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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 07.01.2026

+ **W.P.(C) 9983/2017 & CM APPL. 69600/2024**

LATE TEJPAL SINGH THROUGH LEGAL HEIRs .....Petitioners  
Through: Mr. N.S. Dalal, Mr. Aman Mudgal,  
Ms. Nidhi Dalal, Mr. Alok Kumar,  
Ms. Rachna Dalal, Mr. Karan Mann,  
Advs.

versus

UNION OF INDIA AND ORS. ....Respondents  
Through: Mr. Kamal Kant Jha CGSC, Mr.  
Avinash Singh, Ms. Aishwarya Deep  
Singh and Ms. Aakriti, Advs.

**CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****V. KAMESWAR RAO, J. (ORAL)**

1. This petition has been filed with the following prayers:-

*“(i) Issue an appropriate writ, order or direction thereby setting aside the illegal and arbitrary order dated 31.01.2016 passed by respondent no.3 vide which voluntary retirement of the petitioner was ordered to be cancelled w.e.f 31.01.2016;*

*(ii) issue an appropriate writ, order or direction thereby quashing the order dated 20.08.2016 passed by the respondent no.2 whereby the petitioner was charged with charge u/s 19(a), 26, 40 and 19(b) of the BSF Act and ordered to be dismissed from service;*

*(iii) Issue an appropriate writ, order or direction thereby setting aside the order dated 09.12.2016 passed by office of*



*the respondent no.1 vide which representation of the petitioner was rejected;*

*(iv) Issue an appropriate writ, order or direction thereby directing the respondents to give Voluntary Retirement to the petitioner in pursuance to the letter dated 12.01.2016;*

*(v) Issue an appropriate writ, order or direction thereby directing the respondents to give all the consequential benefits to the petitioner in pursuance to the letter dated 12.01.2016 vide which voluntary retirement of the petitioner was accepted, along with the interest @ 12 % per annum from 01.02.2016;*

*(vi) award costs of the present writ petition in favour of the Petitioner and against the Respondent;*

*(vii) Pass any such other or further orders as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case, in favour of the Petitioner and against the Respondent."*

2. The original petitioner, Tej Pal Singh who died during the pendency of this petition, joined BSF as a constable on 15.06.1993. Thereafter, he was promoted and posted as Head Constable at the Headquarters of 17 Battalion of the respondents at Alamganj, Dhubri, Assam.

3. It is the case of original petitioner that in the month of January 2016, he had suffered from severe pain and swelling in his left knee, went to BSF Hospital for treatment. During the treatment, it was suggested by the Base Hospital doctor that, it is a case of left knee effusion with pain & Swelling. On 08.01.2016, the petitioner was referred to DIG Medical, GHTY, Patgaon for specialist advice and MRI along with one attendant by the Chief Medical Officer, SHQ, BSF, Dhubri, Assam. Pursuant to the reference made by the C.M.O petitioner went to Civil Hospital for his treatment and specialist advice.

4. The issue in this petition is with regard to an order dated 31.01.2016



passed by the respondents whereby the original petitioner's voluntary retirement was cancelled with immediate effect as the he did not resume his duty after termination of leave on 26.01.2016.

5. On March, 2016, One Man Court of Inquiry was initiated against the original petitioner on the charge of overstaying leave. Thereafter, on 21.04.2016, the commandant ordered initiation of disciplinary proceeding. The original petitioner was issued a show cause notice on 29.05.2016. On 18.08.2016, the original petitioner was issued a charge sheet with the following charges:-

***"FIRST CHARGE***

***BSF ACT U/S.19 (a)***

***ABSENTING HIMSELF WITHOUT LEAVE***

***in that he;***

***at Bn HQ Alamganj, on 09.01.2016 at about 1430 hrs at afternoon fall in time was found absent without leave from Bn HQ till brought by party of this unit from 125 Bn BSF Coochbehar to Bn HQ Alamganj on 10.01.2016 (AN).***

***Total period of AWL 01 days.***

***SECOND CHARGE***

***BSF ACT U/S-26 INTOXICATION***

***In that he, at Coochbehar town, on 09.01.2016 at about 1130 hrs, while absent without leave from this until consumed liquor and was found intoxicated by party of PS Kotwali Coochbehar from whom party of 124 Bn BSF took him to 124 bn HQ at Coochebehar.***

***THIRD CHARGE***

***BSF ACT U/S-40***

***AN ACT PREJUDICIAL TO GGOD ORDER AND DISCIPLINE OF THE FORCE***

***In that he,***

***Having been granted 08 days Casual Leave w.e.f.***



*16.01.2016 to 26.01.2016 (AN) to bring papers/documents to prepare papers for his voluntary retirement, failed without sufficient cause to resume his duty at Bn HQ 17 Bn BSF on expiry of the said leave and voluntarily resumed his duties at Bn HQ Alamganj, Dhubri (Assam) on 08.06.2016 (FN), when No. 096668834 CT Jagdev Singh of this Bn went to personally serve the Show Cause Notice (SCN), at his home address, for his eventual dismissal.”*

6. On 20.08.2016, he received a letter from the authorities whereby the he was dismissed from the service.
7. It is the case of the original petitioner that he had already retired from the service with effect from 01.02.2016 and the same has been confirmed by the respondents vide letter dated 12.01.2016. Therefore, the order dated 31.01.2016 is erroneous and the dismissal order dated 20.08.2016 need to be set aside.
8. Mr. N.S. Dalal, learned Counsel for the original petitioner (and now of his LR's) submits that the original petitioner had sought voluntarily retirement and was informed vide a letter dated 12.01.2016, about the acceptance of voluntary retirement. He also submits that the original petitioner was on sanctioned leave from 16.01.2016 to 26.01.2016, and went to his native place. In the meanwhile, the petitioner fell ill and could not join back his duties.
9. As things stood, the original petitioner was in receipt of letter dated 30.01.2026 from the respondents whereby the respondents have called him to be present on his duty on 31.01.2026, so that necessary documents with regard to his voluntary pension can be sent to Head Office.
10. Mr Dalal submits that, once the respondents have called upon the



original petitioner to be present on 31.01.2026 to enable them to send the documents with regard to his pension, the respondents could not have without justifiable reason cancel the voluntary retirement.

11. He submits that the respondents have perpetuated the illegality by not releasing the pensionary benefits and also issuing a Charge-Sheet on 18.08.2016, whereby, they have framed charges relatable to the period even prior to the acceptance of the voluntary retirement. He also submits that the original petitioner did inform the authorities about his illness. The same was along with the medical certificate issued by a Government Hospital. Hence, the charges were clearly unsustainable.

12. Mr. Dalal submits that, when the respondents themselves have accepted the voluntary retirement and the deceased employee being on leave for justifiable reasons between 27.01.2026 to 31.01.2026, the respondents could not have issued a Charge-Sheet on the ground that he overstayed leave and also for certain other misdemeanors which the original petitioner said to have committed much before the voluntary retirement was accepted. He states that the issuance of the Charge-Sheet and the subsequent action of the respondents dismissing the original petitioner from service is totally illegal, harsh and violative of Article 21 of the Constitution of India.

13. On the other hand, Mr. Kamal Kant Jha, learned Central Government Standing Counsel for the respondents has by referring to the counter-affidavit filed by the respondents, contends that the original petitioner had tendered notice on 05.01.2016 for voluntary retirement from service w.e.f. 31.01.2026 along with an undertaking that the deceased employee would not withdraw his voluntary retirement notice. The notice for voluntary



retirement was accepted w.e.f. 31.01.2016. Though a reference is made with regard to original petitioner committing certain offences, the respondents have also stated that the original petitioner proceeded on casual leave upto 26.01.2016 but without sufficient cause he has failed to resume his duty on expiry of the said leave. Since, he did not report from leave, his voluntary retirement was cancelled on 31.01.2016 and the original petitioner was accordingly informed. He also states that, since the original petitioner did not join his duties at the Battalion Headquarter after overstay of 133 days, the he was proceeded for committing offence under Section 19(a), 26, 40 & 19B of the BSF Act, 1968. The Record of Evidence (RoE) was ordered against him after due procedure for the offence committed by him. After the RoE was submitted, the RoE proceedings were duly scrutinised and after due application of mind, Summary Security Forces Court Trial was ordered, which resulted in the penalty of dismissal from service. He states that the penalty of dismissal has been rightly passed after following the due process.

14. Having heard the learned counsel for the parties and perused the record, there is no denial of the fact that, despite the past record of the original petitioner, the respondents did accept the request of the original petitioner for voluntary retirement w.e.f. 31.01.2016 vide order dated 12.01.2016. The respondents had granted leave to him till 26.01.2026. Appropriately, the original petitioner should have joined his duties on 27.01.2026.

15. The case of the original petitioner was that on 25.01.2026, he had informed the respondents about his illness along with medical certificate.

16. We may state here that, this factum has not been contested by the



respondents in their reply/counter-affidavit. In this regard, we may reproduce the stand of the respondents in paragraph 9 of the counter affidavit, which reads as under:-

*“9. That in reply to the contents of para 9 of the writ petition, it is submitted that the petitioner had proceeded on 8 days causal leave w.e.f. 16.01.2015 to 26.01.2016 and was required to report back on 26.01.2016. Copy of the movement order is annexed hereto as Annexure R-1.*

*It is further submitted that the petitioner did not report for duty in time and overstayed the leave granted to him. Since, the petitioner did not report from leave timely and was overstaying from leave, therefore, his voluntary retirement was cancelled and the petitioner was informed accordingly. Copy of the order dated 31.01.2016 is annexed hereto as Annexure R-2.*

*Analysis of the medical documents so sent by the petitioner reveals that he was to report back on 26.01.2016 to the unit and for that he had to start journey for the unit from Raj as than on 23.01.2016. The petitioner went to the doctor for check up on 25.01.2016 which indicates that he feigned illness with intent to overstay. His medical certificate of sickness issued by Govt B.D.K Hospital, Jhunjhunu (Rajasthan) reveal that he needed rest from 10.02.2016 to 05.06.2016 and he joined on 08.06.2016. The medical documents so submitted by the petitioner were examined by the Unit Medical Officer and the documents were found insufficient to prove his overstayed from leave. The petitioner was also indulged in hospital hopping and he reported back from leave after overstaying on 08.06.2016 (FN).”*

(emphasis supplied)

17. It is noted from the aforesaid stand of the respondents, that the original petitioner has feigned illness with an intent to overstay but the fact remains that the medical certificate issued by a Government Hospital at



Jhunjhunu has not been rejected/discarded except that the medical documents submitted by the deceased employee were found to be insufficient to prove his overstay from leave.

18. Be that as it may, atleast nothing has been stated by the respondents that the original petitioner was informed about the rejection of his request for leave beyond 26.01.2016. It is without rejecting the request for leave, the respondents without any show cause notice have issued the order dated 31.01.2016 cancelling the voluntary retirement, which according to us is clearly in violation of the Principles of Natural Justice.

19. Having said that the question would also arise assuming that the original petitioner has overstayed his leave for a period of four (4) days, whether the same could have been the basis for initiating the departmental enquiry, more so, when they have accepted his request for voluntary retirement to leave the service. The answer has to be in the negative. The four (4) days absence is not long enough for the respondents to initiate a departmental enquiry overlooking the medical certificate issued by a Government hospital.

20. Interestingly, we note the subject matter of Charge-Sheet is also misdemeanors alleged to have been committed by the original petitioner prior to the acceptance of the voluntary retirement. The respondents could have instead of accepting the request for voluntary retirement, rejected the same and initiated the departmental action against the deceased employee for the misdemeanors. The respondents instead of taking action, on such misdemeanors have accepted the request for voluntary retirement. Hence, those alleged misdemeanors could not have been made part of the Charge-



Sheet on the principle of estoppel/waiver.

21. In effect, the said Charge-Sheet has resulted in the dismissal of the original petitioner from the service of the BSF after he has put in almost 23 years of service. The effect thereof is that the period of 23 years of service has been forfeited without any benefits. As noted above, the original petitioner has since expired, leaving his wife and three children (as is clear from the amended memo of parties).

22. It is pertinent to note that, in the case of overstay of leave, the Supreme Court in the case of **Union of India & Ors. v. Giriraj Sharma, AIR 1994 SC 215** has held as under:-

*“1. The respondent who was deputed to undergo a course as an electrician sought leave for 10 days on 10-12-1982, which was granted. While he was on leave he sent a telegram for extension of leave by 12 days which request came to be rejected. The respondent, however, joined duty on 22-12-1982 thereby overstaying the period of leave by 12 days (sic 2 days). For this misdemeanour his services came to be terminated by an order dated 7-5-1983. His departmental appeal as well as revision were also rejected, whereupon he filed a writ petition in the High Court challenging the order of termination which writ petition came to be allowed by the order of 3-1-1989. The petitioner was directed to be reinstated with all monetary and other service benefits. It is against this order that the present appeal is preferred.*

*2. Mr Jain, the learned counsel for the appellant-Union of India contended that the interpretation placed on Section 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter called ‘the Act’) is not correct and it is on account of this erroneous understanding of the provision that the High Court quashed the order of*



dismissal. In support of his contention he invited our attention to a decision of the Rajasthan High Court reported in *Shyamsingh v. Dy. Inspector General of Police, C.R.P.* [AIR 1965 Raj 140 : (1965) 1 LLJ 238] He also relied on certain other decisions but it is sufficient to state that according to him the learned Judges of the High Court had committed an error in interpreting the said sub-section. In our opinion it is not necessary for us to construe sub-section (1) of Section 11 of the Act in the backdrop of the facts of the present case. Assuming Mr Jain is right, we are of the opinion that so far as the present case is concerned the allegation is in regard to the incumbent having overstayed the period of leave by 12 days. The incumbent while admitting the fact that he had overstayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. **We are of the opinion that the punishment of dismissal for overstaying the period of 12 days in the said circumstances which have not been controverted in the counter is harsh since the circumstances show that it was not his intention to wilfully flout the order, but the circumstances forced him to do so. In that view of the matter the learned counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty, if they so desired, but a major penalty of dismissal from service was not called for. We agree with this submission.**

3. In the result we see no merit in this appeal but we would modify the order of the High Court by stating that while we affirm the High Court's order quashing the order of dismissal and directing reinstatement in service with monetary benefits, it will be open to the department, if it so desires, to visit the respondent-petitioner with a minor punishment. The appeal will



*stand disposed of accordingly with no order as to costs. If the reinstatement has not taken place thus far the department should reinstate him latest within two weeks from today.”*

(emphasis supplied)

23. This Court in the case of cancellation of voluntary retirement has in ***Baikuntha Nath Das v. Union of India and Ors., 2024:DHC:9202-DB,*** held as under:-

*“15. In the present case, it is not disputed that the petitioner, due to his medical conditions, had sought voluntary retirement by an application dated 05.03.2021. The same was accepted by the respondents, vide its Order dated 10.06.2021, which was to be effective from 30.06.2021. It is also not disputed that the petitioner only wanted a one-month extension to proceed on voluntary retirement from 31.07.2021 instead of 30.06.2021, maybe for the reason that he would have earned one increment in the interregnum, which would have become due and payable on 01.07.2021. **However, in our opinion, only for this reason, the voluntary retirement of the petitioner which already stood accepted by the respondents could not have been cancelled. At best, the request of the petitioner for postponement of his date of retirement could have been rejected and he should have been directed to proceed on voluntary retirement with effect from 30.06.2021.***

*16. Accordingly, we direct that the petitioner shall be considered as having proceeded on voluntary retirement with effect from 30.06.2021, and all consequential benefits to the petitioner be released within a period of 12 weeks from the date the petitioner completes all formalities for the release of his pension and other retirement benefits due in accordance with law.*



*17. The departmental proceedings that have been initiated against the petitioner for his alleged non-reporting at the GC Nagpur, consequent to our above directions, also stand quashed.”*

*(emphasis supplied)*

24. In view of the above discussion, we set aside the order dated 31.01.2016 so also the orders dated 28.08.2016 and 09.12.2016. The original petitioner shall be treated as having voluntarily retired on 31.01.2016 and therefore, shall be entitled to all benefits (subject to adjustment of any amount paid) with interest at 6% per annum, which shall be paid to the LRs of the original petitioner who have come on record, as per the rules.

25. The petition and pending application are disposed of.

**V. KAMESWAR RAO, J**

**MANMEET PRITAM SINGH ARORA, J**

**JANUARY 07, 2026/sr**