

2026:PHHC:023656



205

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-5145-2013
DECIDED ON:04.02.2026**

JANVED SINGH

.....PETITIONER(S)

VERSUS

UNION OF INDIA AND OTHERS

.....RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Aryan Singh, Advocate
for the petitioner

Ms. Puneeta Sethi, Sr. Panel counsel
for respondents/UOI

SANDEEP MOUDGIL, J (ORAL)

Prayer

1. The present writ petition has been preferred invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking prays for quashing of the impugned order dated 25.06.1996 (Annexure P-5) whereby the petitioner has been dismissed from service while further seeking direction to the respondent-department to reconsider the impugned orders and to re-examine the petitioner's case with respect to the quantum of punishment imposed.

Factual Matrix :

2. The petitioner was enlisted in the Border Security Force on 16.12.1969 as a Constable (General Duty) and served the Force for several years, including postings in hard areas in Jammu & Kashmir and North-East India. The petitioner availed 45 days of earned leave w.e.f. 31.01.1996 to 18.03.1996 and was required to report back for duty on 19.03.1996. Though the leave was sanctioned vide certificate dated 29.01.1996, the petitioner could proceed on leave only on 01.02.1996 due to official requirements.

3. During the leave period, the petitioner fell seriously ill and suffered from severe abdominal pain. He was taken to Primary Health Centre, Kahinjhari, District Kanpur Dehat, a Government Hospital, where he was advised medical rest. Owing to his illness, the petitioner could not rejoin duty on the due date and duly informed the Commandant, 151 Bn BSF, by an application dated 19.03.1996 (Annexure P-2) sent under postal certificate.

4. The petitioner's condition deteriorated further and he was diagnosed with jaundice and chronic hepatitis, for which he remained under continuous medical treatment and bed rest. He again intimated the authorities vide application dated 06.05.1996. Medical certificates issued by Government hospitals certified that the petitioner was advised complete rest from 18.03.1996 till 24.06.1996 (Annexure P-3).

5. After recovering and obtaining a fitness certificate dated 25.06.1996, the petitioner reported back to the unit, where he came to know that an order dated 25.06.1996 (Annexure P-5) dismissing him from service under Section 11(2) of the BSF Act, 1968 read with Rule 177 of the BSF Rules, 1969 had already been passed ex parte, allegedly in pursuance of a show cause notice dated 10.06.1996, which was never served upon him.

6. The petitioner thereafter submitted a detailed statutory petition dated 24.07.1996 (Annexure P-6) seeking reinstatement, followed by reminders dated 19.11.1996 (Annexure P-7) and 09.08.1997 (Annexure P-8). However, no decision was communicated to him. Believing that legal proceedings were pending, the petitioner waited for several years and later came to know that no case had in fact been filed on his behalf.

7. Left with no alternative, the petitioner submitted a mercy petition dated 15.09.2012 (Annexure P-9). Ultimately, vide order dated 06.12.2012 (Annexure P-10), the said petition was rejected without dealing with the grounds raised by the petitioner, leading to the present cause of action.

Contentions

On behalf of the petitioners

8. Learned counsel for the petitioner submits that the impugned dismissal order dated 25.06.1996 (Annexure P-5) is wholly illegal, arbitrary and violative of the principles of natural justice, as the same was passed ex parte, without service of the alleged show cause notice and without affording any opportunity of hearing to the petitioner.

9. It is contended that the petitioner's absence from duty was neither wilful nor intentional but was on account of genuine medical reasons duly supported by medical certificates issued by Government hospitals, which were timely communicated to the competent authority.

10. Learned counsel further submits that the petitioner had an unblemished service record spanning more than 26 years, including service in sensitive and hard areas, and there was no justification for imposing the extreme penalty of dismissal.

11. It is argued that the statutory petition and subsequent representations were kept pending for years without any decision, and even the mercy petition was rejected vide a cryptic order dated 06.12.2012 without application of mind or consideration of the grounds raised.

12. Learned counsel thus submits that the entire action of the respondents is vitiated by procedural impropriety, non-application of mind and violation of Articles 14 and 21 of the Constitution of India, and the petitioner is entitled to reinstatement with all consequential benefits.

On behalf of respondent/State

13. Learned State Counsel submits that the writ petition is liable to be dismissed at the threshold on account of gross delay and laches, as the petitioner was dismissed from service in the year 1996 and his statutory petition was finally rejected and duly communicated as early as 12.03.1997. The petitioner has approached this Court after an inordinate delay of more than 15 years, which disentitles him to any relief under Article 226 of the Constitution of India.

14. On merits, it is contended that the petitioner was dismissed from service strictly in accordance with Section 11(2) of the BSF Act, 1968 read with Rules 22 and 177 of the BSF Rules, 1969 on account of unauthorised and illegal overstayal from leave for 99 days. Despite repeated registered notices, apprehension roll and a duly issued show cause notice, the petitioner neither reported for duty nor submitted any reply.

15. Learned State Counsel further submits that the petitioner is a habitual delinquent, having been subjected to disciplinary action on multiple prior occasions for unauthorized absence and overstayal of sanctioned leave. It is contended that his antecedent conduct unequivocally reflects a pattern of indiscipline. The plea of illness, as now sought to be advanced, is asserted to be a

belated afterthought, inasmuch as no medical intimation, certificate, or supporting documentation was furnished to the concerned unit during the relevant period.

16. It is further argued that the petitioner's statutory petition, repeated representations and mercy petition were all examined by the competent authorities and rejected on merits, and the decisions were duly conveyed to the petitioner from time to time. The issue has thus already attained finality, and the petitioner is merely attempting to reopen a settled matter.

Analysis

17. At the outset, this Court must bear in mind that while members of the armed and paramilitary forces are governed by a stringent code of discipline, the rigour of discipline cannot eclipse constitutional guarantees. The power to dismiss is undoubtedly vested in the competent authority under Section 11(2) of the BSF Act, 1968 read with Rule 177 of the BSF Rules, 1969, however, the exercise of such power must withstand the scrutiny of Articles 14 and 21 of the Constitution. Though discipline is the backbone of the armed forces, but fairness is the soul of constitutional governance, which needs to be tested in the following parameters:

Margin of appreciation and Judicial restraint

18. This court is of the opinion that it is important to recognize the scope of judicial review in service matters. The jurisdiction under Articles 226 and 227 of the Constitution of India is extraordinary and discretionary, intended to ensure that the State and its instrumentalities act within the parameters of law, fairness, and reasonableness. It is well settled that judicial review is not an appellate function. The courts do not sit to re-appreciate evidence or substitute their discretion for that of the disciplinary authority. The scope is circumscribed to cases where the authority has acted without jurisdiction, in violation of principles

of natural justice, mala fide, discriminatory, or where the punishment is shockingly disproportionate. The Supreme Court in “***B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749***”, held that,

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence.

19. The Supreme Court in “***Union of India v. P. Gunasekaran, (2015) 2 SCC 610***”. The High Court does not sit as an appellate authority over the decision of the Disciplinary Authority. Judicial review is confined to examining whether the enquiry was conducted in accordance with the principles of natural justice, whether findings are based on some evidence, whether the process was vitiated by *malafide* or arbitrariness, or whether the punishment imposed is so disproportionate as to shock the conscience of the Court. Relevant extract of the same is as under:

20. Similarly in the recent case of “***Union of India v. Subrata Nath 2022 INSC 1221***”, it was held that disciplinary authority in uniformed services must maintain strict discipline, and courts should tread cautiously in interfering with the punishment imposed for serious misconduct. Relevant extract is as follows:

15. It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere.

21. Moreover, though discipline in the armed forces is paramount, constitutional courts cannot remain silent spectators where dismissal, the severest civil consequence is imposed without adherence to settled legal parameters. The balance between discipline and fairness must be maintained, and where that balance is disturbed, judicial review becomes not merely permissible, but imperative.

22. With the above fundamental principles in mind, this court is of the opinion that the core issue that arises for adjudication is ***Whether the petitioner's unauthorized absence was wilful and deliberate, thereby constituting misconduct sufficient to warrant dismissal?***

Wilful Absence from Service

23. It is now well settled that mere absence from duty does not *ipso facto* amount to misconduct unless it is established that such absence was deliberate and intentional. In “***Krushnakant B. Parmar v. Union of India, (2012) 3 SCC 178***”, the Supreme Court categorically held that unless there is a finding of wilfulness, punishment for unauthorised absence cannot be sustained. The disciplinary authority must record a specific finding that the absence was intentional and without sufficient cause. The relevant observations of the Supreme Court are apposite and read as follows:

“18. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean wilful. There may be different eventualities due to which an employee

may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a Government servant.

19. 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 absence of such finding, the absence will not amount to misconduct.”

24. Applying these principles to the present case, the disciplinary authority was required to record a categorical finding regarding wilfulness of absence. In the absence of such finding, and particularly where medical documents indicate illness during the relevant period, the conclusion of misconduct would fall within the category of perversity or non-consideration of material evidence — thereby attracting judicial review.

25. In the present lis, the petitioner has produced medical certificates issued by Government hospitals certifying that he was suffering from jaundice and chronic hepatitis and was advised complete rest from 18.03.1996 to 24.06.1996. It is evident that during this period, the petitioner was undergoing treatment in hospital and was physically incapacitated. Such absence cannot be characterised as wilful or intentional as it was clearly compelled by medical necessity. The petitioner had no control over his illness, which rendered him unfit to report for duty. Absence from duty arising from compelling circumstances beyond an employee's control, such as illness, accident, or hospitalization, cannot constitute misconduct of unauthorized absence. There is no allegation or finding that the petitioner acted deliberately to shirk his duties, and in the absence of any evidence of wilfulness, the mere fact of absence cannot be treated as unauthorized.

26. Also, the Supreme Court in “***Sheel Kr. Roy v. Secretary M/O Defence 2007(12) SCC 462***”, emphatically held that a person does not cease to be a citizen

upon joining the armed forces and cannot be deprived of his constitutional or human rights merely because of the uniform he wears. Relevant extract of the same is as follows:

“It is now a well settled legal principle which has firmly been accepted throughout the world that a person merely by joining Armed Forces does not cease to be a citizen or be deprived of his human or constitutional right.”

27. Furthermore, the respondents have not impeached the authenticity of the certificates furnished by the petitioner duly signed by the Senior Medical officer, Primary Health Centre, Kanpur. (Annexure P-3 and P-4). There is no discussion of the medical evidence nor any finding that the illness was fabricated by the petitioner. When the genuineness of the illness and the certificates was accepted, still visiting an employee with the gravest consequence of dismissal from service, must demonstrate due application of mind to relevant material to reach such a conclusion and the absence of such consideration renders the order arbitrary.

28. Equally disturbing is the fact that the dismissal order was passed ex-parte. The respondents contend that a show cause notice dated 10.06.1996 was issued to the petitioner while he asserts that it was never served upon him. The principle of *audi alteram partem* in service jurisprudence is not a ritual incantation but a substantive guarantee. A mere assertion that notice was dispatched does not satisfy the constitutional requirement of fairness. In “***Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise*, (2015) 8 SCC 519**”, the Apex Court reiterated that an opportunity of hearing must be real and meaningful, while observing that,

“27. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was

considered to be a basic requirement in the Court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary”

Proportionality Of Punishment

29. On the question of proportionality of punishment, the law is equally clear. In ***Ranjit Thakur v. Union of India*, (1987) 4 SCC 611**, the Supreme Court lucidly explained that even in matters where the choice and quantum of punishment lie within the discretion of the disciplinary authority, such discretion is not beyond judicial scrutiny. The Court observed:

“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. 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 and amount in itself to conclusive evidence of bias. 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 province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.”

30. Thus, though judicial review is concerned not with the decision itself but it may interfere when the decision-making process is faulty or where the punishment imposed is wholly disproportionate to the gravity of misconduct.

31. In the present case, even assuming that there was overstayal of leave, the surrounding facts and circumstances, namely, the petitioner’s long and unblemished service of over 26 years, the medical ailment supported by

Government hospital certificates, and the absence of any finding of *mala fides*, clearly warranted consideration of a lesser penalty. The impugned order does not reflect any such balancing exercise. The mechanical imposition of the extreme penalty of dismissal, without addressing mitigating circumstances, betrays non-application of mind and falls foul of the doctrine of proportionality.

32. Furthermore, this Court cannot overlook the fact that the impugned dismissal order operates as a veritable “wolf in sheep’s clothing.” It not only terminates the petitioner’s employment but also extinguishes all accrued service benefits earned over 26 years of exemplary and unblemished service. During this long tenure, the petitioner displayed unwavering dedication and commitment while serving the nation in the Armed Forces, making significant personal sacrifices. The impugned order, therefore, effectively imposes civil death upon the petitioner, depriving him of the fruits of a lifetime of diligent service.

Delay and Laches

33. The respondents have urged that the petition is barred by delay and laches. Ordinarily, a writ court may decline relief on that ground. However, delay cannot sanctify an order that is void for violation of the principles of natural justice. The Apex Court in *Dehri Rohtas Light Railway Co. Ltd. v. District Board*, (1992) 2 SCC 598 held that where an order is fundamentally flawed, the Court may still grant relief notwithstanding delay. The pertinent excerpt from the said judgment reads as under:

“The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its on facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed

unless there is reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches”.

34. In the present case, the petitioner’s delay is fully explained and is directly attributable to his pursuit of statutory remedies in good faith. During the period in question, the petitioner was medically incapacitated and hospitalized due to jaundice and chronic hepatitis, as certified by Government hospitals, rendering him unable to discharge his duties. The impugned dismissal order, therefore, is not merely a question of delay but of manifest illegality and violation of natural justice. The lapse of time, under these circumstances, cannot operate to validate an order which nullifies the petitioner’s 26 years of unblemished service and accrued benefits. The equities weigh overwhelmingly in favour of the petitioner, and the Court must ensure that justice is not defeated by the mere passage of time.

35. Indeed, the requirement of recording reasons is no longer *res integra* and stands firmly embedded in the fabric of administrative and constitutional law. In “***Sant Lal Gupta v. Modern Cooperative Group Housing Society Ltd., (2010) 13 SCC 336***”, the Supreme Court reiterated that the obligation to furnish reasons is an indispensable component of the justice delivery system. The Court observed that reasons introduce clarity in an order and facilitate effective judicial review. Without reasons, it becomes impossible for a superior court to ascertain whether relevant considerations have weighed with the authority or whether the decision has been influenced by extraneous factors. The Apex Court in the aforesaid judgment authoritatively held:

“It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice - delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind." The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected.”

36. Tested on the anvil of the aforesaid enunciation of law, the order dated 06.12.2012 rejecting the petitioner's mercy petition is wholly unsustainable. The order does not advert to the petitioner's plea of serious illness supported by Government medical certificates, nor does it consider his length of service spanning over 26 years, or the grievance regarding non-service of the show cause notice to him. It is a cryptic and non-speaking order. An order affecting livelihood and civil consequences must demonstrate due application of mind. The absence of reasons in the impugned rejection not only violates the principles of natural justice but also renders the decision arbitrary within the meaning of Article 14 of the Constitution.

37. The submission that the petitioner is a habitual delinquent cannot, in the absence of specific findings in the dismissal order, cure the inherent illegality of the action taken. Past conduct, even if adverse, cannot dispense with the requirement of compliance with due process in the present proceeding. The disciplinary authority was obligated to independently examine and evaluate the charge of unauthorised absence in the light of the petitioner's medical evidence. However, there is no indication in the record that any such independent assessment was undertaken, nor is there any finding that the absence was wilful or deliberate. The failure to carry out this essential exercise renders the dismissal order vitiated by procedural impropriety and manifestly unsustainable.

38. Thus considered, the impugned dismissal order is vitiated by three manifest and fatal infirmities. First, there is a complete absence of any finding that the petitioner's absence was wilful or deliberate, a prerequisite for sustaining a charge of unauthorized absence. Second, the principles of natural justice have been flagrantly violated, as the petitioner was neither served with a show-cause notice nor provided an opportunity to present his explanation and medical evidence. Third, the disciplinary authority failed to consider the question of proportionality, neglecting to assess whether the extreme penalty of dismissal was commensurate with the petitioner's long and unblemished service, his medical incapacity, and the absence of any wilful misconduct. The subsequent rejection of statutory and mercy petitions through cryptic and unreasoned orders only compounds the illegality. In the result, the impugned action of the respondents is arbitrary, disproportionate, and violative of Articles 14 and 21 of the Constitution.

39. Accordingly, the dismissal order dated 25.06.1996 and the order dated 06.12.2012 rejecting the mercy petition are set aside. Considering the long lapse of time, the ends of justice would be met by directing reinstatement with continuity

of service for the purpose of pensionary and retiral benefits. However, back wages for the intervening period are declined, as the petitioner did not render service during that time.

Conclusion

40. In view of the foregoing discussion, this Court is of the considered opinion that the petitioner's absence from duty cannot be held to be wilful, as the same was due to genuine medical ailment duly intimated to the authorities, supported by postal receipts (Annexures P-2 and P-3). The impugned order of dismissal dated 25.06.1996 (Annexure P-5) is vitiated by non-consideration of material evidence and violation of principles of natural justice. The punishment imposed is grossly disproportionate to the alleged misconduct.

41. Accordingly, the writ petition is **allowed**. The impugned order of dismissal dated 25.06.1996 (Annexure P-5), as well as consequential orders rejecting the petitioner's representations, are hereby set aside. The respondents are directed to release all service and retiral benefits to the petitioner.

42. It is clarified that the petitioner shall not be entitled to any arrears of salary or monetary benefits for the period from June 1996 to August 2013, as the same has been expressly given up by him.

43. The above exercise shall be completed within a period of four weeks from the date of receipt of a certified copy of this order.

44. Ordered accordingly.

04.02.2026

Meenu

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No