



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

% Date of decision: February 12, 2024

+ W.P.(C) 1961/2024 & CM APPL. 8230-8232/2024

(44) ANNU KHAN CT GD BSF ..... Petitioner  
Through: Ms. Pallavi Awasthi and Ms. Shweta  
Shandilya, Advs.

versus

UNION OF INDIA & ANR. .... Respondents  
Through: Mr. Bhagvan Swarup Shukla, CGSC  
with Mr. Sarvan Kumar, Govt.  
Pleader.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**V. KAMESWAR RAO, J. (ORAL)**

**CM APPL. 8231-8232/2024**

Exemptions allowed subject to all just exceptions.

Applications stand disposed of.

**W.P.(C) 1961/2024**

1. This petition has been filed by the petitioner with the following prayers:

*"It is therefore, most respectfully submitted that this Hon'ble Court may graciously be pleased to:*

*(i) Issue a Writ, order or direction in the nature of Certiorari quashing the apprehension roll dated 07.11.2023 and 09.01.2024 passed by the Respondent No. 2, whereby the*



*petitioner has been declared a deserter under section 61 of the BSF Act;*

*(ii) Issue a Writ, order or direction in the nature of Mandamus directing the Respondents to regularise his overstay leave;*

*(iii) By issuing a writ in the nature of mandamus by directing the Respondent Authority to release salary of the Petitioner which has been unpaid since June 2023;*

*(iv) To direct the respondents to accept the voluntarily retirement of the petitioner after regularizing his leave and to release him from service with all consequential benefits*

*(v) Without prejudice to the prayer no. 1-4, Issue appropriate Writ/ direction to respondent No. 1 to transfer the Petitioner in Delhi/NCR due to his ongoing medical treatment;*

*(vi) pass any other order/ direction which may be deemed fit and proper in the interest of justice to the petitioner.”*

2. The case of the petitioner is that, while he was posted in D- Coy, 43<sup>rd</sup> Bn, BSF, Meghalaya, he faced some health issues and went to the Civil Hospital, Baghmara, South Garo Hills, Meghalaya on July 9, 2023 for urgent medical check-up, where he reported of severe headache, chest pain, restricted movement of left upper limb etc. However, the treating doctors referred him to Civil Hospital, Tura, Meghalaya. The doctors advised him for CT scan (Brain). He was later sent to Composite Hospital BSF, Patgoan, Guwahati.

3. The petitioner was subsequently referred to emergency department of Guwahati Medical College Hospital (‘GMCH’, for short), by the doctors of Composite Hospital BSF, Patgoan, Guwahati. As per the reports of the tests held in the Hospital on July 11, 2023, the petitioner was stated to be



suffering from Acute Anxiety Disorder state with adjustment disorder. The petitioner remained in GMCH from July 11, 2023 to July 17, 2023 and during his discharge, the discharge certificate issued by the GMCH advised him to attend psychiatry OPD, and he was placed under medical category of S3 (T12), H, A, P, E1.

4. It is the case of the petitioner and so contended by his counsel, seeing deterioration in his medical condition, the petitioner applied for 30 days Earned Leave (EL) for the period July 20, 2023 to August 20, 2023. On sanctioning of his leave, petitioner came to his home in Delhi but his mental health / psychiatric problem which started in Meghalaya during his active service got further deteriorated and his family members took him to Institute of Human Behaviour & Allied Sciences, Delhi where he was admitted. He was further advised by the doctor for 'Strict vigilance 24/7'.

5. The petitioner had from time to time informed about his medical condition to the respondent authorities via various emails. In fact, he has also sent all his medical prescriptions, OPD slip and other medical documents related to his ongoing treatment to the respondent authorities along with a request for extension of leave w.e.f August 20, 2023.

6. Ms. Pallavi Awasthi, learned counsel for the petitioner states that the respondents have not considered the petitioner's application in right perspective resulting in the issuance of the apprehension rolls dated November 7, 2023 and January 9, 2024, whereby the petitioner has been declared to be absent under Section 60 and 61 (1) of the BSF Act, 1968, for overstaying the leave without sufficient cause, which is untenable and contrary to the record.

7. On the other hand, Mr. Bhagvan Swarup Shukla, the learned counsel



for the respondents states that the petitioner while working as a Constable in BSF went on deputation to CBI. He was repatriated back to the respondent organization in the month of April 06, 2023, on administrative grounds.

8. He states that the petitioner after availing 53 days EL, reported back at HQrs. of 43<sup>rd</sup> Bn. BSF on June 25, 2023. Thereafter, he availed 30 days EL w.e.f July 21, 2023 to August 20, 2023, but he overstayed his leave w.e.f August 21, 2023. The Unit had directed him several times to join his duty, but he did not join back. He also states that, for certain omissions and commissions, a Court of Enquiry was ordered on October 3, 2023. It is also his submission that the petitioner avoided the Court of Enquiry.

9. In any case, learned counsel for the respondents submits that the medical prescriptions have been examined by the concerned Medical Officer of the Battalion, who was of the view that the case of the petitioner is not so severe that the petitioner cannot undertake the journey. He also states that the petitioner could have reported to the nearest BSF Hospital but he did not do so. He seeks the dismissal of the petition.

10. Ms. Awasthi submits that the petitioner has no difficulty for reporting the 43<sup>rd</sup> Bn. BSF, provided that the petitioner is permitted to be accompanied by his wife.

11. Having heard the learned counsel for the parties and noting the submission made by the learned counsel for the petitioner, we are of the view that the appropriate shall be for the petitioner to report to the Headquarters of 43<sup>rd</sup> Bn., i.e., his place of posting, within a period of ten days from today. He shall also make a request to the Commandant of the 43<sup>rd</sup> Bn., BSF, for permitting him to be accompanied by his wife within two days from today. The Commandant shall take a decision and convey the



same to the petitioner within two days thereafter. It goes without saying that, *de hors* the decision to be taken by the Commandant, petitioner shall report to the Headquarters 43<sup>rd</sup> Bn., BSF within 10 days from today as an outer limit.

12. During the course of hearing, learned counsel for the petitioner has raised the issue that, despite availing his EL's as per the rules till August 20, 2023, the petitioner has not been paid salary. Suffice to state, respondent shall release the salary as payable to the petitioner under the Rules within 3 weeks from today.

13. The petition stand disposed of.

**CM APPL. 8230/2024**

Dismissed as infructuous.

**V. KAMESWAR RAO, J**

**SAURABH BANERJEE, J**

**FEBRUARY 12, 2024/jg**