



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CWP-9217-2010(O&M)
Date of decision: 05.08.2025**

CHHOTE LAL

.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Ravinder Malik, Advocate and
Mr. Anuj Malik, Advocate
for the petitioner.

Mr. Karan Kumar Jund, Senior Panel Counsel
for respondents-Union of India.

VINOD S. BHARDWAJ, J. (Oral)

Seeking setting aside of the order dated 30.01.1995 passed by respondent No.3-Commandant, 35 Battalion, Border Security Force, Amritsar, and the subsequent dismissal of the appeal by the Director General, Border Security Force, New Delhi, vide order dated 11.12.1998, the instant writ petition has been filed.

2. Briefly the facts are that the petitioner was recruited as a Constable (General Duty) on 01.02.1990 and was subsequently posted to the 35 Battalion. On account of the petitioner's unauthorized absence from 13.07.1994 to 30.01.1995, a punishment of dismissal from service was

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imposed upon him. This disciplinary action was taken invoking the powers conferred by Section 11(2) of the Border Security Force Act, 1968 (hereinafter referred to as “the BSF Act, 1968”), read with Rule 177 of the Border Security Force Rules, 1969 (hereinafter referred to as “the BSF Rules, 1969”).

3. Learned counsel appearing on behalf of the petitioner contends that the respondents have failed to comply with the statutory provisions contained in Section 62 of the Border Security Force Act, 1968. It is submitted that, in cases of absence without leave, the statute mandates holding of a Court of Enquiry as per procedure and as prescribed under Rule 173 of the Border Security Force Rules, 1969. Learned counsel further submits that the mandatory procedural safeguards required for imposing the major penalty of dismissal from service have not been followed by the respondents. The impugned order merely records the petitioner’s absence and order of dismissal was passed summarily without following the prescribed inquiry process. The operative part of the order passed by the Commandant reads thus:-

“I have personally gone through the case of over-staying from leave with effect from 17.07.94 (FN) in respect of No.90194118 Const Chhote Lal 'A' coy of this Unit. He was given an opportunity through show cause notice vide this office L/No. 35/Bn/Estt-37/94-95/8273 dt. 27 Dec'94 which he has not availed. I am satisfied that he is overstaying leave without any reasonable cause and



his further retention in service is not desirable. I, therefore dismiss him from service with effect from 20 Jan'95 (AN) under the power conferred to me vide Sec. 11(2) of BSF Act 1969 read with rule 177 of BSF Rule 19.9.

2 The period of absence from 17.07.94 to 20.1.95 be treated as "Dies-Non". He is hereby struck of strength from this Unit w.e.f. 20.01.95 (AN)."

4. He further submits that the appeal against the same was dismissed vide order dated 11.12.1998 by passing the following order:-

Ref your application dated 27.6.98 regarding reinstatement in the

2 After carefully considering all the points in your application, all the facts and circumstances of case the competent authority has rejected your appeal being devoid of merit.

3 In view of above, it is informed that your case has been closed and correspondence received if any on the subject in future will not be entertained.

5. He submits that the orders passed by the respondent authorities are not only non-speaking but also demonstrate a failure to comply with the mandatory procedure for imposing the punishment. Consequently, the impugned orders are liable to be set aside, and the petitioner is entitled to reinstatement.



6. Counsel for the respondents, however, contends that the petitioner's conduct has been unbecoming of a member of the disciplined force. He submits that the petitioner joined the Border Security Force on 16.10.1990 and was subjected to three separate punishments under Section 19(B) of the BSF Act, 1968, on account of overstaying leave without sufficient cause during his brief tenure of service. The details of the punishments effected upon the petitioner are extracted as under:

“(a) 28 days RI in Force Custody w.e.f. 24-04-92 to 21-05-92 and 14 days Confinement to unit line w.e.f. 22-05-92 to 04-06-92, for 89 days overstayal from leave w.e.f. 12-01-92 to 09-04-92.

(b) 28 days RI in Force Custody w.e.f. 01-11-92 to 28-11-92, for 89 days overstayal from leave w.e.f. 04-08-92 to 31-10-92.

(c) 28 days RI in Force Custody w.e.f. 06-09-93 to 03-10-93 and 14 days confinement to unit line w.e.f. 04-10-93 to 17-10-93, for 90 days overstayal from leave w.e.f. 12-04-93 to 11-07-93.”

7. Counsel for the respondents further submits that prior to the imposition of the punishment of dismissal, the petitioner was granted earned leave for a period of 30 days from 18.04.1994 to 17.05.1994 on account of the marriage of his sister. Subsequently, the petitioner applied for an extension of leave for another 30 days, which was granted from 18.05.1994 to 17.06.1994. Thereafter, the petitioner applied for and was granted yet



another extension of leave for 30 days. The petitioner was thus required to rejoin duty on 16.07.1994; however, he failed to do so and remained absent. The Commandant issued letter No. 1458 dated 07.09.1994, directing the petitioner to rejoin his duties and to submit supporting medical documents in support of his claim. The petitioner however neither resumed his duties nor provided any medical record and continued to remain absent without informing the unit headquarters. Thereafter, a Court of Enquiry was ordered on 19.09.1994 to enquire into the circumstances surrounding the petitioner's unauthorized absence. The petitioner still failed to appear before the Court of Enquiry. Following its conclusion and submission of the report by the Court of enquiry, a show cause notice was issued to the petitioner vide registered letter dated 27.12.1994, directing him to submit his defence against the proposed action of dismissal from service on or before 20.01.1995 but no responses was filed. Hence, in the absence of any response, the competent authority proceeding further and in exercise of powers under Section 11(2) of the BSF Act, 1968, read with Rules 22 and 177 of the BSF Rules, 1969, imposed the order of dismissal from service upon the petitioner. The subsequent appeal filed by the petitioner was also dismissed. In response to the explanation for delay in filing the present writ, it is not disputed that the petitioner had initially challenged the impugned orders by filing Writ Petition No. 2252 of 1999 before the Hon'ble High Court of Allahabad. The said writ petition remained pending before the High



Court and was eventually dismissed vide order dated 17.11.2009 for want of territorial jurisdiction. Thereafter, the present writ petition was filed.

8. It is also submitted that the petitioner was approximately 30 years of age at the time when the order of punishment was passed in 1995 and that since it is nearly 30 years since, he has already attained the age of around 60 years.

9. A specific query was put to the learned counsel for the respondents to refer to or produce the pleadings or documents on record which would establish that a Court of enquiry was actually convened and that a report was submitted thereafter. The learned counsel for the respondents has been unable to refer to any document in support and relies solely on a self-serving response contained in the written statement.

10. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended along with the present writ petition.

11. Before proceeding further, it is imperative to extract and consider the relevant statutory provisions governing the disciplinary authority, in cases of absence without leave. Section 62 of the Border Security Force Act, 1968 specifically prescribes the procedure to be followed when any person subject to the Act remains absent from duty without lawful authority for a period of thirty days or more. The same is extracted as under:-

62. Inquiry into absence without leave.—



(1) When any person subject to this Act has been absent from duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be appointed by such authority and in such manner as may be prescribed; and such court shall, on oath or 19 affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessities; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof and the said deficiency, if any, and the Commandant of the unit to which the person belongs shall make a record thereof in the prescribed manner.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall for the purposes of this Act, be deemed to be a deserter.

12. The relevant rules of the Border Security Force Rules, 1969 are also extracted as under :

173. Procedure of Courts of inquiry

(1) The proceedings of a Court of inquiry shall not be open to the public. Only such persons may attend the proceedings as are permitted by the Court to do so.

(2) The evidence of all witnesses shall be taken on oath or affirmation.

(3) Evidence given by witnesses shall be recorded in



narrative form unless the Court considers that any questions and answers may be recorded as such.

(4)The Court may take into consideration any documents even though they are not formally proved.

(5)The Court may ask witnesses any question, in any form, that they consider necessary to elicit the truth and may take into consideration any evidence, whether the same is admissible under the Indian Evidence Act, 1872 (1 of 1872) or not.

(6)No counsel, or legal practitioner shall be permitted to appear before a Court of inquiry.

(7)Provisions of section 89 shall apply for procuring the attendance of witnesses before the Court of inquiry.

(8)Before giving an opinion against any person subject to the Act, the Court will afford that person the opportunity to know all that has been stated against him, cross-examine any witnesses who have given evidence against him, and make a statement and call witnesses in his defence.

(9)The answers given by a witness to any question asked before the Court shall not be admissible against such a witness on any charge at any subsequent occasion except a charge of giving false evidence before such Court.

174. Courts of inquiry when to be held

(1) A Court of inquiry may be held to investigate into any disciplinary matter or any other matter of importance.

(2) In addition to a Court of inquiry required to be held under section 62, a Court of inquiry shall be held in the following cases:-

(a)(i) All unnatural deaths of persons subject to the Act



or of other persons within the Force lines, an immediate report shall be sent through the messenger to the officer-in-charge of the police station within whose jurisdiction the place of such unnatural death is.

(ii) In cases when such report cannot, for any reason, be delivered within a reasonable time, a Court of inquiry shall be held into such unnatural death.

(iii) Immediately on receipt of information of an unnatural death, the Commandant or the senior-most officer of the Battalion present shall prepare a report on the proforma set out in Appendix XIII.

(b) All injuries sustained by persons subject to the Act which are likely to cause full or partial disability. The Court shall in such case determine whether such injuries were attributable to service or not.

(c) All financial irregularities, losses, theft and misappropriation of public or Force property, where it is necessary to obtain the order of a superior officer on such irregularities, loss, theft or misappropriation.

(d) All losses of secret documents and any other material of secret or above security classification. Such a Court of inquiry shall be ordered by an officer or authority superior to the unit Commandant having the lost document or material on its charge.

(e) All damage to private persons or property in respect of which there is likely to be a claim against the Government or the Force.

175. Action on the proceedings of a Court of inquiry

.-The proceedings of a Court of inquiry shall be submitted by the presiding officer to the officer or



authority who ordered the Court. Such officer or authority on receiving the proceedings may either pass final orders on the proceedings himself, if he is empowered to do so, or refer them to a superior authority.

176. Copies of Court of inquiry proceedings

.-A person subject to the Act against whom the Court of inquiry has given an opinion or who is being tried by a Security Force Court on a charge relating to matter investigated by the Court of inquiry, shall be entitled to copies of the proceedings of the Court of inquiry unless the Director-General orders otherwise.

175. Action on the proceedings of a Court of inquiry

The proceedings of a Court of inquiry shall be submitted by the presiding officer to the officer or authority who ordered the Court. Such officer or authority on receiving the proceedings may either pass final orders on the proceedings himself, if he is empowered to do so, or refer them to a superior authority.”

13. It is evident from a perusal of the foregoing that in cases of unauthorized absence, the Border Security Force is statutorily mandated to conduct a Court of Enquiry. Such Court of Enquiry is required to gather evidence and record the statements of witnesses and then to arrive at a finding regarding the reasons behind absence of the individual and as to whether there is any satisfactory reason. Only upon such Court of Enquiry recording a conclusion that the absence was without lawful authority or



sufficient cause, may the absence and the relevant period be declared unauthorized. The detailed procedure for conducting a Court of Enquiry is provided under Rule 173. It is also mandated that a copy of the inquiry proceedings be supplied to the employee under Rule 176. Although the respondents have asserted in their pleadings that the prescribed procedure was duly followed, however a perusal of the impugned order reveals there is neither any reference whatsoever to any Court of Inquiry having been held nor is there any mention of a report having been submitted to the competent authority by the Court of inquiry in accordance with Rule 175 of the BSF Rules, 1969 or it being supplied as per Rule 176. Furthermore, the Appellate Authority has also failed to record any findings regarding compliance with the mandatory procedure for imposing the penalty of dismissal. The communications statedly sent to the petitioner i.e. the letter dated 07.09.1994 directing the petitioner to report to Battalion Headquarters and the subsequent correspondence dated 11.11.1994 conveyed by Special Messenger also do not indicate that any Court of Enquiry was initiated. Likewise, the Show Cause Notice dated 27.12.1994, which called upon the petitioner to submit his defence against the proposed dismissal, makes no mention of receipt of any Court of Enquiry report or its findings.

14. The lapses identified herein cannot be lightly ignored as mere negligent omissions. Any competent authority or organization well-versed in the statutory framework governing the conduct of a Court of Enquiry, its procedural requirements, and the obligation to furnish copies of proceedings



and reports to the concerned employee, would ordinarily not fail to record any such action taken at the relevant time. A total evasive silence and absence of any reference to the initiation, conduct, or findings of a Court of Enquiry in any/all communications and correspondence originating from the respondents undermines their assertion that the prescribed procedure was duly followed. While the respondents have stated in their reply that records relating to the extension of leave granted to the petitioner have been weeded out, there is no claim that documents concerning the Court of enquiry and its constitution, proceedings, or its report have also been similarly weeded out. The respondents have also failed to produce or even refer to any material or evidence supporting the lawful constitution of a Court of Enquiry or the initiation and completion of any enquiry proceedings. Despite being in possession of such records, the respondents' failure to produce the same before this Court justifies drawing of an adverse inference against them. This Court is hence unable to accept that failure to reflect *prima facie* compliance of the fundamental requirements of the statute or establishing it by any credible document was a sheer inadvertence, rather, *prima facie*, this disparity between the respondents' pleadings and the available documentation reflects at an attempt by the respondents to mislead this Court in giving an impression regarding adherence to the mandatory procedural requirements despite with-holding all documents. The respondent authorities are accordingly cautioned to exercise utmost care and caution



when filing affidavits on oath before this Court and to ensure that the documents substantiate, corroborate and establish the pleading.

15. Hence the self serving averments contained in the reply are rendered liable to be rejected. An institutional credibility cannot by itself be a shield against the prescription to the statutory rules and immunity from judicial review. No special parameters, as an exception, can be evolved for the respondents. When a statutory protection is the procedure, proof of compliance is the only way to scale the defence.

16. Consequently, the impugned orders under challenge herein are held to suffer from a grave breach of the principles of natural justice as well as from non-compliance with the statutory procedure prescribed under the Border Security Force Rules, 1969.

17. This Court now turns to the question as to what relief can now be granted to the petitioner at this stage, particularly in light of the fact that the petitioner has long since exceeded the age of superannuation. It is an undisputed fact that the petitioner joined service in October 1990, and his service record also reveals a repeated pattern of unauthorized absences between January and April 1992, the petitioner overstayed for 89 days, for which he was punished with 28 days' Rigorous Imprisonment (RI) in Force Custody. Again, from August to October 1992, he overstayed for another 89 days and was similarly penalized with 28 days' RI. A third such absence occurred from April to July 1993, lasting 90 days, for which an equivalent punishment was imposed. In the present case, the period of overstay extends



beyond six months. Thus, within less than four years of service tenure, the petitioner exhibited a repeated and sustained tendency to absent himself from duty without authorization. While the petitioner claims to have been suffering from jaundice since July 7, 1994, this assertion remains untested before any competent authority or court, and no evidence in support thereof has been produced even before this Court. Such a claim, therefore, cannot be entertained at this belated stage and must be deemed as an afterthought.

18. Ordinarily, where an order of punishment is found to have been passed in breach of the prescribed procedure, the appropriate course is to set aside such order and remand the matter for a fresh adjudication, however, given the peculiar circumstances of this case, including the fact that the dispute has languished unresolved for nearly 15 years before the Allahabad High Court and for an equal span before this Court, coupled with the petitioner's actual substantive service being less than three years, no useful purpose would be served by directing a re-initiation of the entire disciplinary process.

19. Under the given circumstances, I am of the opinion that the interest of justice can be well served by suitably compensating the petitioner for termination of his service in violation of the procedure prescribed by law. The lump sum compensation payable to the petitioner is hence quantified as **Rs. 3 lakhs.**

20. Let the aforesaid compensation be paid by the respondents within a period of three months of the receipt of certified copy of this order,



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failing which the petitioner shall become entitled to claim interest @ 6% per annum from the date of filing of the writ petition till its actual disbursement.

21. The writ petition is accordingly disposed of.

(VINOD S. BHARDWAJ)
JUDGE

AUGUST 05, 2025
Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No