

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 19248 of 2013

**Md. Afajuddin
-Vs-
Union of India & Ors.**

For the Petitioner : Mr. Subrata Bhattacharjya
Mr. Indranuj Dutta
Ms. Shipra Santra

For the Respondents/Union of India : Mr. Anirban Mitra

Heard on : 26.06.2024, 08.08.2024, 07.10.2024
10.01.2025

Judgment on : 15.05.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner was appointed as a Constable under the BSF and had joined his post on 22nd June, 1999 at Simanagar. During the course of his service, the petitioner sustained an injury on 18th January, 2006 at the Amritsar border in Punjab while discharging his official duties. Consequent to the said injury, the petitioner was declared to be in the low medical category, and was diagnosed to be a case of Prolapsed Intervertebral Disc (PIVD) involving the segments L3-2, 4-5, and L5-S1. The petitioner remained under treatment and was in receipt of medical care under the BSF authorities from 19th

January, 2006 until 12th June, 2012. Two MRI scans were conducted during this period. On 19th February, 2009, the petitioner was categorised as S1H1A1P3(T-96)E1. Thereafter, the petitioner was transferred to the Sector Headquarters, BSF, Berhampore on 25th March, 2011. On 1st April, 2011, the petitioner reported to the BSF hospital as he continued to suffer from the effects of the said injury. He was examined by a doctor who, upon consideration of the petitioner's condition, referred him to Berhampore New General Hospital for further treatment. The Orthopaedic Surgeon at Berhampore New General Hospital advised the petitioner to take rest for a period of 14 days. Subsequently, from 2nd May, 2011 to 17th September, 2011, the petitioner remained absent from duty, allegedly due to his wife's illness, for which she was undergoing treatment at various hospitals and eventually in Vellore.

2. It had been submitted that on 4th May, 2011, the petitioner submitted an application to respondent no.2 seeking permission to arrange treatment for his wife at G.M. Hospital. On 7th July, 2011, a Court of Inquiry was convened under Section 62 of the Border Security Force Act, 1968 to look into the petitioner's absence from duty with effect from 4th May, 2011. The said Court of Inquiry concluded on the same day and found that the petitioner was Absent Without Leave (AWL) without sufficient cause. On 28th July, 2011, the petitioner submitted an application seeking sanction of 75 days of earned leave. The BSF authorities issued a direction to the petitioner to report for duty through a letter dated 8th August, 2011. On 17th September, 2011, the petitioner rejoined duty and submitted a written

application enclosing relevant medical documents in support of his application for leave. On 7th October, 2011, the petitioner joined the 85th Battalion, BSF, for the purpose of the initiation of a departmental proceeding against him. On 17th November, 2011, respondent no.4 initiated disciplinary proceedings under Rule 45 of the BSF Rules, 1969. On the same day, respondent no.4 directed preparation of the record of evidence under Rule 48 of the BSF Rules, 1969. Sri Vikrant Thakur was appointed as the recording officer, who completed the process and submitted the record of evidence to respondent no.4 for a decision under Rule 51 of the BSF Rules, 1969. A total of four charges were framed, of which one was under Section 20(c) and three under Section 19(a) of the BSF Act.

3. The petitioner again started receiving treatment at Berhampore General Hospital from 14th January, 2012. On 3rd March, 2012, the petitioner reported to the BSF Hospital and was again referred to an Orthopaedic Surgeon. The petitioner continued treatment at Berhampore New General Hospital and was advised to rest for two months. By letter dated 5th March, 2012, the petitioner was informed that a Summary Security Force Court (SSFC) had been constituted for 15th March, 2012 to dispose of the disciplinary proceeding against him. On 7th March, 2012, the petitioner made an application to his Commandant seeking grant of casual leave for three days to consult his lawyer. The BSF granted leave from 9th March to 12th March, 2012. Thereafter, on 13th March, 2012, the petitioner submitted an application to respondent no.5 seeking extension of his earned leave by 30 days on medical grounds and attached OPD slips in support. In

the said application, the petitioner stated that he would be producing defence witnesses and the friend of the accused in the SSFC upon recovering from his medical condition. The petitioner made similar representations on 29th March, 2012 and 23rd April, 2012. The BSF doctor who examined the petitioner submitted a report dated 12th April, 2012 to respondent no.5 stating that the petitioner had been advised to take rest for two months.

4. On 23rd April, 2012, a Court of Inquiry was convened to examine the petitioner's absence from duty from 13th March, 2012. On 25th April, 2012, the BSF issued an Apprehension Roll against the petitioner under Section 60 of the BSF Act through a letter bearing no.4405-06 addressed to the Superintendent of Police, Murshidabad with a copy forwarded to the Officer-in-Charge, Lalbagh Police Station. On 3rd May, 2012, a show cause notice was issued to the petitioner, but it is the case of the petitioner that he did not receive the said notice. On 7th May, 2012, the petitioner received a registered letter bearing RL No. 5854 dated 4th May, 2012 sent by respondent no.5. However, it has been submitted that the envelope contained only a blank piece of paper and was received in the presence of the Pradhan of Lochanpur Gram Panchayat. The petitioner thereafter informed respondent no.5 on 17th May, 2012 about the irregularity and also stated that he had conveyed the same to his Commanding Officer via a telephonic conversation on the same day. In the same communication dated 17th May, 2012, the petitioner made a further request for extension of leave till his recovery. As there was no response from the authorities, the

petitioner submitted another representation on 10th June, 2012 requesting 110 days of leave.

5. It had been submitted that on 12th June, 2012, the petitioner was dismissed from service and that the period of absence of 92 days from 13th March, 2012 to 12th June, 2012 was treated as dies non. The name of the petitioner was struck off from the strength of the Sector Headquarters, BSF, Berhampore. The impugned letter of dismissal referred to a show cause notice dated 3rd May, 2012 which had purportedly been served upon the petitioner by registered post, but according to the petitioner, the said notice had not been received by him. Subsequently, on 5th October, 2012, the petitioner submitted an appeal under Section 28A of the BSF Rules, 1969 before respondent no.3 seeking to set aside the order of dismissal dated 12th June, 2012 and to reinstate him in service. On 29th October, 2012, respondent no.3 rejected the appeal preferred by the petitioner.
6. The petitioner submitted that he had repeatedly made representations for leave on medical grounds, and the medical records indicate that he was under continuous treatment during the relevant period. It was further submitted that the show cause notice referred to in the impugned order of dismissal was not served upon him and that he had informed the authorities regarding the receipt of a blank paper instead. The petitioner contended that his dismissal was arbitrary and violative of the principles of natural justice.
7. The learned advocate for the petitioner submitted that the impugned order of dismissal dated 12th June, 2012 issued by the Commandant, 85 Battalion, BSF, was passed in clear violation of Rule 22(1) of the BSF Rules, 1969, as

no opportunity of showing cause was afforded to the petitioner prior to the passing of the said order. It was contended that under the said Rule, before a termination order is passed, a mandatory show cause notice must be issued to the concerned personnel, enabling him to reply and defend himself. In the present case, although the BSF authorities alleged that a show cause notice dated 3rd May, 2012 had been issued and sent via registered post, the petitioner had not received the same. Instead, by a registered letter dated 4th May, 2012 bearing RL No. 5854, the petitioner received a blank white paper, which was received in the presence of the Pradhan of Lochanpur Gram Panchayat. The petitioner promptly informed respondent no.5 of the same vide a letter dated 17th May, 2012 and also communicated the matter telephonically to his Commanding Officer. Consequently, the petitioner was unable to submit a reply to the alleged show cause notice, thereby depriving him of an opportunity to be heard and rendering the impugned order a nullity in law and violative of the principles of natural justice.

8. The learned advocate for the petitioner submitted that several applications were made by the petitioner addressed to the Commandant, 85 Bn, BSF, specifically on 13th March, 2012, 29th March, 2012, 23rd April, 2012, 17th May, 2012 and 10th June, 2012, wherein the petitioner sought grant of earned leave on medical grounds, supported by medical documents and certificates issued by government hospitals. The applications were sent via registered post and were accompanied by relevant OPD slips and medical records as advised by the Medical Officer of the Government Hospital. It was submitted that the BSF authorities, without considering the merits of the

said applications and the supporting medical evidence, erroneously and arbitrarily came to the conclusion that the petitioner had overstayed his leave without sufficient cause from 13th March, 2012, and proceeded to initiate and conclude disciplinary proceedings on such ground. The said finding, it was urged, was baseless, unsubstantiated, and in complete disregard of the medical condition of the petitioner and the continuous medical advice that the petitioner had been under rest.

9. The learned advocate for the petitioner further submitted that the Summary Security Force Court (SSFC) was fixed on 15th March, 2012 and was to be conducted under the authority of the Commandant, 85 Bn, BSF, who acted as the presiding officer. However, on 13th March, 2012, the petitioner applied for leave, citing his own medical condition and the illness of his wife who was undergoing treatment at Vellore, supported by medical documents. It was urged that given the circumstances, and the documentary proof submitted, there was no lawful or reasonable basis for proceeding with the SSFC trial on 15th March, 2012. Nonetheless, the Commandant passed the order of dismissal dated 12th June, 2012 by taking undue advantage of the petitioner's absence and leave application. The learned advocate contended that the said order of dismissal was wholly illegal, arbitrary, and passed without adherence to the prescribed procedure under law.
10. The learned advocate for the petitioner submitted that Rule 22 of the BSF Rules, 1969 is a special provision that permits an authority to dispense with a trial in circumstances where the trial is found to be inexpedient or impracticable, and only in such cases the disciplinary authority may proceed

to terminate the service by recording reasons. However, in the present case, there is no indication or record to suggest that the Commandant had formed an opinion that trial was inexpedient or impracticable. On the contrary, the petitioner was ready and willing to face the trial for the alleged charge of overstaying leave with effect from 13th March, 2012. The learned advocate submitted that the Commandant failed to record such satisfaction or to communicate the same to the petitioner, and no proper opportunity was given to him to explain or defend himself. As such, the invocation of Rule 22 was not only unwarranted but also procedurally flawed, resulting in grave prejudice to the petitioner.

11. The learned advocate for the petitioner also submitted that no inquiry was initiated under Section 62 of the BSF Act, 1968, which expressly provides for inquiry into instances of absence without leave. It was argued that the BSF authorities did not initiate any proceeding in accordance with the BSF Act and Rules prior to passing the impugned order of dismissal. The omission to conduct an inquiry as mandated under Section 62, it was urged, further invalidates the impugned action of the respondents and demonstrates that the petitioner's rights under law were not observed. The learned advocate reiterated that the proceedings culminating in the impugned order dated 12th June, 2012 were in violation of statutory safeguards and thus liable to be set aside.
12. The learned advocate for the petitioner submitted that the petitioner had served in the BSF since 22nd June, 1999 and had rendered more than thirteen years of continuous and meritorious service. The petitioner's family,

including his wife and children, were wholly dependent on his income and livelihood. Since April 2011, the petitioner had been in a low medical category and suffering from persistent illness, which was duly supported by medical documents and reports issued by government hospitals and BSF medical officers. Despite being aware of the petitioner's medical condition and his wife's treatment, the Commandant failed to consider these genuine hardships and passed the order of dismissal. It was urged that such a dismissal has caused irreparable harm to the petitioner and his family and is violative of the principles of fairness and justice.

13. The learned advocate for the petitioner further submitted that the Commandant could have, in terms of the BSF Rules, proceeded under Rules 45, 48 and 51 and conducted a regular proceeding in accordance with the law. The petitioner had joined the 85 Bn, BSF on 7th October, 2011 for the purpose of facing the departmental proceeding and was willing to submit his defence and to produce defence witnesses before the Summary Security Force Court constituted under Section 70 of the BSF Act. It was argued that the petitioner had never refused to participate in the proceedings and had rather been prevented from participating due to illness and medical advice. The learned advocate submitted that the Commandant, without adhering to the regular procedure and without recording any reasons for invoking the extraordinary provision under Rule 22, exercised his powers in an arbitrary and unlawful manner and passed the termination order which is liable to be struck down.

14. Lastly, the learned advocate for the petitioner submitted that the Appellate Authority, while passing the order dated 29th October, 2012 rejecting the petitioner's appeal, failed to consider the specific grounds raised by the petitioner in his statutory appeal filed under Section 28A of the BSF Rules, 1969. It was urged that the said order was passed in a mechanical and cryptic manner without application of mind. The grounds concerning non-service of the show cause notice, non-initiation of inquiry under Section 62, the medical condition of the petitioner, his representations dated 13.03.2012, 29.03.2012, 23.04.2012, 17.05.2012, 10.06.2012 and his readiness to participate in a regular proceeding, were not dealt with or even considered in the appellate order. It was submitted that the said order of the Appellate Authority, being non-speaking and passed without due consideration, is unsustainable in law and liable to be set aside.
15. The learned advocate for the respondents submitted that the petitioner, Md. Afajuddin, was appointed as a Constable (General Duty) in the Border Security Force on 2nd June, 1999. The petitioner was permanently posted at Sector Headquarters BSF, Berhampore, from the 141 Battalion, BSF, pursuant to FHQ BSF New Delhi (Pers Dte) Order No. 142/KMR/08-Estt/BSF/2630-38 dated 08.02.2011. It was contended that the petitioner was a habitual offender who, since his enrolment, had been involved in repeated misconduct, for which he was awarded several punishments during his tenure. The learned advocate submitted that the petitioner was awarded 28 days of rigorous imprisonment in force custody on 17.11.2003 for an offence under Section 34(a) of the BSF Act, 1968, 7 days rigorous

imprisonment on 25.10.2004 under Section 20(c), 7 days' pay fine on 30.12.2005 under Section 40, 7 days' pay fine on 12.02.2009 for offences under Sections 19(d) and 20(c), and 28 days of rigorous imprisonment in force custody on 26.03.2012 under Sections 34(a) and 40 of the BSF Act, 1968.

16. The learned advocate for the respondents submitted that the petitioner had earlier approached the Hon'ble High Court by filing W.P. No. 13172 of 2011 against an order transferring him from Sector Headquarters BSF, Berhampore to 18 Battalion BSF. In the said writ petition, the petitioner levelled certain false and unsubstantiated allegations against his superior officers. The matter was heard by the Hon'ble Court on 24.08.2011, which directed the petitioner to show cause as to why untrue allegations concerning the pendency of criminal proceedings against his superior officers had been made as a ground in the said petition. As the petitioner failed to substantiate the said allegations, and after tendering an unqualified apology, the petitioner was permitted to withdraw the said writ petition by order dated 12.09.2011.

17. It was further submitted by the learned advocate for the respondents that during his posting at SHQ Berhampore, the petitioner committed further offences for which he was attached with 85 Battalion BSF, vide Headquarters South Bengal Frontier BSF Order No. 9426-27 dated 7th October, 2011, for finalisation of the pending disciplinary cases. The charges levelled against the petitioner included an offence under Section 20(c) of the BSF Act, 1968, for using insubordinate language to his superior officer and

three charges under Section 19(a) for absenting himself without leave. The Commandant, 85 Bn BSF, proceeded to hear the charges under Rule 45 of the BSF Rules, 1969 and, upon finding that a prima facie case had been made out against the petitioner, remanded him for the preparation of the Record of Evidence (ROE) in terms of Rule 45(2)(iii) vide Order No. 11331-34 dated 17.11.2011.

18. The learned advocate for the respondents submitted that after the completion of ROE proceedings, the Commandant, 85 Bn BSF, decided to try the petitioner by convening a Summary Security Force Court (SSFC) under Rule 51(iii) of the BSF Rules, 1969. The petitioner was informed of the proposed SSFC trial and provided with a copy of the ROE proceedings and the charge sheet, as communicated through Letter No. Estt/85 Bn/SSFC-MA/2012/2013 dated 05.03.2012. The petitioner proceeded on casual leave for three days beginning 17.03.2012. However, upon expiry of the said period, the petitioner failed to report back for duty and remained absent without authorisation. The petitioner was directed to rejoin duties vide Letter No. 989-90 dated 25.04.2012, but failed to do so.

19. It was submitted that a Court of Inquiry was convened on 23rd April, 2012 vide Order No. 4173-76 under Section 62 of the BSF Act, 1968 to investigate the petitioner's continued absence from 13.03.2012. Upon completion of the Court of Inquiry, it was found that the petitioner had overstayed leave without sufficient cause. Consequently, a Show Cause Notice was issued to the petitioner vide 85 Bn BSF Letter No. 5036-37 dated 03.05.2012. As no response was received from the petitioner, and as the petitioner neither

reported for duty nor provided any explanation for his absence, the petitioner was dismissed from service with effect from 12.06.2012 (A/N) in terms of Rule 22(2) of the BSF Rules, 1969 vide Order No. 6463-90 dated 12.06.2012 issued by the Commandant, 85 Bn BSF. The said order of dismissal was communicated to the petitioner's known address via registered post. Thereafter, the petitioner submitted a statutory appeal dated 5th October, 2012 for reinstatement in service. The appeal was considered in depth by the IG, BSF, South Bengal Frontier, in terms of Rule 28A of the BSF Rules, 1969 and was rejected as devoid of merit. The rejection was communicated to the petitioner vide Frontier Headquarters South Bengal Order No. Pers/Re-Inst/Md-Af/BHP/2012/8394-97 dated 29th October, 2012.

20. The learned advocate for the respondents submitted that though the petitioner received three good entries in the form of commendations and cash rewards during the years 2000, 2002 and 2004, his service record was overwhelmingly marred by multiple instances of indiscipline. His punishments included, inter alia, 28 days rigorous imprisonment under Section 34(a) in 2003, 7 days rigorous imprisonment under Section 20(c) in 2004, pay fines under Sections 40, 19(d), and 20(c) in 2005 and 2009 respectively, and again 28 days rigorous imprisonment under Sections 34(a) and 40 in 2012. Charges of using insubordinate language and remaining absent without leave were also established against him. His Annual Confidential Reports (ACRs) since 2002 consistently reflected unsatisfactory

or average performance, with the assessments for the years 2002–2003 marked as ‘satisfactory’, and for 2003–2009 as ‘average’.

21. It was further submitted that the petitioner had, on several earlier occasions, overstayed leave or remained absent without authorisation. However, these instances had been regularised by granting him the kind of leave due to him. These included 83 days from 09.03.2005 to 30.05.2005, 280 days from 08.12.2006 to 13.09.2007, 34 days from 07.10.2010 to 11.11.2010, and 23 days from 07.02.2011 to 01.03.2011. Despite being granted these repeated indulgences, the petitioner failed to demonstrate any commitment to the discipline expected of personnel of a paramilitary force.
22. The learned advocate for the respondents submitted that during the relevant period of absence from 13.03.2012, action was initiated under Section 62 of the BSF Act, 1968. The Court of Inquiry confirmed that the petitioner had overstayed leave without sufficient cause. The Show Cause Notice was served to the petitioner at his permanent address located at VPO Gopinathpur, P.S. Islampur, District Murshidabad, West Bengal, which was approximately 20 kilometres from the BSF campus at Roshanbagh. The petitioner was also at his local address at Village Pilkhana, P.O. Roshanbagh, District Murshidabad, which was merely 500 metres from the BSF campus. It was submitted that on 7th May, 2012, the petitioner refused to accept the Show Cause Notice when approached at his local address. Thus, the assertion of non-receipt of the Show Cause Notice was false and misleading.
23. It was contended that the petitioner’s repeated acts of misconduct, indiscipline, and deliberate absence, coupled with insubordinate behaviour

and filing of false and malicious representations and litigations against his superior officers, rendered him wholly unfit for retention in a disciplined force. The learned advocate for the respondents argued that the Summary Security Force Court, as constituted, was a judicial proceeding under Section 106 of the BSF Act, 1968, and the decisions rendered thereunder were based on evidence. The dismissal of the petitioner was carried out in compliance with Section 48 of the BSF Act, 1968, and after observance of all legal formalities under Rule 22 read with Section 11(2) and Rule 177 of the BSF Rules, 1969.

24. The learned advocate for the respondents relied upon various decisions of the Hon'ble Supreme Court and High Courts to substantiate the legality of the action taken by the respondents in cases of unauthorised absence from duty. Reliance was placed on the decision in *Maan Singh vs. Union of India & Ors.* [(2003) 3 SCC 464], *State of Andhra Pradesh & Anr. vs. Dr. Rohimuddin Kamal* [(1997) 3 SCC 505], *General Manager, Appellate Authority, Bank of India & Anr. vs. Mohd. Nizamuddin* [(2006) 7 SCC 410], *Francis Xavier vs. Magna Graphics (India) Pvt. Ltd. & Ors.* [2006 (2) LLN 641], and *Amar Singh (Constable No. 694/FDK) vs. State of Punjab & Ors.* [2005 SCC Online P&H 937]. It was argued that the facts of the present case demonstrated repeated and wilful disregard for discipline and established that the dismissal of the petitioner was lawful, justified, and not liable to be interfered with.

25. In the present writ petition, the petitioner had sought a writ in the nature of mandamus directing the respondents to show cause as to why the order of

dismissal dated 12th June, 2012, passed by the Commandant, 85 Battalion, BSF, and the subsequent rejection of the petitioner's appeal dated 29th October, 2012, should not be quashed forthwith. The petitioner had joined service as a Constable in the Border Security Force (BSF) on 22nd June, 1999, and while on duty at the Amritsar border on 18th January, 2006, he sustained an injury which resulted in a chronic medical condition for which he remained under treatment, including multiple MRIs, till the date of his dismissal. He was placed under a low medical category and transferred to Berhampore, where he continued to receive treatment and was referred to specialists. In the meantime, due to the serious illness of his wife, he remained absent from duty from 2nd May to 17th September, 2011, following which disciplinary proceedings were initiated under the BSF Rules, 1969. The petitioner submitted multiple leave applications supported by medical documentation, and sought to produce defence witnesses and legal representation, but his requests were either ignored or improperly processed. Despite being advised complete rest by BSF medical officers, the petitioner was treated as absent without leave and an apprehension roll was issued against him. The petitioner claimed that a crucial show cause notice allegedly sent to him was never properly served and that he only received a blank paper in the registered envelope, which he promptly reported. Nonetheless, on 12th June, 2012, the petitioner was dismissed from service, and his absence for the preceding 92 days was marked as *dies non*. His appeal under Section 28A of the BSF Rules was subsequently rejected on 29th October, 2012, leading to the present writ petition.

26. The learned advocate appearing for the petitioner contended that Rule 22 of the BSF Rules mandates issuance of a show cause notice prior to termination; however, in the present case, no such notice was served. Instead, a blank sheet was allegedly sent to the petitioner by registered post dated 04.03.2012, thereby depriving him of an opportunity to respond, in clear violation of the principles of natural justice and Rule 22(1). It was further submitted that the petitioner had applied for earned leave on multiple occasions—namely, on 13.03.2012, 29.03.2012, 23.04.2012, 17.05.2012, and 10.06.2012—enclosing medical documentation in support of his request. Despite this, the authority arbitrarily and illegally held the petitioner guilty of unauthorised absence from 13.03.2012.
27. It was also urged that although a Summary Security Force Court proceeding was scheduled for 15.03.2012, and despite the availability of sufficient medical documents evidencing the petitioner's wife's treatment at Vellore, the Commandant, 85 Bn BSF, acting as the presiding officer of the said court, proceeded to pass an order of termination on 12.05.2012. The learned advocate submitted that Rule 22 may only be invoked when trial is deemed inexpedient or impracticable, and the authority must form such an opinion and inform the delinquent accordingly. However, no such opinion was formed in the present case, and the petitioner was always ready to face trial for the alleged overstay.
28. It was further argued that Section 62 of the BSF Act contemplates an inquiry in cases of absence without leave, but no such inquiry or proceeding was conducted. The impugned order was therefore illegal and liable to be set

aside. The petitioner, having joined service on 22nd June 1999, had served for over thirteen years, and both he and his dependents were facing severe hardship due to the arbitrary termination. The petitioner had been under a low medical category since April 2011, and this aspect, along with his wife's serious illness, was not considered.

29. Finally, it was argued that the authority could have initiated proper proceedings under Rules 45, 48, and 51 and convened a Security Force Court under Section 70 of the BSF Act, which the petitioner was prepared to face. Instead, a summary and arbitrary use of Rule 22 was adopted. The appellate order dated 29.10.2012 was also assailed for having been passed in a mechanical manner, without any application of mind to the petitioner's grounds of appeal.

30. The Learned Advocate representing the respondents had submitted before this Court that the petitioner, Ex-Constable Md. Afajuddin, had been appointed to the Border Security Force (BSF) as a Constable (General Duty) on 2nd June 1999 and had subsequently been posted permanently to the Sector Headquarters, BSF, Berhampore, from the 141 Battalion, pursuant to the order dated 08.02.2011 issued by FHQ BSF New Delhi. From the very beginning of his service, the petitioner had established himself as a habitual offender and had repeatedly committed acts of indiscipline which had attracted punishments under various provisions of the BSF Act, 1968. These included rigorous imprisonment and fines, awarded on several occasions, for offences under Sections 34(a), 20(c), 40, and 19(d) of the said Act.

31. It had further been submitted that the petitioner had previously filed a writ petition (W.P. No. 13172 of 2011) challenging his transfer from SHQ BSF Berhampore to the 18 Battalion BSF, in which he had made unsubstantiated allegations against his superior officers. The Hon'ble Court had granted him an opportunity to explain his allegations, but he had failed to produce any proof in support thereof. Ultimately, upon tendering an unqualified apology, the petitioner had withdrawn the said writ petition.
32. While being posted at SHQ Berhampore, the petitioner had committed further offences, including insubordinate behaviour under Section 20(c) and absence without leave under Section 19(a) of the BSF Act. As a consequence, he had been attached to the 85 Battalion BSF for finalisation of disciplinary proceedings. The Commandant of the said Battalion had, upon conducting a hearing under Rule 45 of the BSF Rules, 1969, found a prima facie case and had ordered the preparation of a Record of Evidence (ROE). Following the completion of the ROE, the petitioner had been tried before a Summary Security Force Court (SSFC) in accordance with Rule 51(iii) of the BSF Rules, and he had been duly informed of the proceedings and provided with all necessary documents.
33. The petitioner had then proceeded on casual leave from 17.03.2012 for a period of three days, but he had failed to rejoin duty upon the expiry of the said leave. Despite being directed to resume his duties, he had overstayed his leave. A Court of Inquiry had accordingly been convened under Section 62 of the BSF Act to investigate the circumstances of his unauthorised absence. Upon the conclusion of the inquiry, it had been found that the

petitioner had overstayed his leave without sufficient cause. A Show Cause Notice had been issued on 03.05.2012, but the petitioner had failed to respond and had refused to accept service of the notice at his known address.

34. Accordingly, in terms of Rule 22(2) of the BSF Rules, 1969, the petitioner had been dismissed from service with effect from 12.06.2012, and the dismissal order had been duly communicated to him. A statutory appeal submitted by the petitioner had also been rejected, upon full consideration of the relevant records and facts, by the Inspector General, BSF, South Bengal Frontier, in terms of Rule 28A of the BSF Rules.

35. The Learned Advocate for the respondents had drawn the attention of the Court to the fact that although the petitioner had received three commendatory recognitions in the early years of his service, the record had thereafter been marred by consistent acts of misconduct. The petitioner's ACRs since 2002 had reflected a pattern of underperformance, being marked as 'satisfactory' or 'average' throughout. Additionally, prior instances of unauthorised absence had been regularised solely out of administrative leniency and had not mitigated the petitioner's habitual indiscipline. These included overstays of 83 days, 280 days, 34 days, and 23 days at various points of time.

36. The Learned Advocate for the respondent had also submitted that during the relevant period of unauthorised absence beginning in March 2012, a proper Court of Inquiry had been conducted, and the petitioner had been served with the Show Cause Notice both at his permanent and local addresses,

which had been located in close proximity to the BSF campus. The petitioner had not only refused to accept service of notice but had also not responded within the stipulated time. Therefore, in accordance with Sections 11(2), 22, and 48 of the BSF Act, 1968 and Rule 177 of the BSF Rules, 1969, he had been dismissed after full compliance with legal formalities.

37. It had been further argued that the petitioner's record clearly established a consistent pattern of misconduct, insubordination, and absence without leave, which rendered him unfit to be retained in a disciplined force such as the BSF. The Summary Security Force Court, being a judicial proceeding under Section 106 of the BSF Act, had considered all relevant evidence and had adjudicated the matter in accordance with law.

38. In support of the legality of the dismissal, the respondents had relied on several decisions including *Maan Singh vs. Union of India*, *State of Andhra Pradesh vs. Dr. Rohimuddin Kamal*, *General Manager, Bank of India vs. Mohd. Nizamuddin*, *Francis Xavier vs. Magna Graphics Pvt. Ltd.*, and *Amar Singh vs. State of Punjab*, to substantiate that unauthorised absence without sufficient cause, particularly in uniformed services, constituted grave misconduct warranting dismissal from service.

39. The Hon'ble Supreme Court held the following in ***Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu***¹:-

“31. It is apt to note here that in the said Mukul Kumar Choudhuri case [*Coal India Ltd. v. Mukul Kumar Choudhuri*, (2009) 15 SCC 620 : (2010) 2 SCC (L&S) 499] the respondent had remained unauthorisedly

¹ (2014) 4 SCC 108

absent from duty for six months and admitted his guilt and explained the reasons for his absence by stating that he neither had any intention nor desire to disobey the order of superior authority or violate any of the rules or regulations but the reason was purely personal and beyond his control. Regard being had to the obtaining factual matrix, the Court interfered with the punishment on the ground of proportionality. The facts in the present case are quite different. As has been seen from the analysis made by the High Court, it has given emphasis on past misconduct of absence and first time desertion and thereafter proceeded to apply the doctrine of proportionality. The aforesaid approach is obviously incorrect. It is tell-tale that the respondent had remained absent for a considerable length of time. He had exhibited adamant attitude in not responding to the communications from the employer while he was unauthorisedly absent. As it appears, he has chosen his way, possibly nurturing the idea that he can remain absent for any length of time, apply for grant of leave at any time and also knock at the doors of the Court at his own will.

32. *The learned counsel for the respondent has endeavoured hard to impress upon us that the respondent had not been a habitual absentee. We really fail to fathom the said submission when the respondent had remained absent for almost one year and seven months. The plea of absence of “habitual absenteeism” is absolutely unacceptable and, under the obtaining circumstances, does not commend acceptance. We are disposed to think that the respondent by remaining unauthorisedly absent for such a long period with inadequate reason had not only shown indiscipline but also made an attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of*

proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate.”

40. The Hon’ble Supreme Court held the following in **Union of India v. Ghulam Mohd. Bhat**²:-

“9. This Court had occasion to deal with the cases of overstay by persons belonging to disciplined forces. In State of U.P. v. Ashok Kumar Singh [(1996) 1 SCC 302 : 1996 SCC (L&S) 304 : (1996) 32 ATC 239] the employee was a police constable and it was held that an act of indiscipline by such a person needs to be dealt with sternly. It is for the employee concerned to show how that penalty was disproportionate to the proved charges. No mitigating circumstance has been placed by the appellant to show as to how the punishment could be characterised as disproportionate and/or shocking. (See Mithilesh Singh v. Union of India [(2003) 3 SCC 309 : 2003 SCC (L&S) 271] .) It has been categorically held that in a given case the order of dismissal from service cannot be faulted. In the instant case the period is more than 300 days and that too without any justifiable reason. That being so the order of removal from service suffers from no infirmity. The High Court was not justified in interfering with the same. The order of the High Court is set aside. The appeal is allowed but under the circumstances there shall be no order as to costs.”

41. Records reveal the conduct of the petitioner to be abominable. The petitioner had been reckless, adamant and oblivious of the duties and responsibilities, he was bound to discharge being a member of the uniformed force like B.S.F., an organization avowed to ensure the safety and security of the entire country requires services of dedicated personnel, relentlessly and spiritedly, always ready and willing to sacrifice their lives for the sake of the country. The job of a constable attached to B.S.F. is not a 10 a.m. to 5 p.m. work of a

² (2005) 13 SCC 228

person sitting in the ambiance of an office-room, of course the peculiarity of the individual function is respected and appreciated, but the magnanimity and enormity of the job profile of constable and other personnel on foot, irrespective of days, weather conditions, natural disaster and calamities bordering and guarding the entire human populace and property of a country is salutary, obligatory, deserving gratefulness and gratitude from the citizenry. To be a member of such distinguished and valorous organization require the services of intrepid and committed persons, unlike the petitioner deliberately being unaware and unconscious of his responsibility, heedless and unaffected, prone to abdicate his duties time and again, unabashedly failing to rectify himself despite earlier lenient consideration of the senior authority to have pardoned and/or condoned similar reprehensible acts.

42. In view of the aforesaid discussions, this Court is not inclined to interfere with the order passed by the Disciplinary Authority and the Appellate Authority.

43. Under the facts and circumstances, the instant writ petition being WPA 19248 of 2013 is dismissed.

44. There is no order as to costs.

45. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)