



W.P.No.9863 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.07.2025

Pronounced on : 29.10.2025

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.9863 of 2012

K.Dhanavel

... Petitioner

Vs.

1. The Union of India,
Rep. by its Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Deputy Inspector General (CONFD),
Office of Directorate General (Border Security Force),
Ministry Home Affairs,
Block No.10, CGO Complex,
Lodhi Road, New Delhi – 09.
3. The Inspector General,
Border Security Force,
Frontier Headquarters Gujarat,
Post: Group Centre CRPF Campus,
Chilloda Road, Gandhi Nagar (District),
Gujarat Pin: 382 045.
4. The Deputy Inspector General & Commandant,
S T C., Border Security Force,
Chakur & Post, Latur District,
Maharashtra State Pin: 413 513.



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5. Mr. Ashish G.Sonawane

6. Shri S.A.Kadher

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned court of enquiry report of the 5th respondent, dated 02.07.2010 and confirmed by findings on 15.07.2010, followed by the 4th respondent dismissal order dated 12.11.2010 vide proceedings in No.Esst-1/STC/Min/Dismiss/10/14088-104 and dismissal of appeal/ statutory petitions dated 11.04.2011 in No.F32039/64/2011-Staff/BSF/8160-63 and the order on review dated 08.07.2011 passed No.F-32039/64/2011-Staff/BSF/11748-49 by the office of 2nd respondent and quash the same.

For Petitioner : Mr.V.Raghavachari,
Senior Counsel for
Mr.R.Veeramani
for M/s. V.Srimathi

For R1 to R4 : Dr.D.Simon, CGSC

ORDER

This writ petition has been filed aggrieved by the punishment of 'Compulsory retirement', imposed on the petitioner by the Respondent No.2 by order bearing No.F32039/64/2011-Staff/BSF/8160-63, dated 11.04.2011,



by modifying the punishment of 'Dismissal from Service' imposed by the disciplinary authority/ Respondent No.4.

2. The brief facts that are relevant for disposal of this writ petition are as under:-

2.1. The petitioner herein was initially appointed as 'Assistant Sub-Inspector (Ministerial/ Clerk)' on 05.06.1992 and was promoted to the post of 'Sub-Inspector (Ministerial)' on 31.01.2002. While he was working as 'Sub-Inspector (Ministerial)' at Subsidiary Training Centre (BSF), Chakur, Lathur District, Maharashtra, the petitioner proceeded on 30 days Earned Leave with effect from 22.02.2010 to 23.03.2010 along with 30 days of Extra Ordinary Leave with effect from 24.03.2010 to 22.04.2010. However, on expiry of the sanctioned leave as above, the petitioner failed to resume back to his duties, which was due on 23.04.2010. Hence, the petitioner was addressed on number of occasions to report back to duty by addressing letters dated 26.04.2010, 12.05.2010 and 22.05.2010. However, all the said letters addressed to the petitioner by registered post with acknowledgment due were all returned by the postal authorities either as 'door locked' or 'left without instructions'.



2.2. Under those circumstances, the Respondent No.4 herein ordered for conduct of One Man Court of Enquiry (hereinafter referred to as 'OMCE') to ascertain the circumstances under which the petitioner is overstaying since 23.04.2010. Accordingly, the OMCE conducted an enquiry under intimation to the petitioner, duly examining as many as five witnesses and marking eight documents as Exhibits A to H. The OMCE appointed in terms of the Border Security Force Rules (hereinafter referred to as the 'BSF Rules') submitted its report dated 07.07.2010, stating that inspite of several correspondences with the petitioner and the district administration, the petitioner failed to report back to resume his duties nor communicated the reasons for his overstay of leave.

2.3. It was also stated in the report that the petitioner has overstayed his leave on 18 occasions previously and was awarded punishments twice and warnings were issued twice, and the overstayal period was regularized 14 times by granting leave to him. It is also further stated that at the present place of posting since the year 2007, the petitioner has overstayed his leave on four occasions and absented himself without leave on one occasion. Further he has three bad entries during his tenure at the present place of working. The said



report of the OMCE was acted upon by the Respondent No.4, duly submitting appropriate recommendation to the Respondent No.2 herein. Accordingly, the Respondent No.2 invoked the power under Rule 22 of the BSF Rules and issued a show cause notice dated 05.08.2010 to the petitioner to show cause as to why the petitioner should not be dismissed from service for illegally overstaying from leave with effect from 23.04.2010.

2.4. In response to the same, the petitioner submitted his reply dated 01.09.2010, stating that he was left with no other option at that stage but to request earnestly to sanction study leave with effect from 22.04.2010 and release his pay and allowances to enable him to complete the second and third years of LL.B. Degree course. He also requested for posting him to BSF establishment at Chennai/ Tamil Nadu to enable him to continue his services. Along with the said reply, the petitioner submitted yet another reply on the same date, stating that the petitioner was subjected to harassment by one Mr.S.A.Kadher, holding the office of the Respondent No.4 herein, and also expressed a life threat at the hands of the Respondent No.4 herein. However, finally, he requested for sanction of leave to enable him to complete his law graduation. Once again, the petitioner was required to submit his reply to the



show cause notice as the petitioner has only requested for sanction of leave in his previous replies. In response to the same, the petitioner submitted a reply dated 02.11.2010, again complaining of harassment and the situations meted out to him during his entire service and made a request for considering his case for promotion to the post of 'Inspector (Ministerial)', to sanction study leave till he completes the LL.B. Degree course, and to post him at any BSF establishment at Chennai/ Tamil Nadu to enable him to continue in service.

2.5. It was thereafter, having not been satisfied with the said reply submitted by the petitioner, Respondent No.4 herein passed an order dated 12.11.2010, imposing the punishment of 'Dismissal from Service' with effect from 12.11.2010, and the period of his unauthorized absence from 23.04.2010 to 12.11.2010 is directed to be treated as *dies-non*. Aggrieved by the same, the petitioner submitted a representation dated 10.12.2010 to the Director General of the Border Security Force to reinstate him into service. He also submitted another representation to the Respondent No.3 herein on the same date i.e., 10.12.2010 for reinstatement. It was on considering the representation submitted by the petitioner, the Respondent No.2 herein passed an order dated 11.04.2011, modifying the punishment of 'Dismissal from Service' to that of



‘Compulsory Retirement’ and to grant him 2/3rd of pension and gratuity admissible to him under Rule 40 of the Central Civil Services (Pension) Rules, 1972 with effect from 12.11.2010. It is aggrieved by the said order dated 12.11.2010, the petitioner approached this court by filing the present writ petition.

3. In support of the relief sought for, the petitioner has filed an affidavit running into 19 pages. Out of 19 pages, in 16 pages, he has narrated various instances with which the petitioner was confronted during his entire service and the punishments that were imposed on him. He also stated that the he was subjected to harassment in view of the fact that the petitioner belongs to Scheduled Caste community and further stated that he has made a complaint to the National Commission for Scheduled Caste & Scheduled Tribes. However, the petitioner has failed to advert to the allegation of overstaying, which is the subject matter of the impugned order herein. What all he has stated in the entire affidavit is about all other aspects that had taken place much prior to the sanction of leave with effect from 22.02.2010 to 22.04.2010. In the grounds raised in the writ petition also, the petitioner has continued to narrate about the previous incidents and allegations made against Mr.S.A.Kadher, but has not pointed out any of the procedural violation in the



matter of passing the impugned order.

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4. In this background, this court heard Mr.V.Raghavachari, learned Senior Counsel for Mr.R.Veeramani, for M/s.V.Srimathi, for the petitioner and Dr.D.Simon, learned Central Government Standing Counsel for the respondents 1 to 4.

5. This court, after having heard at length, and on perusal of the order of dismissal dated 12.11.2010, initially felt that the same is cryptic in nature, so also, the order dated 11.04.2011 passed by the Respondent No.2. This court also entertained a doubt as to whether the Respondent No.4 is justified in invoking the power under Sub Rule (2) of Rule 22 of the BSF Rules in the facts and circumstances of the case. But after examining the matter in detail, this court came to the conclusion that this is not a fit case where interference of this court is warranted, especially while exercising its discretionary jurisdiction under Article 226 of the Constitution of India.

6. No doubt, the petitioner is making a series of allegations and making out a grievance on various grounds basing upon the instances occurred in his



entire service of about 17 years in the Border Security Force. But, the fact that the petitioner was sanctioned leave with effect from 22.02.2010 to 22.04.2010 and thereafter there was no sanction of leave is not disputed. It is also not in dispute that the various letters addressed to the petitioner requiring him to report back to duty on expiry of the sanctioned leave, at the permanent address available with the Border Security Force and the leave address furnished by the petitioner in the leave application, were all returned by the postal authorities. Therefore, all the said registered letters, were all deemed to have been served on the petitioner. But, it was only when a show cause notice was issued under Sub Rule (2) of Rule 22, the petitioner immediately responded by submitting his reply within a weeks' time. That means, the petitioner is fully aware of the letters addressed by the respondents from time to time but deliberately got them returned. Even otherwise, it is the responsibility of the petitioner to see that appropriate arrangements are made to receive any communication from his employer while he was on leave. As already noted above, the letter addressed to address furnished by the petitioner in his leave application were also returned by the postal authorities.

7. Be that as it may, even in response to the show cause notice issued



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by the Respondent No.4, proposing to impose the punishment of 'Dismissal from Service', the petitioner has submitted a reply seeking sanction of study leave to enable him to complete his LL.B. Degree course. For better appreciation, a scanned reproduction of the reply dated 01.09.2010 submitted by the petitioner is produced hereunder:-



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Registered post with acknowledgement due

NA/Pes/ST-KDVA/Ins-R-C/2009-10/01

01 Sep 2010
Chennai (TN)

To,

The Director General,
Border Security Force,
Block No.10, CGO Complex,
Lodhi Road,
New Delhi - 11 0002

HARASSMENTS / SHOW CAUSE NOTICE : REPLY THERE ON:-

Respected Sir,

With Profound respect, I No. 920027406 Sub-Inspector (mir) K. Dhanavel serving under STC BSF Chakur very humbly forwarding the copies of my reply and show cause notice issued by STC BSF Chakur vide letter No. Estt-BSTC/SCN/2010/7972 dated 05th Aug 2010 for your kind information and sympathetic action please.

2. That Sir, I left no other option at this stage but to request earnestly his Excellency to sanction study leave w.e.f 22nd April 2010 and release my pay & allowances to complete IInd & IIIrd year LL.B degree Course. Simultaneously I may be posted to any BSF establishments at Chennai / Tamil Nadu to enable me to continue my service please.

3. Sir, I Sincerely believe that your kind honour will consider and redress my grievances favorably please.

Thanking you sir,

Encl: As above.

Dated 01 Sep 2010

Yours Sincerely
K. Dhanavel
Sub Inspector No. 920027406
STC BSF Chakur
On leave

RECEIVED
ATTACHED

By Commis. & P.G.
S.P. & J. S. S. S. S. S.
STC BSF CHAKUR



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8. Similarly, the request made by the petitioner by another reply dated 01.09.2010 is also extracted hereunder:-

“10. In view of the facts above, I earnestly request you good office to kindly approach the higher headquarters to sanction my study leave with effect from 01 Jan 2010 as applied in leave application or from 22 April 2010 in continuation to the leave and release my pay and allowances to complete the Law Graduation. Simultaneously, I may be posted to any BSF establishment in Chennai/ Tamil Nadu to enable me to continue my service pelase.”

9. Even thereafter, the petitioner was afforded an opportunity to submit his reply to the show cause notice on the proposed punishment of ‘Dismissal from Service’ by issuing a second show cause notice dated 15.10.2010. Even in response to the same also, the petitioner once again requested for sanction of study leave to enable him to complete his LL.B. Degree course. The operative portion of the said reply dated 02.11.2010 is extracted hereunder for clarity:-

“8. In view of the facts enumerated above, I earnestly request your good office to kindly approach higher headquarters to consider my following prayer sympathetically and convey orders favorably please.



(a) I may be promoted to the rank of Inspector (Min) in my turn set-aside the arbitrary punishment / ACR remark / Medical Category please.

(b) I may kindly be sanctioned Study leave w.e.f 01 Jan 2010 as per my application dated 14 Sept 2009 or w.e.f 22 April 2010 in continuation to my leave to complete the LLB degree Course.

(c) Simultaneously I may be posted to any BSF establishments at Chennai / Tamil Nadu to continue my service as well as to restart my life. In case the posting can not be materialized for any reason, I may be sent on Deputation with IRB CBI please.”

10. From the above, it is evident that the whole idea of the petitioner in overstaying is only with a view to complete his LL.B. Degree course, and his absence from duty after expiry of the leave period is intentional and not for any reason which is beyond the control of the petitioner nor because of any necessity. It is also necessary to notice that, when the petitioner was required to report to duty and then make any such request for grant of study leave also, the petitioner has chosen not to report to duty and continued to remain absent unauthorizedly. Under those circumstances, in the considered view of this court, the respondents have no other option except to impose the



punishment as proposed. When there is no denial of the alleged misconduct of overstaying of leave and failure of the petitioner to report back to duty, and continued to request for sanction of study leave to enable him to complete his LL.B. Degree course would show that the petitioner has no intention to report back to duty. At this stage, it is relevant to take note of the fact that the petitioner has already completed his LL.B. Course and has been practicing as an advocate.

11. Another important factor to be noted is, inspite of the attitude of the petitioner as already noted above, on a representation/ appeal submitted by the petitioner, the Respondent No.2 has taken a lenient view and modified the punishment of 'dismissal from service' to that of 'compulsory retirement' by passing the impugned order dated 11.04.2011. In the considered view of this court, the Appellate Authority has rightly exercised its discretion in modifying the punishment and passing the impugned order dated 11.04.2011.

12. In the considered view of this court, there is absolutely nothing for this court to interfere with the impugned order dated 11.04.2011. Even if there is any procedural violation in the matter of imposing the punishment of



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‘Compulsory Retirement’, in the light of the observations made hereinabove, on the deliberate act of the petitioner in overstaying on expiry of leave, all such procedural violation would pale into insignificance, and this court accordingly decline to interfere with the impugned order on any such grounds.

13. At this stage, it is also necessary to notice that there is no denial of the averments made in the counter-affidavit filed by the respondents at Paragraph No.50, wherein it is stated that the petitioner has overstayed on 18 occasions during his service and was awarded with punishment on two occasions and warnings on two occasions. Considering this past conduct of the petitioner also, this court is unhesitant to come to the conclusion that this is not a fit case for exercising the discretionary jurisdiction of this court under Article 226 of the Constitution of India.

14. Accordingly, this writ petition is dismissed. No costs. Connected miscellaneous petitions, if any, shall stand closed.

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Index : Yes / No



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Speaking order / Non-speaking order
Neutral Citation : Yes / No

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To

1. The Secretary to Union of India,
Ministry of Home Affairs, New Delhi.
2. The Deputy Inspector General (CONFD),
Office of Directorate General (Border Security Force),
Ministry Home Affairs, Block No.10, CGO Complex,
Lodhi Road, New Delhi – 09.
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MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
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