

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. 77 of 2021

1. The Union of India

represented by the Secretary, Ministry of Home Affairs,
Government of India, Central Secretariat, New Delhi-110001

2. The Director General, Border Security Force, Adm Dte (Gr
Cell), New Delhi-3

3. The Inspector General, FTR HQ BSF, Punjab, Jalandar

4. The Commandant, 70 Battalion BSF, Ajnala Distict-
Amritsar, Punjab-143102

... APPELLANT-RESPONDENTS

Versus

Shri Nabajit Debbarma

son of late Sunil Debbarma, resident of Bamchakobra Para,
P.O. Bodhjungnagar, P.S. Lefunga, District- West Tripura, Pin-
799210

... RESPONDENT-PETITIONER

For Appellant(s)	:	Mr. B. Majumder, Deputy SGI
For Respondent(s)	:	None
Date of hearing & delivery of judgment	:	22.03.2023
Whether fit for reporting	:	Yes / No

HON'BLE THE CHIEF JUSTICE (ACTING)

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order (Oral)

22/03/2023

(T. Amarnath Goud, ACJ)

Heard Mr. B. Majumder, learned Deputy SGI appearing for
the appellant-respondents. None appears for the respondent
petitioner.

2. This appeal has been filed by the appellant-respondents
challenging the judgment and order of the learned Single Judge
dated 07.09.2020 passed in WP(C) no.643 of 2017.

3. Briefly stated, the respondent-petitioner was serving as Head Constable (Ministerial) in 70 Bn. BSF and he had been sanctioned leave for 13 days which would expire on 31.12.2014, but the petitioner did not join his service till 08.01.2015 overstaying the period of his leave. Since the petitioner did not join into his service, the appellant-respondent no. 4, i.e. appellant no. 4 herein, issued a letter upon the petitioner on 09.01.2015 directing him to join his duty forthwith failing which disciplinary action will be initiated against the petitioner under BSF Act and Rules. The petitioner did not reply nor did he join his duty. Thereafter, the appellant no. 4 herein again issued a letter upon the petitioner on 29.01.2015 directing him to join his service failing which disciplinary action will be initiated against him. Since, the petitioner did not join his duties, an inquiry was initiated against him and a show-cause notice dated 24.04.2015 was issued against the petitioner asking as to why he should not be dismissed from the service for his overstaying the leave. The said show-cause notice was received by the mother of the petitioner, but the petitioner did not appeared personally before the authority nor did not he made any reply to the said show-cause notice. Subsequently, on 12.06.2015, the respondent no. 4 by final order had dismissed the service of the petitioner and the name of the petitioner was struck off from the battalion. The

petitioner submitted his representation which was rejected by the respondent no. 3 by its order dated 02.09.2016. Thereafter, the petitioner had preferred a writ petition before this court being WP(C) 643 of 2017 and a learned single Judge of this court by its order dated 07.09.2020 had quashed the show-cause notice dated 24.04.2015 and also the order dated 02.09.2016 giving an opportunity to the petitioner to submit a representation and also directed the respondent no. 4 to consider the said representation. Being aggrieved by the said order, the instant writ appeal has been filed respondent-appellants.

4. Learned Deputy SGI appearing for the appellant-respondents has submitted that the petitioner had been dismissed from his service after following the due procedure laid down in the BSF Act and Rules. Further, learned Deputy SGI has submitted that despite receipt of the letters and show-cause notice, the petitioner did not give any reply. Learned Deputy SGI has urged this court to set-aside the judgment and order dated 07.09.2020 passed by a learned single Judge of this court. Learned Deputy SGI has submitted that the petitioner has not even complained of the order in submitting his explanation to the so-called show-cause notice which was issued on 07.09.2020 even after passing of the judgment till filing of this writ appeal, within one month the explanation was not filed. Learned Deputy

SGI has submitted that the petitioner had been terminated as per sub-rule (8) of Rule 173 of the BSF Rules, 1969. Sub-rule (8) of Rule 173 of the BSF Rules, 1969, reads as follows:

“(8) Before giving an opinion against any person subject to the Act, the court will afford that person the opportunity to know all that has been stated against him, cross-examine any witnesses who have given evidence against him, and make a statement and call witnesses in his defence.

Provided that this provision shall not apply when such inquiry is ordered to enquire into a case of absence from duty without due authority.”

5. Today when the matter has been taken up for hearing, there is no representation from the petitioner-respondent.

6. We have perused the records and also the judgment of the learned single Judge

7. It is seen from the affidavit that there is no denial by the petitioner with regards to receiving of the show-cause notice. There is no admission that though the show-cause notice was received for any reason he has not submitted the explanation of delay atleast. Admittedly, the petitioner has not submitted any explanation with delay inspite of receipt of the letters and show-cause notice. It is only when the petitioner was terminated from his service, he has submitted his representation for his reinstatement which was subsequently rejected by the respondent no. 3. Thereafter, the petitioner approached this court by filing a writ petition with false pleas and unclean hands and also he has not complied with the order passed on 07.09.2020.

8. The present case is a case of a Head Constable merely overstaying his leave by 13 days and never reported for duty thereafter. Instead he submitted representation taking some frivolous pleas after passing of the order of his dismissal, and thereafter, filed a writ petition before this Court in which the impugned order has been passed. It is amply clear that members of the uniformed forces cannot absent themselves on frivolous pleas having regard to the nature of the duties on these forces. Such indiscipline on the part of a member of the forces, if it goes unpunished, will greatly affect the discipline of the forces. We cannot take such matters lightly, particularly when it relates to uniformed forces of this country. A member of a uniformed force who overstays his leave must be able to give a satisfactory explanation. We are satisfied that in cases of this nature, order of dismissal from the force passed by the respondent no. 3 is a justified disciplinary action and cannot be described as disproportionate to the misconduct alleged. From the conduct of the petitioner, we are of the view that the petitioner wilfully remained absent and not submitted any defence statement or participated in the process of enquiry. Even during the process of enquiry, the petitioner had not made any attempt to report for duty. Only after passing of the dismissal order he had approached this court by way of filing a writ petition on some

frivolous grounds. We, therefore, do not find any infirmity in the order of dismissal passed by the respondent no. 3 dismissing the petitioner from service.

9. With this adverse remark regarding the conduct of the petitioner, this court finds that the petitioner is not entitled to be reinstated in his service. Accordingly, the order dated 07.09.2020 passed by a single Judge of this court in WP(C) 643 of 2017 is set-aside.

10. With the above observation, the instant writ appeal stands allowed. Interim application(s), if any, also stand disposed of.

JUDGE

CHIEF JUSTICE (ACTING)



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