

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.274 of 2016

Reserved on: 06.03.2024

Pronounced on: 03.05.2024

No.97005927 Ex Constable/GD,
Shri Ashwin Patti, Petitioner
-vs-

1. The Union of India represented by the Secretary, Ministry of Home Affairs, Government of India, New Delhi.
2. The Directorate General of Border Security Force,
3. The Director Medical, H.Q: Directorate General, BSF,
4. The Inspector General, BSF,
5. The Commandant, 65 Battalion, BSF, ... Respondents

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice

Appearance:

For the Petitioner : Mr. R.Jha, Adv.

For the Respondents : Dr. N.Mozika, DSG with
Ms. A.Pradhan, Adv.

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| i) Whether approved for reporting in Law journals etc.: | Yes |
| ii) Whether approved for publication in press: | Yes |

ORDER

The present writ petition has been filed, challenging the impugned dismissal order dated 31.08.2015 passed by the Summary

Security Force Court (SSFC) constituted under the BSF Act, 1968 with a direction to reinstate him in the service from the date of his dismissal, i.e., 31.08.2015 with backwages and with such other perks and privileges incidental thereto.

Brief Facts:

2. The petitioner was enrolled as a Constable in the Border Security Force (BSF) on 03.12.1997 and after completion of the basic training, he was posted to 65 Battalion BSF on 18.12.1998 from STC BSF Jodhpur. He applied for leave on 24.05.2014 and his request for 50 days leave was sanctioned by the competent authority. However, he did not go on sanctioned leave and he made a fresh application for 15 days earned leave on the ground of his sister's illness. The said leave was also sanctioned for the period between 25.05.2014 to 11.06.2014 with 2 days journey period.

2.1. Though he was supposed to join duty on 11.06.2014, he did not join duty and overstayed leave without any sufficient ground and no intimation to the Unit was given. Three letters have been sent to the petitioner on 18.06.2014, 30.06.2014 and 05.07.2014 asking him to report for work, failing which action would be initiated in terms of BSF Act and Rules. After a lapse of 49 days of overstay, a request was made by the petitioner on 31.07.2014 for extension of leave on medical ground,

stating that he was taking treatment in a private hospital as an Out Patient. Considering the request of the petitioner, he was directed to report for work at 65 Bn BSF vide communication dated 23.08.2014.

2.2. The petitioner, without joining duty, further sought extension on medical ground on 16.09.2014, stating that he was taking treatment from one private practitioner, who was issuing medical certificate to the petitioner without mentioning any progress or referring him to any specialist. Since his illness was not so serious, he was directed by the Commandant to resume duty by Letters dated 19.09.2014, 13.11.2014 and 05.12.2014.

2.3. Even thereafter, the petitioner did not evince any interest in joining duty and hence, it was decided to conduct an enquiry in terms of Section 62 of the BSF Act, 1968. The Court of Inquiry found that he overstayed the leave period from 12.06.2014 without sufficient cause and recommended for a suitable disciplinary action. In terms of Section 61 of the BSF Act, 1969, an Apprehension Roll was issued against the petitioner on 18.12.2024 and the Police could not apprehend the petitioner. Since the Apprehension Roll could not be executed and the petitioner did not report for work, in exercise of powers under Section 11(2) of the BSF Act, 1968 r/w Rule 177 of the BSF Rule, a show cause

notice was issued tentatively proposing to dismiss him from service and asking him as to why he should not be dismissed from service.

2.4. The petitioner did not reply to the show cause notice and a special representative in the Unit was sent to the home town of the petitioner on 03.02.2015 to ascertain reasons for his absence, wherein he was not available and the representative met the mother of the petitioner and local Police authorities and requested them to ask the petitioner to resume duty immediately.

2.5. The petitioner voluntarily reported for work in the Unit on 12.04.2015 after overstaying leave for 305 days without any sufficient cause and before convening the SSFC, the petitioner was provided with a copy of the charge sheet to prepare his defence and the same was received by the petitioner on 28.08.2015. The petitioner was also informed that he is at liberty to engage a legal counsel on his own arrangement to defend his case. He was also asked to nominate an Officer of his choice to assist him in the trial. The petitioner intimated the name of Shri Kailash Lukha, Deputy Commandant as friend of accused during SSFC trial.

2.6. The Trial was conducted on 31.08.2015 and during trial, the petitioner had pleaded guilty to the charge and accordingly, the trial of the petitioner was proceeded on the plea of guilty. Since the Court had satisfied that the petitioner understood the charge and effect of his plea in terms of Section 142(2) of the BSF Act, it proceeded with the trial of the petitioner on the plea of guilty. The petitioner was also given an opportunity to produce witnesses and make statement. However, the petitioner did not produce any witness and made a short statement that he is guilty of the charge and that he may be given a chance and that he will not repeat such mistake again. Finally, the petitioner was imposed with the punishment of dismissal from service on 31.08.2015.

2.7. After dismissal from service, the petitioner was informed of his right to prefer an appeal before the Inspector General, BSF, Meghalaya within three months from the date of dismissal order and accordingly, he had submitted a petition before the Appellate Authority without obtaining a copy of the SSFC trial proceedings. Though he was asked to submit a fresh petition after obtaining SSFC trial proceedings, he has straightaway approached this Court without exhausting the alternative remedy. The petitioner's past record was also considered and he had been awarded punishments on several occasions for his omissions

and commissions, which have been elaborately described by the respondents in the counter affidavit.

3. Learned counsel for the petitioner has submitted that there was no proper enquiry conducted and that all the evidences were recorded only in English, which is in violation of Rule 134 of the BSF Rules, 1969, as the petitioner does not understand English. The said submission has been refuted by the learned DSG, stating that at every stage, the petitioner was given opportunity to defend his case and it was the petitioner, who failed to utilize such opportunities, which ended in his dismissal from service.

4. Heard both parties and perused records.

5. Admittedly, the petitioner absented himself for 305 days without any sufficient reasons. From the pleadings of the parties, this Court is able to visualize that at every stage, the petitioner was asked to report for work. Border Security Force is a disciplined force and the Apex Court in the case of *Union of India vs. Datta Linga Toshawad*, reported in *2005 (13) SCC 709* categorically held that a Constable overstaying his leave period and thereafter, reporting for work is not entitled to any relief. The petitioner was afforded opportunity to cross

examine the prosecution witnesses and all the mandatory requirement of the provisions of the BSF Act, 1968 have been duly complied with. This Court finds no violation on the part of the respondents in conducting enquiry and dismissing the petitioner from service.

6. The Apex Court in the case of *Union of India and others Vs.P.Gunasekaran*, reported in *(2015) 2 SCC 610* laid down a dictum that under Article 226/227 of the Constitution of India, the High Court shall not go into the proportionality of punishment, unless it shocks its conscience. In this case, the petitioner had suffered five punishments on earlier occasions and habitually been overstaying beyond leave period in his 17 years of service. Taking into account the grave situation, the respondents had chosen to impose the punishment of dismissal from service and this Court finds no error or infirmity in the order impugned herein.

7. Dehors all the procedural aspects, the petitioner had accepted the charge and pleaded guilty before the Enquiry Officer that itself is suffice to impose the punishment. In the light of the judgment of the Supreme Court in *Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v Educational Appellate Tribunal and another*, reported in *(1999) 7 SCC 332*,

admission of guilt alone is sufficient for imposition of punishment and a detailed enquiry is not required. The said judgment has been referred to by me in **The General Manager, Southern Railway HQ Office and 3 Others vs. D. Emarose (W.A.No. 2457 of 2022 dated 28.02.2023)**, while sitting in a Division Bench of Madras High Court.

8. The conduct of the petitioner is highly deprecated and he, who has not maintained discipline in his service, cannot be allowed to continue in service. The petitioner, being a Constable, more particularly, a member of disciplined force, is bound to obey the order and command of his superior officers. As held by the Supreme Court in the case of **Union of India and others vs. Diler Singh**, reported in **2016 (13) SCC 71**, which has been affirmed in a recent judgment of the Apex Court in **Anil Kumar Upadhyay vs. The Director General, SSB and others**, reported in **2022 SCC Online SC 478**, a member of the disciplined force is expected to follow the rules, have control over his mind and passion, guard his instincts and feelings and not allow his feelings to fly in a fancy.

9. Taking into account the totality of the circumstances, the dismissal of the petitioner from service is justified and the impugned order dated 31.08.2015 passed by the Summary Security Force Court

(SSFC) is perfectly valid in the eye of law, warranting no interference by this Court.

10. Accordingly, **WP (C) No.274 of 2016** is dismissed as devoid of merits.

(S.Vaidyanathan)
Chief Justice

Meghalaya
03.05.2024
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PRE-DELIVERY ORDER IN
WP (C) No.274 of 2016