

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.48/2023

Date of Order: 20.02.2024

Union of India & ors	Vs.	Constable (General Duty) Shashi Kumar Rajak
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Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Appellants	: Dr. N. Mozika, DSGI with Ms. A. Pradhan, Adv
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For the Respondent	: Ms. P. Agarwal, Adv
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i) Whether approved for reporting in Law journals etc.:	Yes
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ii) Whether approved for publication in press:	Yes
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JUDGMENT

(Made by Hon'ble Chief Justice)

The present Writ Appeal has been preferred, challenging the order dated 11.04.2023 passed by the learned Single Judge in W.P.(C) No.443 of 2018.

2. According to the Writ Petitioner, who is the respondent herein, he joined the post of Constable (General Duty) in the Border Security Force (in short 'BSF') on 18.04.2013 in pursuance of an order dated 01.04.2013 and he, while serving in the BSF had availed leave for a period of 30 days with effect from 04.06.2015 to 03.07.2015 and he had to resume duty on the expiry of leave, viz., with effect from

04.07.2015. It is the case of the Writ Petitioner/respondent that while he was on leave, he suffered Cardiac Nervosa with anxiety Neurosis problem, on account of which, he was unable to join duty. Further, his condition got deteriorated, which had resulted in the illness developing acute weakness on account of mental depression and he was completely bedridden and was incapacitated to join duty. Since the writ petitioner/respondent did not report for duty, a memo was issued asking him to report for duty.

3. It is further case of the Writ Petitioner that he did not receive any communication from the appellants herein and therefore, the question of replying to the notices did not arise at all. It is also the case of the Writ Petitioner that the procedure adopted by the appellants in divesting of his service is arbitrary in nature and it smacks victimization. The case put forth by the Writ Petitioner is that learned Single Judge, after going through the records and holding that the writ petitioner/respondent was not given proper opportunity to put forth his submission and in view of the lacuna in conducting the enquiry, has interfered with the order and remanded the matter for fresh consideration. Aggrieved by the order dated 11.04.2023 of remand, the present Writ Appeal has been preferred by the appellants herein / Union of India.

4. Learned counsel for the Appellants herein / respondents in the writ petition contended that it is totally incorrect that the writ petitioner was victimized and that the notices, which were addressed to him, had been received by the writ petitioner. Learned counsel for the appellants drew the attention of this Court to Page 49 of the appeal papers to show that in the acknowledgement card, the writ petitioner had put his signature. In support of his contention, he drew the attention of this Court two Statutory Petitions dated 20.12.2025 submitted under Rule 28-A of BSF Rules, 1969 to the Director General, BSF, wherein it has been stated as follows:

“That I earnestly say that my prolonged illness caused physical weakness and mental depression and I was neither in position to join my duty in time nor to reply any notices served upon me. That I had no intention to cause illegal and unauthorized absence, only my prolonged illness and this situation.”

5. Learned counsel for the appellants has relied upon the judgment of the Supreme Court in the case of **Union of India v. Datta Linga Toshatwad** reported in **(2005) 13 SCC 709** to substantiate his contention that in the event of overstay beyond sanctioned leave, there should be a suitable explanation furnished by a Member of Disciplined Force. The relevant passage from the judgment is extracted hereunder:

“8. The present case is not a case of a constable merely overstaying his leave by 12 days. The respondent took leave from 16.6.1997 and never reported for duty thereafter. Instead he filed a writ petition before the High Court in which the impugned order has been passed. Members of the uniformed forces cannot absent themselves on frivolous

pleas, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if it goes unpunished, will greatly affect the discipline of the forces. In such forces desertion is a serious matter. Cases of this nature, in whatever manner described, are cases of desertion particularly when there is apprehension of the member of the force being called upon to perform onerous duties in difficult terrains or an order of deputation which he finds inconvenient, is passed. 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 by a few days must be able to give a satisfactory explanation. However, a member of the force who goes on leave and never reports for duties thereafter, cannot be said to be one merely overstaying his leave. He must be treated as a deserter....*** We are satisfied that in cases of this nature, dismissal from the force is a justified disciplinary action and cannot be described as disproportionate to the misconduct alleged.”

6. On a careful scrutiny of the entire background of the case, it unravels the fact that the writ petitioner absented himself from duty. It was the stand taken by the Writ Petitioner that there was no intention to remain absent. The receipt of notices was not disputed by the Writ Petitioner, as he had endorsed his signature, while receiving notices. Hence, taking a different stand before this Court, viz., denial of receipt of notices, is not appreciated. Even though he had received notices, he had not chosen to respond to those notices. The Apex Court in the case of **Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v Educational Appellate Tribunal and another**, reported in **(1999) 7 SCC 332**, unequivocally held that admission of guilt alone is sufficient for imposition of punishment and a detailed enquiry is

not required. It is apposite to state here that the BSF is India's border guarding Organization in which such absenteeism without permission cannot be tolerated. A person, who is working in the BSF cannot be equated with other persons employed in a factory or establishment, where an employee can avail according to his whims and fancies. We find that there is no error in the proceedings dated 12.10.2015 issued by the Commandant, whereby the Writ Petitioner was dismissed from service and therefore, the order of the learned Single Judge needs to be interfered with in this Writ Appeal.

7. Accordingly, W.A.No.48 of 2023 is allowed and the Writ Petition in W.P.(C) No.443 of 2018 stands dismissed. No costs.

(B. Bhattacharjee)
Judge

(S. Vaidyanathan)
Chief Justice

Meghalaya
20.02.2024

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