A/D at his residential address so recorded in his Service Book. The address so recorded in the order, dated

11.05.2010, was also not disputed by the petitioner, herein. Accordingly, it is to be noted that the petitioner having unilaterally remained absent from his duty and not having intimated the authorities about his address during the period of such absence; the respondent authorities were called upon to issue notices upon the petitioner only at the address so recorded in his Service Book. Such communications/orders, admittedly, having been so issued to the petitioner at his address, so recorded in his service records; the plea of the petitioner that he was not served with such notices and/or the copy of the order, dated 11.05.2010, would not merit any consideration by this Court.

36. It is further seen that the petitioner was issued with a memorandum, dated 13.07.2010, affording to him, a last opportunity to resume his duty failing which it was indicated therein that he would be removed from his service. The said communication, dated, 13.07.2010, was also forwarded to the petitioner at his residential address and the address of the petitioner was so noted in the memorandum itself. The said address as recorded in the communication, dated 13.07.2010, is also not disputed by the petitioner. The stand of the respondent authorities is that the said memorandum, dated 13.07.2010, although forwarded to the petitioner at his residential address; was returned with the postal endorsement 'addressee is out of station and returned back to sender'.

37. It is to be noted that the petitioner, at the relevant point of time, was not present in his residence and he also did not inform his Unit about his forwarding address during the relevant point of time and accordingly, the steps taken by his Unit to have the memorandum, dated 13.07.2010, served upon the petitioner at his residential address; would satisfy the requirement of intimation of the said memorandum to the petitioner, herein. In view of the

above position; it is to be noted that the memorandum, dated 13.07.2010, was duly communicated to the petitioner, herein.

38. Likewise, the order, dated 12.10.2010, on being so issued and the petitioner removed him from service; a copy of the said order, dated 12.10.2010, was also forwarded to the petitioner at his residential address, herein, which was again the address so recorded in his Service Book. Accordingly, the said order, dated 12.10.2010, is also deemed to be duly communicated to the petitioner, herein, by the respondent authorities.

39. In view thereof; this Court is of the considered view that the decisions of the Hon'ble Supreme Court in the case of **Dinanath Shantaram Karekar**(supra) and **Dulu Devi** (supra), would not advance the case of the petitioner, herein, on account of distinguishing factors so involved in the present proceeding.

40. Having noticed that the order, dated 12.10.2010, was so passed by following the procedure so mandated under the Sashastra Seema Bal Act, 2007, and the Sashastra Seema Bal Rules, 2009, as well as also the conclusion of the notices and the memorandum, dated 13.07.2010, and the order, dated 12.10.2010, were duly forwarded to the petitioner, herein, at his residential address so recorded in the Service Book; this Court would now consider as to whether the petitioner was so incapacitated on account of his ailments, that he was not in a position to even intimate the respondent authorities about the reasons for non-resuming by him of his duty.

41. In this connection, the petitioner in the present proceeding, has brought

on record certain Medical documents. The petitioner has brought on record a prescription issued by the SDMHO, Bihaguri PHC, Sonitpur, on 30.11.2009, wherein, he was advised to proceed to the Mental Hospital, Tezpur, for further consultation and treatment. It is seen that the petitioner had consulted the Doctors at Lokopriya Gopinath Bordoloi Regional Institute of Mental Health, Tezpur, on 22.11.2013, as an outdoor patient and he was prescribed medicines with further advise to stop intake of alcohol. The petitioner, thereafter, visited the said Hospital on 04.03.2014, 06.05.2014, 07.11.2014, 26.12.2014, 03.02.2015 and 26.09.2015. The OPD ticket No. 14756/13 of the petitioner, dated 26.09.2015, had an endorsement from the consulting Doctor that he had to attend OPD if so necessary and for the fitness certificate, a letter from the concerned office is required. Thereafter, the petitioner has placed on record, a certificate issued by one Dr. Rezaul Hamid, Consultant Neuropsychiatrist, Barpeta, Assam, wherein, the said Doctor had certified that the petitioner was suffering from psychological illness of long duration and same was severely disabling and affecting dimensions like social relatedness, occupational functioning, mental tranquility, etc., and was under his care w.e.f. 01.02.2010. It was also certified that the petitioner had followed-up the treatment till 05.11.2011, and thereafter, the attendants revealed that the petitioner used to remain untraceable for prolonged periods. It was further certified that the petitioner's treatment was re-started and he had shown good response. However, during check-up on 06.06.2013, the petitioner's condition was found to have deteriorated because of ethanol abuse. The said certificate further proceeds to record that the petitioner had attended the Doctor on 06.03.2016 and the records reflected good treatment compliance. Accordingly, the Doctor proceeded to record that on 30.03.2016, the petitioner was found to have improved significantly with subsidence of all oddities and accordingly, the Doctor was of the opinion that the petitioner was fit to resume his duty.

42. A perusal of the said certificate would bring to the forefront that the petitioner was taken to the Doctor issuing the certificate, dated 30.03.2016, by his relatives. However, it is not known as to why the relatives had not intimated his Unit about the ailments suffered by the petitioner. The said certificate further does not indicate as to the treatment received by the petitioner after 06.06.2013 till 06.03.2016.

43. Accordingly, the medical documents so submitted by the petitioner does not bring on record the fact that the petitioner was so incapacitated, on account of the ailments purportedly suffered by him during the said period, that he could not even inform his Unit about the reasons behind his inability to resume his service. Further, the medical documents having recorded that the ailments suffered by the petitioner was also to the knowledge of his relatives; no explanation is forthcoming in the matter from the petitioner as to why even such relatives had not intimated the respondent authorities about the condition of the petitioner.

44. It is to be noted that the medical documents as referred to by the petitioner in the present proceeding, were duly considered by the appellate authority while issuing the order, dated 20.06.2016. The appellate authority while considering the certificate, dated 30.03.2016, had recorded a finding that although it was stated in the said certificate that the petitioner was treated on 01.02.2010, 05.01.2011, 06.06.2013, 06.03.2016 and 30.03.2016, by the attending Doctor, but, no prescription of the said dates, were so annexed by the petitioner with the appeal so preferred by him. It was further recorded that the petitioner had received the treatment as an outdoor patient and accordingly, there was no justification in support of his absence from duty as the treating Doctor had not advised rest to the petitioner for his ailments.

45. The said conclusions as drawn by the appellate authority in the matter being in consonance with the disclosures made from the medical documents as produced in the matter by the petitioner; the same would not call for any interference by this Court.

46. In view of the conclusions reached by this Court hereinabove; the reliance as placed by Mr. Chauhan, learned counsel for the petitioner, in the decisions rendered by this Court in the case of ***Vikramjeet Singh Chib***(supra) and ***Manik Daimary***(supra), would not advance the case of the petitioner, herein. Accordingly, the same being distinguishable on facts of the present case, is not further dilated upon by this Court.

47. In view of the conclusions drawn hereinabove; this writ petition is held to be devoid of any merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant