

21.04.2021.
Item no. 35.
Court No.13
pk

**W.P.A. No. 4614 of 2021
(Through Video Conference)**

**Mainuddin Sardar
Versus
The Inspector General, FTR, Headquarters, Border
Security Force, North Bengal & Ors.**

Mr. Apurba Kumar Ghosh,
Mr. Subham Ghosh

... for the petitioner.

Mr. Debapriya Gupta,
Mr. Madhu Jana

...for the U.O.I.

The writ petitioner challenges final order passed by the Appellate Authority dated 24.03.2020 confirming the order of the First Authority dated 26th September, 2018. By the said order the petitioner was dismissed from service of the B. S. F.

The facts of the case in brief are that the petitioner, who was constable GD, earned leave for thirty days with effect from 31st January, 2018 till 04.03.2018. After expiry of the leave, he did not resume duties. Repeated letters dated 19.03.2018, 23.03.2018 and 31.03.2018 were issued to the petitioner asking him to join duties. The petitioner did not reply to the same. It was further stipulated in the letters that if the petitioner did not join duties, due proceedings cannot be taken out against him.

Thereafter, Commandant 08 Bn BSF vide Order No. 4027-32 dated 09.04.2018 convened a COI to

investigate into the conduct of the unauthorised absence and/or overstaying from leave and disciplinary action was recommended against the petitioner. BSF also tried to apprehend the petitioner through the S. P., North 24 Parganas but in vain.

A show cause notice was issued to the petitioner in terms of Rule 22(2) as to why he should not be dismissed from service. But the petitioner did not reply to the show cause notice. BSF thereafter deputed a constable to the home address of the petitioner to ascertain his whereabouts. The family members of the petitioner were handed over the show cause notice along with copy of COI. The said constable was informed by the family members that the petitioner sold all his land after the death of his father and became untraceable thereafter. The total absence of the petitioner was 206 days.

The defence submitted by the petitioner that his mental condition started deteriorating since after returning home and his father died and his daughter was also became sick. He submits that a representation was made by the petitioner to the respondents on 13.11.2018 after passing a final order. The petitioner has produced death certificate and medical documents indicating that he was under treatment of doctors.

This Court notice that no infirmity was found in the procedure adopted by the respondents.

Insofar as the defence of the petitioner is concerned, nothing prevented him from at least replying to the third notice issued by the BSF asking him to join duties. The petitioner also did not choose to reply to show cause notice of punishment.

The petitioner has clearly abandoned service and has overstaying his leave. BSF could have initiated criminal proceedings against him in terms of Section 19 of the BSF Act.

An explanation given by the petitioner for his absence is not even remotely convincing. This Court, therefore, does not find any perversity in the order of the First Authority or the Appellate Authority.

The writ petition must fail and is hereby dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)