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

+ **W.P.(C) 13837/2023**

SANDEEP SHUKLA

.....Petitioner

Through: Dr. Amit George, Mr.
Kartickay Mathur, Mr. K.K. Shukla, Mr.
Adhishwar Suri, Mr. Dushyant Kishan Kaul,
Ms. Ibansara Syiemlieh, Mr. Bhriugu A.
Pamidighantam, Ms. Rupam Jha, Mr.
Vaibhav Gandhi and Mr. Kartikay Puneesh,
Advocates

versus

UNION OF INDIA AND ANR

.....Respondents

Through: Mr. Vivek Sharma, SPC

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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08.12.2025

OM PRAKASH SHUKLA, J.

1. The present writ petition has been filed under Article 226 of the Constitution of India assailing the impugned order dated 22.11.2022, whereby the petitioner was dismissed from service due to overstaying leave since 02.08.2022 without sufficient cause. The petitioner seeks a declaration that dismissal order dated 22.11.2022 is illegal, arbitrary and unjustified. The petitioner is further seeking reinstatement w.e.f. 22.11.2022 with consequential benefits and back wages.

2. The factual backdrop of the present petition is that the petitioner

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was appointed as Constable (General Duty) in Border Security Force¹ on 03.04.2012.

3. Thereafter, on 17.07.2022, the petitioner was granted sanctioned leave from 18.07.2022 to 01.08.2022. The petitioner claims that in the last week of July 2022, he fell ill with persistent high fever. Upon medical examination on 29.07.2022, he was diagnosed with typhoid and was prescribed one month of bed rest. It is further claimed that his medical condition failed to improve, and subsequent medical evaluations on 28.08.2022, 27.09.2022, and 26.10.2022 purportedly revealed no improvement in the health of the petitioner and blood tests repeatedly confirmed a positive result for typhoid. Therefore, the petitioner's bed rest was also extended by the prescriptions dated 28.08.2022 and 26.10.2022 for one month each.

4. Admittedly, due to his illness, the petitioner did not resume duty and overstayed his leave from 02.08.2022 to 22.11.2022.

5. It is gathered from the record that the petitioner was examined by a doctor on 24.11.2022 and declared fit for duty, and the same also carries attestation of the Chief Medical Officer, Gorakhpur². Subsequently, feeling an improvement in his health, the petitioner attempted to contact his office and battalion³ through the BSF exchange number but was informed that the line was not functioning. It is claimed that the petitioner repeatedly attempted to contact the

¹ "BSF" hereinafter

² "CMO" hereinafter

³ "Bn" hereinafter



aforesaid authorities from 05.11.2022 to 26.11.2022 but he was unable to speak with any superior officer, although he conveyed a message to the operator that he would be re-joining shortly.

6. In the interregnum, he was also directed by the respondent through various registered communications dated 08.08.2022, 14.08.2022, and 23.08.2022 to report for duty forthwith, with an intimation that failure to do so would invite disciplinary action against the petitioner under the BSF Act, 1968⁴.

7. Thereafter, owing to the absence of the petitioner, on 08.09.2022, the respondents convened a Court of Inquiry⁵ under Section 62 of the BSF Act to investigate the circumstances under which the petitioner had overstayed his leave.

8. Upon completion of the said inquiry, it was concluded that the petitioner had overstayed without sufficient cause. Consequently, upon being deemed “deserter”, the Commandant of 193 Bn BSF issued an “apprehension roll” to the Superintendent of Police⁶, Gorakhpur, requesting that the petitioner be apprehended immediately and to inform the concerned unit accordingly.

9. However, since the petitioner could not be apprehended, his trial was considered impracticable. Accordingly, a Show Cause Notice⁷ dated 07.10.2022, as per Rule 22(2) of the BSF Rules, 1969⁸,

⁴ “BSF Act” hereinafter

⁵ “COI” hereinafter

⁶ “SP” hereinafter

⁷ “SCN”, hereinafter.

⁸ “BSF Rules” hereinafter



proposing petitioner's dismissal from service was issued with a copy forwarded to the SP, Gorakhpur.

10. The Commandant, 193 Bn BSF, having been satisfied that the petitioner's trial was impracticable and that his further retention in service was not desirable, exercised the powers as under Section 11(2) of the BSF Act to dismiss the petitioner from service w.e.f. 22.11.2022.

11. Thereafter, on 24.11.2022, upon being declared medically fit to rejoin his duty, as attested by the CMO, the petitioner reported to his base office to resume duties on 26.11.2022. However, he was denied entry and informed that his services had already been dismissed w.e.f. 22.11.2022.

12. It is the case of the petitioner that he only became aware of the SCN dated 07.10.2022 in relation to his alleged unauthorized absence in first week of December 2022. It is also pointed out that the SCN indicates that it came to be processed on 01.12.2022 and was served to the petitioner only on 17.12.2022.

13. In response to his dismissal, the petitioner thereafter, submitted a handwritten representation on 15.12.2022, challenging his dismissal from service and citing his ill-health as the reason for non-joining. Having received no response, another representation was submitted on



06.03.2023 to the Inspector General⁹, BSF. Both the aforesaid representations were rejected *vide* communication dated 02.06.2023, primarily on the ground that the petitioner had failed to satisfactorily explain his non-appearance for 113 days.

14. Aggrieved by the dismissal order dated 22.11.2022 and subsequent rejection of representation *vide* communication dated 02.06.2023, the petitioner has approached this Court by way of the present writ petition for redressal.

15. Dr. Amit George, learned Counsel for the petitioner submits that the respondents violated the fundamental principles of natural justice as the SCN was only received by the petitioner in the first week of December 2022, although his dismissal had already been given effect from 22.11.2022. Thus, according to him, there was no opportunity of hearing granted to him nor the respondent ever thought of giving him a right to hearing as even before the issuance of SCN, the case had been already decided against him, which infringes the basic tenets of Articles 14 and 21 of the Constitution of India.

16. Further, it was emphasized that the doctor who diagnosed the petitioner was a duly qualified medical practitioner, and hence, there was no reason for the respondents to disregard the validity of the said certificates. It is submitted that the order rejecting the representation dated 02.06.2023 wrongly records that the treating doctor was not registered with the Medical Council of India, even though he holds the



requisite MBBS and MD qualifications and that the medical certificate issued was duly attested by the CMO.

17. The learned Counsel further contends that the IG, Police, despite the petitioner's repeated representations, neither afforded him a hearing nor duly considered the medical documents submitted.

18. Learned Counsel also submits that the writ petition has been contested by the respondents on allegations of indiscipline and past overstay. However, it is submitted that the earlier overstay had no bearing on the petitioner's dismissal and was not considered in the impugned dismissal order dated 22.11.2022.

19. Learned Counsel further submits that the respondents' reliance on letters dated 08.08.2022, 14.08.2022, and 23.08.2022 is misplaced, as none of these communications were ever served upon or received by the petitioner, and no proof of service or postal receipts have been produced on record.

20. *Per Contra*, Mr. Vivek Sharma, learned SPC, submits that the petitioner has consistently exhibited a casual and undisciplined attitude during the entirety of his service in the BSF. Reliance is placed on his service record which reflects multiple instances of misconduct for which he was awarded punishments at earlier instances. It is further pointed out that, even prior to the present incident, disciplinary proceedings had been contemplated against him for an earlier unauthorized overstay of 90 days from 19.02.2022 to



18.05.2022 and as such according to him, the petitioner did not deserve any indulgence by this Court.

21. Having considered the rival submissions and perused the material placed on record, it is an undisputed and admitted fact that the petitioner overstayed the leave granted to him by the respondents. In consequence, the respondents, *vide* impugned order dated 22.11.2022, dismissed the petitioner from service.

22. In view of the aforesaid, the primary issue for determination is whether the petitioner's dismissal violates the principles of natural justice and the provisions of the BSF Act and Rules, as no opportunity of being heard was provided to the petitioner.

23. Rule 173 of BSF Rules prescribes the procedure for holding a COI. Under Rule 173(8), it is mandated that a COI cannot form an adverse opinion against the officer concerned without first giving him an opportunity to know the statements against him, cross-examine witnesses, and present his own evidence or statement in defense.

24. Further, Rule 22 of the BSF Rules governs the dismissal or removal of persons other than officers on grounds of misconduct and mandates that such individuals be given an opportunity to show cause. Under Rule 22(2), the competent authority must first examine the reports of alleged misconduct. If it finds that a trial is "inexpedient" or "impracticable" and the individual's further retention is undesirable, it must supply such person with all adverse material and afford him due



opportunity to submit a written explanation and enter into defence.

Rule 22 reads thus:

“22. Dismissal or removal of persons other than officers on account of mis-conduct –

(2) When after considering the reports on the mis-conduct of the person concerned, the competent authority is satisfied that the trial of such a person is inexpedient or impracticable, but, is of the opinion that his further retention in the service is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the competent authority may withhold from disclosure any such report or portion thereof, if, in his opinion its disclosure is not in the public interest.”

25. It is pertinent to note that the dismissal of the petitioner herein is stigmatic in nature, as opposed to a *simpliciter* dismissal, thereby necessitating a fair opportunity to be heard before any adverse action is undertaken against him.

26. Needless to say, *audi alteram partem* is an essential facet of a fair and just hearing, which is imbibed in all state actions involving employment. The doctrine ensures that no person is subjected to any adverse or punitive action without first being afforded an opportunity of being heard. An essential component of fair hearing is the requirement of prior notice to be issued to the person concerned. Once such notice is duly served, the law presumes that the individual has been afforded a reasonable and adequate opportunity to appear and participate in the proceedings instituted against such person.



27. In *Dharampal Satyapal Limited vs. Deputy Commissioner of Central¹⁰*, the Hon'ble Supreme Court, while determining the genesis behind giving the notice, opined that principle of natural justice serves as a fundamental restraint on judicial, quasi-judicial, and administrative actions that may infringe upon an individual's rights. *Audi alteram partem* requires that no person should face adverse action without being afforded an effective opportunity to be heard. For such a hearing to be meaningful and fair, the person must firstly be informed of the allegations against him and must be afforded a reasonable chance to present his defense. Though the said decision did not pertain to the BSF Act and Rules thereunder, it is a trite position that the principles enshrined above are well-prevalent across all spheres of the law, to uphold and protect rule of law and fairness, and these principles equally extend to uniformed officers in all administrative actions.

28. In the present case, upon perusal of the record, it reveals that the SCN was issued on 07.10.2022. An examination of this SCN brings out that it was processed by *Pradhan Lipik* (Head Clerk) on 01.12.2022 and thereafter served on the petitioner on 17.12.2022, i.e., well after the petitioner was dismissed *vide* impugned order dated 22.11.2022.

29. Thus, the petitioner was neither served the SCN before his dismissal nor was he afforded an opportunity to present an effective defense to justify his overstayed leave. Further, there is nothing on



record to suggest that the petitioner was afforded due opportunity to take part in the COI proceedings. In our considered view, such an action is nothing short of being arbitrary and thus is squarely inconsistent with the principles of natural justice, including the right to a fair hearing.

30. In light of the above, the action of the competent authority of dismissing the petitioner from service, without affording him a fair opportunity to be heard, is in stark violation of the principles of natural justice and is in breach of Rule 22 of the BSF Rules.

31. Reliance placed by learned SPC on the petitioner's previous instances of overstay and earlier punishments in that regard, is of no consequence, as the dismissal order dated 22.11.2022 was neither founded on any such prior misconduct nor was this aspect taken into consideration while issuing the impugned dismissal order dated 22.11.2022.

32. For all the aforesaid reasons, the writ petition is allowed.

33. The order of termination of the dismissal of the petitioner from service is quashed and set aside.

34. The petitioner would be entitled to be reinstated in service w.e.f. the date when he was dismissed along with continuity of service, fixation of pay and seniority.

35. However, due to the principle of "no work, no pay", he would not be entitled to any back wages for the period that he did not serve



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in the BSF.

OM PRAKASH SHUKLA, J

C. HARI SHANKAR, J

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