IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8023 OF 2022

SUNIL RANGNATH KALE
VERSUS
THE UNION OF INDIA THROUGH ITS PRINCIPAL SECRETARY AND OTHERS

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Advocate for the Petitioner : Mr. Manish P. Tripathi
Advocate for Respondents No. 1 to 3 : Mr. Rohit S. Sarvadnya

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CORAM : SACHIN S. DESHMUKH, J.

Date : 23rd October, 2026

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioner has put forth two fold challenge i.e. (i) the order dated 18.03.2022 rendered by the Commanding Officer of Battalion No. 54, Indo-Tibetan Border Police Force (ITBP), dismissing the petitioner from service as a Cook due to an unauthorized overstay and (ii) the order dated 04.05.2022 rendered by the Deputy Inspector General, ITBP, Tezpur, rejecting the appeal presented by the petitioner against dismissal.

3. The petitioner was initially appointed as a Cook on

28.08.2007 by the respondent Authorities and was posted with the 54 Battalion of the ITBP at Bhalukpong in the West Kameng district of Arunachal Pradesh. The petitioner claims to have performed the duties sincerely and to the satisfaction of Superior Authorities during the tenure.

4. The dispute began when the petitioner applied for 15 days of leave, however, was granted 10 days of earned leave from 30.10.2021 to 08.11.2021 by an order dated 29.10.2021. Following the grant of leave, the petitioner travelled to native place at Sailu in the Parbhani district of Maharashtra and was required to report back to Unit Headquarters for duty on the expiry of leave on 09.11.2021.

5. According to the petitioner, upon arrival at home, the petitioner discovered that his brother was suffering from Schizophrenia. Since the father an old age person and no other family member was available, the petitioner had to admit brother to a hospital and stay back to look after medical treatment.

6. The petitioner further states that subsequently, petitioner was also suffering with a fever and had to undergo

medical treatment from 11.12.2021 to 04.01.2022. After recovering, the petitioner attempted to travel back to place of posting and obtained railway tickets for 05.01.2022 and 08.01.2022. However, since those tickets remained on the waiting list, could not travel without a valid confirmed ticket resultantly failed to reach unit. Meanwhile, due to continuous absence without permission, the respondent Authorities initiated disciplinary proceedings against the petitioner. A Force Court was convened under Section 74 of the Indo-Tibetan Border Police Force Act 1992, declaring the petitioner a deserter by an order dated 03.01.2022. The petitioner has not received any notice or intimation regarding these proceedings from the Force Court or through the Superintendent of Police, Parbhani.

7. The respondent authorities subsequently issued a show-cause notice dated 04.02.2022 through the District Superintendent of Police, giving the petitioner 30 days to join the duties. A public notice was also issued, however, the petitioner claims he did not receive the notice and the publication did not appear in any local newspaper in Parbhani. Since the petitioner failed to join the duties, the Commanding Officer renderd the final impugned order dated 18.03.2022, dismissing the petitoner from

service under Rule 17 read with Rule 20 of the ITBP Rules 1994 for an unauthorized overstay of 130 days.

8. When the petitioner eventually reported to rejoin the unit, was denied entry due to the dismissal order. The petitioner submitted a representation dated 28.03.2022 to the Deputy Inspector General, ITBP, seeking permission to resume the duties. The respondent Authorities treated this representation as an appeal under Rule 28 of the ITBP Rules 1994. The Appellate Authority reviewed the matter, noted that the petitioner had a past record of unauthorized absences on three occasions and rejected the appeal on its merits by an order dated 04.05.2022. Aggrieved by the same, the petitioner has approached this Court

9. Mr. Tripathi, learned counsel for the petitioner submits that the orders of dismissal and rejection of appeal are erroneous, and rendered in gross violation of the principles of natural justice. The petitioner was not extended an opportunity of being heard and the proceedings were conducted without serving any notice or intimation. The learned counsel for the petitioner further submitted that the respondent authorities failed to consider that the petitioner's overstay of leave was not willful and compelled by

circumstances those were unavoidable, domestic and medically critical.

10. The learned counsel for the petitioner further submits that the overstay was prolonged since the petitioner was suffering from a fever, requiring medical treatment from 11.12.2021 to 04.01.2022. The petitioner never intended to desert the service.

11. The learned counsel further submits that the petitioner has rendered nearly 15 years of satisfactory service to the nation since the appointment in the year 2007. The drastic punishment of dismissal from service for a temporary absence is shockingly disproportionate. The counsel further submits that the appellate authority wrongly placed reliance on overstays to reject the appeal, ignoring that the petitioner's explanations for those past instances had already been accepted by the department at the relevant time. As such, the counsel submits that the impugned orders deserve to be set aside, and the petitioner should be reinstated with continuity of service.

12. In support of the contentions, the learned counsel for the petitioner has placed reliance upon the following judgments :-

(a) **Nawal Kishore Sharma Vs. Union of India [(2014)9 SCC 329]**

(b) **Shri. Pankaj Panwar Vs. Lalit Kala Academy and Ors. [(2014) SCC OnLine Cal. 14154]**

(c) **Sarwajeet Singh Vs. Union of India [(2015) SCC OnLine Raj. 8110]**

(d) **Bakshis Ahemad Vs. Union of India (AIR 2026 SC 2818)**

13. Mr. Sarwadnya, learned counsel for the respondents, raises a preliminary objection regarding the maintainability of the petition contending that this Court lacks the territorial jurisdiction to entertain the matter. The petitioner was appointed, posted, and dismissed by Battalion No. 54, located at Bhalukpong, District West Kameng, Arunachal Pradesh. Furthermore, the appeal was decided and rejected by the Deputy Inspector General, ITBP, at Tezpur, Assam. The learned counsel submits that since the seat of the respondent authorities, the issuance of the orders and the cause of action arose beyond the territorial limits of this Court, the mere fact that the petitioner resides in Parbhani or received the orders at native place in Maharashtra does not vest the jurisdiction with this Court.

14. The learned counsel for the respondents further submits the petitioner was granted a specific period of leave from 30.10.2021 to 08.11.2021 and was required to report back to the Unit on 09.11.2021. The petitioner chose to remain absent without any information to superiors, leading to willful overstay of 130 days. The learned counsel further submits that the department followed the procedure prescribed under the Indo-Tibetan Border Police Force Act, 1992, and the Rules of 1994. When the petitioner failed to report for duty, various communications, including email messages and office memorandums dated 17.11.2021 and 24.11.2021, were sent directing the petitioner to report the duties.

15. The learned counsel submits that apart from the above, the letter was served to the Superintendent of Police, Parbhani, on 10.12.2021 to trace the petitioner and a show-cause notice dated 04.02.2022 was published in the prominent newspapers. Since the petitioner did not avail all the opportunities, the Authorities had to proceed to declare the petitioner a deserter.

16. The learned counsel submits that the petitioner in past also remained absent without leave on three occasions. The counsel submits that the punishment of dismissal is justified,

proportionate to the gravity of indiscipline, and the writ petition deserves to be dismissed.

17. In support of the contentions, the learned counsel for respondents placed reliance upon the following judgments :-

(a) **Sachin Chhotu Pawar Vs. The Collector Raigad and Ors. (Writ Petition No. 3719 of 2019) delivered by this Court on 15.05.2020**

(b) **Kusum Ingots and Alloys Ltd. Vs. Union of India and Anr. [(2004)6 SCC 254]**

18. Upon hearing the learned counsel for litigating sides and perusing the material on record, the following issues fall for consideration before this Court :

(I) Whether this Court has the territorial jurisdiction to entertain and decide the present writ petition ?

(II) Whether the impugned order of dismissal dated 18.03.2022 and the appellate order dated 04.05.2022 were rendered in violation of the principles of natural justice and the statutory procedures prescribed under the Indo-Tibetan Border Police Force Act, 1992, and the Rules of 1994 ?

(III) Whether the petitioner's overstay of leave for 130 days can be regarded willful abandonment of duty ?

(IV) Whether the punishment of dismissal from service inflicted upon the petitioner is shockingly disproportionate to the gravity of the alleged misconduct of unauthorized absence, taking into account his near 15 years of total service tenure ?

As to Issue No. 1 :

19. The learned counsel for respondents submitted that since the petitioner was posted in Arunachal Pradesh and the impugned orders were passed in Arunachal Pradesh and Assam, this Court does not have the jurisdiction to entertain the petition.

20. At this juncture, the reference must be made to Article 226(2) of the Constitution of India, which provides that a High Court can exercise jurisdiction if the cause of action arises, wholly or in part, within its territorial limits. The expression "cause of action" signifies the bundle of essential facts which the petitioner must prove to sustain the claim.

21. The Hon'ble Apex Court in the case of **Bakshis Ahemad Vs. Union of India (supra)** observed as under :-

> *"32. What then are the available fora exercising writ jurisdiction under Article 226, which the appellant could have approached for relief in light of clause (2) thereof?*

> *33. First and foremost, the High Court at Calcutta since the SCN and the order terminating the appellant's service were issued from Narayanpur, District Malda, West Bengal; secondly, the High Court for the Union Territory of Jammu & Kashmir and Ladakh, since it is within the said high court's jurisdiction that the appellant's petition under Rule 28A, BSF Rules came to be rejected; and thirdly, the Allahabad High Court's writ jurisdiction could have also been invoked by the appellant since he married the lady in Kushinagar, District Kushinagar, Uttar Pradesh, without prior permission of the competent authority and despite subsistence of his first marriage, which formed the basic ingredient of the charge of misconduct. All these high courts are empowered to grant adequate relief, if at all satisfied that a strong case on merits has been set up.*
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> *37. In our considered opinion, the doctrine of forum non conveniens has been misapplied by the Division Bench in the context of writ jurisdiction referable to Article 226 of the Constitution. Such article permits filing of a writ petition as per situs of office of the respondent(s) [clause (1)] and cause of action [clause (2)] which gives the right of action. Where the question of pursuing a constitutional remedy is involved and invocation of writ jurisdiction is traceable to clause (1) of Article 226, the doctrine of forum non conveniens may rarely apply. When a writ of or in the nature of Certiorari is prayed, Rule Nisi requires the records of the case to be placed before the Court for examining whether the order under challenge, which is part of the records, deserves to be quashed or not by a writ of or in the nature of Certiorari. Such records would invariably be available in the offices of the respondents28; if not, it can readily be called for from the custodian thereof. A suitor having himself chosen the forum convenient to the respondents, application of the doctrine of forum non conveniens could be self-defeating and likely to deny access to justice rather than advancing it."*

22. In the present case, the petitioner is a permanent resident of Sailu, District Parbhani, Maharashtra and was granted

leave to visit the native place, which lies entirely within the jurisdiction of this Court. The domestic crises which prevented the petitioner from returning to duty, occurred at the native place within the State of Maharashtra. The effects of dismissal are eventually suffered at the place of permanent residence.

23. It is a well-settled legal proposition that the service of a dismissal order constitutes an integral part of the cause of action, as the termination becomes effective against the employee upon communication. Since a material part of the cause of action arose within the territorial limits of the State of Maharashtra, the preliminary objection raised by the respondents, in view of the above and verdict of the Hon'ble Apex Court in the case of **Bakshis Ahemad (supra),** objection does not warrant consideration.

As to Issue No. 2 :

24. Perusal of record reveals that the respondent Authorities initiated proceedings to declare the petitioner a deserter on 03.01.2022 and subsequently issued a show-cause notice on 04.02.2022. However, there is nothing on record to indicate that these memo / notices were served upon the petitioner. The respondents primarily relied on a paper publication, however, failed

to demonstrate that the notice was actually published in a local, circulated Marathi newspaper in the Parbhani district where the petitioner resides, in any case, in matters involving the extreme punishment of termination, a mere compliance or service through distant publications cannot substitute actual or personal notice.

25. The Force Court and the disciplinary authority proceeded without ensuring an adequate and sufficient opportunity of being heard to the petitioner. This results in violation of the principles of natural justice, which vitiates the order of dismissal dated 18.03.2022.

As to Issue No. 3 :

26. The petitioner has placed on record medical evidence indicating that real brother Ganesh Kale was suffering from a severe case of schizophrenia. Since the petitioner's father an age old person was suffering from ailment, the petitioner was the only capable member available to look after brother's treatment and hospitalisation which forced the petitioner to remain at the native place.

27. Furthermore, the petitioner suffered with a fever from 11.12.2021 to 04.01.2022. The bona fide intention of the petitioner

to join duty is established by the fact that booking of railway tickets for 05.01.2022 and 08.01.2022 immediately upon recovery, which unfortunately remained on the waiting list. In any case, the petitioner eventually traveled to the Unit Headquarters to resume the duties. Therefore, in view of aforesaid peculiar circumstances, the overstay cannot be termed a willful or intentional, however, was the result of a series of unavoidable and compelling circumstances.

As to Issue No. 4 :

28. Upon a perusal of the service record of the petitioner, the petitioner was appointed as a Cook on 28.08.2007 and had continuously served the respondent organization for nearly 15 years till the date of order of dismissal. A service spanning a decade and a half cannot be wiped out casually without evaluating the contribution of the employee.

29. The learned counsel for respondents relied upon the history of the petitioner submitting that the petitioner had overstayed the leave on three previous occasions. However, the record indicates that for those prior infractions, the department had already imposed appropriate minor penalties. Once those past

instances were processed and penalised by the competent authority, stood regularised and the petitioner's explanations were accepted at the relevant time.

30. While this Court does not condone unauthorized absences in a disciplined force like the Indo-Tibetan Border Police, it must distinguish between a calculated, deliberate desertion and an absence compelled by domestic distress. The bona fides of the petitioner are established by the fact that the petitioner actively attempted to secure railway tickets to join the posting immediately after recovering from fever, reported at Tezpur Camp on 30.03.2022.

31. The Hon'ble Apex Court in the case of **Ranjit Thakur Vs. Union of India [(1987)4 SCC 611]** observed as under :-

> "25. Judicial review generally speaking, is not directed against a decision, but is directed against the decision-making process. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. <u>But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience...</u>"

32. As such, the doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive domain of the Court-Martial, if the decision of the Court even as to sentence is irrational, then the sentence would be liable to be set aside. Irrationality and perversity are recognised grounds of judicial review.

33. Thus, the punishment of dismissal from the service for overstay, under such circumstances, is excessively exorbitant. Therefore, I am of the considered view that the quantum of punishment warrants interference to meet the ends of justice.

34. In view of the aforesaid findings, the Writ Petition is **allowed**.

35. The impugned order dated 18.03.2022 rendered by the respondent No. 3 dismissing the petitioner from service, as well as the appellate order dated 04.05.2022 rendered by the respondent No. 2, are quashed and set aside.

36. The respondents are directed to reinstate the petitioner into service with continuity of service within a period of six (6) weeks from today.

37. However, keeping in view the facts and circumstances of the case, the petitioner shall be entitled to full back-wages only from the date of the order of the appellate Court, i.e., 04.05.2022, till the actual date of reinstatement.

38. Rule is made **absolute** in the aforesaid terms. No order as to costs.

39. Pending civil applications, if any, also stand disposed of.

(SACHIN S. DESHMUKH, J.)

Omkar Joshi