



2025:DHC:4359-DB



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

***Reserved on: 24.02.2025***  
***Pronounced on: 26.05.2025***

+ **W.P.(C) 9372/2007**

SI/STENO DIGAMBER SINGH .....Petitioner

Through: Mr.Rabindra Singh, Mr.Paran  
Aggarwal, Ms.Ekta Singh,  
Advs.

Versus

THE UOI & ANR .....Respondents

Through: Ms.Radhika Bishwajit Dubey,  
CGSC with Ms.Gurleen Kaur  
Waraich, Mr.Vivek Sharma,  
Advs. for R-1 and 2.  
Mr.Hemandra Singh, DC (Law)  
BSF.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

## **J U D G M E N T**

### **SHALINDER KAUR, J**

1. The present petition has been filed by the petitioner, who is serving in the Border Security Force (BSF), seeking the following reliefs:

*“(a) issue a writ of certiorari thereby quashing the findings of GSFC as well as the impugned order dated 16.5.07 passed by the respondent No.2 (Annexure - P/8) whereby the sentence of dismissal from service awarded by the GSFC and confirmed by the convening*



*authority has been commuted to that of; (a) "Forfeiture of five years service for the purpose of promotion"; and (b) "Severe Reprimand" while disposing of the post-confirmation statutory petition preferred by the petitioner u/s 117 of BSF Act, 1968; and the petitioner be accorded clean acquittal/exoneration of the alleged charge. (b) Allow the costs of proceedings and compensation to the petitioner for his victimization by his superiors in a well planned and calculated manner."*

2. Brief facts leading to the present petition are that the petitioner was inducted into the BSF on 10.09.1999 in the rank of Sub-Inspector (SI) (Stenographer) through direct recruitment. Upon successful completion of his Basic Training at STC BSF Tekanpur, the petitioner served in various BSF establishments/Headquarters during his eight years of service. On 19.07.2004, he was permanently posted at Sector Headquarters (SHQ), BSF, Jaisalmer, where he continued to serve until 09.11.2006.

3. Insofar as the incident in question is concerned, it is petitioner's case that on 02.08.2005, he had applied for three days of Earned Leave (E.L.) with effect from 16.08.2005, seeking permission to prefix and suffix the leave period with Saturday, Sunday, and a Gazetted Holiday, in order to celebrate the Raksha Bandhan festival. The leave application of the petitioner was recommended on the same day by the Establishment Branch/Head Clerk, with the observation that Inspector (PA) T. Somasundaram would attend to the duties of the petitioner during the proposed leave period, after consulting him. The Head Clerk forwarded the leave application, along with the leave



register, to the Deputy Commandant (Administration) on the same day.

4. The petitioner has averred that he persistently followed up on his leave application with the Deputy Commandant (Administration). However, according to the petitioner, the Deputy Commandant (Administration) repeatedly misled him regarding the status of his leave, each time directing him to approach the Commandant (SHQ), while simultaneously stating that the leave application had already been forwarded to the said authority, which was the Competent Authority, to sanction the leave. As a result, the petitioner was shuttling between the Deputy Commandant (Administration) and the Commandant (SHQ) in an attempt to ascertain the status of his leave application.

5. In this context, the petitioner submitted a complaint dated 11.08.2005 to the Deputy Inspector General (DIG), Sector Headquarters, BSF, Jaisalmer, raising his grievance and requesting due consideration of his pending leave application and to reconsider grant of leave to him on humanitarian grounds. However, *vide* letter dated 11.08.2005, the petitioner's application was returned the same day with a direction to approach the Commandant (SHQ) for the matter pertaining to leave. The petitioner once again approached the Commandant (SHQ) and reiterated his request for the grant of leave. The Commandant (SHQ) informed the petitioner that his leave had been denied in accordance with the instructions issued by the DIG.

6. Subsequently, in view of the scheduled visit of the Additional Director General (W), BSF, to the Station with effect from



11.08.2005, the petitioner, *vide* letter dated 12.08.2005, was advised to defer his leave plan until the said official visit was over.

7. Thereafter, *vide* communication dated 12.08.2005, the petitioner intimated that due to unavoidable and inescapable personal reasons, he would be proceeding to his hometown on the evening of 12.08.2005. He further stated that he would make every effort to resume duty on 16.08.2005. The petitioner left the Station on 13.08.2005 without obtaining prior sanction for leave and reported back for duty only on 18.09.2005, after remaining absent for over a month. In the meantime, the petitioner submitted applications for extension of leave on 16.08.2005, 30.08.2005, and again on 10.09.2005, citing unfinished personal work as the reason for seeking such extension. Repeated communications, including registered letters, were issued to the petitioner, directing him to resume duties. These communications stated that failure to report back to duty would entail disciplinary action. Notwithstanding the said warnings, the petitioner remained absent and did not comply with the directions issued to him.

8. Upon rejoining duty, the petitioner submitted his arrival report dated 18.09.2005, and an Inter-Office Note was prepared recording his return.

9. To conduct a preliminary inquiry, the petitioner was then produced before the Commandant on 23.09.2005, and was heard in accordance with Rule 45(B) of the BSF Rules, 1969 (BSF Rules). During the said proceedings, the petitioner was afforded the opportunity to cross-examine three witnesses, which he availed, and



he chose not to cross-examine one of the witnesses. He was also afforded an opportunity to submit a written statement in his defence, which he duly availed by submitting the same.

10. Subsequent thereto, after due consideration of the material on record, the Commandant directed the preparation of the Record of Evidence (ROE). Pursuant to the said direction, Shri Upendra Rai, Deputy Commandant (Communication), Sector Headquarters, BSF, Jaisalmer, was detailed to conduct the ROE proceedings.

11. Based on the pre-trial advice rendered by the Frontier Headquarters, BSF, Rajasthan, as communicated *vide* letter dated 19.05.2006, the petitioner was tried by the General Security Force Court (GSFC) at Sector Headquarters, BSF, Jaisalmer (South), during the period from 04.08.2006 to 13.10.2006, on the charge of absenting himself without sanctioned leave for the period from 13.08.2005 to 18.09.2005. The petitioner pleaded 'Not Guilty' to the charge, and the trial proceeded on that plea.

12. The Charge framed against the petitioner is reproduced as under:

“ **CHARGE SHEET**

*The accused No. 990010728 SI/ Steno Digamber Singh of Sector HQ BSF Jaisalmer is charged with:-*

**BSF ACT-1968**  
**SEC-19(a)**

**ABSENTING HIMSELF WITHOUT LEAVE**

*in that he,  
at sector HQ BSF Jaisalmer-II,  
Dabla on 13<sup>th</sup> Aug'2005 absented  
himself without leave till he  
voluntarily reported on 18<sup>th</sup> Sept'  
2005.”*

13. After the trial, the petitioner was found 'Guilty' of the charge



by the GSFC, and was accordingly awarded the sentence of 'dismissal from service'. The findings and sentence recorded by the GSFC were confirmed by the Confirming Authority on 08.11.2006, and the sentence was duly promulgated to the petitioner on 09.11.2006.

14. Subsequent to his dismissal from service, the petitioner submitted a statutory petition dated 06.03.2007 under Section 117 of the BSF Act, 1968 (BSF Act) read with Rule 167 of the BSF Rules to the Director General (DG), BSF, New Delhi, seeking reconsideration of the findings and sentence awarded by the GSFC.

15. Upon consideration of the said petition, the DG, BSF, as communicated *vide* letter dated 16.05.2007, commuted the punishment of 'dismissal from service' to that of forfeiture of five years of service for the purpose of promotion, along with a severe reprimand. In light of the commutation of the sentence, the petitioner was reinstated in service.

16. Still aggrieved, the petitioner filed the present petition.

**SUBMISSION OF THE LEARNED COUNSEL FOR THE PETITIONER:**

17. The learned counsel for the petitioner submitted that the petitioner had apprised the authorities well in advance of his personal and social commitments and had repeatedly requested the grant of leave. However, such requests went unheeded. He submitted that it was not a case of abrupt abandonment of duty, but rather one where the petitioner, having lost faith in the senior officers, was compelled to proceed on leave.



18. He further submitted that the petitioner had initially assessed that he would be able to attend to his familial obligations within a short span of holidays. However, due to unforeseen developments, his commitments could not be completed within that duration. Even then, the petitioner continued to keep the authorities informed of the prevailing circumstances and requested for extension of leave.

19. He contended that the right to leave, though subject to regulation, can only be denied on legitimate grounds as envisaged in the Rules, however, in the present case, the denial of leave was premised on extraneous considerations, eventually leaving the petitioner with no option but to proceed on leave.

20. It is submitted that the request of the petitioner was never considered owing to the adamant approach of the officers, which was allegedly driven more by ego than by administrative exigency, which is further evident as Inspector /PA T. Somasundaram was available and had expressed readiness to take over additional charge during the petitioner's absence.

21. It was further urged that there was no genuine exigency of service, as visits by senior officers are a regular occurrence and the operational situation in the petitioner's posting location, Jaisalmer, Rajasthan was normal, peaceful, and incident-free. Moreover, as per the revised visit programme, the Additional Director General was scheduled to visit the Jaisalmer Sector on 25.08.2005, whereas the petitioner was due to return from leave on 21.08.2005, that is, prior to the scheduled visit of the Additional Director General.

22. Lastly, he submitted that the petitioner was undergoing severe



mental distress, and the leave was primarily sought to celebrate the festival of Raksha Bandhan with his three married sisters who were visiting him, along with other pressing personal and social obligations. While in his hometown, due to circumstances beyond the petitioner's control, the petitioner was unable to report back for duty as scheduled and was compelled to extend his stay. In these circumstances, the petitioner could not have been held guilty of the alleged misconduct and prayed that the petitioner be accorded a clean acquittal.

**SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS:**

23. On the other hand, the learned counsel for the respondents submitted that the petitioner was well aware of the impending visit of the Additional Director General, and was also cognizant of the fact that, Sh. T. Somasundaram, was undergoing medical treatment at the relevant time. It was contended that, in view of such administrative exigencies, the presence of the petitioner at the Headquarters was imperative.

24. He further submitted that notwithstanding the fact that his leave had not been sanctioned, the petitioner willfully absented himself from duty during the period commencing from 13.08.2005 to 18.09.2005.

25. He submitted that repeated communications and warnings were issued to the petitioner, directing him to report back for duty, and stating that failure to do so would result in the initiation of disciplinary proceedings. Despite such warnings, the petitioner did not



comply, thereby necessitating disciplinary action in accordance with the applicable service rules.

26. The learned counsel submitted that the said action was undertaken in a *bona fide* manner, strictly in accordance with law and in adherence to the principles of natural justice. He submitted that the Impugned Order, therefore, does not call for interference by this Court.

### **ANALYSIS AND CONCLUSION:**

27. We have heard the learned counsels for the parties and perused the record as well as the digitized record of the GSFC proceedings.

28. In the backdrop of the factual position as stated above, let us examine the submissions of the learned counsel for the petitioner. It is not in dispute that the petitioner proceeded on leave without obtaining prior sanction of the leave from the Competent Authority. It is further evident from the communication dated 12.08.2005, that inspite of being told that leave shall not be sanctioned, the petitioner informed the respondents that, owing to certain unavoidable and compelling personal circumstances, he would be travelling to his hometown in the evening of 12.08.2005. Furthermore, in his application for extension dated 16.08.2005, the petitioner stated that due to inescapable reasons, his presence was required at his home and he would not be in a position to resume duties. On 30.08.2005, and again on 10.09.2005, he submitted further applications citing unavoidable circumstances for his inability to resume duty and finally informed that he would be reporting back on 18.09.2005, which he thereafter did.

29. Upon his return, the petitioner was produced before the



Commandant and was afforded an opportunity of being heard in terms of Rule 45(B) of the BSF Rules. Subsequent to which, the Commandant directed that a ROE be prepared. The ROE was duly prepared and submitted. Following the pre-trial advice rendered by the Frontier Headquarters, BSF, Rajasthan, as communicated *vide* letter dated 19.05.2006, the petitioner was tried by the GSFC convened at Sector Headquarters, BSF, Jaisalmer. The Charge framed against the petitioner was that of absenting himself without sanctioned leave for the period between 13.08.2005 and 18.09.2005. The petitioner pleaded 'Not Guilty' to the said charge and the trial accordingly proceeded on the basis of his plea. Upon conclusion of the trial, the GSFC found the petitioner 'Guilty' in respect of the Charge framed and accordingly imposed the sentence of 'dismissal from service'.

30. The petitioner, thereafter, submitted a statutory petition dated 06.03.2007 under Section 117 of the BSF Act, read with Rule 167 of the BSF Rules, addressed to the DG, BSF, New Delhi, seeking substitution of the findings and sentence awarded by the GSFC. The petition was partially accepted and the penalty was reduced.

31. It is pertinent to note that it is not the case of the petitioner that there was any violation of the principles of natural justice or any infraction of the provisions of the BSF Act or the Rules framed thereunder. The petitioner, however, contended that there existed no administrative exigency justifying the denial of leave, inasmuch as the visit of Senior Officers was a routine occurrence. Furthermore, the petitioner urged that he was posted at Jaisalmer, Rajasthan, a location which is peaceful. Additionally, there was no shortfall in manpower as



the strength at the Sector Headquarters was at full capacity, ensuring the proper functioning of the office. Significantly, Inspector/PA T. Somasundaram was not only present but also willing to take over the additional charge during the petitioner's proposed leave period, which he is stated to have discharged satisfactorily during the petitioner's absence.

32. In this regard, it is apposite to note the relevant provision of the CCS (Leave) Rules, 1972, which reads as under :

***"7. Right to leave:***

*(1) Leave cannot be claimed as of right.*

*(2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant. Provided that leave applied under Rule 20, shall not be refused or revoked without reference to the Medical Authority, whose advice shall be binding."*

33. In view of the above, we are of the considered opinion that the grant or refusal of leave to personnel serving in a disciplined Force is linked to the administrative exigencies and operational requirements of the concerned Force. This Court is not inclined to substitute its wisdom for that of the Departmental Authorities in assessing whether, in the prevailing circumstances, leave ought to have been granted to the petitioner. The strength and deployment of personnel, as well as the determination of whether the petitioner's leave would be compatible with the needs of the Force, are matters that lie within the



domain of the Competent Authority sanctioning leaves in the Force. The said Authority, *vide* letter dated 12.08.2005, had advised that the petitioner should defer his leave plan until the official visit of the Additional Director General was over. As a member of the disciplined Force, the petitioner should have complied with this direction instead of proceeding on leave without sanction.

34. Furthermore, the GSFC examined eight prosecution witnesses, while the petitioner examined one witness in his defence. Upon examining the evidence, the GSFC recorded a finding that all the prosecution witnesses, as well as the petitioner, had deposed to the effect that the petitioner was absent from duty with effect from 13.08.2005 to 18.09.2005.

35. The only issue that remains for consideration before us is whether the petitioner had voluntarily absented himself without sanctioned leave during the said period.

36. In this regard, PW-1 deposed that the petitioner had been advised by him, in accordance with the directions of the DIG, to plan his leave after the completion of the visit of the Additional Director General (West). However, despite such advice, the petitioner absented himself without sanctioned leave from 13.08.2005. The statements of PW-2, PW-3, PW-4, and PW-6 corroborated the version of PW-1 on all material particulars. The petitioner himself has deposed that he had already confirmed his availability at his home during the aforesaid period and had left the Sector Headquarters after informing the GD Office of the SHQ, even though no leave had been granted to him.

37. Thus, in view of this, we have no hesitation in holding that the



petitioner had misconducted himself by proceeding to his hometown without sanctioned leave, and was rightly tried by the GSFC, which sentenced him to ‘dismissal from service’.

38. Upon the representation filed by the petitioner, the DG, BSF commuted the punishment of dismissal from service to that of forfeiture of five years of service for the purpose of promotion, along with a severe reprimand, *vide* Order dated 16.05.2007. In light of the commutation of the sentence, the petitioner was reinstated in service.

39. That being said, we are mindful of the settled position that any interference in matters concerning the quantum of punishment imposed by the Disciplinary Authorities must be exercised with restraint and should not be exercised unless the punishment is found to be shockingly disproportionate to the gravity of the misconduct. In this regard, the observations of the Supreme Court in ***Ranjit Thakur v. Union of India and Others***, (1987) 4 SCC 611, are apposite to be noted and the same are reproduced 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. 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.....”*



2025:DHC:4359-DB



40. In the present case, given the fact that the petitioner proceeded on leave without the same being sanctioned and to the contrary, the petitioner being told that leave cannot be sanctioned, has acted in a manner not befitting a member of the Armed Disciplined Force. In view of the same, the punishment imposed on him cannot be said to be disproportionate. As stated above, in these proceedings, this Court can interfere with the punishment only if it is found to be shockingly disproportionate and not only because it may have exercised the discretion by imposing a different or lighter punishment.

41. In view of the foregoing, we find no merit in the petition.

42. The petition is accordingly dismissed.

**SHALINDER KAUR, J.**

**NAVIN CHAWLA, J.**

**MAY 26, 2025/SK**

*Click here to check corrigendum, if any*