



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

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Judgment reserved on: 13.09.2023

Judgment delivered on: 12.12.2023

W.P.(C) 3129/2016

ANIL PK

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

**Advocates who appeared in this case:**

For the petitioners: Mr. Wills Mathews with Mr. Paul John Edison & Mr. Dhanesh M. Nair, Advocates

For the Respondent: Mr. Jaswinder Singh, Advocate

**CORAM:-**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**JUDGMENT**

**MANOJ JAIN, J**

1. Petitioner challenges order of his dismissal from service and seeks reinstatement with all consequential benefits.
2. Petitioner joined Border Security Force as a Constable on 05.06.2002 and claims to have continued to serve his country with complete devotion and utmost dedication and had a good service record.



3. According to him, during 2009 and 2010, his father developed serious medical issues and his wife suffered miscarriage. After availing 25 days' leave, he was required to join on 31.10.2010 but on account of acute family exigencies, he could not resume his duties and conveyed his helplessness to the respondents as well.

4. Petitioner claimed that since he was subjected to pressure by the respondents for not resuming his duties, he even sought discharge. There was exchange of correspondence between him and respondents. He kept on explaining the circumstances he had been through and even requested to condone his absence and post him at some convenient place.

5. Admittedly, he overstayed leave for 642 days for which he was tried by *Summary Security Force Court* for offence u/s 19(b) of BSF Act. On being arraigned by the court, he pleaded guilty and was sentenced to '*suffer rigorous imprisonment for 89 days in Force Custody and to forfeit two years past service for the purpose of pension*' on 06.12.2012. DG, BSF, however, diluted the sentence by waiving the forfeiture part of the sentence. The petitioner, accordingly, underwent RI from 06.12.2012 to 03.03.2013.

6. Things, however, did not stop here.

7. According to petitioner, on account of compelling circumstances, he, immediately thereafter, sent his resignation which



was not accepted. Fact though remains that he sought further leave and was granted 60 days' Earned Leave and 15 days' Paternity Leave from 26.03.2013 to 09.06.2013.

8. Petitioner, however, could not report back and overstayed leave, again. His several requests for extension of leave were not acceded to. Interestingly, on 24.06.2013, he sent another letter requesting respondents to either accept his resignation or to grant him 5 years' leave. Respondents directed the petitioner to report back to the unit and since he did not join back, Court of Inquiry (CoI) was conducted which also found that he was overstaying leave w.e.f. 10.06.2013.

9. Having considered his continued illegal absence from duty, the respondents came to the conclusion that his further retention in the service was undesirable. Accordingly, he was called upon to show cause why he should not be dismissed from the service for his such act of illegal absence.

10. The petitioner failed to submit any reply to said show cause notice and accordingly, vide impugned order dated 12.03.2014, he was dismissed from service for illegal absence for 276 days i.e. from 10.06.2013 to 12.03.2014. Dismissal was ordered while exercising powers under Section 11(2) of BSF Act read with Rule 177 and Rule



22(2) of BSF Rules. His representation, challenging the said dismissal order, was also rejected on 28.01.2016.

11. According to petitioner, such dismissal was without appreciating the correct facts. It is contended by him that he was the only one who could have taken care of his indisposed family members including his parents and his wife and, therefore, he had to stay back and such humane angle was never considered by the respondents. It is also contended that since his family was in deep crisis and respondents have been duly intimated about his compelling circumstances, respondents should have shown enough of compassion, particularly when it was peace time. It is also claimed that he lost his father on 14.02.2018 and mother on 21.04.2014 and that his absence from duty was neither deliberate nor wilful. According to him, there might be certain lapses on his part but there was nothing to indicate that his absence was without any justifiable cause. Reliance has been placed on *Shri Bhagwan Lal Arya Vs. Commissioner of Police, Delhi and Ors.* (2004) 4 SCC 560, *Chairman-cum-Managing Director, Coal India Limited & Anr. Vs. Mukul Kumar Choudhuri & Ors.* (2009) 15 SCC 620, *Nirmal Lakra Vs. Union of India & Ors.* 102 (2003) DLT 415 (DB) and *Satyawan Singh Vs. Union of India* 219 (2015) DLT 29 (DB).

12. According to respondents, whereas, the absence of petitioner was intentional and unauthorized and the penalty of dismissal from



service had been imposed upon him after careful consideration of the entire material and also while keeping in mind his past service record. According to the respondents, he overstayed leave for 276 days i.e. from 10.06.2013 to 12.03.2014 and failed to report back despite having been given repeated opportunities. It is contended that petitioner was shown compassion on umpteen occasions and was even counselled but he seemed to have taken the things for granted.

13. We have gone through the record and given our anxious consideration to the rival contentions.

14. It is admitted fact that on one earlier occasion, the petitioner had overstayed leave for whopping 642 days, for which Record of Evidence (RoE) was prepared and he was tried by *Summary Security Force Court* for offence under Section 19(b) of BSF Act 1968. During such trial, he pleaded guilty and was sentenced to suffer RI for 89 days in Force custody. He remained in such Force custody from 06.12.2012 to 03.03.2013.

15. He came out of custody on 03.03.2013 and sent his resignation on 04.03.2013. In his resignation letter dated 04.03.2013, he reiterated about his family circumstances and sought discharge claiming that he was unable to continue in service. He sent another letter on 06.03.2013 to the same effect.



16. It is not the case of the respondents that his such letters were not considered. He was rather apprised that if he wanted to proceed with his decision to resign before completing 10 years of qualifying service then he would be required to deposit expenditure towards his training as well as under other heads before proceeding on resignation and, therefore, he was directed to intimate whether he, still, intended to proceed on resignation. He, however, did not send any concrete response.

17. Despite his previous prolonged overstayed leave of 642 days and casual approach, he was given 60 days' earned leave and 15 days' paternity leave w.e.f. 26.03.2013 to 09.06.2013. He, however, failed to resume his duties and sought extension of leave by sending a telegram on 14.05.2013 which did not find favour and vide letter dated 27.05.2013, he was directed to report back, else to face disciplinary action. Petitioner sent another letter to the respondents on 24.05.2013 stating therein that either he may be permitted to resign or he may be granted leave for a period of five years. His such request was also considered by the respondent and he was intimated that it was not possible to consider his request for leave for five years and if he intended to proceed on resignation, he may first report. It was also mentioned in such communication dated 24.07.2013 that delay in resuming duties may result in break in service, deduction in salary due



to unauthorized absence and may also invite disciplinary action for OSL (overstayed leave).

18. Thus, the petitioner did not resume his duties and remained absent w.e.f. 10.06.2013. As he was in possession of government stores and documents, the Court of Inquiry was conducted which found him blameworthy. Since his presence was found to be essential, *Apprehension Roll* was issued on 08.10.2013 so that he could be apprehended. However, the concerned police station reported that he was not available at the given residential address. Respondents sent one more letter on 12.02.2014 to the petitioner, directing him, once again, to join back within 15 days, else it would be presumed that he has nothing to urge in his defence. Thus, there were repeated directions to him to join back.

19. Faced with no other alternative, the respondent served him with a *show cause notice* for illegally overstaying leave w.e.f. 10.06.2013. He was also duly intimated that proceedings of Court of Inquiry had been held in accordance with Section 62 of BSF Act, 1968 which too found him liable for overstaying leave w.e.f. 10.06.2013. Observing that his further retention in the service was undesirable, he was directed to show cause as to why he should not be dismissed from service.



20. Despite service of such show cause notice upon the petitioner, he failed to submit any reply and accordingly, considering the matter in its entirety, the competent authority came to the conclusion that petitioner had been illegally and without any sufficient cause overstaying from leave and that his such continued illegal absence was contrary to the expected norms and was detrimental to the Force discipline and, therefore, his further retention in the Force was undesirable and consequently, he was dismissed from service w.e.f. 12.03.2014 and the period of absence of 276 days (10.06.2013 to 12.03.2014) was treated as '*dies non*'.

21. Petitioner, aggrieved by such order of dismissal, submitted a representation which was also rejected on 28.01.2016 by the concerned competent authority.

22. During the course of consideration of the present Writ Petition, petitioner could not bring forth any material which may suggest that his absence from duty was justifiable from any angle whatsoever. It is rather obvious from the aforesaid discussion and correspondence between him and the respondents that he had already made up his mind to leave the services. By no stretch of imagination, it can be said that respondents had not given any due consideration to his compelling circumstances. Rather, he himself is to be blamed for his miseries as he took the things nonchalantly.



23. Petitioner should have shown some sense of urgency towards his duties as well and should have tried to strike a right balance between his 'personal life' and 'professional life'. If on one hand, he had to attend to family exigencies, on the other, the call of duty was also equally important.

24. There is also nothing to indicate that there was any infraction of any laid down procedure or any kind of violation of principle of natural justice. In *Gouranga Chakraborty vs. State of Tripura & Another* (1989) 3 SCC 314, the appellant, a Constable with BSF, was also dismissed by his Commandant in exercise of power under Section 11(2) of the BSF Act, 1968 for having remained unauthorizedly absent from duty for a prolonged period. The order dismissing the appellant from service was assailed mainly on the ground that said order was not made in accordance with the provisions of BSF Act and Rules framed thereunder, in as much as the appellant was neither tried nor awarded punishment by the Security Force Court as required under the BSF Act and, therefore, the impugned order of dismissal from service of the appellant passed by the Commandant was illegal. Rejecting such contention, the dismissal by the Commandant while exercising his powers under Section 11(2) of the BSF Act read with Rule 177 of the Rules was upheld by Supreme Court. In the instant case also, the dismissal is under the same provision.



25. The manner in which the petitioner has conducted himself clearly suggests his indifferent attitude towards his service and portrays him as an indisciplined person. In *Ex. Sepoy Madan Prasad Vs. Union of India & Ors. (2023) SCC Online SC 887*, it has been observed that ‘discipline is the implicit hallmark of the Armed Forces and non-negotiable condition of service’.

26. We have gone through the precedents cited before us by the petitioner and have no hesitation in holding that these are not attracted in context of the peculiar facts and circumstances of the case in hand. In *Shri Bhagwan Lal Arya (supra)*, petitioner was serving as constable in Delhi Police and during training, he fell and resultantly got injured and proceeded on leave which had been even sanctioned. However, for the same period of leave, he had been issued a charge-sheet and was eventually removed from the service. Period of his alleged absence was of *two months and eight days* and it was in that backdrop that the Supreme Court observed that his absence on medical ground, for which the leave had already been sanctioned, could not be termed as grave misconduct rendering him unfit for police service and, therefore, punishment of removal could not have been imposed upon him.

27. *Chairman-cum-Managing Director, Coal India Limited & Anr. (supra)* pertains to a person in a civil employment and, therefore, no real advantage can be dug out from said judgment, particularly, in



view of *Rabindra Kumar Shaw V. Union of India, Ministry of Defence and Others (2019) 16 SCC 93* wherein Supreme Court, while dealing with termination matter, observed that Armed Forces personnel were different from civil services.

28. No benefit can be drawn from *Nirmal Lakra (supra)* as there is nothing before us to suggest that the procedure adopted against the petitioner was unfair.

29. In *Satyawan Singh (supra)*, petitioner was constable (GD) in BSF and he overstayed his leave for 30 days for which he was tried in summary manner and was awarded for 14 days' imprisonment in Force custody. During such custody, he refused to take meals and, therefore, proceedings were initiated against him for disobeying the lawful command and was, therefore, dismissed from service. Taking note of various facts, it was held that punishment of dismissal from service, for not obeying such command, was disproportionate.

30. In the instant case, there is nothing which may suggest that order of dismissal from service is shockingly disproportionate, particularly keeping in view the fact that petitioner had earlier overstayed leave twice and had one bad entry and one warning as well. Respondents were, thus, fully justified in dismissing him from service for overstaying leave for a period of 276 days. Petitioner seemed totally unmindful of the fact that he had earlier overstayed



leave for a period of 642 days for which he had suffered Force custody for 89 days and instead of mending his ways, he rather, again, chose to remain absent unauthorizedly.

31. In view of our foregoing discussion, we do not find any merit in the writ petition. Same is accordingly dismissed.

32. No order as to costs.

**MANOJ JAIN, J**

**SANJEEV SACHDEVA, J**

**December 12, 2023**

*dr*

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