

Through Video Conference

SANJAY JAISWAL VS. UNION OF INDIA &
ORS.

Mr. Sambhu Nath Ray
Ms. Sharmistha Ray Chowdhury
Ms. Tuhina Parvin
 ..for the petitioner
Mr. Debapriya Gupta
Mr. Sourav Mondal
 ..for the respondents

In view of the urgency, the matter is taken up virtually. The application being C.A.N.1 of 2020 is disposed of.

The petitioner, who was the Head Constable under the Border Security Force, has preferred this writ petition challenging an order dated July 9, 2020. The petitioner was dismissed from service on the ground of unauthorized absence. The period of absence from September 4, 2019 to July 9, 2020(310 days) was treated as "Dies-Non". It appears from the order impugned that the petitioner was given several opportunities to place his case and put forward his defense before the authorities concerned.

Earlier direction of this Hon'ble Court, that the representation dated December 2, 2019 to be

considered as his answer to the show cause notice was also complied with. On an earlier occasion also, show cause notice was issued to the petitioner. The petitioner failed to answer to the said show cause notice. The subsequent representation of the petitioner was found to be devoid of merits and the petitioner was issued another show cause notice and a further opportunity to place his case within 15 days from disposal of the representation dated December 2, 2019.

It appears from the order that the petitioner neither joined his duty nor did he make any correspondence even after the speaking order was passed. Till the date of order of dismissal, the petitioner did not join his duty. It is found that the petitioner was illegally overstaying his leave since September 4, 2019 and the order was passed on July 9, 2020. This is a disciplinary force and the parameters to be followed by such servicemen are more strict and stringent than civilians.

The order impugned records intentional disregard of the petitioner to attend the proceeding before the authorities despite issuance of several show cause notices and even after the representation of the petitioner was dismissed.

In my prima facie view, sufficient reasons

have been assigned by the authorities concerned as to how and why the order was passed ex-parte. This cannot be an exception, which would entitle the petitioner to be heard afresh. Moreover, this is not a simplicitor case of violation of principles of natural justice when the petitioner intentionally did not appear before the authority nor did he show any inclination to attend his duty. The order is a reasoned one and the petitioner must avail of the alternative remedy, that is Rule 28A of the Border Security Force Rules, 1969 by filing an appeal before the Inspector General, Meghalaya Frontier. The petitioner shall prefer an appeal in terms of Rule 28A of the Border Security Force Rules, 1969.

The appellate authority will decide the appeal, preferred by the petitioner on its own merits without being influenced by this order.

It appears that the petitioner received the dismissal order on August 12, 2020 at 3-30 p.m. as per the records annexed to the writ petition.

With the above observations, this writ petition is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, be supplied to the parties on priority basis.

(Shampa Sarkar, J.)

