

**HIGH COURT OF TRIPURA
AGARTALA
WA NO.152 OF 2022**

Ratan Rudra Paul

Son of Sri Nikunja Rudra Paul,
Resident of village & P.O.- Konaban,
P.S.- Bishalgarh, District-Sepahijala Tripura.

.....**Appellant(s)**

Versus

1. Union of India,

Represented by the Secretary to the Department of Home,
Government of India, P.O.- New Delhi, Pin-110001.

2. The Director General,

Border Security Force, Government of India,
North Block, New Delhi, Pin-110001.

3. The Inspector General,

Border Security Force, Headquater at S.B. Jammu Frontier,
Ministry of Home Affairs, Government of India, Paloura Camp,
Jammu & Kashmir, Pin-181124.

4. The Commandant, 152nd Battalion,

Border Security Force, Haringhata P.O.- Mohanpur, District-
Nadia, West Bengal, Pin-741235.

.....**Respondent(s)**

For the Appellant(s) : Mr. Koomar Chakraborty, Advocate.

For the Respondent(s) : Mr. B.N. Majumder, Deputy SGI.

Date of hearing and delivery of
Judgment & Order : 26.02.2024.

Whether fit for reporting : No.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R (O R A L)**

This present writ appeal has been filed under Rule 2 of
Chapter V-A of the Gauhati High Court Rules, read with Article 226
of the Constitution of India, against the impugned Judgment &

Order dated 09.12.2021, passed in WP(C) No.7 of 2019 whereby the learned Single Judge has dismissed the said writ petition.

2. The brief fact of this case is that the petitioner-appellant herein was enrolled as a Constable (GD) under the Border Security Force (*BSF, for short*) in the year 2011. While discharging his duties as Constable, the petitioner was given punishment for overstaying on leave for the month of November-December, 2012. Again in the month of March 2013, the petitioner-appellant was given punishment of quarter-guard for a period of 14 days. Thereafter, the petitioner was found missing. The petitioner-appellant had pleaded that during that period he lost his mental stability. After the expiry of 30 days for his unauthorized absence from the Force, a Court of Inquiry was held. It is pertinent to mention here that before the Court of Inquiry, the Unit of the petitioner-appellant had made their best efforts to look for him, and having failed to trace him out, an FIR was lodged. Thereafter, the Unit of the petitioner-appellant had sent several letters at his home address through registered post directing him to resume his duties immediately, but, he failed to report back in spite of repeated reminders. So, after 30 days of his absence without due authority, the Court of Inquiry was held as contemplated under Section 62 of the BSF Act, 1968 (*here-in-after referred to as the Act, 1968*). Since, neither the petitioner reported back to his duty nor any communication was received by the respondents from him justifying

his absence without due authority, the matter was taken up by the Commandant, and as per his remarks on the report of the Court of Inquiry, an apprehension role was prepared through the Civil Authority (District Magistrate & Collector, West Tripura, Agartala) and was issued in compliance of the provision of Section 60 and 61 of the said Act, 1968, but, no response was received from the Civil authority till the order of his dismissal. Ultimately, as mandated under sub-rule (2) of Rule 22 of the BSF Rules, 1969, the petitioner was given an opportunity to show cause vide no. Estt./AWL/ 152 Bn/2013/712-13 dated 2nd September, 2013 against his proposed dismissal from service, but, the petitioner-appellant had failed to respond to the said notice and did not submit any reply. Ultimately, it had led the competent authority to decide the matter of the continued illegal absence of the petitioner-appellant in its entirety and being found the petitioner non-responsive to the correspondences made by the Unit and the competent authority found the behaviour of the petitioner-appellant contrary to the expected norms and detrimental to the Force discipline. It was further opined that further retention of the petitioner-appellant in the Force was undesirable. The competent authority also had taken into consideration the fact that on earlier two occasions, the petitioner was found to be absent from his duty without due authority of law, and he was found to be a habitual offender of absenting himself without leave. Accordingly, the petitioner-

appellant was dismissed from service and his name was struck off from the Unit w.e.f. 11th October, 2013.

3. Being aggrieved thereby, the appellant preferred a statutory appeal there against, but the same was also rejected. Situated thus, the appellant filed a Writ Petition[W.P.(C) No.7 of 2019], before the learned Single Judge of this Hon'ble High Court, praying for reinstatement, but by the impugned Judgment and Order dated 09.12.2021, the same was dismissed.

4. Hence this present writ appeal seeking the following reliefs:-

"i) Admit this Writ Appeal;

ii) Call for the relevant records, pertaining to the impugned Judgment & Order (Oral) dated 09.12.2021, passed in W.P.(C) No.7 of 2019;

iii) After hearing the parties, in terms of the GROUNDS set forth above, be pleased to quash/set aside the impugned Judgment & Order (Oral) dated 09.12.2021, passed in W.P.(C) No.7 of 2019, passed by the Learned Single Judge, and thereafter, allow this Writ Appeal, thereby quashing/setting aside the impugned Notices dated 30.05.2013 & 10.06.2013, the impugned Order of Dismissal dated 11.10.2013 & the impugned Appellate Order dated 05.11.2018 (Annexures-4, 5, 6 & 9 respectively to the WP), and thereupon, reinstate the Appellant in service, with effect from the date of his dismissal (i.e., w.e.f. 11.10.2013), alongwith all financial benefits;

iv) And pass any other Order(s) as may be deemed fit and proper for ends of justice. "

5. Heard Mr. Koomar Chakrabarty, learned counsel appearing for the petitioner-appellant as well as Mr. B. Majumder, Deputy SGI appearing for the respondents-Union of India.

6. Mr. Chakraborty, learned counsel appearing for the appellant submitted that the petitioner-appellant was not in a fit

state of mind and the respondents had themselves lodged a missing diary on the account of his missing. As such, there cannot be any show cause notice against a person who is missing in the eye of law. Accordingly, the entire action of the respondents in issuing the alleged show cause notice under Rule 22(2) of the BSF Rules 1969, and the consequent dismissal of the petitioner-appellant was wholly illegal. The family members of the petitioner-appellant only received the notices but the same could not be communicated with the petitioner-appellant as he was missing due to his unfit mental condition. Learned counsel appearing for the petitioner-appellant referred to a letter wherein the petitioner-appellant expressed his intention to join his duties. Learned counsel also referred to annexure-2 of the writ appeal wherein the father of the petitioner-appellant submitted a prayer for conducting an inquiry of his missing son to the Chief Minister of Tripura.

7. On the other hand, Mr. B. Majumder, learned Deputy SGI appearing for the Union respondents submitted that as per Rule 22 of the BSF Act, 1969, a show-cause notice was properly issued to the petitioner-appellant and before that also several correspondences were made to the petitioner-appellant but he did not turn up. Therefore, the question of issuing further notice does not arise. Learned Deputy SGI submits that a bare reading of paras- 13 and 14 the impugned Judgment dated 09.12.2021 makes it aptly clear that everything has been fulfilled as per Section 22 of the *BSF*

Act. Learned Deputy SGI further submits that the principle of natural justice does not constitute the fact and the present situation of this case.

To support his argument on the point of '*principle of natural justice*', learned counsel referred to the relevant portion of **Para-24** of the Hon'ble Supreme Court Judgment reported in **AIR 1989 SC 1321** titled as **Sri Gouranga Chakraborty Vs. State of Tripura and anr.** The same is produced here-in-under:-

" 24. 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."

8. Heard both sides and perused the evidence on record.

9. Here the main contention as advanced by the learned counsel appearing for the appellant-petitioner is that the petitioner was not given an proper opportunity to explain himself to the show causes notice issued by the respondents at that point in time as he was untraceable and was in unfit state of mind. His family members who received the correspondences could not communicate the same to him. As such, the termination that came to be passed is in contravention of Rules 22(2) and (3) of Border Security Rules, 1969 and in violation of the principles of natural justice.

10. The adjudicate the grievances of the appellant-petitioner herein let was reproduced **Rule 22** of the **BSF Act, 1969** in its entirety:-

"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 a Subedar.

(4) All cases of dismissal or removal under this rule, shall be reported to be Director-General."

11. To properly adjudicate the matter, let us also reproduce the relevant portion of the impugned Judge passed by the Hon'ble Single Judge:-

"13. Firstly, on plain reading of Rule 22 of the BSF Rules, it becomes aptly clear that the competent authority i.e. the Commandant after considering the reports of mis-conduct of the person concerned if satisfied that the conduct of trial of such a person is inexpedient or impracticable, but, in his opinion that his further retention in his service is undesirable, the Commandant shall inform the same to the person concerned alongwith all reports adverse to him, calling upon such person to submit, in writing, his explanation and defence. The proviso of sub-section (2) of Section 22 contemplates that the competent authority may also refrain from disclosing any such report or portion thereof, if, in his opinion, its disclosure is not in the public interest.

14. Now, on a bare perusal of the contents of the show-cause notice, it comes to light that the Commandant while issuing the show-cause notice had mentioned all the particulars of absence of the petitioner without due authority. From para (iv) of the said show-cause notice, it further comes to light that the show-cause notice was accompanied by a copy of the Court of Inquiry alongwith other reports referred to in para-1 of the show-cause notice for his reference.

15. In this situation, the contention of the learned counsel for the petitioner that the substance of imputation/adverse report were not incorporated with the show-cause notice, is found to be bereft of any merit. Hence, the submission of learned counsel for the petitioner in this regard is repelled."

12. Here a bare perusal of the impugned judgment as passed by the learned Single Judge reveals that while issuing the show notice the same was accompanied by a copy of the Court of Inquiry along with other reports and all the particulars of the absence of the petitioner-appellant was mentioned. This aptly made it clear that provisions under Rule 22 of the BSF Rules were adhered to while passing the show cause notice.

13. The petitioner-appellant herein is a responsible employee working in security service (BSF) and his unauthorized absence from his duties is detrimental to the interest and security of the nation. Further, though learned counsel for the petitioner-appellant stated more than once in his argument that the petitioner-appellant at the time of his unauthorised absence was in an unfit-state of mind and due to such unfit condition of mind, he could not communicate with the respondents, but, no such corresponding evidence of medical treatment or otherwise was not proved to support his claim. This Court draws an adverse inference

against the conduct of the appellant-petitioner as he acted irresponsibly.

14. Accordingly, the Judgment and order dated 09.12.2021 passed by the learned Single Judge in WP(C) No.7 of 2019 is confirmed and this present appeal stands dismissed.

15. As a sequel stay if any stands vacated. Pending application(s), if any also stands closed.

B. PALIT, J

T. AMARNATH GOUD, J

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