

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 6th August, 2021**

+ **W.P.(C) 7885/2021**

DEEPAK CHAUDHARY

..... Petitioner

Through: Mr. Abhay Kumar Bhargava, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Shruti Shivkumar, Adv. on
behalf of Mr. Ravi Prakash & Mr.
Syed Hussain Adil Taqvi, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

AMIT BANSAL, J.

CM No.24512/2021 (for permission to file uncertified, dim & un-typed Hindi annexures)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

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3. The present petition has been filed by the petitioner, an Ex-Constable in respondent Border Security Force (BSF) impugning the dismissal order dated 22nd January, 2021 of the Commandant, BSF dismissing the petitioner from service with effect from 22nd January, 2021 pursuant to finding of the Summary Security Force Court (SSFC) of the petitioner being guilty of offences under Section 19(a) of the Border Security Force Act, 1968 (BSF Act).
4. The petitioner, absented himself without leave twice, from 16th August, 2020 till 18th August, 2020 and again from 29th August, 2020 to

23rd October, 2020. The respondent BSF wrote letters to the petitioner, asking him to re-join his duties, but the said letters were not replied to by the petitioner and he resumed his duties only on 23rd October, 2020. The petitioner was heard by the Commandant, BSF, who remanded the petitioner for Record of Evidence. The petitioner, after competition of the Record of Evidence was tried by the Summary Security Force Court (SSFC) for two offences of 'absenting himself without leave' under Section 19(a) of the BSF Act. The petitioner pleaded guilty to both offences and upon being given an opportunity by the respondent BSF of making a statement in his defence, he stated that "***I had made a mistake and may be pardoned***". Additionally, the petitioner declined to call any witness in his defence upon being given an opportunity to do so. Vide order dated 22nd January, 2021, the petitioner was awarded the punishment of dismissal from service by the SSFC.

5. The said order was challenged by the petitioner in W.P.(C) No.5322/2021 earlier petition filed by the petitioner being W.P.(C), vide order dated 17th May, 2021 was dismissed as withdrawn with liberty to the petitioner to pursue his statutory remedy under Rule 28A of the Border Security Force Rules, 1969 (BSF Rules).

6. The statutory petition filed by the petitioner was dismissed vide order dated 28th May, 2021 communicated to the petitioner on 9th June, 2021. It was noted therein that the petitioner had a dismal service record and he was habitually absenting himself without leave. He had absented himself without leave on earlier occasions also, but his case was dealt with leniently by the authorities to give him an opportunity to improve his conduct.

7. The present petition has been filed, *inter alia* impugning the dismissal order and seeking reinstatement. The counsel for the petitioner has contended before us violation of Rule 45, Rule 45B and Rule 71 read with Rule 78 of the BSF Rules. He submits that proper opportunity of presenting his case was not given to the petitioner in terms of aforesaid Rules and that the petitioner was made to plead guilty under coercion by the respondents.

8. We have gone through the record and in light thereof considered the submissions made by the counsel for the petitioner. The petitioner has annexed the medical records of his uncle in support of his contention that his uncle was gravely ill. However, from the said records, it appears that the uncle of the petitioner was hospitalised only from 25th August, 2020 to 3rd September, 2020, i.e. for a period of 10 days. The same does not justify the petitioner absenting himself without leave for 56 days from 29th August, 2020 to 23rd October, 2020. Even otherwise, no particulars of the uncle of the petitioner who was ill as to how he was related to the petitioner, have been given.

9. The petitioner has failed to show any clear violation of the aforesaid Rules. Even if it is assumed that there was some violation of any procedure as mandated by the Rules, the petitioner has failed to point out the prejudice caused to him on account of such alleged violation. In fact, it is admitted on behalf of the petitioner that the petitioner had applied for leave but the same was not given by the respondent BSF and therefore, the petitioner proceeded to absent himself without leave as his uncle was acutely ill. Moreover, there is nothing on record to substantiate the contention that the petitioner was made to plead guilty under coercion. The violation as alleged

by the petitioner would not be grounds for seeking interference of Courts unless it is clearly demonstrated that such violation caused prejudice to the petitioner. Reference in this regard may be made to the dicta in *State Bank of Patiala Vs. S.K. Sharma* (1996) 3 SCC 364 where the Supreme Court has observed that an order cannot be set aside altogether for any and every violation of a facet of natural justice and the complaint must be examined on the touchstone of prejudice. It was further observed that all things taken together, whether or not the delinquent officer was afforded a fair hearing, is what has to be seen in cases involving objection to compliance of procedural provisions.

10. The petitioner has failed to provide any justification for proceeding without leave. The conduct of the petitioner of absenting himself without leave gravely affects the ethos and discipline of an armed force like BSF. As noted in the order dated 28th May, 2021, the petitioner had absented himself without leave on earlier occasions also but was dealt with leniently and given an opportunity to improve his conduct. As personnel of a disciplined force like the BSF, the petitioner cannot absent himself without leave and such conduct is taken seriously by the respondent BSF and accordingly, the punishment of dismissal has been rightly imposed.

Dismissed.

AMIT BANSAL, J

RAJIV SAHAI ENDLAW, J.

AUGUST 06, 2021

‘gsr’..