

**HIGH COURT OF TRIPURA
AGARTALA
WP(C)No.924 of 2022**

Sri Krishna Jamatia,
son of Sri Bipari Kumar Jamatia,
resident of Village & P.O. Malbasa,
P.S. Birganj, District-Gomati Tripura

.....Petitioner(s)

Versus

1. The Union of India,
represented by Secretary,
Home Affairs, North Block, New Delhi, 110001

2. The Director General,
Border Security Force, Block No.10,
CGO Complex, Lodhi Road, New Delhi, 110003

3. Commandant, 47th Battalioin, Border Security Force,
Gandhinagar, Gopalpur, P.O. K.K. Bari, District-Coochbehar,
West Bengal, Pin-736179

4. Deputy Commandant(Adjutant),
47th Battalion, Border Security Force,
Gandhinagar, Gopalpur, P.O.-K.K.Bari,
District-Coochbehar, West Bengal, Pin-736179

5. Sri Virendra Kumar, AC/PO, Presiding Officer,
47th Battalion, Border Security Force, Gandhinagar,
Gopalpur, P.O. K.K. Bari, District-Coochbehar,
West Bengal, Pin-736179

.....Respondent(s)

For Petitioner(s)	:	Mr. R. Datta, Adv.
For Respondent(s)	:	Mr. B. Majumder, Deputy SGI.
Date of Hearing &		
Judgment & Order	:	03.05.2023
Whether fit for reporting	:	YES/NO

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order(Oral)

Heard Mr. R. Datta, learned counsel appearing for the petitioner as well as Mr. B. Majumder, learned Deputy SGI appearing for the respondents.

2. The petitioner approaches this Hon'ble Court under Article 226 of the Constitution of India seeking a writ in the nature of certiorari quashing the Inquiry report/finding of the court dated 06.01.2022 submitted by the respondent No.5, show cause notice dated 19.02.2021 issued by the respondent No.3 and the order dated 21.05.2021 issued by the respondent No.3 whereby the petitioner was dismissed from service and also praying to reinstate the petitioner in service and direct the respondents to disburse the arrears of salaries and other admissible service benefits in favour of the petitioner.

3. On 25.05.2011, the petitioner was appointed to the rank of Constable under the Border Security Force and was posted under 47th Battalion BSF at Coochbehar, West Bengal and serving his higher authorities with entire satisfaction. The petitioner while being posted at 47th Battalion BSF submitted an application before the respondents and prayed for 60 days Earned Leave to meet his family members at Tripura. Accordingly, the respondents by an order dated 10.09.2020 sanctioned 60 days Earned Leave w.e.f. 11.09.2020 to 10.11.2020 in favour of the petitioner. After expiry of the leave period, the petitioner failed to rejoin his duties at his place of posting i.e. 47th Battalion BSF, Coochbehar, West Bengal as he was suffering from severe lower back pain and he was advised by the Doctor to take complete bed rest. The petitioner was also going through some personal matrimonial difficulties with his wife namely Chitra Devi Jamatia. The marriage between the petitioner and his wife was solemnized on 05.11.2021

as per the customary law of Jamatia Community of Tripura following the rules and customs of The Jamatia Customary Law Act, 2017. Since the divorce proceedings was going on, the petitioner was barred from leaving his village and from joining his duties before a final decision was taken by the authorities of the said Jamatia Community of Tripura.

4. The respondent No.4 issued a letter dated 12.11.2020 and directed the petitioner to report to the Battalion Headquarter immediately after receipt of the said letter and also stated that disciplinary action would be initiated against the petitioner if he fails to join his duties. The respondent No.4 issued similar letters dated 24.11.2020 and 01.12.2020 and letter dated 10.12.2020 and directed the petitioner to report to the Battalion Headquarter immediately after receipt of the said letters and also stated that disciplinary action would be initiated against the petitioner if he fails to join his duties.

5. The respondent No.4 issued an order dated 17.12.2020 and appointed the respondent No.5 as the presiding officer of One man Court of Inquiry i.e. inquiry officer to investigate into the circumstances under which the petitioner overstayed from leave w.e.f. 10.11.2020 and the said enquiry was held on 02.01.2021 and on subsequent dates at the BOP Amrit & BN HQ 47 BN BSF. The respondent No.5 without giving reasonable opportunity to the petitioner to know what has been stated against him, cross examine any witness who gave evidence against him and without providing him any opportunity to make a statement and call witness in his defense as per the provisions of Section 173(8) of Border Security Force Rules, 1969 submitted

its opinion and findings dated 06.01.2021 before the respondent No.3

whereby it was opined by the respondent No.5 as follows :

(a) A show cause notice as per policy/rules be sent to the Home address of No.111726402 CT Krishna Jamatia directing him to resume his duties forthwith otherwise strict disciplinary action as mandated by BSF Acts & Rules will be initiated against him. If the individual resumes his duties, his case may be examined on the basis of evidence produced by him by the Competent Authority and action as deemed fit by CA be initiated.

(b) In Case the individual remains OSL and doesn't respond to the Show cause notice, the apprehension roll to be issued against him and local Police/civil authorities be approached to arrest him and further hand him over to nearest BSF establishment. He will be escorted to 47 BN BSF and strict disciplinary action as per BSF Acts & Rules be initiated against him.

(c) The pay and allowances of No.111726402 CT Krishna Jamatia is not traceable/arrested even through repeated efforts by Local Police/BSF authorities, he should be declared a deserter and necessary action as per BSF Acts & Rules be taken against him. In this case following additional actions be taken:

(i) Rs.4100/- only as Ration Money Advance only is deposited by No.111726402 CT Krishna Jamatia. As per deduction memo drawn out by a Board of Officers, Rs.3267/- only is outstanding against the individual on account of Kit, clothing and other items issued to him by the Prov Branch of 47 BN BSF.

Thus in the event of being declared as a Deserter, all the pending dues/recoveries be made from his dues payable and deposited into branch concerned. All the Kit Clothing items to be also thus struck off the ledger charge of 47 BN BSF. Any other dues also be ascertained from other branches and recovered from the dues payable to No.111726402 CT Krishna Jamatia and deposited accordingly.

(ii) All efforts be made with the help of Local Police/nearest BSF establishments to recover the Identity Card bearing number 583834 dated 31 Aug 2013 issued to No.111726402 CT Krishna Jamatia and be destroyed as per existing policies. If the said identity card cannot be recovered, actions to be taken to strike it off from ledger charge as per policy on the subject."

6. The respondent No.3 after receipt of the inquiry report dated 06.01.2022 submitted by the respondent No.5, gave his remarks on 15.01.2021 with regard to the said opinion and findings and stated that he agrees with the findings and opinion of the court and directed to issue a

registered letter to the petitioner with the direction to join his duty immediately along with all supporting documents, and also stated that if no reply of registered letter is received within 30 days, an apprehension roll should be issued through civil authorities as per the provisions of 60 and 61 of BSF Act and to take disciplinary action against the petitioner. The respondent No.3 further directed to issue a show cause notice as per the provisions of BSF Rule 22 through a registered post to deduct Rs.3267/- from dues applicable to the petitioner and also to take all efforts with the help of Local police establishment to recover the Identity Card and to destroy the same as per the existing policies.

7. The respondent No.3 issued a show cause notice dated 19.02.2021 and stated that trial of the petitioner regarding absence from duty by Security Force Court was not only inexpedient but also impracticable and further retention of the petitioner was undesirable. The petitioner was also called upon to show cause as to why the petitioner should not be dismissed from the service. Thereafter, the respondent No.3 issued an order dated 21.05.2021 and dismissed the petitioner from service w.e.f. 21.05.2021. In the said order, it was also stated that the period of unauthorized absence w.e.f. 10.11.2020 to 21.05.2021 would be treated as dies non for all purpose, to recover an amount of Rs.3267/- towards cost of deficient kit/clothing items and to recover the identity card of the petitioner. After receipt of the said order of termination dated 21.05.2021, the petitioner in the month of March, 2022 submitted various representations before the

respondent No.3 and prayed for reviewing the order dated 21.05.2021 and to reinstate the petitioner into service. The said representation duly received by the respondent No.3 but no reply was given by the respondents.

8. Mr. B. Majumder, learned Deputy SGI appearing for the respondents has submitted that while posted in 47 Bn, BSF, the petitioner proceeded on 60 days EL w.e.f. 10.09.2020 to 10.11.2020 and as the petitioner failed to rejoin his duty after completion of leave, initially he was issued four letters to his home address through registered post whereby he was directed to rejoin his duty forthwith. But the petitioner neither rejoined his duty nor was any intimation received from him. Moreover, during his overstay, he did not inform anything whereas being a member of a disciplinary force i.e. BSF, he cannot be irresponsible and casual towards his job responsibility. However, as per record available, the petitioner is married and has one son. Further the contention made as per the Jamatia Customary Laws Act, 2017 since divorced proceeding was going on, the petitioner was barred from leaving his village and from joining his duties before a final decision was taken by the authorities of the said Jamatia Community of Tripura are misleading and mischievous and as such, denied and disputed by the answering respondents.

9. Having heard both sides as advanced by the learned counsel this court thinks it appropriate to remand the matter back for reconsideration for imposing punishment. Considering the said punishment of removal from the service for unauthorized absence and on medical grounds, this court feels

that this is excessive and any other alternative punishment be considered in accordance with law within a period of three months from the date of receipt of a copy of this order. The impugned order dated 21.05.2021 herein stands set aside and disposed of accordingly.

JUDGE

