



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

Reserved on: August 1, 2022

Pronounced on: August 30, 2022

+ W.P.(C) 4531/2020

KRIPA SHANKER SHUKLA

.... Petitioner

Through: Dr. S.S. Hooda with Mr. Ashutosh Kumar,
Advocates.

Versus

UNION OF INDIA THROUGH HOME SECRETARY

& ORS

..... Respondents

Through: Mr.Sanjeev Sabharwal, Senior Counsel with
Ms.Shruti Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SAURABH BANERJEE, J

1. As per petitioner, since joining service with the Border Security Force (hereinafter referred as “**BSF**”) in December, 1991 as Assistant Commandant, he moved up the rank to be promoted as Commandant in 2010. Petitioner then assumed charge as Superintendent of Police, Bureau of Police Research and Development, Ministry of Home Affairs (hereinafter referred to as “**Bureau**”) on 01.08.2018. Between January, 2019 till September, 2019 petitioner sought leaves on as many as twelve different occasions from the DIG(Admn.), Bureau, due to his son's and his own medical illness. Out of which the respondents later only sanctioned his leave on seven occasions but denied leave on the rest five occasions.

2. During the said period, the respondents vide letter dated 17.05.2019 sought two medical documents for sanctioning his leave for the period of 79



days with effect from 22.04.2019 till 25.05.2019. Upon satisfactory examination of documents by the Chief Medical Officer (Selection Grade), BSF on 03.06.2019, issued a fitness certificate declaring the petitioner fit to resume his duties. However, the petitioner kept applying for more leaves from time to time.

3. The respondents vide Office Memorandum No. 2/43/2018-PF/Adm dated 20.06.2019 apprised the petitioner about non-sanction of his 37 days leave on medical grounds and advised him to apply appropriately. The respondents vide another Office Memorandum of even date apprised the petitioner of his being absent from duty with effect from 22.04.2019 and directed him to report for duties immediately failing which disciplinary action would be taken against him. Instead of replying thereto, petitioner once again sought further 30 days earned leave from the DIG(Admn.), Bureau by verbal consent on 24.06.2019 and proceeded for leave on 26.06.2019. Vide letter dated of even date, the respondent no.2 for the first time since joining of petitioner with the Bureau on 01.08.2018, asked him to submit leave application in the prescribed format to the Assistant Director (Estt.), Bureau.

4. The petitioner accordingly submitted a proper leave application of 30 days, albeit to the Superintendent of Police, Bureau on 04.07.2019. Thereafter as the petitioner's son underwent psychiatric treatment with effect from 27.07.2019 to 17.08.2019, he never applied for any leave and instead apprised the Director General, Bureau that his request for repatriation to his parent department, i.e. BSF stood accepted by respondent no. 1 and sought relieving him from his current posting. However, the



respondents retained him, only to be harassed and tortured by the DIG(Admn.), Bureau.

5. The petitioner vide letter dated 02.09.2019 and subsequent reminders, informed the respondents that as per his pay slip for August 2019, the annual increment had not been effected therein and sought for his leave regularization. In the meanwhile, petitioner sought further 3 days commuted leave from the DIG(Admn.), Bureau by verbal consent on 18.09.2019, which was sanctioned.

6. The respondent no.2 issued Memorandum No. 2/43/2018-PF/Adm dated 24.09.2019 seeking explanation from the petitioner for his unauthorized absence from office without grant of leave for 79 days during 22.04.2019 till 25.07.2019, in 4 different phases as stated therein, within 24 hours. Undeterred by the short time on hand, the petitioner filed his response on 25.09.2019 itself. The respondents finally repatriated the petitioner to BSF on 26.09.2019. Thereafter the petitioner vide subsequent letters asked for his Non-Initiation Certificate and resolution of the issue of his annual increment of July 2019.

7. The respondent no.2 then issued Office Order No. 2/43/2018-PF/Adm dated 07.11.2019 (hereinafter referred to as “**first impugned order**”) to the petitioner, directing the period of 79 days absence of petitioner with effect from 22.04.2019 till 25.07.2019 be treated as *dies non* under Rule 25 of the CCS (Leave Rules), 1972 (hereinafter referred to as “**CCS Rules**”). The said first impugned order states as under:-

“Shri Kripa Shanker Shukla, Ex SP, BPR & D (now repatriated to BSF) has requested for regularization of the following periods of his absence as earned leave:

(i) 42 days- 22/04/2019 to 02/06/2019



- (ii) 03 days - 12/06/2019 to 14/06/2019
- (iii) 04 days - 18/06/2019 to 21/06/2019
- (iv) 30 days - 26/06/2019 to 25/07/2019

Shri Kripa Shanker Shukla is hereby informed that the Competent Authority has not agreed to regularizing his absence from duty without authority as leave.

Consequently , the above period of absence (79 days in all) is treated as 'dies-non ' under GOI decision under Rule 25 of CCS (Leave Rule), 1972.

The following procedure shall be followed in r/o of Shri Kripa Shanker Shukla, who was absent from duty without any authority: -

- (i) *The Government servant shall not be entitled to any leave salary for such absence;*
- (ii) *The period shall be debited against his leave account as though it were half pay leave to the extent such leave is due , the period in excess of such leave due being treated as extraordinary leave.*

This issues with the approval of the DG, BPR& D”

8. Further to a detailed representation dated 20.11.2019 thereto by petitioner, the respondent no.2 then issued another Office Order F. No. 02/43/2018-PF/Adm/P-1009 dated 29.11.2019 (hereinafter referred to as “**second impugned order**”) granting petitioner increment for the year 2019, albeit since 18.09.2019 treating the 79 days unauthorized leave as *dies non*, stating as under:

“Sh. Kripa Shanker Shukla (IRLA No. 19148021), Commandant, the then Superintendent of Police, BPR&D, is hereby granted annual increment, by raising his pay in the pay Matrix, as per details furnished below:-



Sr. No.	Name & Designation	Pay Matrix Level	Pay Last Drawn		Pay after increment in the Pay Matrix		Remarks
			Pay	Cell No.	Pay	Cell No.	
1	Sh. Kripa Shnaker Shukla, the then SP, BPR&D	13	Rs. 1,51,400/- w.e.f. 01.07.18	8	Rs. 1,55,900/- w.e.f. 18/09/2019	9	

Note:- The period of unauthorized absence for 79 days (22/04/2019 to 02/06/2019-42 days, 12/06/2019 to 14/06/2019-03 days, 18/06/2019 to 21/06/2019-04 days & 26/06/2019 to 25/07/2019-30 days) in respect of Sh. Kripa Shanker Shukla, SP, BPR & D was treated as 'Dies-non' vide BPR&D office order dated 07.11.2019.

2. The period of dies-non will not count for annual increment and the increment due from 01.07.2019 is postponed by 79 days and will be affected from 18.09.2019."

9. Reiterating its stand, the respondent no.2 then issued another Order F.No. 02/43/2018-PF/Adm dated 30.12.2019 (hereinafter referred to as "**third impugned order**") stating as under:

"Kindly refer to your letter No. KSS/ LEAVE/2019/ PNR/18838-39 dated 21.11. 2019 on the subject mentioned above.

2. I am directed to inform that the Competent Authority has considered your request for regularization of 79 days leave, but not acceded to due to lack of merit in the case. Annual increment has already been granted to the officer vide BPR & D office order dated 29.11.2019 (copy enclosed)."



10. Thence the respondent no.2 further issued the last Order No. F.No. 02/43/2018-PF/Adm dated 16.01.2020 (hereinafter referred to as “*fourth impugned order*”) on the same lines, stating as under:

“Kindly refer to your letter No. KSS/LEAVE/2019/PNR/18838-39 dated 20.12.2019 on the subject mentioned above.

2. The BPR & D, vide its letter dated 30.12.2019, has already conveyed the decision of the competent authority on the above matter.

3. In view of above, the matter stands closed and no further correspondence will be entertained in this regard.”

11. Aggrieved by all the aforesaid 4 impugned orders, the petitioner has filed the instant writ petition seeking the following reliefs:-

“a. Issue a Writ, order or direction in the nature of Certiorari may not be issued quashing orders dated 07.11.2019, 29.11.2019, 30.12.2019 and 16.01.2020 passed by Respondent No. 02 in respect of the Petitioner; and

b. Issue a Writ, order or direction in the nature of Mandamus may not be issued directing the Respondents to regularize leave of 79 days availed by the Petitioner between 22.04.2019 and 25.07.2019 along with all consequential benefits.”

12. During the course of arguments in support of his case, the learned counsel for petitioner has contended that the disciplinary authority could not have treated the petitioner’s period of absence as *dies non* without initiating any disciplinary proceedings and holding a formal inquiry without hearing him. Also contended that the petitioner could not have been punished for



proceeding on leave on five different occasions after taking verbal approval from the DIG(Admn.) whence they were always sanctioned in the same manner.

13. To substantiate his arguments, the learned counsel for petitioner submitted that bias of the respondents is writ large in issuance of the Memorandum dated 24.09.2019 prior to the issuance of the first impugned order as he was called upon to respond within a short span of twenty-four hours without assigning any reasons of urgency and further as the same was issued immediately after the petitioner pressed hard for repatriation.

14. Learned counsel for petitioner also contended that all the impugned orders are non-reasoned and have been issued in a mechanical manner without appreciating the facts or any application of mind. He further contended that they have all been issued without affording any opportunity to the petitioner at any stage.

15. To substantiate his case, learned counsel for petitioner has relied upon paragraph 2(i) of the Office Memorandum No. 130153/3/2000-Estt(L) dated 24.08.2000 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of personnel and Training, paragraph two of the Office Memorandum No. 14028/3/2000-Estt(L) dated 22/27.03.2001 also issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training and lastly Rule(s) 19(3), 7(2) and 25 of the CCS Rules.

16. Per contra, the respondent no.1 has filed a short counter affidavit stating the facts and alleging absence on the part of the petitioner without denying any of the averments/ allegations made by petitioner in the writ petition. The other respondents have adopted the same and supported the



case of the said respondent no.1 before us and have thus not filed any response(s). The respondents contend that after joining the Bureau on deputation for a period of three years with effect from 01.08.2018, the petitioner was assigned additional duties of Staff Officer of its Director General and Public Relations Officer mentioned in Task Order No. 08/2018 dated 11.12.2008.

17. Learned counsel for the respondents submitted that during those three years, the petitioner applied for pre-mature repatriation to BSF vide letter dated 15.01.2019 citing personal reasons and various other reasons attributable to difference in work culture, no job satisfaction and like. Taking a considerable view, the respondents advised the petitioner to submit more cogent reasons, however, without adhering thereto, petitioner intermittently went on leave for a cumulative period of sanctioned and unsanctioned 101 days until 30.07.2019. As per respondents, the petitioner never reported for any work or official assignment since 15.01.2019 to either DIG(Admn.) or IG/Director(Admn.).

18. Further submitted, on most occasions the petitioner never applied for leave as per due procedure. The respondents vide Office dated 20.06.2019 (*supra*) asked him to report for duty as he was on unauthorized leave, without any approval from the competent authority, but the petitioner failed to resume his duties.

19. Also submitted, the petitioner was not useful to the Bureau as he did not attend any of the important tasks during his period of unauthorized leave with effect from 15.01.2019 till 30.07.2019. Accordingly, the petitioner was issued Memorandum dated 24.09.2019(*supra*) asking for due explanation. Finding his response unsatisfactory, respondent no.2 issued the first



impugned order declaring the period of 79 days as *dies non* as he was unauthorizedly absent from duty for such period.

20. We have perused the documents on record and have heard the learned counsel for both parties and we find that both the petitioner and the respondents are lacking and are at fault.

21. On one hand, though the petitioner was absenting himself by mostly applying for leave, that too initially by seeking verbal consent from the DIG(Admn.), but as the same was in usual course of prevalent practice followed there was no objection from the respondents at any point of time. Further though the respondents claim that the conduct of the petitioner was such that he was reluctant in working with the Bureau but once again the respondents neither objected nor raised any allegations qua it at any point of time. Further, seeking pre-mature retirement by the petitioner alongwith his grievances coupled with his unauthorized absence without approval was not justifiable, however, once again the same was neither objected nor denied by the respondents until 20.06.2019.

22. No doubt, the petitioner had a genuine case as he was ailing under the pressure of his own and his son's medical condition but belonging to the Armed Force he was aware that it was imperative for him to maintain absolute discipline and follow orders. His unauthorized absence was not justifiable and the petitioner was in deliberate default.

23. On the other hand, though the respondents had genuine concerns and issued the impugned orders as the repatriation of the petitioner already stood sanctioned by the respondent no.1 but all the impugned orders have been issued in a haste without any show cause, are non-reasoned and issued without granting any opportunity of hearing to the petitioner.



24. As per the case before us, in our view even though the unauthorized absence of the petitioner was uncalled for but respondents hurriedly issued the impugned orders in such a short span of time without following the principles of natural justice by condemning the petitioner unheard, more so whence he was already serving in BSF since almost last 30 years. The proper procedure for respondents would be to have issued an unambiguous, clear and precise show cause notice to petitioner specifying the charges levelled against him. The petitioner ought to have been given reasonable time for replying to the charges leveled against him. The respondents should have then constituted a competent authority to look into the matter and thence pass a well-reasoned speaking order to dispose of the same.

25. Justice, equity, fair play and good conscience are the four pillars of the principles of natural justice which demand that petitioner be issued a formal show cause notice and granted a due opportunity of being heard prior to issuance of any such impugned orders which would tantamount to affect him and his career. The petitioner is entitled to all those under common law. In the present case the respondents declared the period of 79 days as *dies non* without issuing any show cause notice or setting up a disciplinary inquiry and without affording any opportunity of fair hearing to the petitioner, however, proceeded to issue the impugned orders in utter haste. It is a fundamental rule of law that prior to taking any such grave action against a delinquent like the petitioner herein, the respondents were to follow the principles of natural justice and *audi alteram partem*. This is a clear fault on the part of the respondents.



26. Reliance is placed upon ***Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and Others*** (2015) 8 SCC 519 wherein it is held as under:-

“27. It, thus, cannot be denied that the principles of natural justice are grounded in procedural fairness which ensures taking of correct decisions and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms.

28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.”

27. Reliance is further placed upon ***Biecco Lawrie Limited and Another Vs. State of West Bengal and Another*** (2009) 10 SCC 32 wherein it is held as under:-

“24. It is fundamental to fair procedure that both sides should be heard audi alteram partem i.e., hear the other



side and it is often considered that it is broad enough to include the rule against bias since a fair hearing must be an unbiased hearing. One of the essential ingredients of fair hearing is that a person should be served with a proper notice i.e. a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence. Denial of notice and opportunity to respond result in making the administrative decision as vitiated.

25. The adequacy of notice is a relative term and must be decided with reference to each case. But generally a notice to be adequate must contain the following:

- (a) time, place and nature of hearing;*
- (b) legal authority under which the hearing is to be held;*
- (c) statement of specific charges which a person has to meet.”*

28. Further while issuing the impugned office Orders the respondents have not considered the medical documents in terms of Rule 7(2) of the CCS Rules whereby, because of non-opportunity to the petitioner, he has had no chance to show any exigency of any kind for securing leave(s); and in terms of Rule 19(3) of the CCS Rules whereby the competent authority may grant leave at its discretion after securing a second opinion from few medical practitioners to have the applicant medically examined at the earliest; and the first Office Order under Rule 25 of the CCS Rules has been wrongly issued.

29. The issuance of the impugned orders is also vitiated in view of the Office Memorandum dated 22/27.03.2001 wherein it is stated that:-

“2. It is indeed desirable in the interest of the public services that government servants take leave at suitable intervals and return to work relaxed and refreshed. It has



also been laid down that the leave sanctioning authorities may encourage government servants to take leave periodically, preferably annually, and in case where all applications for leave cannot, in the interest of public service, be granted at the same time, the leave sanctioning authority should draw up phased programme for the grant of leave to the applicants by turn with due regard to the principles enunciated. Leave is, accordingly, not to be ordinarily denied to any employee, especially in the last 10 years of his career.”

30. In view thereof we set aside the four impugned orders dated 07.11.2019, 29.11.2019, 30.12.2019 and 16.01.2020 challenged before us and also direct the respondents to, follow the principles of natural justice and serve a fresh detailed Show Cause Notice to the petitioner; to constitute a competent authority; to accord petitioner due opportunity of fair hearing and thence to pass a well-reasoned order within *twelve weeks* from today. Accordingly, we make it clear that the period of unauthorized absence from office without grant of leave for 79 days during 22.04.2019 till 25.07.2019 shall not be treated as *dies non*. We further make it clear that the said period of *dies non* shall also not be regularized till the pendency / disposal of the proceeding before the competent authority.

31. We hereby specify that should the petitioner succeed in proving his case before the competent authority, the said period of 79 days shall not be treated as *dies non* and he shall be entitled to the complete amount wrongly withheld by the respondents for the aforesaid period of 79 days during 22.04.2019 till 25.07.2019 and also for his annual increment along with interest @ 6% per annum from the date of its accrual till the date of its final payment thereof by the respondents.



32. Nothing said herein by us shall be taken as binding and the respondents will proceed in a free and fair manner without being bound by what is contained herein above.

33. The present writ petition, alongwith all the pending applications therein, is accordingly disposed off in above terms leaving the parties to bear their own costs.

(SAURABH BANERJEE)
(JUDGE)

(SURESH KUMAR KAIT)
(JUDGE)

AUGUST 30, 2022/rr

