

1. The order passed by the Deputy Inspector General (PSO), South Bengal Frontier, Border Security Force dated 23rd June, 2023 affirming the order of dismissal dated 4th February, 2023 passed by the disciplinary authority against the petitioner is impugned in the instant writ petition.
2. Submission of the petitioner is that the appellate authority lacked the jurisdiction to either decide or pass any order in the appeal preferred by him. Malice both in law and in fact has been pleaded. Prayer has been

made to set aside the impugned order of dismissal and the affirmation thereof and to reinstate the petitioner in service with all consequential benefits.

3. It has been submitted that the documents relied upon by the authority, especially the proceeding of the Court of Inquiry, were never supplied to the petitioner. He was not aware of the contents of the said documents. Violation of principle of natural justice has been alleged.
4. It has been contended that though the petitioner produced documents in support of not joining service immediately on completion of his leave period, the authority in hot haste passed the order of dismissal.
5. Learned advocate for the petitioner submits that the petitioner reported to duty on 4th February, 2023 as per his commitment made in writing and handed over to the representative of the authority who visited his house to enquire about his overstaying of leave, but the authority passed the order of dismissal on 4th February, 2023 itself without allowing the petitioner to re-join duty.
6. It has been submitted that the provision of Rule 22 (2) of the Border Security Force Rules, 1969 has not been complied with by the authority. It has been contended that there was no occasion on the part of the authority to invoke the aforesaid provision to initiate proceeding against him.
7. It has further been argued that without a proper finding that the petitioner wilfully absented from duty, the order of dismissal on the

ground of misconduct cannot be supported in law. It has been contended that without specific finding by the authority that the absence is wilful, the employee cannot be held guilty.

8. In support of such submission, learned advocate for the petitioner relies on the order passed by the Hon'ble Supreme Court in the matter of ***Krushnakant B. Parmar vs. Union of India & Anr.*** reported in **(2012) 3 SCC 178** wherein the Hon'ble Court held that in a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful. In the absence of such finding, the absence will not amount to misconduct.
9. According to the petitioner, as there is no finding either by the disciplinary authority or the appellate authority that the absence of the petitioner or his overstaying of leave was wilful, the same cannot be treated as misconduct and the dismissal on such ground is liable to set aside.
10. Learned advocate representing the respondents opposes the prayer of the petitioner. The affidavit filed on behalf of the respondents mentions that the petitioner took leave from 19th October, 2022 to 28th October, 2022. He was supposed to join duty in the forenoon of 29th October, 2022. The petitioner failed to report on the due date. As per procedure, three letters dated 7th November, 2022, 14th November, 2022 and 22nd November, 2022 was sent to the recorded home address of the petitioner with

direction to join duty, failing which disciplinary action will be initiated against him.

11. The petitioner neither responded to the above letters, nor sent any message giving reason for overstaying of leave. As per Section 62 of the Border Security Force Act, 1968, to conduct inquiry about his absence, an Assistant Commandant of the Unit was appointed to conduct one man Court of Inquiry. As per the remarks of the Court of Inquiry, Apprehension Roll dated 2nd December, 2022, as per Section 60 of the Act, was issued to apprehend the petitioner and the same was handed over to the nearest BSF headquarter.
12. A show cause notice dated 27th December, 2022, proposing dismissal from service, was issued to the petitioner along with a copy of the Court of Inquiry and the remarks made thereon. No response was received from the petitioner. A movement order dated 1st February, 2023, was issued in favour of another constable to proceed to the residence of the petitioner to ascertain the reason for his prolonged absence without notice or any information.
13. The constable met the petitioner on 2nd February, 2023, in his recorded home address and handed him a copy of the show cause notice and a copy of all other previous notices along with a copy of the Court of Inquiry and the remarks made thereon. On that date the petitioner handed over a hand written communication to the said constable addressed to the Unit Commandant stating that he will join duty on 4th

February, 2023. The petitioner did not turn up on 4th February, 2023, nor sent any communication to the office.

14. Being satisfied that the petitioner remained absent illegally without sufficient cause since the forenoon of 29th October, 2022, and his retention in the disciplined force was undesirable, the disciplinary authority passed order of dismissal against the petitioner with effect from 4th February, 2023. The appeal preferred by the petitioner dated 11th March, 2023, against the order of dismissal, stood rejected.
15. It has been disclosed in the affidavit that prior to dismissal from service, several opportunities were given to the petitioner to rectify his conduct and to discipline himself. On many occasions disciplinary action was taken against him. On five occasions his overstaying of leave was regularized. He was imposed punishment with fine for being absent without leave and to suffer rigorous imprisonment in Force custody thrice for overstaying leave.
16. After dismissal from service, the petitioner applied for reinstatement on 3rd April, 2023. A brief history of his case mentioning the good and the bad entries with remarks of the Unit Commandant were forwarded to the frontier headquarters seeking advice. The Inspector General, Border Security Force, after careful consideration of all the records, rejected the prayer of the petitioner.

17. According to the respondents, the petitioner does not have good antecedent and he is a habitual offender. His service is not desirable in the disciplined Force.
18. It has been submitted that the authority acted strictly in accordance with the Act and the corresponding Rules to dismiss the petitioner from service and prayer has been made not to interfere with the order of dismissal.
19. I have heard and considered the rival submissions made on behalf of both the parties and perused the materials placed before this Court.
20. The service of the petitioner has been terminated by invoking Rule 22 (2) of the Rules, 1969 which deals with dismissal or removal on account of misconduct. The petitioner was found absenting from duty by overstaying his leave period without any prior intimation or notice. As many as three opportunities were given to the petitioner to report to duty. He failed to respond to any of the notices issued to him.
21. The authority even sent a representative to his recorded home address to ascertain as to why he did not report to duty. The petitioner disclosed by way of a hand written communication addressed to the Commandant that he would return on 4th February, 2023. Despite such intimation, the petitioner did not revert to report for duty on the said date. It was only then that the authority took a decision to dismiss him from service.
22. The petitioner has averred in the writ petition that he went to join his battalion on 4th February, 2023 as promised, but he was not allowed to

resume duty. There is no proof in support of such averment of the petitioner. The aforesaid statement of the petitioner has been specifically controverted by the respondents. The consistent stand of the respondents is that the petitioner neither joined duty on 4th February, 2023, nor sent any communication or reply to any of the notices issued to him explaining the reason for not attending duty and remaining absent without any reasonable cause.

23. The very first communication made by the petitioner after his dismissal is dated 11th March, 2023 by which he prayed for reinstatement in service. The petitioner has averred that he received the order of dismissal dated 4th February, 2023, on 10th February, 2023 by post. The petitioner waited for more than a month to seek reinstatement. The conduct of the petitioner suggests that he did not take any steps for the entire month from 10th February, 2023 till 11th March, 2023.
24. The petitioner ought to know that he is serving in a disciplined Force. Any type of indiscipline or misconduct cannot be expected to be tolerated while serving in the Force. The Border Security Force has the responsibility to ensure security of the citizens of this country at the borders. It has the solemn duty to prevent trans-border crime, smuggling and unauthorized entry into and exit from the Indian Territory. The members of the Force are to maintain a definite style of functioning and there cannot be any laxity in the same.

25. From the performance of the petitioner as detailed in the affidavit of the respondents, it is clear that on repeated occasions the petitioner overstayed his leave. The authority regularized such leave at least on five occasions. He was also imposed punishment for being absent from work without any sanctioned leave. He even paid fine for his absence. He was also awarded punishment to suffer rigorous imprisonment for ten days on 12th October, 2000 for remaining absent without any cause for 105 days and suffered further rigorous imprisonment for fourteen days on 14th June, 2021 for overstaying of leave without sufficient cause for total 108 days.
26. The figures mentioned herein above clearly depict that the petitioner was not committed to his duty. He frequently and abruptly absented himself from work without sanction and without any information. The members of the Force are always assigned a specific duty. If a member suddenly absents himself from duty without any reasonable cause, then it becomes very difficult for the superior officer to regulate the members of the Force. If leniency and sympathy is shown to a particular member of the Force, then maintaining strict discipline amongst other members of the Force will become a challenge.
27. It is common knowledge that the members of the Force are required to remain very alert and attentive in their duties. It is absolutely not expected that any member of the Force will behave in such an indisciplined manner. The same amounts to misconduct. After perusing the records of the case of the petitioner, the authority came to a

conclusive finding that the service of the petitioner in the Force is undesirable.

28. It does not appear that the authority acted with any malice either in law or in fact as alleged by the petitioner. Reasonable opportunity of hearing was given to the petitioner in his defence. It does not appear that there has been violation in the principle of natural justice in the disciplinary proceeding initiated against him. Though it has been submitted that all documents in respect of the subject proceeding was not provided to the petitioner but, surprisingly, the said non supply of document(s) was never reported to the authority. There is no communication from the end of the petitioner praying for supply of any document at any point of time.
29. The submission of the petitioner that the authority acted in hot haste also cannot be accepted. The petitioner himself intimated the Unit Commandant that he would join on a particular date but he failed to do so. The authority had no other option but to pass necessary order after it was noticed that the petitioner did not report to duty. There was absolutely no reason to wait further for the petitioner to resume work.
30. Moreover, how long is the authority expected to wait for him to re-join? The authority is not expected to wait for eternity. The petitioner was not doing any favour to the country; he was being paid for the services rendered. A member of the Force cannot be expected to drop in and absent himself as per his own sweet will. Each member of the Force has

to act responsibly. Careless and irresponsible attitude of a member of the Force cannot be supported under any circumstances.

31. It also does not appear that either the disciplinary or the appellate authority acted without jurisdiction in passing the impugned order of dismissal or affirming the same. The authority acted in accordance with the Act and the corresponding Rules to get rid of the black sheep from the Force.
32. In *Krushnakant (supra)* the Court found that there was evidence led by the charge sheeted officer that he was prevented to sign the attendance register and to perform duty. On such finding, the Court held that the authority was required to prove that the absence was wilful. Without such finding, the absence will not amount to misconduct.
33. Such is not the case here. The petitioner was never restrained from attending his duty. On the contrary, the petitioner deliberately absented himself from work. He failed to avail the repeated opportunities given to him to rectify his conduct. He displayed total lack of dedication in his job. Such a member is a burden to the Force. The Authority decided to dismiss him from service. The Court does not find any error with the order of dismissal.
34. Hence, no order can be passed in favour of the petitioner in the instant writ petition. The writ petition fails and is hereby dismissed.
35. No costs.

36. 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.)