

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No.697 of 2024**

Sri Deb Kumar Majumder,
S/o Late Babatosh Majumder,
Vill.- Gandhigram, PS. Airport, Agartala,
Dist. West Tripura,

....Petitioner(s)

Versus

1. Union of India

Represented by Inspector General
Ftr. B.S.F. Salbagan, Agartala, West Tripura.

2. The Commandant,

74 Bn. B.S.F. presently situated at Gandidham,
Dist.- Kutch District State-Gujarat
Pin.-370240
(Notice to be served office of the I.G., B.S.F,
Frontier Salbagan, P.S- Airport, Agartala, Pin.-799012
Dist.- West Tripura)

....Respondent(s)

For Petitioner(s) : Mr. Chandrasekhar Sinha, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Dy. S.G.I.

Date of hearing and delivery : **22nd April, 2025.**
of Judgment & Order

Whether fit for reporting : **YES**

**HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER (ORAL)**

Heard Mr. Chandrasekhar Sinha, learned counsel appearing for the petitioner. Also heard Mr. Bidyut Majumder, learned Dy. S.G.I. appearing for the respondents.

[2] The allegation of the petitioner is that he being a constable in BSF, was posted at Frontier Head Quarters of BSF, Salbagan, Agartala, Tripura and due to advent of Covid-19 he was given out leaving permission to stay outside the campus of the BSF Authority to any nearer place. According to him, he was

peacefully discharging his duty till 2020, but suddenly on 24.08.2020 he met an accident wherein he received severe head and chest injuries and as a result he was not in a position to make any communication with his Authority and due to such injuries he was not even able to indentify his relatives also. It is further stated by the petitioner that in June,2020 the petitioner received a letter from Frontier Head Quarters of BSF, Salbagan, Agartala, Tripura that he was given such out leaving permission on condition that whenever he would be called upon to attend duty he would do so, but on 26.05.2020, he was attempted to be communicated through mobile phone to attend such duty, but there was no response from his side and therefore the period from 24.03.2020 to 26.05.2020 when he was on outliving permission, was considered as his Earned Leave and from 27.05.2020 his absence was treated to be without permission or leave. As that letter of the respondents was not responded by him nor he joined the duty, he was directed for immediately reporting to his head quarter.

[3] Then on 10.09.2021 by one application he requested the respondents for his posting at Salbagan which was rejected by them informing that he was already dismissed from service w.e.f. 13.11.2020. It is also the grievance of the petitioner that no copy of such dismissal order was ever furnished to him and, therefore, he made another application on 16.01.2023 to get the copy of such dismissal order and getting no response, the

present writ petition has been filed for quashing/cancelling said dismissal order dated 13.11.2020 (issued by respondent no.2).

[4] Mr. Chandrasekhar Sinha, learned counsel strenuously argues that as per Rule 22(2) of Border Security Force Rules, 1969 Departmental proceeding is required to be initiated before imposing punishment of dismissal, but same was not done in this case and thereby terminating him illegally from his service. According to Mr. Sinha, learned counsel proper procedure was not followed by the Authority before such imposition of punishment and, therefore, such dismissal order is violative of principle of natural justice and hence same is required to be set aside.

[5] Mr. Sinha, learned counsel also relies on a decision of Hon'ble the Supreme Court in case of **Dhanajaya Reddy versus State of Karnataka (2001) 4 SCC 9** wherein at para 23 it was observed by the Hon'ble Apex Court that where a power is given to do a certain thing in a certain manner, the things must be done in that way and or not at all. According to Mr. Sinha, learned counsel, service of a show-cause notice upon the petitioner as per Rule 22 was mandatory which was not done in this case.

[6] Mr. Majumder, learned Dy S.G.I., on the other hand, submits that the petitioner was attached with Frontier Head Quarters of BSF, Salbagan, Agartala, Tripura w.e.f. 13.05.2015 and was working as Constable (Sweeper now designated as Safai Karmachari). According to learned Dy S.G.I., the petitioner was granted out leaving permission for keeping his family outside

Frontier Head Quarters of BSF, Salbagan, with admissible HRA as he was residing within one km radius from BSF Campus and from 23.03.2020 onwards, due to nationwide lockdown for Covid-19 pandemic, he was verbally directed to remain outside the campus, but due to exigency of service he was called on duty on 26.05.2020, but neither he picked up the phone call nor he did reported to Frontier Head Quarters of BSF, Salbagan. According to learned Dy. S.G.I., thereafter three letters by registered post were sent to him on 27.05.2020, 11.06.2020 and 04.08.2020 asking him to join the duty, but he did not and, therefore, a court of enquiry was constituted to investigate into the circumstances owing to his such absence without leave w.e.f. 26.05.2020 and an apprehension roll was also issued lateron to the Superintendent of Police, West Tripura to apprehend the petitioner and to hand him over to the nearest BSF Head Quarters, but then also the petitioner did not join.

[7] Thereafter, Mr. Majumder submits, the court of enquiry suggested in September, 2020 to initiate a disciplinary action as per BSF Act and Rules against the petitioner for his absence without leave w.e.f. 26.05.2020. According to Mr. Majumder, learned Dy. S.G.I., in consequence thereof, a show-cause notice dated 30.09.2020 was issued to the petitioner which was duly received by him, but he did not come forward to give any reply and ultimately vide the impugned order punishment of dismissal from service was imposed on him.

[8] Learned Dy. S.G.I. submits that the BSF Authority in strict compliance of sub-rule (2) of Rule 22 of BSF Rules, 1969 terminated the petitioner from the service and there was no lapse on their part in compliance of the provision of said rules. Learned Dy. S.G.I. also refers to a decision of Hon'ble Supreme Court in case of **Union of India and Others versus P. Gunasekaran (2015) 2 SCC 610** to gain support that under Articles 226/227 of the constitution the High Court should not go into the proportionality of the punishment unless the same shocks its conscience. Mr. Majumder, learned Dy. S.G.I. further relies on another decision of the Hon'ble Apex Court rendered in **Union of India and Others versus Datta Linga Toshatwad (2005) 13 SCC 709** wherein the dismissal of a CRPF personnel on the ground of overstaying beyond the leave period was confirmed with observation for treating him as a deserter. The relevant paragraph no.8 of said decision 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. He appears on the scene for the first time when he files a writ petition before the High Court, rather than reporting to his Commanding Officer, 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."

[9] Lastly, learned Dy. S.G.I. relies on another decision of the Single Bench of this Court in case of **Prasenjit Das versus The Union of India & Ors. in WP(C) No.843 of 2020** wherein also another Constable of BSF after enjoying twenty days leave did not join the duty and remained unauthorized absent for months together. Ultimately the BSF Authority issued a show-case notice and dismissed him from the service without pension. In that case the plea of the said BSF personnel was that owing to his mother's illness he could not join the duty in time. Learned Coordinate Bench of this Court in that case rejected the writ petition without interfering with such dismissal Order. The relevant paragraph nos. 8, 9 & 10 of said judgment are extracted hereunder for useful reference:

"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, if 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."*

[10] Said judgment was challenged by the said writ petitioner in WA No.153 of 2021 and the Division Bench of this Court also affirmed the judgment of Leaned Writ Court vide judgment dated 20.09.2023.

[11] The Court has taken into consideration the submissions of both the learned counsel and also taken note of all the decisions as referred above. This Court has also meticulously gone through the record. The basic challenge as to the dismissal Order of the petitioner is that no notice to show-cause was served upon him before such harsh order of dismissal was passed by his Authority. However, the respondents have submitted copy of said show-cause notice dated 29.09.2020 along with the copy of the related acknowledgment card which shows that said show-cause notice was duly received by the petitioner under his own signature. Therefore the contention of the petitioner is that no show-cause notice was served upon him is contrary to the record.

[12] Mr. Chandrasekhar Sinha, learned counsel also submits that as per sub-rule (2) of Rule 22 it was incumbent upon the Department to furnish all the adverse report against the petitioner along with said show-cause notice, but same was also not done in the instant case. However, as it appears, no such specific plea is taken by the petitioner in the writ petition. Moreover, the respondents in their counter affidavit have categorically stated that copy of proceeding of Court of Inquiry was furnished to the petitioner alongwith said show cause notice

and therefore, same has now become a disputed question of fact. Moreover, it appears that after receipt of show-cause notice, the petitioner did not submit any reply there against, or even did not think it necessary to appear before his Authority and, therefore, non-furnishing of adverse report, if any as alleged, has not affected him any way. If such reports were not furnished to him in terms of provision of sub-rule (2) of Rule 22, he could very well ask the Department to furnish the same immediately to enable him to submit proper explanation against said show-cause reply.

[13] It appears also that he was absent from his duty from 26.05.2020, for, nothing could be produced or shown by the petitioner that after that date he, on any occasion, performed his duty as was assigned to him or reported to his place of posting at Shalbagan. Rather it appears surprisingly that on 10.09.2021 i.e. after more than one year thereafter, he submitted one petition to his Authority with the caption '**Reply of letter dated 30th August**' (year after the date is not mentioned) with a prayer that he might be posted at Salbagan, Agartala to perform his official duty as if he was already transferred from Salbagan, but he has not produced any alleged transfer Order issued to him showing his transfer from Salbagan on any occasion during said period. Even in the said letter he also stated that in July 2016 he was transferred to Jammu & Kashmir, but owing to his family problems and his personal problem of illness he could not join the duty there. When it is his case that in the year 2020 he was

already posted at Frontier Head Quarters of BSF, Salbagan, Agartala, then what prompted him to submit such petition for his transfer to Shalbagan in the year 2021. As indicated above, he has also not clearly indicated the date of so-called letter of the respondents of 30th August. Respondents clearly stated that they never issued any such letter and petitioner also failed to produce any such letter in the Court. Therefore, the conduct of the petitioner appears to be suspicious and fishy.

[**14**] According to the petitioner, he suffered an accident on 24.08.2020 and received injuries on his chest and brain and as he was under treatment he could not join the duty. However, he is totally silent as to when he had actually recovered from such illness and even no single sheet of paper regarding his meeting of such accident or receiving of such treatment is submitted in the Court. Therefore, it casts a serious doubt about genuineness of his claim of illness.

[**15**] On meticulous scrutiny and also for the reasons as discussed above, this Court does not find any infraction by the Respondents of the provision of sub-rule (2) of Rule 22 of Border Security Force Rules, 1969 which authorizes the Department to dismiss somebody from service without trial of such person under Border Security Act, 1968. Section 11 of Border Security Force Act, 1968 also empowers any officer of rank of Deputy Inspector-General to dismiss or remove any person from the service under his command other than an officer or a subordinate officer of

such rank or ranks. Here in this case also impugned dismissal order was passed by Deputy Inspector-General of BSF.

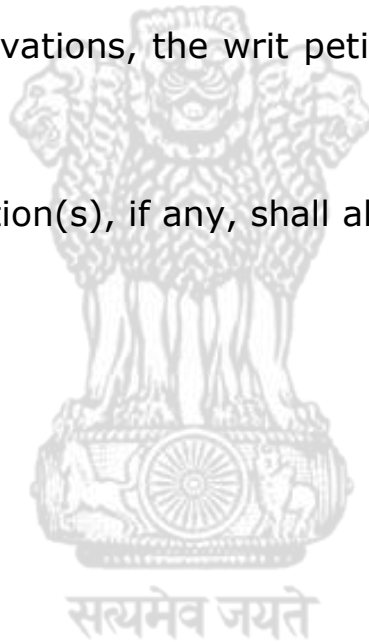
[**16**] In similar nature of case i.e. in WP(C) No.843 of 2020 as discussed above, the Court did not interfere with such dismissal Order on similar ground of unauthorized absent which was further affirmed by the Division Bench of this Court. Considering all these aspects, this Court finds no merit in the writ petition

[**17**] Mr. Chandrasekhar Sinha, learned counsel submits that the petitioner vide his letter dated 16.01.2023 (*Annexure-3*) prayed for furnishing him the copy of dismissal order but said prayer of the petitioner is still undisposed of by Inspector General, BSF, Salbagan. Mr. Sinha, learned counsel also submits that after receipt of copy of the said dismissal order, the petitioner intends to file petition under rule 28(A) of BSF Rules, 1969 and therefore, the petitioner may be given a liberty to file the petition under said provision. So far the first point i.e. non-furnishing of copy of dismissal order is concerned, the respondents have asserted in their counter affidavit that such copy of dismissal order was sent to the petitioner by registered post with copy to the SHO of Airport Police station with a request to hand it over to the petitioner on proper receipt and therefore, same is also a disputed question of facts which cannot be decided in this forum. Anyway, for convenience of the petitioner, the respondents are directed to transmit a copy of said dismissal order to the petitioner by registered post, A/D within 07 days of

receipt of this order. So far the second prayer for granting liberty to the petitioner to file petition under rule 28(A) of BSF Rules, 1969 is concerned, option is always there to him to submit the same before the appropriate authority, if he so desire and he neednot require to ask for any such liberty. However, it is clarified that this judgment will not stand as a bar against filing of the same unless same is barred by any other provision of law/rules.

With such observations, the writ petition is dismissed being devoid of any merit.

Pending application(s), if any, shall also stands disposed of.



JUDGE

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