

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5790 of 2020

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Ghanshyam Kumar S/o Shri Bulan Lal Deo Resident of Village- Turki, PS-
Baheri, District- Darbhanga.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.
2. D.G. of B.S.F., B.S.F. Head Quarter New Delhi.
3. I.G., B.S.F. Ftr. Head Quarter Tripura.
4. Commandant 31 B.N., B.S.F. Bagafa, Tripura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ebrahim Kabir, Adv. Mr. Shruti Sinha, Adv.
For the Respondent/s	:	Mr. Ram Anurag Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 09-07-2026

Heard the parties.

2. The petitioner has invoked the prerogative writ jurisdiction of this Court seeking quashing of the Order bearing No. ESTT/31BN/OSL-GK/2018 9732-45 dated 25.05.2018 issued by the Commandant 31 B.N., B.S.F. Bagafa, Tripura whereby the petitioner has been dismissed from service with effect from 25.03.2018 for unauthorized absence with effect from 11.12.2017 to 25.05.2018, by treating the period; "Dies Non" for all purpose. The challenge has also been made to the Order bearing No. IGA/Estt-IV/Re-Inst/GK-31BN/2018/11814-20 dated 27.09.2018 passed by the I.G., B.S.F. HQ Tripura Frontier



B.S.F. Salbagam, Tripura whereby the appeal preferred by the petitioner also came to be rejected. The Order No. IGA/Estt-IV/Re-Inst/GK-31BN/2018/15321-25 dated 10.12.2018 issued by the D.I.G./P.S.O. for IG, BSF Ftr. HQ Tripura, whereby the representation of the petitioner filed before the DG, BSF has also been rejected observing no new issues has been raised.

3. The brief facts of this case, as narrated in the writ petition are that the petitioner joined service as Constable/GD in BSF in the month of May, 2015; while serving as 31st Battalion BSF, he was granted 15 days casual leave with effect from 20.11.2017 to 10.12.2017. Upon expiry of the aforementioned period, the petitioner had to resume duty on 10.12.2017. But unfortunately, in the meanwhile, his son, namely, Priyanshu, who was aged about one year got seriously ill and during the course of treatment he died on 14.05.2018. It has further been submitted that, in the meanwhile, the mother of the petitioner also fallen ill and she also died on 26.06.2018. On account of the aforesaid reason, the petitioner went in depression and could not inform the authorities regarding unfortunate incidence. However, when the special representative was sent to his home, the petitioner vide Letter dated 24.03.2018 informed the department about all the unfortunate incident.



4. On account of the aforesaid reason of unauthorized absence, the commandant 31st BN BSF issued show-cause notice seeking his response for overstaying leave for 166 days; on being dissatisfied with his response, dismissed the petitioner from his service by treating the period; "Dies Non". The copy of the order of dismissal was communicated to the petitioner at his native place in Darbhanga. On receipt of the dismissal order, the petitioner preferred appeal before the I.G., B.S.F., which also came to be rejected. The last representation also met with the same fate, as stated hereinabove.

5. Learned Advocate for the petitioner while assailing the impugned order adverting the facts, noted hereinabove, submitted that since the son of the petitioner was seriously ill and subsequently died, and further his mother also left for heavenly abode, immediate to the death of his son, the petitioner had a reasonable excuse not to resume his duty. Moreover, prior to the death of his son and mother, his wife has also died on account of serious illness and, as such, he was passing through his worst and stressful days. Irrespective of all these unfortunate incidence, the petitioner has shown his willingness to join the service and serve the nation, but his earnest prayer has been turned down in a most arbitrary manner, by treating his case as



willful negligence and planned unauthorized absence. It is further contended that the impugned order of dismissal is quite disproportionate to the charges for unauthorized absence of 166 days.

6. On the other hand, learned Advocate for the Union of India Mr. Ram Anurag Singh made a preliminary objection with regard to maintainability of the writ petition and submitted that all the incidence right from the issuance of the show-cause notice till the dismissal and rejection of appeal, have taken place in the State of Tripura and thus, in no circumstances, the present writ petition is maintainable before this Court.

7. To support the aforesaid contention, heavy reliance has been placed on a decision rendered by this Court in case of *Ashutosh Ranjan Vs. Union of India through Director General CISF & Ors., (2022) 3 BLJ 413*. Further reliance has also been placed on a Bench decision of this Court in *Rajnish Kumar Vs. The Union of India & Ors., CWJC No. 7142 of 2026*. Referring to the decisions aforementioned, he vehemently submits that since no cause of action has arisen in the State of Bihar, therefore, in any of the circumstances, the writ petition ought not to be entertained.

8. While addressing on the merit of the writ petition,



learned Advocate for the Union of India further drew the attention of this Court to paragraph no. 11 of the counter affidavit and submitted that in a short span of three years of service, the petitioner had earned two major punishments on the charge of “Absenting without Leave” and “Overstayed from Leave”, respectively. The petitioner is a habitual absentee and before passing the order of dismissal, his past conduct was also taken into consideration. The petitioner has been given proper opportunity of hearing and after consideration of his show-cause, the impugned order of dismissal has been passed. The unauthorized absence of a personnel in a disciplined force is nothing but a grave misconduct, for which the punishment of dismissal is proportionate to the charges.

9. This Court has heard the learned Advocate for the respective parties and perused the materials available on record. Before parting with the case, this Court deems it apt and proper to begin with the maintainability of the writ petition. It need not require any clarification that the High Court can issue a writ even when the person or the authority against whom the writ is issued, located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction, in terms with the mandate of the Article 226 (2) of



the Constitution of India, which is extracted hereinbelow:-

226.Power of High Courts to issue certain writs.—(1) *Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.”

10. So far the expression cause of action for the purpose of invoking the jurisdiction under Article 226 (2) of the Constitution of India is concerned, this Court while considering the identical matter in the case of ***Navneet Kumar Yadav Vs. Union of India & Ors., CWJC No. 9942 of 2020***, this Court has considered numbers of decisions on the point of territorial jurisdiction, including the decision passed by the Hon'ble Supreme Court in the case of ***Nawal Kishore Sharma Vs.***



Union of India & Ors., (2014) 9 SCC 329; Oil and Natural Gas Commission Vs. Utpal Kumar Basu & Ors., (1994) 4 SCC 711; Union of India & Ors. Vs. Adani Exports Ltd & Anr., (2002) 1 SCC 567; Kusum Ingots and Alloy Ltd. Vs. Union of India & Anr., (2004) 6 SCC 254; as also the judgment rendered in the case of *Om Prakash Srivastava Vs. Union of India & Anr., (2006) 6 SCC 207*, where the Court reinforced the legal position that the question of cause of action arising within the territorial limits either wholly or in part for filing a writ has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has *prima facie* either been infringed or is threatened to be infringed by the respondent within the jurisdiction and such infringement may take place by causing him actual injury or threat thereof.

11. So far the judgment in the case of *Ashutosh Ranjan* (supra) is concerned, the petitioner was working in Assam with CISF and he was subjected to disciplinary proceeding, which culminated with the dismissal from service and it was confirmed by the Appellate and Revisional Authority, who was stationed at Assam and Kolkata, respectively. The



petitioner in the said case had been claiming territorial jurisdiction only because the service of dismissal order was sent in his native place situated in the State of Bihar. However, the Court rejected the contention of the petitioner by holding that mere correspondence does not even constitute any partial cause of action. Further in the case of **Rajnish Kumar** (supra), the learned Single Judge placing reliance upon the decision in **Ashutosh Ranjan** (supra) has rejected the writ petition; on being found that no cause of action has arisen before the High Court of Judicature at Patna since the proceeding ended in termination of the petitioner as well as appellate order were passed by the authorities in the State of Chattisgarh.

12. In the light of the aforesaid settled legal position, now we come to the merit of this case as to whether any cause of action has arisen within the territorial jurisdiction of this Court. From the materials available on record as well as the counter affidavit filed on behalf of the respondent Union of India, the facts are admitted to the extent that while the petitioner was at his native place of Darbhanga within the State of Bihar and was completely engaged in treatment of his son, a special representative of the Unit along with show-cause notice issued vide Letter No. Estt/31Bn/SC-Notice/OR/2018/4824-26



dated 15.03.2018 has been sent to the home address of the petitioner to ascertain the reasons for his unauthorized absence from duty and on receipt of such show-cause notice, the petitioner has submitted all the written statement relating to the treatment of his son, as his son was seriously ill and after due care, he would join his duty. While the petitioner was in his native place, he was served with the show-cause notice against the proposed dismissal from service, which was replied by the petitioner and finally the order of dismissal came to be passed, which was duly communicated to the petitioner at his native place.

13. However, it is the contention of the learned Advocate for the Union of India that the petitioner has never responded to the show-cause.

14. As the Court, time without number, has observed that cause of action means right to sue and it has been judicially interpreted to mean that every fact which would be necessary for plaintiff to prove, if traversed, in order to support his right to judgment of Court, in the totality of the circumstances, this Court finds that the aforesaid facts are sufficient enough to constitute a part cause of action for which writ can be maintained. Moreover, the finding given hereinabove to support



the maintainability of writ petition to get strengthened for the reason that the writ petition was filed long back in the year 2020 and now the pleadings are complete and after six years, relegating the petitioner to approach before the High Court of Guwahati would cause further prejudice to the petitioner, besides travesty of justice. Thus, in such circumstances, the preliminary objection raised by the respondent Union of India is turned down.

15. Now coming to the legality of the order of dismissal, which has been passed on account of unauthorized absence from 11.12.2017 to 25.05.2018, which period has been treated as “Dies Non” for all purposes *prima facie* appears to be disproportionate to the charges of unauthorized absence for the aforesaid period, for the reason that the petitioner after taking proper leave went to the native place, where his son was suffering from serious illness, who later on died and so thereafter, his mother also died and thus, in such circumstances, he was compelled to stay there; hence, the case of the petitioner should be deserved to be considered sympathetically by treating it as an unauthorized leave in an extraordinary facts and circumstances.

16. An identical matter has also came up for



consideration before the learned Division Bench of this Court in case of ***Sumit Kumar @ Sumit Kumar Tiwary Vs. The Union of India & Ors., (LPA No. 617 of 2019)***, where the Constable of Central Reserve Police Force overstayed for 196 days on account of treatment of his mother, who was suffering from cancer, but his plea was not accepted and the documents submitted by him have not been taken into account either by any of the respondent authorities or by the learned Single Judge. The learned Division Bench on being found the order of dismissal disproportionate, set-aside the order of the learned Single Judge as well as the order of the punishment passed by the disciplinary authority and the appellate revisional order by holding as follows:-

“Keeping in view all the facts and circumstances of the case, we are very much conscious of the fact that absence of the appellant from duty cannot be equated with the person who is said to be unauthorized absence from his duty. On the said score, dismissal of appellant from service is totally disproportionate to the conduct committed by the appellant. For the end of justice, we have to take sympathetic approach towards the appellant in the given facts and circumstances of the case that appellant has reason to leave the place of posting.”



17. In view of the aforesaid facts and circumstances and the position obtaining in law, this Court finds substance in the writ petition. Accordingly, the impugned order of dismissal contained in Order No. ESTT/31BN/OSL-GK/2018 9732-45 dated 25.05.2018 is hereby set-aside. On account of setting-aside the dismissal order, the order passed by the first appellate authority as well as the order passed by the D.G., B.S.F., also stood set-aside.

18. The matter is relegated to the respondent no. 4 to consider the claim of the petitioner afresh and pass an appropriate order, in accordance with law, taking into consideration the unfortunate mishappenings that occurred with the petitioner, due to which he could not resume his duty and compelled to remain away from the service for a period of 166 days.

19. With the aforesaid observations and directions, the present writ petition stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.07.2026
Transmission Date	NA

