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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19157-2018

DECIDED ON: 26.08.2025

BHAGIRATH MAL

.....PETITIONER

VERSUS

UNION OF INDIA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. C.L. Verma, Advocate
for the petitioner.

Mr. Sunil Kumar Sharma, Sr. Panel Counsel for
respondent-UOI

SANDEEP MOUDGIL, J (ORAL)

1. **Prayer**

This civil writ petition is preferred under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order of conviction and dismissal dated 10.04.2017, whereby the petitioner was dismissed from service and the impugned order dated 23.08.2018 whereby the appeal was dismissed.

2. **Brief Facts**

The petitioner was enrolled in the Border Security Force (BSF) on 07.09.2006 as a cook and remained posted with 162 Battalion BSF at the Thrissur camp till his dismissal on 10.04.2017. It is the case of the petitioner that he had been placed under low medical category being a case of generalised seizure disorder since 2011 and was categorized accordingly by the BSF medical board. On 05.01.2017, while proceeding to his duty at the battalion mess at Thrissur, he

allegedly suffered a seizure attack and lost consciousness. According to the petitioner, he regained consciousness only on 12.01.2017 at New Delhi Railway Station, whereafter his family members took him to Narnaul for medical treatment. He again suffered a seizure on 22.01.2017 and reported back to his unit on 29.01.2017.

The authorities, however, treated the petitioner's absence as "Absent Without Leave (AWL)" from 05.01.2017 to 29.01.2017. A Court of Inquiry was conducted, and thereafter, charge-sheet was issued under Section 19(a) of the BSF Act, 1968. The Summary Security Force Court (SSFC) was convened on 08.04.2017 at Thrissur, and vide order dated 10.04.2017, the petitioner was convicted and dismissed from service. His statutory appeal, filed with delay due to medical reasons, under Section 117 of the BSF Act read with Rule 167(2) of the BSF Rules, was dismissed by respondent no.3 on 23.03.2018 without considering the case of the petitioner on merits.

Aggrieved, the petitioner approached this Court by way of the present writ petition under Article 226 of the Constitution, seeking quashing of the impugned orders dated 10.04.2017 and 23.03.2018, reinstatement with back wages, and consequential benefits.

3. **Contentions**

On behalf of Petitioner

Learned counsel for the petitioner submits that the impugned orders of conviction and dismissal are liable to be set aside being patently illegal and violative of statutory provisions as well as principles of natural justice. It is argued that the entire proceedings before the Summary Security Force Court stood vitiated inasmuch as the convening authority, i.e. the Commandant himself, also participated in the trial, which is in direct contravention of Rule 60(1) of the BSF

Rules, 1969, rendering the proceedings erroneous in law. It is further urged that Rule 63(2) of the BSF Rules, which mandates appointment of a defending officer unless specifically declined by the accused in writing, was also violated, and no opportunity of proper defence was provided to the petitioner.

Counsel further submits that the petitioner has been a medically categorized to the seizure disorder category by the BSF medical board since 2011, and was re-categorized in the seizure category in March 2017 and the alleged absence from 05.01.2017 to 29.01.2017 was not willful but the result of a two seizure episode beyond his control. The doctrine of *actus non facit reum nisi mens sit rea* squarely applies, and punishment of dismissal for a medical condition is harsh in law. It is further advanced that while deciding the statutory appeal, the appellate authority failed to condone the delay despite sufficient cause being shown and ignored the medical evidence on record. Thus, the impugned orders suffer from arbitrariness and violation of Article 14 of the Constitution, the petitioner has been subjected to grave prejudice in contravention of his fundamental and statutory rights under the BSF Act and Rules. Accordingly, it is prayed that the impugned orders be quashed, the petitioner be reinstated in service with consequential benefits.

On behalf of Respondent

Learned Counsel for the respondent, at the outset disputes the maintainability of the present writ petition for want of territorial jurisdiction as all proceedings including the trial and dismissal order took place at Thrissur, Kerala. Furthermore, the counsel while vehemently opposing the arguments raised by the petitioner, would contend that the petitioner has suppressed material facts and attempted to mislead the Court with an afterthought story of seizure disorder,

unsupported by cogent medical evidence. The OPD card of Civil Hospital, Narnaul produced by the petitioner merely mention “dizziness” and the petitioner reported to the Thrissur camp on 29.01.2017 and the produced OPD Slips nowhere certify that the petitioner was advised bed rest during the period from 12.01.2017 to 29.01.2017 wherein the petitioner remained absent without leave even after gaining consciousness on 12.01.2017.

It is further submitted that the petitioner was a habitual offender, repeatedly absenting without leave or overstaying sanctioned leave on several occasions in the past, for which he was tried and awarded lenient punishments on six occasions and despite repeated warnings, failed to mend his conduct, and therefore, the present act of unauthorized absence for 25 days cannot be condoned. The respondents submit that under Section 19(a) of the BSF Act, absence without leave is a serious misconduct, and the Summary Security Force Court, after complying with the BSF Act and Rules, found the petitioner guilty and imposed dismissal. Moreover, the principles of proportionality must be seen in light of discipline in uniformed forces, where unauthorized absence gravely undermines operational efficiency.

As regards the appeal, it is submitted that the petitioner filed the same with inordinate delay and failed to show sufficient cause. The appellate authority, after due consideration, found no merit to interfere. Thus, the impugned orders are passed after following due process and the petitioner has no enforceable right to reinstatement, and the writ petition deserves to be dismissed.

Heard counsel for both parties.

4. Analysis

Having considered the arguments raised and material placed on record,

it is evident that the petitioner was charged under Section 19(a) of the BSF Act 1968 for absence without leave wherein he was convicted, the same having been reproduced below:

19. Absence without leave .-Any person subject to this Act who commits any of the following offences, that is to say,-

(a) absents himself without leave; or

on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

Moreover, the facts are not in dispute that the petitioner absented himself from duty between 05.01.2017 and 29.01.2017 whereby the explanation qua the petitioner is that he suffered a seizure episode on the morning of 05.01.2017, remained unconscious for several days, and subsequently reported back to duty after regaining consciousness. The OPD slips relied upon, however, make no mention of a seizure episode nor do they certify incapacity for the relevant period. The documents merely record complaints of dizziness and contain no advice of prolonged rest. In the absence of contemporaneous medical evidence, the plea advanced by the petitioner remains unsubstantiated and incapable of acceptance.

Also, the court cannot overlook the submission of the respondents wherein it was stated that the contention of the petitioner and the letter of communication by the wife of the petitioner are inconsistent, thereby causing a shadow of doubt on the series of events as admitted by the petitioner.

The material placed on record further discloses that the petitioner was a habitual absentee and over the course of his service, he was tried on multiple occasions for absence without authority or overstaying leave. Despite repeated

warnings and imposition of minor punishments, there was no improvement in his conduct. The present absence of 25 days, therefore, cannot be viewed in isolation but as part of a continued pattern of indiscipline.

Coming to the contentions advanced by the petitioner in relation to the violation of BSF Act and Rules, the submissions made by the respondent clarify that, the Commandant is responsible for Command, Discipline, Morale and Administration of the battalion and the statute provides that SSFC may be held by the Commandant of any unit of the force and he alone shall constitute the Court and he shall not be disqualified from hearing merely because the offence is disobedience of his own orders. Moreover, the petitioner had nominated a friend of accused in terms of BSF Rule 157, a medical examination of the petitioner was also conducted and due procedure was followed in consonance with principles of natural justice.

This Court is constrained to reiterate that discipline constitutes the cornerstone of the armed and paramilitary forces. The chain of command, the efficiency of units, and the readiness of the force in matters concerning national security are all predicated upon the strict observance of discipline. In matters concerning uniformed forces, discipline constitutes the foundation of institutional integrity. Unauthorized absence strikes at the very root of discipline and operational preparedness. Guidance may be drawn from the Supreme Court judgment of ***“Ex Sepoy Madan Prasad v. Union of India 2023 INSC 656”*** wherein it was held that:

He remained out of line far too often for seeking condonation of his absence of leave, this time, for a prolonged period of 108 days which if accepted, would have sent a wrong signal to others in service. One

must be mindful of the fact that discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service.

This Court is of the opinion that the petitioner was part of disciplined force and was bound to strictly follow the rules and regulations and the Forces cannot retain any indisciplined member. It is not a case of the petitioner that he, for the first time, committed an alleged offense and was subjected to harsh punishment. Thus, had it been his first offense, this Court would have applied principle of proportionality to reconsider quantum of punishment but in the case at hand, dismissal from service for absence without leave is not disproportionate, having regard to the stringent standards required in the forces. The doctrine of proportionality does not permit courts to supplant the discretion of disciplinary authorities unless the punishment shocks the conscience or is manifestly arbitrary.

The disciplinary proceedings were conducted in accordance with the BSF Act and Rules, the Summary Security Force Court acted within its jurisdiction and the petitioner was afforded due opportunity, and no violation of statutory safeguards has been established. The appellate authority, while considering the statutory appeal, applied its mind to the facts and declined interference.

In the above circumstances, this Court is of the considered view that the order of dismissal does not warrant interference under Article 226 of the Constitution. The impugned orders are valid, lawful, and sustainable.

5. Relief

On the conspectus of facts and circumstances and having gone through the original record produced by the respondents, this court does not find any substantive or procedural irregularity having been committed by the respondents in awarding the punishment of "dismissal from service" to the petitioner.

In the light of facts and circumstances discussed hereinabove, the present petition stands dismissed being devoid of merits.

26.08.2025

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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No