

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 27.11.2025

Pronounced on: 05.12.2025

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*Whether the operative part
or full judgment is
pronounced: **Full***

SWP No.1957/2010

TARIQ AHMAD LONE

...PETITIONER(S)/APPELLANT(S)

*Through: - Mr. Z. A. Qureshi, Sr. Advocate, with
Mr. I. A. Parray, Advocate &
Mr. Babar Bilal Malik, Advocate.*

Vs.

UNION OF INDIA AND OTHERS.

...RESPONDENT(S)

Through: - Mr. Hakim Aman Ali, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner, through the medium of present petition, has challenged order dated 15.03.2004, issued by respondent No.3, whereby he has been dismissed from service with effect from 10.03.2004. The petitioner has also sought a Writ of Mandamus commanding the respondents to reinstate him and to pay him all the pay/salary.

2) The case set up by the petitioner is that he was appointed as Constable in Border Security Force (BSF) on 05.05.1995. In August, 2003, while he was discharging his

duties in SHQ BSF CI Ops-II, Karan Nagar, Srinagar, he was taken ill and proceeded on earned leave with effect from 01.08.2003 to 18.08.2003. It has been submitted that the condition of the petitioner worsened and he had to be hospitalized due to which he could not resume his duties. It has been submitted that due to death of one of the relatives of the petitioner in militancy related activities, he was prevented from resuming his duties. Ultimately, in the month of November, 2009, the petitioner approached the respondents for resuming his duties but he was not allowed to do so on the ground that his services had been terminated. The petitioner thereafter was provided with copy of the dismissal order against which he preferred a representation in the month of January, 2010. However, he was not reinstated.

3) The petitioner has challenged the impugned order of dismissal from service on the grounds that the same has been issued in violation of the principles of natural justice and in violation of the provisions of BSF Act and the rules framed thereunder. It has been submitted that the petitioner has not been allowed to defend his case before the Enquiry Officer nor any notice has been issued to him prior to his dismissal. It has been contended that the respondents have not served any charge sheet upon the petitioner nor he has been given an

adequate opportunity of being heard. According to the petitioner, the impugned order has been issued in violation of Rule 22 of the BSF Rules, 1969.

4) The respondents have contested the writ petition by filing their reply in which it has been submitted that the petitioner proceeded on eleven days earned leave with effect from 01.08.2003 to 18.08.2003 but he overstayed the leave with effect from 19.08.2003. According to the respondents, two registered letters bearing No.9848 dated 16th September, 2003 and 10035-37 dated 23rd September, 2003, were issued to the petitioner and sent to his home address calling upon him to join duties forthwith but no response was received from him. It has been submitted that on 2nd October, 2003 and 17th October, 2003, two more letters were issued by the respondents to the concerned police authorities directing the petitioner to join duty forthwith but no response was received.

5) According to the respondents when no response was received from the petitioner, Court of Inquiry under Section 62(1) of the BSF Act was ordered on 26th September, 2003 and Shri S. S. Rawat, Deputy Commandant of the Headquarter was appointed as Presiding Officer to investigate into the circumstances under which the petitioner overstayed the leave. It has been submitted that the Court of Inquiry was

completed on 17th October, 2003 and an apprehension roll was issued to SP, Kulgam, to apprehend the petitioner but no response was received from SP, Kulgam. It has been further submitted that when the petitioner failed to join his duty, an opportunity was given to him by issuing show cause notice along with a copy of report of Court of Inquiry and other reports, vide SHQ BSF C1(Ops)-II, Karan Nagar letter No.13741 dated 2nd December, 2003 and the petitioner was given thirty days' time to present his defence but the said letter was received back with the remarks "addressee not known". The said letter was again sent through SP, Anantnag, vide communication dated 13th January, 2004 but no response was received from the petitioner upto 9th March, 2004, whereafter the impugned order dated 15.03.2004 came to be issued.

6) I have heard learned counsel for the parties and perused record of the case including the record produced by the respondents.

7) The facts, so far as the circumstances leading to dismissal of the petitioner from service are concerned, are not in dispute. It is not in dispute that the petitioner did not join his service after the initial leave period had expired on 18.08.2003. As per his own case, the petitioner approached

the respondents only in November, 2009. Thus, for a period of more than six years, the petitioner did not approach the respondents and did not even care to know about the fate of his service.

8) It is the contention of the petitioner that he was not given any notice by the respondents before proceeding to hold an enquiry and even the enquiry proceedings against him were held exparte without issuing notice to him. It is also the contention of the petitioner that the report of the Enquiry Officer along with the show cause notice has never been served upon him by the respondents.

9) Reliance in above context has been placed on Rule 22 of the BSF Rules which mandates giving of an opportunity to a delinquent member of the force before proceeding to dismiss or remove him from service. It is also the requirement of sub-rule (2) of Rule 22 that a delinquent member of the force has to be informed about all reports adverse to him and he has to be called upon to submit in writing his explanation and defence and it is only thereafter that an order of dismissal can be issued. The question that arises for determination is as to whether the respondents, in the present case, have followed the mandate of Rule 22 or whether they have served any

notice upon the petitioner prior to holding the Court of Inquiry or during the proceedings of Court of Inquiry.

10) If we have a look at the record produced by the respondents, it is revealed that the respondents have sent notices dated 23rd September, 2003 and 16th September, 2003 to the petitioner through registered post at his address at Kulgam. Besides this, after holding of the Court of Enquiry in exparte, the notice of show cause in terms of Rule 22 of the BSF Rules has also been sent to the petitioner through registered post at his address at Kulgam. It appears that all these notices were received back by the respondents with the report “returned to sender for full address”, “no such person found at the relevant address” and “not known”. A perusal of the service record pertaining to the petitioner would reveal that he has declared his residential address as “R/o Village and post office Kulgam District Anantnag”. On the same address, appointment letter of the petitioner has also been sent to him. The aforesaid notices were also sent to the petitioner on the same address. However, the notices were returned unserved. The question that arises for determination is as to whether service of notices upon the petitioner in these circumstances can be presumed.

11) According to learned Senior Counsel appearing for the petitioner, it was incumbent upon the respondents to publish

the notices in newspaper once the notices could not be served upon the petitioner through registered post.

12) As already stated, the record produced by the respondents tends to show that before commencing Court of Inquiry into the circumstances in which the petitioner had overstayed his leave, a notice was sent to the petitioner at his residential address as reflected in his service record. Even the Enquiry Officer issued a notice to him during the enquiry proceeding on the same address. The record also shows that the show cause notice was sent to the petitioner along with a copy of the report of enquiry asking him to show cause against the punishment of dismissal from service. This notice was also sent to his residential address as reflected in his service record. All these communications/notices were returned undelivered with the report “not known/insufficient address”.

13) An employer is not expected to launch a manhunt for an absconding employee in whole of the world. It is sufficient if an employer sends the communications to an absconding employee at his residential address. This is what has been done by the respondents as well as by the Enquiry Officer in the present case. Therefore, it cannot be stated that the respondents have failed to follow the procedure prescribed

under the BSF Act and the rules framed thereunder or the principles of natural justice.

14) Apart from the above, the reason assigned by the petitioner in the present petition for overstaying his leave does not appear to be convincing. He has stated that one of his relatives died in a militancy related incident and he was also suffering from ailment which prevented him from approaching the respondents for six long years. The death of relative of the petitioner, as per the police report, a copy whereof has been placed on record by the petitioner himself, is an incident of the year 2002, which is prior in point of time when the petitioner had proceeded on leave.

15) So far as the medical record produced along with the petition is concerned, the same does not, in any manner, indicate that the petitioner was suffering from some serious ailment. In fact, there is nothing on record to show that the petitioner had undergone hospitalization in connection with his treatment. The fact that the petitioner approached the respondents after more than six years of his leaving the placing of posting clearly shows that his approach has been careless and casual towards his duties. If at all the petitioner was suffering from any ailment or there was any other circumstance which prevented him from joining his duties, he could have easily informed his employer, particularly when

his place of posting was in Kashmir Valley itself. It is not even the case of the petitioner that he had informed his employer about the reasons of his absence from duty at any stage whatsoever. In these circumstances, directing the respondents to hold a fresh enquiry would be an empty formality. It is a settled legal position that the rules of the natural justice do not operate in vacuum. In the facts and circumstances of the case, giving an opportunity to the petitioner to present his case before the respondents would be a mere wastage of time, as the same would not alter the position that the petitioner has been guilty of unauthorized absence from duty for more than six long years.

16) For the foregoing reasons, I do not find any merit in this petition. The same is dismissed accordingly. Interim direction, if any, shall stand vacated.

17) The record be returned to learned counsel for the respondents.

(SANJAY DHAR)
JUDGE

Srinagar
05.12.2025
“Bhat Altaf”

<i>Whether the Judgment is speaking:</i>	Yes
<i>Whether the judgment is reportable:</i>	Yes/No