

**HIGH COURT OF TRIPURA
AGARTALA
W.A. 153 of 2021**

Sri Prasenjit Das, son of late Manoranjan Das, resident of Abhoynagar, P.O. Nalua, P.S. Belonia, District- South Tripura, presently residing at Uttar Ramnagar, P.O. Narayanpur, P.S. Airport, District- West Tripura

... APPELLANT
(Petitioner in the writ petition)

Versus

- 1. The Union of India**, represented by the Secretary, Department of Home, Government of India, having his office at South Block, New Delhi.
- 2. The Secretary**, Department of Home, Government of India, having his office at South Block, New Delhi
- 3. The Director General**, Border Security Force, having his office at Lodhi Road, New Delhi
- 4. The Inspector General**, Border Security Force, Rajasthan Frontier, having his office at Mandore Road, Jodhpur, Rajasthan
- 5. The Deputy Inspector General**, Principal Staff Officer, Border Security Force, having his office at FTR, HQ BSF, Rajasthan
- 6. The Commandant**, 114 BN BSF, Border Security Force, having his office at Pakhanjore, District- Kanker, Chattisgarh

... RESPONDENTS
(Respondents in the writ petition)

For Appellant(s)	:	Mr. Somik Deb, Sr. Advocate Mr. P. Chakraborty, Advocate
For Respondent(s)	:	Mr. B. Majumder, Deputy SGI
Date of hearing & delivery of judgment	:	20.09.2023
Whether fit for reporting	:	Yes / No

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH
Judgment & Order (Oral)**

20/09/2023
(T. Amarnath Goud,J)

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. P. Chakraborty, learned counsel for the appellant. Also heard Mr. B. Majumder, learned Deputy SGI appearing for the respondents- Union of India.

2. This appeal has been filed by the appellant assailing the judgment and order passed by a learned Single Judge dated

08.01.2021 in WP(C) no. 843 of 2020 dismissing the writ petition filed by the petitioner, the appellant herein.

3. Briefly stated, the petitioner-appellant was serving as a Constable under the respondents, and he had been sanctioned earned leave of 20 days w.e.f. 25.07.2018 on account of illness of his mother. Since the treatment of his mother could not be concluded, the petitioner had to extend his stay for a period of 65 days more. In course of treatment of his mother, the petitioner also suffered from severe back pain due to which he had to remain in bed rest upto 07.04.2019 as per advise of doctor. Since the petitioner did not join into his service, the respondent no. 5 on 15.03.2019 passed an order dismissing the petitioner from service without pensionary benefit. The petitioner submitted an appeal before the respondent no. 4 for setting aside the order of dismissal. During pendency of the said appeal, the petitioner filed a writ petition before this court being W.P.(C) 1073 of 2019 for setting aside the order dated 15.03.2019, and this court vide order dated 04.02.2020 disposed of the said writ petition directing the respondents to dispose the appeal filed by the appellant expeditiously, but the respondent no. 4 by its order dated 29.05.2020 dismissed the appeal filed by the appellant. Being aggrieved, the petitioner had preferred this writ appeal. .

4. Mr. B. Majumder, learned Deputy SGI has fairly submitted that findings of the appellate authority i.e. respondent no. 4 in its order dated 29.05.2020 is valid and no interference. Learned DSGI has submitted that after expiry of leave period the petitioner was required to resume his duty, but he failed and overstayed without

sufficient cause. It is further submitted by learned DSGI that despite issuing show-cause notice and issuing several reminders/letters through registered post by the respondents to the residential address of the petitioner, the petitioner did not resume his duties, and therefore, he has been rightly dismissed from his service as per provisions of Rule 22(2) of the BSF Rules. Mr. Majumder, learned DSGI has relied upon a decision rendered in ***Sri Gouranga Chakraborty vs. State of Tripura and another*** reported in ***AIR 1989 SC 1321 (para 24)***. Mr. Majumder, learned DSGI raised objection regarding maintainability of the writ petition and submitted that the writ petition itself is not maintainable due to lack of territorial jurisdiction as because the dismissal order had been issued from Chattisgarh and the appellate order had been passed from Rajasthan, and hence, this court has no territorial jurisdiction regarding the matter. On to this, learned DSGI has relied upon a decision of ***Oil and Natural Gas Commission vs. Utpal Kumar Basu and others***, reported in ***(1994) 4 SCC 711 (para 8)***. Learned DSGI has submitted that the petitioner had been dismissed from his service after following the due procedure laid down in BSF Act and Rules. In fine, learned DSGI has prayed for dismissal of the instant appeal being devoid of any merit.

5. Mr. Somik Deb, learned senior counsel appearing for the appellant has submitted that the illness of the mother of the appellant and also illness of the appellant himself compelled him to extend his period of leave. Mr. Deb, learned senior counsel has submitted that Annexure 10 and 11 were communicated to the appellant by the respondents from Chattisgarh which would

constitute a part of cause of action and this court has jurisdiction regarding the matter. In this regard, Mr. Deb, learned senior counsel has referred to decisions of the Hon'ble Apex court in **Nawal Kishore Sharma vs. Union of India and others**, reported in **(2014)9 SCC 329** (para 16 to 19) and **Maheshwar Tigga vs. State of Jharkhand** reported in **(2020) 10 SCC 108** (paras 2 and 2.3). Mr. Deb, learned senior counsel has further argued that Section 19 of the BSF Act would be applicable in the instant appeal where the petitioner remained absent without leave. Mr. Deb, has further argued that Rule 22 of the BSF Rules has not been followed while passing the impugned order. Mr. Deb, learned senior counsel has also submitted that though communications have been made, but the petitioner did not receive the communications. Mr. Deb, learned counsel has further argued that there was non-compliance of sub-rule 2 of Rule 22 of the BSF Rules. Mr. Deb, learned senior counsel has also argued that the adversarial report should accompany the show-cause notice and in the instant case the same is absent. Learned senior counsel appearing for the petitioner submitted that the requirement and the essential of the BSF Act and Rules have not been complied with while issuing the show cause notice as also while issuing the final order passed by the respondents and, therefore, the impugned show cause notice and also the Final order are liable to be set aside.

6. Learned DSGI has placed the original file which contains the proof of communications including the show-cause notice and the same is placed on record.

7. We have perused the record and also the judgment of the learned single Judge. We have also gone through the entire file as placed by learned DSGI.

8. From the file it is evident that on 25.07.2018 the petitioner was granted 20 days earned leave and from the order dated 03.10.2018 it is seen that the leave of the petitioner was extended for further 25 days wherein it is also seen that after expiry of the extended period of leave i.e. on 09.10.2018, the petitioner shall resume his duty, but the petitioner did not resume his duty and had been overstaying his leave. From the communication dated 13.10.2018 issued by the respondent no. 6, it is seen that respondent no. 6 has communicated the petitioner to resume his duties since he has been overstaying from leave, wherein, it has been stated that '*it is to inform that you had been extended 30 days EL w.e.f. 10.09.2018 to 09.10.2018 is hereby extended in continuation to earlier sanctioned 20 days E/L w.e.f. 27.07.2018 to 15.08.2018 and further extended 25 days E/Leave w.e.f. 16.08.2018 to 09.09.2018. You were required to resume your duty at Transit Camp, Durg (C.G.) on 09.10.2018 (AN) after expiry of said leave but you have not reported on due date and overstaying from leave w.e.f. 10.10.2018 (FN). You are hereby directed to resume your duty forthwith otherwise strict disciplinary action will be initiated against you as per provision of BSF Act and Rules*'. Thereafter, the respondent no. 4 again intimated the petitioner to resume his duties vide communication dated 21.10.2018 and 03.11.2018. Since the notices could not be delivered to the petitioner, the same was communicated to the petitioner through

his e-mail and whatsapp and also the notice was affixed on the residential door of the petitioner, which would be evident from snapshots as well as the letters submitted to the respondent no. 6 by the process server, annexed with the file. From the file it is also evident that the petitioner on 16.08.2018 through whatsapp intimated the respondent no. 6 regarding illness of his mother, but intimation regarding his absence is not found. It is also seen in the file that the Pradhan of Nalua GP on 14.02.2019 had certified that Constable Tapas Paul has come to the house of the petitioner to serve the show-cause notice but the petitioner is not residing in his permanent house since long. Thus, all endeavours were being taken by the respondent no. 4 to serve the show-cause notice upon the petitioner. It is also evident from the file that the respondent no. 6 on 21.12.2018 had made a remark on the COI proceeding in regard to the petitioner, which is as under:

“Remark of the Commandant on the COI Proceedings in R/O No. 131300646 CT(GD) Prasenjit Das ‘G’ Coy 114 BN BSF, Pakhanjore, (CG)

I generally agree with the findings and opinion of the Court

2. No. 131300646 CT(GD) Prasenjit Das ‘G’ Coy of this Unit was granted 20 days EL w.e.f. 27.07.2018 to 15.08.2018 and further extended 25 days EL w.e.f. 16.08.2018 to 09.09.2018 and again extended 30 days EL w.e.f. 10.09.2018 to 09.10.2018. On expiry of said leave, individual was supposed to rejoin his duty on 09.10.2018 (AN) but he failed to do so and is overstaying from leave w.e.f. 10.10.2018 (F/N) In this regard three letters were sent to his home address vide this Unit Letter no. Estt/OSL/114/Bn/2018/11227-31 dated 13.10.2018; No. Estt/OSL/114 Bn/2018/ 11869-74 dated 29.10.2018 and Estt/OSL/114Bn/2018/1480-81 dated 03.11.2018 with direction to report back on duty and also with a caution that if he fails to report on duty disciplinary action may be initiated against him, but no response was received from the individual.

3. I, therefore, direct that:-

(a) No. 131300646 Ct/GD Prasenjit Das be declared as “Deserter”.

(b) An Apprehension roll be issued to concerned police station authorities through registered letter to apprehend the individual and further hand over him to the nearest BSF authorities.

(c) BSF ID Card issued to individual be recovered by the concerned police stations authorities and be deposited as per instructions.

(d) Outstanding dues on account of deduction memo of CT & S amounting to Rs. 5444/- be deducted from individual pay and allowances lying UD in unit account.

(e) His rum security and RMA be remitted to individual account after recovery of any dues.

(f) Suitable disciplinary action be initiated against no. 131300649 Ct/GD Prasenjit Das as per BSF Act & Rules.”

9. After the said remarks being made by the respondent no. 6, the respondent no. 6, vide his letter under no. Estt/114Bn/AP-

PD/2018/13734-35, dated 21.12.2018 intimated the Superintendent of Police, South Tripura requesting him to apprehend the petitioner and handover him to the Unit since the petitioner has been declared 'Deserter' under BSF Act and Rules. The respondent no. 6 also by his communication under no. Ops/114Bn/2019/85-86 dated 03.01.2019 informed the SHQ of Belonia police station requesting him to recover the identity card of the petitioner from the petitioner and send the same to the Unit. Thus, from the act and action of the respondents, it is clear that all efforts were being taken by them to procure the attendance of the petitioner, but failed. Thereafter, on compelling circumstances, the respondent no. 6 issued a show-cause notice dated 29.01.2023 to the petitioner, which reads as under:

"Based on the reports available, it is noted that you have been illegally overstaying from leave with effect from 10.10.2018. the proceeding of the Court of Inquiry held in accordance with Section 62 of the BSF Act to investigate into the said illegal absence has also found and declared that you have been illegally absent and without sufficient cause overstaying leave with effect from 10.10.2018 (FN).

2. Having considered the matter of your said continued illegal absence from duty, I am satisfied that your trial by a Security Force Court is not only inexpedient but also impracticable and that your further retention in the service is undesirable. Accordingly, in exercise of the powers vested in me by Sub Sec (2) of Sec-11 of the BSF Act read with Rule 177 of the BSF Rules and in conformity with Sub-Rule (2) of Rule 22 of the BSF Rules, you are hereby called upon to show cause why you should not be dismissed from the service for your aforesaid act.

3. If you have anything to urge in your defence against the proposed dismissal from the service, you may do so within 30 days of the receipt of this notice failing which it will be assumed that you have nothing to urge in your defence against the proposed action and further decision in the matter will be taken.

4. A copy of the Court of Inquiry referred to in Para-I above is enclosed for your reference.

5. Please acknowledge receipt of this show cause notice."

10. When all possible endeavours were being applied to serve the show-cause notice and the petitioner remained unresponded, and also when the police could not apprehend the petitioner as he was not found in his house, the respondent no. 6 dismissed the petitioner from the service by order dated 15.03.2019, which reads as under:

“ Order by Shri G.S. Dhaliwal, Commandant, 114 BN BSF in the OLS Case of No. 131300646 Constable Prasenjit Das.

- 1. I have examined the matter relating to the illegal absence without leave/without sufficient cause over stayed of leave by No. 131300646 Constable Prasenjit Das of 114 BN BSF.**
- 2. As mentioned vide Sub-Rule (2) of Rule 22 of the BSF Rules, the said No. 131300646 Constable Prasenjit Das was given an opportunity to show cause vide 114 Bn. BSF notice No. Estt/114 Bn/SCN/2019/739-42 dated 29th Jan’ 2019 against his proposed dismissal from the service No. 131300646 Constable Prasenjit Das, however has failed to submit any reply to the said show cause notice till date.**
- 3. Considering the matter in its entirety I am satisfied that 131300646 Constable Prasenjit Das has been illegally absenting without leave/without sufficient cause over staying leave since 10.10.2018 (FN). I am also satisfied that his aforesaid continued illegal absence in contrary to the expected norms of and is detrimental to the Force discipline, which makes his further retention in the Force as undesirable.**
- 4. I, therefore, direct that the said No. 131300646 Constable Prasenjit Das be dismissed from the service without pensionary benefits with immediate effect.**
- 5. The period of unauthorized absence w.e.f. 10.10.2018 to 15.03.2019 be treated as ‘Dies-non’.**
- 6. The cost of deficient kit/clothing items to the tune of Rs.5444/ (Rupees Five thousand four hundred forty four) only be recovered from the amount payable to him and be deposited into Govt. treasury. Laminated identity card bearing no. 619526 issued to individual should also be recovered from the individual through concerned police authority and disposed off as per instruction.**
- 7. Individual is struck off strength of this unit w.e.f 15th mar’ 2019 (AN).”**

11. After passing of the dismissal order, the petitioner on 29.05.2019 submitted his appeal before the respondent no. 4 requesting the respondent no. 4 to set aside the dismissal order passed against him for his overstaying of leave. During pendency of the appeal, the petitioner filed a writ petition before this court which was registered as WP(C) 1073 of 2019 and this court vide its order dated 04.02.2020 disposed of the writ petition with an observation that the appeal of the petitioner may be decided expeditiously. Thereafter, the appellant authority disposed of the appeal filed by the petitioner by its order dated 29.05.2020 with the following observations:

“7. Whereas, in compliance of Hon’ble court order dated 04.02.2020, the appeal dated 29.05.2019 for re-instatement in service submitted by the petitioner has been considered and examined by the Inspector General, BSF Rajasthan Ftr in detail, in the light of relevant Rules as well as facts and circumstances of the case. In the representation dated 29.05.2019, the petitioner contended that he was so busy in the treatment of self illness as well as mother’s treatment, as such he could not be able to respond immediately against his dismissal order and further requested to reinstate him in service on compassionate ground. It is evident from the record that adequate opportunities have been afforded to the individual to re-join the duty after expiry of leave granted/extended to him but he did not avail the same and did not respond to unit correspondence or had submitted any documents to substantiate his claim about self illness or mother treatment. More so he did reply to the Show Cause Notice issued by the Unit. All the action taken against the petitioner are in accordance to BSF Act & Rules as well as instructions thereof, following due procedure of law

as such no prejudice has been caused to the individual by the authority. In light of above, IG BSF Ftr HQ Rajasthan arrived at the conclusion that the dismissal order issued by the Commandant 114 Bn BSF, vide Order No.Estt/114 Bn/Disc/2019/1763-67 dated 15 March'2019, is in order and requires no interference.

8. In view of above facts & circumstances of the case, the Inspector General, BSF, Rajasthan Frontier has rejected the instant appeal dated 29.05.2019 submitted by the petitioner for reinstatement in service, being devoid of merit."

12. Challenging the dismissal order dated 29.05.2020, the petitioner again approached this court by filing a writ petition which was numbered as W.P(C) 843 of 2020. This court after hearing both the parties by its order dated 08.01.2021 dismissed the writ petition with the following observations:

4. The record would, however, show that the petitioner who was a member of an armed force, overstayed his leave period by several months. During this period of his unauthorized absence the department tried to serve him notices and also persuaded him to resume duty. The appellate authority has recorded in the order that a communication was issued to the Superintendent of Police, South Tripura on 21.12.2018 with a request to apprehend the petitioner despite which neither the petitioner resumed his duties nor any response was received from the police authorities. Thereafter, a special messenger was sent to the house of the petitioner but he was not found there. The special messenger contacted the petitioner on mobile phone and asked him to report to the headquarters which he refused. Under the request of the special messenger the petitioner also contacted the headquarters when also request was made for him to resume the duties which he refused. In such background the appellate authority recorded that due to prolonged unauthorized absence charge of the petitioner by a Security Force Court under the BSF Act and Rules was felt impracticable and inexpedient and his further retention in service was considered detrimental to the discipline of the force. It was under such circumstances that the Commandant exercised powers under Rule 22(2) of the BSF Rules and dismissed the petitioner from service which order as noted earlier the appellate authority also confirmed.

5. I have no reason to interfere with such orders. As noted, the petitioner was a member of the armed force and showed total lack of discipline by remaining unauthorisedly absent for a long period. Even when attempt was made to contact him, initially, he was untraceable. He was persuaded on telephone to resume duty. He remained unmoved.

6. I do not think the interpretation of the counsel for the petitioner of Rule 22 of the said Rules would come to the aid of the petitioner. Before we refer to Rule 22 one may have a look at Section 19 of the Border Security Force Act, 1968 (BSF Act, for short) which provides that any person subject to the said Act and who commits any of the following offences which includes in clause (a) of a person absenting without leave, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in the Act mentioned. Absence from duty without leave of a member of BSF thus is a punishable offence and would be dealt with under Section 19 of the BSF Act.

7. Rule 22 of the BSF Rules on the other hand pertains to dismissal or removal of persons other than officers on account of misconduct. This rule reads as under:

"22. Dismissal or removal of persons other than officer 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 person concerned an opportunity of showing cause. (2) When 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 the 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 the 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 an Inspector. (4) All cases of dismissal or removal under this rule, shall be reported to be Director-General."

8. As per sub-rule (1) of Rule 22 when it is proposed to terminate the service of a person other than an officer, he would be given an opportunity by the competent authority to show-cause in the manner specified in sub-rule (2) before dismissing or removing him from service. As per sub-rule (2) when after considering the reports on the misconduct of the concerned person the competent authority is satisfied that the trial of such a person is inexpedient or impracticable but further retention of the person in service is undesirable, it would so inform him along with all the reports adverse to him and call upon him to submit his explanation and defence in writing. As per sub-rule (3), the competent authority after considering the explanation and defence, if any may remove or dismiss the person from service with or without pension.

9. Sub-rule (1) of Rule 22 thus is the source of power of a competent authority to dismiss or remove a member of the force. Sub-rule (2) essentially lays down the procedure when the competent authority instead of ordering trial of the concerned person for alleged misconduct, decides to exercise the power of removal or dismissal on the ground that his further retention in service is undesirable. Sub-rule (3) of Rule 22 provides for the punishments which the competent authority can impose after following the procedure prescribed in sub-rule (2). When sub-rule (2) of Rule 22 refers to satisfaction of the competent authority of inexpedience or impracticability of a trial of such a person, it necessarily as reference to Section 19 of the BSF Act which as noted, prescribes punishment upon conviction by Security Force Act of a person who commits any of the offences provided in the said Section including of absenting himself without leave. The appellate authority has also elaborated on this aspect of the matter and he recorded that in view of the prolonged absence from duty the trial of the employee by the Court of inquiry was found inexpedient. At the same time, his retention in service was found to be undesirable. Hence, the action under sub-rules (2) and (3) of Rule 22 of dismissal from service.

10. Petition is, therefore, dismissed."

13. Counsel appearing for the respondent agreed that the relevant provisions which would govern the instant case is the amended provision of Rule 22 of the BSF Rules. A reading of the aforesaid provisions would indicate that when the competent authority proposes to terminate the services of a person subject to the Act other than an officer, he would be given an opportunity by the competent authority empowered to dismiss or remove him, to show cause in the manner specified in Sub-rule (2) against such action. Sub-rule 2 of Rule 22 provides that when after considering the reports on the mis-conduct 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 the 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

defense. Sub-rule 3 of Rule 22 provides that the competent authority after considering his explanation and defense, if any, may dismiss or remove him from service with or without pension. Therefore, a power is vested on the competent authority to dismiss or remove a person other than an officer after complying with the procedure and the provisions of Rule 22 of the BSF Rules. The said Rule requires that in an appropriate cause, the competent authority may dispense with the trial if according to the said competent authority, the trial of such a person is inexpedient or impracticable and when he is also of the opinion that his further retention in service is undesirable. When such satisfaction and opinion is arrived at by the competent authority, a show cause notice is to be issued to the concerned person where after the order could be passed as against the said person dismissing or removing him from service.

14. It was contended by the counsel appearing for the respondents that after following all due procedure of the Act and Rules, the order of termination was passed against the petitioner. It was further submitted that several steps were being initiated by the respondents for service of show-cause notice or communications, but the same could not be served upon the petitioner. It is also submitted that the unauthorised absence of the petitioner is considered as a misconduct under the BSF Act and Rules framed there under, the entire procedure laid down for a trial to try an offence for misconduct is always required to be complied with and followed and the summary procedure as prescribed under Rule 22 of the BSF Rules and accordingly, he

had been removed from his service. It is further contended that the observation and decision of learned Single Judge in W.P(C) 843 of 2020 is correct.

15. We are also of the opinion that Section 62 and its interrelation with Rule 22 requires to be appreciated. Section 62 of the B.S.F. Act reads as under:-

“62. Inquiry into absence without leave-(1) When any person subject to this Act has been absent from duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be appointed by such authority and in such manner as may be prescribed; and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessities; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof and the said deficiency, if any, and the Commandant of the unit to which the person belongs shall make a record thereof in the prescribed manner.
(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall for the purpose of this Act, be deemed to be a deserter”.

Further, Section 11 of the BSF Act 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 the ranks any person under his command except an officer or a subordinate officer.
(4) The exercise of any power under this section shall be subject to the provisions of this Act and rules”.

16. Therefore, all the contentions of the counsel appearing for the petitioner are found to be without any merit. The preconditions for making out a case under Section 11 of the BSF Act read with Rules 22 and 177 of the BSF Rules have been satisfied and were complied with and the entire procedure as laid down therein was followed by the respondents and, no prejudice was caused to the petitioner in any manner. In that view of the

matter no interference is called for to the action of the respondents.

17. In ***Sri Gouranga Chakraborty vs. State of Tripura and another*** reported in ***AIR 1989 SC 1321 (para 24)***, the Hon'ble Apex Court has held as under:

“24. 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 validity 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 without any reasonable cause or for overstaying leave without sufficient cause and holding him 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. It is also to be noticed in this connection that Rule 6 of the said Rules has specifically provided that in regard to matters not specifically provided in the Rules it shall be lawful for the Competent Authority to do such thing or take such action as may be just and proper in the circumstances of the case. In this case though any procedure has not 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. No other point has been urged before us by the learned counsel appearing on behalf of the appellant”.

18. A Court of Inquiry was held *ex-parte* for which we find there is sufficient power in the respondents to do so. Needless to say, the proceedings of the Court of Inquiry evidenced petitioner being on unauthorized absence and thereafter the Commandant of the Unit issued a show cause notice informing the petitioner that action was proposed to be taken against him on account of continuous unauthorized absence for which petitioner was called

upon to furnish a response. Despite several efforts, notice could not be served and no response was received from the petitioner and the respondents exercising power conferred under BSF Act and Rules, penalty of dismissal from service was inflicted upon the petitioner. The petitioner made a belated representation taking a stand of his illness, but has not acted diligently and failed to place on record all evidences in support of his claim before the concerned authorities. A person working in BSF is supposed to be more diligent and responsible. Having accepted the employment it is not open for him to go on unauthorized leave. Proceeding to face misconduct and to not act diligently cannot be justified in any manner. In exercise of BSF Act and Rules, the petitioner was removed from his service without any pensionary benefit after issuing show cause notice to the petitioner in terms thereof. Therefore we hold that no further inquiry was required to be held in view of the fact that the petitioner has failed to file any reply to the show cause notice and to deny the allegation in the process. Therefore, we are bound by the ratio of the aforesaid BSF Act and Rules and the observations and findings of the learned Single Judge in WP(C) 843 of 2020, and also the decision, as stated here-in-above. In terms of the said, we have no other option but to hold that the petitioner has failed to make out any case for interference into the findings of the learned Single Judge in W.P(C) 543 of 2020.

19. In the light of the aforesaid conclusions, we hold that there is no merit in this writ appeal and the writ appeal stands

dismissed. The judgment and order passed by a learned Single Judge dated 08.01.2021 in WP(C) no. 843 of 2020 is confirmed.

However, there shall be no order as to costs.

JUDGE

JUDGE

HIGH COURT OF TRIPURA



SAIKAT KAR

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