

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 12398 of 2023

Sudhan Mondal
Vs.
The Union of India & Ors.

For the writ petitioner	:-	Mr. Ziaul Islam, Adv.
For the Union of India	:-	Mr. Amal Kumar Datta, Adv.
Heard on	:-	24.03.2026
Judgment on	:-	08.04.2026

Amrita Sinha, J.:-

1. The petition is a member of the Border Security Force (BSF). He is aggrieved by the order dated 24th December, 2022 passed by the Commandant of his battalion under Section 19 (b) of the Border Security Force Act, 1968 holding him guilty for unauthorized absence of thirty-seven days with effect from 1st November, 2022 to 7th December, 2022 and imposed the punishment of 'reprimand'. The period of absence was treated as *dies non*. The break in service was, however, condoned for the purpose of counting past service for pension.
2. The petitioner is aggrieved by the punishment imposed upon him. He submits that punishment was imposed without considering the

explanation provided by him for not being able to report to duty because of medical emergency. The petitioner has annexed documents to the writ petition in support of the submission that he had to undergo operation of his gall bladder for which he was advised rest after the surgery.

3. According to the petitioner, the respondent authority acted in an inhuman manner and failed to consider the medical documents relied upon by him and passed order mechanically reprimanding him which is illegal and arbitrary.
4. Prayer has been made to set aside the impugned order of punishment.
5. Submission of the petitioner is opposed by the respondents. It has been submitted that the petitioner failed to provide any valid cause or reasonable explanation for remaining absent and overstaying his period of leave. The authority considered the prayer of the petitioner and imposed the punishment of reprimand. His absence was not considered as break in service and the same has been condoned.
6. It has been contended that the authority acted strictly in terms of the Act and the corresponding Rules. The punishment has been imposed for maintaining discipline in the Force. The Court ought not to interfere with the same or else it will be difficult for the authority to maintain proper National Security System of the country.
7. The respondents deny any illegality or arbitrariness on the part of the authority and pray for dismissal of the writ petition.

8. I have heard and considered the submissions made on behalf of both the parties and have perused the materials on record.
9. Initially a point of non-maintainability of the writ petition before this Court on account of lack of territorial jurisdiction was taken by the respondents. The writ petition was dismissed by the learned single Judge by a judgment dated 7th October, 2024. In MAT 135 of 2025 (IA No. CAN 2 of 2025) preferred by the petitioner the Hon'ble Division Bench, vide judgment dated 25th August, 2025, was pleased to set aside the judgment of the learned single Judge and was pleased to restore the writ petition to its original file and number with a direction to the learned single Judge to decide the same on merits.
10. The only point for consideration at this stage is whether the authority considered the explanation provided by the petitioner for remaining absent in a proper manner. The quantum of punishment depends upon the severity of the offence committed by the incumbent. For ascertaining the severity, the explanation provided by the offender ought to be considered properly so that the incumbent does not feel prejudiced and sense injustice being committed to him.
11. The respondent authority, in support of the punishment, has relied upon a report affirmed by the Deputy Inspector General wherefrom it appears that the petitioner was sanctioned twenty-eight days earned leave with effect from 4th October, 2022 to 31st October, 2022. He was to report back for duty on 31st October, 2022 in the afternoon. The

petitioner failed to do so. He was directed to re-join his duty by a communication dated 8th November, 2022.

12. On 23rd November, 2022 the battalion received an application from the petitioner dated 16th November, 2022 giving medical reason for not reporting to duty on time. He also prayed for extension of his leave period. No specific period required for leave was, however, mentioned by him. The petitioner was directed by a communication dated 6th December, 2022 to intimate the number of days for which the leave was sought to be extended.
13. By an application dated 2nd December, 2022 the petitioner requested for extension of leave up to 8th December, 2022. He reported on 8th December, 2022 after overstaying his leave period for thirty-seven days.
14. The issue of overstaying of leave was heard by the Commandant on 24th December, 2022 and the submission of the petitioner was recorded. The medical documents relied upon by the petitioner was considered wherefrom it appeared that the petitioner was operated for laparoscopic cholecystectomy on 12th November, 2022 in Kolkata and he was discharged on 14th November, 2022 advising rest until further advise. He could not produce any medical advice directing him to stay in rest any further. The petitioner was unable to explain the reason for overstaying his leave and pleaded guilty. An appeal preferred against the order of punishment stood dismissed.

15. The petitioner has annexed a doctor's prescription dated 5th December, 2022 wherein the petitioner was advised to take further rest for one week and to review the blood test reports. From the report filed by the authority it does not appear that the authority took note of the said medical prescription at the time of consideration of the case of the petitioner. Learned advocate for the petitioner specifically contends that, despite production of the prescription dated 5th December, 2022, the same was ignored by the authority.
16. The Court is not in a position to ascertain as to whether the doctor's prescription dated 5th December, 2022 was at all produced by the petitioner at the time of hearing before the Commandant or before the appellate authority. The authority, however, in the report has specifically denied that the document dated 5th December, 2022 was ever submitted by the petitioner at the time of hearing.
17. It appears that the petitioner and the Deputy Inspector General both have affirmed affidavit with contrary statements. This Court is not in a position to take evidence to verify facts. Since the disputed document is annexed to the writ petition, accordingly, the Court is minded to direct the authority to re-verify its records to find out as to whether the same was actually placed by the petitioner before the authority at the time of hearing. Otherwise also, the authority may consider as to whether production of the disputed document will make any change in the punishment that has been imposed upon the petitioner.

18. The direction for re-verification of records is passed with the idea of removing any doubt in the mind of the parties with regard to the production and consideration of the disputed medical prescription at the time of considering the case of the petitioner. A member of the Force should not harbour the feeling that all documents were not verified prior to passing the order of punishment. The authority will also get an opportunity to recheck as to whether there was any genuine reason for the petitioner to remain away from duty. Afterall, an unfit member will be a burden of the Force.
19. The authority is directed to take steps for re-verification at the earliest but positively within a period of four months from the date of communication of this order. Till the re-verification is made, the order of punishment is directed to be kept in abeyance.
20. It is made abundantly clear that the authority would be justified in passing necessary order for maintaining discipline and a sense of responsibility in the members of the Force. Any casual or indiscipline attitude in the Force ought not to be tolerated at all in view of the fact that the members of the Force are charged with the responsibility of ensuring border security and any lapse on their part may lead to cross border and other issues.
21. The writ petition stands disposed of.
22. No costs.

23. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)