



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/97/2022

Rajib Sarkar
Son of Lt. Manik Sarkar,
Permanent Resident of Village Najiran Deuci, Khata, PO/PS Barui para, Boxirhat,
District Cooch Bihar.
Phone No. 8637592911

VERSUS

THE UNION OF INDIA and 8 Ors.
Through the Secretary,
Ministry of Home Affairs,
Govt. of India,
North Block, Raisina Hills,
New Delhi 110001

2: The Director General
Age: 0
Occupation :
I.T.B.P. F MHA Govt. of India
Govt. of India
C/o 99 APO Block II C.G.O Complex
Lodhi Road
New Delhi 110003

3: The Inspector General
Age: 0
Occupation :
ITBPF MHA Govt. of India
Frontier Headquarter Khating Hill
Dist. Papumpare
Itanagar 791111

4: 4th Deputy Inspector General
Age: 0
Occupation :
I.T.B.P.F MHA Govt. of India

sector headquarter
Tezpur Rangamati Pobihaguri
Distt. sunitpur Tezpur
Assam 784153

5:The Commandant
Age: 0
Occupation :
4th Battalion ITBP Police Force
Distt West Kameng
Dirang
Arunachal Pradesh 790101

6:The Commandant
Age:
0 Occupation :
3rd Battalion I.T.B.P.F MHA
Govt. of India ATC Training Centre
Pochoubari Bukhara Camp Bareilly
(UP) 243001

7:The IGMED
Age: 0
Occupation :
(medical) Superintendent composite
Hospital CRPF
Nomile Guawahati 781023

8:The Superintendent of Police
Age: 0
Occupation :
Cooch Beher Sagar DIGHI Square
PO/PS Cooch Beher
West Bengal 736101

9:The Officer Incharge
Age: 0
Occupation :
Boxirhat Police Station
Village Chhotolower kutha
PO Boxirhatm
Distt CoochBeher
West Bengal 73613

Advocate for the Petitioner : Ms. S. Tsomo

Advocate for the Respondent : Mr. Marto Kato, Dy.S.G.I.

**BEFORE
HONBLE MRS. JUSTICE MARLI VANKUNG**

Date of hearing : **23.04.2024**
Date of judgment : **03.05.2024**

JUDGMENT & ORDER (CAV)

Heard Ms. S. Tsomo, learned counsel for the petitioner and Mr. M. Kato, learned Dy.S.G.I. for the respondents.

2] This writ petition filed under Article 226 of the Constitution of India is against the order dated 01.11.2013 declaring the petitioner "Deserter" u/s 74(2) of the ITBPF Act 1992 and the termination order No.2013-2687-99 dated 15.04.2014 issued under rule 20 and rule 17 of Indo Tibet Border Police Rules, 1994 against the petitioner, and for issuance of an order for re-instatement of the petitioner in the service for the post of C/CD in the 4th Battalion ITBPF and for a direction for back payment to the petitioner with interest from the month of May 2013 till his re-instatement in the Service.

3] The admitted facts in a nutshell is that the petitioner was recruited as CT/GD (Constable) in Indo Tibetan Border Police Force (ITBPF) on 25th October, 2011. Thereafter, the petitioner was sent to campus at ATC Bareilly where his right hand was fractured and dislocated during training. The Court of enquiry dated 21.03.2012 (Annexure-C) also held that the injury in his right hand was sustained during government duty for which no individual can be held

responsible. The court of enquiry also recommended that since the individual sustained injury during the basic training, order may be issued by the Commandant, 3rd Bn. ITBP, whereby all financial benefits were made payable to the petitioner in case he be declared disable due to the above injury in future. The petitioner went to SHG ITBP Hospital, Bareilly, Uttar Pradesh for treatment from 25.02.2012 to 09.04.2012, however the petitioner continued to complain of pain and swelling in his right elbow joint for which he was referred by the 4th Bn ITBP, Dirang to composite hospital, CRPF Guwahati for Ortho consultation treatment on 19.05.2012. The petitioner had continued to complain of pain and swelling in his right elbow joint for which the petitioner had remained under treatment at composite hospital, CRPF, Guwahati *w.e.f.* 24.05.2012 to 04.06.2012. From there he was granted 42 days leave by doctor for home rest from 05.06.2012 to 16.07.2012. The petitioner reported back to duty on 17.07.2012 to 4th Battalion at Arunachal Pradesh, but then the petitioner continued to go to the Guwahati Medical College for treatment of his right hand for which he again took leave and the petitioner reported for duty on 19.09.2012. On 21.09.2012, the petitioner applied for leave at the 4th Battalion since his mother was unwell and Unit approval of his leave for 30 days. The mother of the petitioner died on 09.11.2012, and the petitioner had applied for further extension of his leave which was not granted so he reported back to duty on 07.12.2012 at 4th Battalion Dirang, where because he overstayed his leave, he was awarded punishment (7 days extra guard duties) and 46 days was regularized as (extra ordinary leave (EOL)). On 20.12.2012, the petitioner was referred by Medical Officer, 4th Bn. ITBPF Dirang to composite Hospital, CRPF, Guwahati for right hand upper Ultra Bone fracture treatment. From 09.01.2013 to 25.01.2013 the petitioner continued to consult and approach the hospital for treatment. The petitioner's case was that he was informed that the Doctor had

prescribed for operation when he had X-rays done for his right hand.

4] Thereafter, the petitioner was found absent from 4th Bn. ITB Police Campus on 15.06.2013 without the permission of the competent authority, because of which an FIR was lodged on 18.06.2013 at Police Station, Dirang. The petitioner was also directed to report at the Unit immediately vide 4th Bn.Telegram No.0156 dated 25.06.2013. However, since the petitioner did not make any communication, a letter dated 09.09.2013 was sent to the Superintendent of Police, District Cooch Behar, (West Bengal) with the copy to the petitioner's father, to apprehend and hand over the petitioner to the Commandant 4th Battalion ITB Police, however, no steps are taken by the civil police. Thus because of his unauthorized absence, a Court of Inquiry was then constituted and based on the findings and recommendations, the Court of Inquiry under the provisions of section 74(2) of the ITBP Police Act, 1992, declared the petitioner as 'Deserter' w.e.f. 15.06.2013 vide its order dated 01.11.2013.

5] Thereafter since no communication was received and the petitioner remained absent without any explanation, a show cause notice address to his home address was issued by Registered post on 03.01.2014 with direction to submit his explanation in defense within 30 days. However, the petitioner failed to report back to Unit and he did not make any written explanation nor any reasons were given for his absence. On 04.02.2014 a notice for publishing in leading newspaper of the individuals home town was sent to the Assistant Media Executive, Directorate of Advertising of Publicity, New Delhi in which the individual was directed to report to his duty within a period of 15 days of the publication of notice in the newspapers and submit his defense in writing and

that if he failed to appear or submit his defense, an ex-parte decision would be taken against him. Since no response was received from the petitioner, he was removed from service by the Force Court duly constituted, as per the provisions of Rule 20 read with Rule-17 of the ITBP Rules 1994 for his absence period from 15.06.2013 to 15.04.2014 *w.e.f* 15.04.2014 (as per corrigendum), which is a total of 304 days and treated as dies non for all purpose.

6] The case of the petitioner is that since his right hand continued to trouble him, he applied for leave on 10.06.2013 and 12.06.2013 which was not granted by the authority. Therefore, the petitioner returned home on 15.06.2013 without authorization for further treatment of his injured hand. On 15.07.2013 two West Bengal Police personnel came to his residence since the FIR (annexure-II) was registered against him on 18.06.2013, but on seeing the sick condition of the petitioner they left him after taking the signature of the petitioner in a piece of paper and also took medical documents from the petitioner. That there was no attempt to contact him by the Superintendent of Police, District Cooch Behar, West Bengal even though the Office of the Commandant 4th Bn., ITBPF, MHA, Govt. of India requested for the apprehension of the petitioner on 09.09.2013. The petitioner continued informing the battalion in writing for grant of leave by informing them of his condition on 26.02.2013 and 16.11.2013 (annexure-J). Thereafter on 01.11.2013, without prior notice, the Office of Commandant, 4th Bn., ITBPF issued the 'deserter order'. The case of the petitioner is that the petitioner received the show cause notice dated 03.01.2014 only on 12.04.2014 which is after 99 days of issuance of the show cause notice by the respondent No.5. Thereafter, on 25.04.2014, the petitioner went to report to the 4th Bn., Dirang, however, he was not allowed to enter into the camp and the authority informed

him that he was already removed from service. Then on 21.06.2014, the petitioner received the order dated 15th April, 2014 of his termination under rule 20 & 17 of ITBPF Rules, 1994 (annexure-M). Meanwhile, the petitioner had on various occasions submitted representations asking to be taken back to duty however, his representations were not considered.

7] Being aggrieved the petitioner had approached the Calcutta High Court in Writ petition No. 4508(W) of 2016. However, the writ petition was dismissed on 26.06.2019, on the ground that the Calcutta High Court lacks territorial jurisdiction. The petitioner again approached the High Court, Itanagar Permanent Bench in W.P(C) 216(AP)/2019 challenging the impugned order dated 15.04.2014. The writ petition was disposed of on 19.07.2019 by granting liberty to the petitioner to approach appropriate forum, namely, Central Administrative Tribunal, Guwahati. However, on being informed that the Central Administrative Tribunal at Guwahati lacked jurisdiction a Review Petition was filed for review of the order dated 19.07.2019 passed in W.P(C) 216(AP)/2019. The court in W.P(C) 360(AP)/2019, on 09.09.2021, had dismissed the petition and the petitioner was advised to approach the appellate forum as provided under Rule 28 of the IPBP Rules, 1994. Accordingly, the Appellate authority was approached before the appellate forum, however, the appellate authority had dismissed the appeal on 28.10.2021.

Aggrieved the petitioner filed the instant writ petition.

8] Ms. S. Tsomo, learned counsel for the petitioner submits that the principle of natural justice had not been followed in the instant case since the petitioner was dismissed without any departmental inquiry or giving him the

opportunity of being heard before the Inquiry officer issued the order dated 01.11.2013, declaring him a 'deserter'. Further, no report was made available to the petitioner to defend himself before issuance of the termination order dated 15.04.2014 nor was he given any opportunity to defend himself to explain the reasons for his absence before the termination order dated 15.04.2014 was arbitrarily issued. She submits that the case of the petitioner was not of any negligence in the performance of his duty but purely due to medical grounds since he was not able to attend duties because of the injury on his right hand which he sustained during his training. That the petitioner had to undergo medical treatment for his injury and that he was also sick for a long time and was too weak to join his unit. The learned counsel led the court through the medical reports annexed as Annexure-B(colly). The learned counsel also submitted that the medical certificates are sufficient to support the claimed that the petitioner's absence from duty was not willful but due to his medical conditions. It was due to compelling circumstances which was beyond his control that he could not report himself on duty.

9] The learned counsel for the petitioner also submits that since the show cause notice dated 03.01.2014 was received belatedly after 99 days, only on 12.04.2014, he had gone to report himself on 25.04.2014 but he was not allowed to register his presence and he was then told that a termination order dated was already issued against him. The petitioner had then received the termination order dated 15.04.2014 only on 21.06.2014. The learned counsel for the petitioner submitted that the petitioner was not given any chance to explain the reason for his absence and he received the termination order without being informed or receiving any show cause notice before his termination as required under Section 20(2) of the ITBP Rules, 1994. No report

of Inquiry was also made available to him. The learned counsel for the petitioner submitted that the whole proceeding was conducted ex-parte which shows the arbitrariness and illegality on the part of the respondents.

10] The learned counsel for the petitioner has relied on the judgment of the Apex Court in **Krushnakant B.Parmar Vs. Union of India Anr.** reported in **(2012) 3 SCC 178**, she has also relied on the judgment of a bench of this Court at the Principal Seat, in **Subhas Chandra Vs. Union of India & Others** in **W.P.(C) No.3167/2016 dated 13th December, 2021 and Sirajul Qureshi vs. Union of India in WP(C) No.5744/2019 dated 12.05.2022.**

11] Per contra, the respondents in their counter affidavit, have stated that while the petitioner served the Unit, 4th Bn at Dirang, the petitioner was placed under low medical category (LMC) with medical category P-3 (T-120) on 16.04.2013. The next date of reclassification of Medical Board (RCMB) was due in the month of July however he had left the Unit without authorization on 15.06.2013. That the 4th Bn. has no document which shows that the petitioner had sustained upper ulna bone or any record to show that the petitioner was advised to surgery for the injury in his right hand.

12] The respondents in their counter affidavit also claimed that they did not receive any communication from the petitioner during his period of unauthorized absence and the letters received from the petitioners are dated after he was removed from his service *w.e.f.* 15.04.2014.

13] Mr. M. Kato, learned Dy.S.G.I. submits that the respondents, as per the provision contained in ITBPF Act, 1992 and Rule 1994, had convened the

Court of enquiry on 12.09.2013 into the circumstances of the petitioner's unauthorized absence from the Unit Campus w.e.f. 15.06.2013. The termination order dated 15.04.2014 itself makes it clear that the respondents had followed the due process of law and issued notice to the petitioner before declaring him deserter vide the letter dated 03.01.2014. However, since the petitioner failed to report himself, it seemed that he was not willing to serve the ITB Police Force any further and accordingly the termination order dated 15.04.2014 was issued on his being absent without authority for more than 30 days.

14] The learned Dy.SGI submits that the respondents have taken all steps and as per law before the termination order dated 15.04.2014 was issued by issuing show cause notices however since the petitioner failed to respond the termination notice was ultimately issued. He further submits that the petitioner was dismissed vide order dated 15.04.2014 and the instant writ petition was filed only in 2022. Under such circumstances, there is no possibility of reinstatement of the petitioner at this belated stage.

15] He further submits that a similar case was also decided and dismissed by a Co-ordinate Bench of this Court in **T.Seiminthang Haokip Vs. The Union of India &Ors.** In **W.P.(C) /753/2022 dated 07.09.2023.**

16] I have considered the submissions made by the counsels for the rival parties and I have also perused the documents on record.

17] In the instant case the petitioner's main plea was that he left the 4th Battalion, ITBP Police Force, West Kameng, Dirang on 15.06.2013 for further treatment of his injured hand and that he could not join duty thereafter, due to his medical condition. To substantiate his claim, he has annexed his medical documents as Annexure-B(colly). It is seen that in the medical document dated

20.06.2013, the petitioner was taking Ayurvedic treatment for his injured right hand, wherein the Doctor had prescribed medicines to be taken for 3 (three) months and advised bed rest for 3 (three) months. Other documents showing photo copies of OPD cards are also enclosed, however the dates are not clear. A medical certificate dated 05.02.2014 showed that he was suffering from severe jaundice and weakness where he was advised 3 (three) months bed rest is also annexed. Other medical documents on different dates are also annexed in an attempt to support the claim of the petitioner is that there are sufficient medical certificates to support that the absence of the petitioner from duty, was not willful but due to his medical conditions, that he could not report himself on duty.

18] This Court however finds it appropriate, at this stage, to highlight the decision of the Apex Court in **Pravin Kumar Vs. Union of India and Ors.** reported in **(2020) 9 SCC 471** where it was held that:

“25. Learned counsel for the appellant spent considerable time taking us through the various evidences on record with the intention of highlighting lacunas and contradictions. We feel that such an exercise was in vain, as the threshold of interference in the present proceedings is quite high. The power of judicial review discharged by Constitutional Courts under [Article 226](#) or 32, or when sitting in appeal under [Article 136](#), is distinct from the appellate power exercised by a departmental appellate authority. It would be gainsaid that judicial review is an evaluation of the decision making process, and not the merits of the decision itself. Judicial Review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice; or in case of bias or gross unreasonableness of outcome.”

19] In view of the above, the court finds it fit to first evaluate the

decision-making process, wherein the services of the petitioner was terminated vide order dated 15.04.2014.

20] It is also seen that the Apex Court in **Krushnakant B.Parmar Vs. Union of India & Anr.(Supra)** held that the question whether unauthorized absence from duty amounts to failure of devotion to duty or behaviors unbecoming of a government servant cannot be decided without the deciding the question whether absence is willful or because of compelling circumstances beyond his control like illness, accident, hospitalization etc. in such cases the employee cannot be held guilty of failure of devotion to duty.

21] In **Subhas Chandra Vs. Union of India & Others (Supra)** a Single Bench at the Principal Seat Guwahati in its order dated 13th.December, 2021 had held that since notice was not given under Section 74 of the Sashastra Seema Bal Rules, 2009 and that the Court of Inquiry is comparable to departmental proceedings. Therefore, it is incumbent upon the disciplinary authority to inform the charge officer of convening of the departmental enquiry by informing the charge officer of the date and time. That, this information or notice about holding the departmental enquiry is distinguishable from the show cause notice as to why a disciplinary action will not be taken. Thus, it is incumbent upon the authorities before holding the Court of Inquiry to inform the petitioner of the date when the enquiry is going to be held. That there can be no proper enquiry into the matter without notice to the person whose conduct is being enquired upon and also no proper satisfaction can be arrived at without hearing the person concerned.

22] Again in **Sirajul Qureshi Vs. Union of India & Ors. (supra)** it was held that though the competent authority has discussed the unauthorized

absence of the petitioner, the competent authority, under Rule 17 of the 1994 Rules, i.e. the Commandant, had not recorded his satisfaction to the effect that the trial of the petitioner is inexpedient or impractical as required under Section 20(2) of the 1994 Rule. As the provision of section 20(2) of the 1994 Rules, have not been followed by the authority, the Commandant could not have removed the petitioner from service under Rule 20(2) of the 1994 Rules. Further, the petitioner was not removed from service in terms of section 51 of the 1992 Act. The petitioner was accordingly reinstated.

23] Keeping in mind the observations made in the above cited cases it is seen that the order dated 01.11.2013 had noted that the petitioner was absent from his Unit from 15.06.2013 without permission and the court of Inquiry had declared him a 'Deserter' on 01.11.2013, which is punishable under section 21(a) of the ITBPF Act, 1992. Before passing the order, an FIR dated 18.06.2013 was lodged, notice dated 25.06.2013 vide office telegram was issued and the Superintendent of Police, District, Cooch Behar (W.B). was requested to apprehend the petitioner. Copy of the order 01.11.2013 was sent to the petitioner in this permanent address via registered post. This court on perusal of the order dated 01.11.2013 finds that the Court of Inquiry finding that he had absented himself from his duty on 15.06.2013 without permission wherein he was not apprehended till date, declared him a "deserter" under section 74 (2) of the Indo-Tibetan Border Police Force Act, 1992 / ITBPF Act, 1992. It is seen herein that the required steps under section 72 of the ITBPF Act, 1992 have been followed and the appellant after due Inquiry done by the Court of Inquiry, the petitioner was declared a 'deserter'.

24] In spite of the above steps and declaration, since the petitioner still failed to appear, a show cause notice, addressed to the home address of the

petitioner, was issued by Registered post on 03.01.2014, for the petitioner to appear and also explain his defense within 30 (thirty) days. However, the plea of the petitioner at this point is that he received the said show cause notice dated 03.01.2014 after 99 days only on 12.04.2014. Thus, this court finds that it cannot be said positively said that the show cause notice was received by the petitioner within time.

25] Thereafter, it is seen that the respondents had on 04.02.2014, also taken steps for issuance of notice for the publishing in leading newspaper of the individual's home town, which was sent to the Assistant Media Executive, Directorate of Advertising of Publicity, Soochna Bhawan, CGO Complex, Phase-IV, Lodhi Road New Delhi in which the individual was directed to report to his duty within a period of 15 days and give his defense in writing. However, since the petitioner had failed to report himself, it was concluded that the individual has been given many opportunities to remain in service but, it seems that the individual is not willing to serve further in ITB Police Force. Therefore, in exercising the powers conferred as per the provisions contained in Rule 20 read with rule 17 of the ITBP Rules 1994, the petitioner was 'struck -off' from the posted strength of the force and the Battalion. The absent period of the petitioner from 15.06.2013 to 15.04.2014(AN) total 304 days are treated as "Dies-Non" for all purposes.

26] This court however, on scrutiny of the steps taken by the respondents as reflected in the termination order has noted that, on 04.02.2014, while asking Assistant Media Executive, Directorate of Advertising of Publicity, New Delhi to for publishing the notice, the respondents have not taken any steps to ensure that newspaper publication was actually made or done in the leading newspaper of the petitioner's home address which is at Cooch

Behar, West Bengal. The Directorate of Advertising of Publicity, New Delhi has not made any intimation to the respondents of making such publication and the respondents have not taken steps to enquire whether the publications were made, under such circumstances, again, it cannot be safely presumed that the show cause notice was actually issued through news-paper publication and as such it cannot be safely presumed that show cause notice upon the appellant was complete.

27] Rule 20 of the Indo Tibetan Border Police Force Rules, 1994, provides that

“20. Termination of service of persons, other than officers 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) -----

(b) -----

(2) *When after considering the reports on the misconduct of the person concerned, the authority as specified in rule 17 is satisfied that the trial of such a person by the Force Court 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-----.

(3) *The authority as specified in rule 17 After considering his explanation and defence, if any, or the judgment of the criminal court, as the case may be, may dismiss or remove him from the service.*

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

28] Thus, in the instant case wherein it is mandated under Rule 20 of the Indo Tibetan Border Police Force Rules, 1994, that the petitioner be given an opportunity of being heard at the time of an order of dismissal, this court finds that the respondent authority has not taken steps to ascertain that the show cause notice dated 03.01.2014 was received by the petitioner in time or that the newspaper publication was actually done by the Directorate of Advertising of Publicity, New Delhi as requested 04.02.2014. It is also seen that the Commandant had not recorded to his satisfaction to the effect that the trial of the petitioner is inexpedient or impractical as required under Section 20(2) of the ITBPF Rules, 1994. For the afore said reasons the termination of the service of the appellant dated 15.04.2014, under rule 20 read with rule 17 of the ITBPF Rules, 1994 cannot be upheld.

29] This court also finds that the respondents have relied on the Judgment & Order of the Co-ordinate Bench of this court in **T.Seiminthang Haokip Vs. The Union of India &Ors (Supra)**. However, the facts and circumstances cannot be said to be the same with the instant case. In the cited case, it is seen that while the respondents had issued show cause notice dated 06.05.2020 and at the same time, had also communicated to the Directorate of Advertising of Publicity, New Delhi for paper publication of the notice, there was a communication dated 26.06.2020 received from the Directorate of Advertising of Publicity, New Delhi informing the respondents that notices were issued in 3 news-papers having circulation at the place of residence of the petitioner. Further in the cited case it was observed that even though the petitioner had annexed medical certificates where the ailment was vaguely diagnosed as "Anxiety Disorder, it is not the case of the petitioner that he ever intimated the office of such ailment, but, in the instant case, the respondents were fully aware of the injury sustained by the petitioner during his training and that he had to undergo

medical treatment on various occasions.

30] It is also seen that there was no undue delay in filing the instant writ petition. The reason why the instant writ petition was filed in 2022, when the termination order was passed in 2014 has been explained. It is seen that the petitioner had approached the Calcutta High Court in Writ petition No.4508(W) of 2016, which was dismissed on 26.06.2019, on the ground that the Calcutta High Court lacks territorial jurisdictions. The petitioner again approached the High Court, Itanagar Permanent Bench in W.P(C) 216(AP)/2019 but the writ petition was disposed of on 19.07.2019 by granting liberty to the petitioner to approach appropriate forum, namely, Central Administrative Tribunal, Guwahati. However, on being informed that the Central Administrative Tribunal at Guwahati lacked jurisdiction a Review Petition was filed for review of the order dated 19.07.2019 passed in W.P(C) 216(AP)/2019. The court in W.P(C) 360(AP)/2019 on 09.09.2021 had dismissed the petition and the petitioner was advised to approach the appellate forum as provided under Rule 28 of the IPBP Rules, 1994. Accordingly, the Appellate authority was approached before the appellate forum, however, the appellate authority had dismissed the appeal on 28.10.2021. Thereafter, the instant petition was filed in 2022 and thus cannot be said that there was any delay on the part of the petitioner in approaching the Court.

31] In view of the above circumstances, this Court find it appropriate that the petitioner be given a chance to show cause and explain the reasons why he had absented himself between 15.06.2013 to 15.04.2014 by producing his medical certificates before the respondents authority .

32] Under the above facts and circumstances, the Commandant, 4th Bn. ITBP Force removing the petitioner from service without giving a chance to the petitioner of being heard by passing the termination order dated 15.04.2014 is

set aside and the petitioner may be given the opportunity to submit his show cause in writing as to why he was absent during the period from 15.06.2013 to 15.04.2014. The Force Court may thereafter take a decision whether or not the impugned order dated 15.04.2014 deserved to be upheld or not. The respondents authority is also to examine whether the unauthorized absence of the petitioner can be termed as willful unauthorized absence by keeping in mind the principals of justice, equity and fair play.

33] The Force Court will thus initiate the trial with regards to the unauthorized absence of the petitioner promptly, however liberty is given to the Force Court to take a decision on the question of payment of back wages of the petitioner with other consequential benefits.

34] Accordingly, W.P.(C). /97(AP) of 2022 stands disposed as above.

JUDGE

Comparing Assistant