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

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Date of Decision : 23.02.2026

+ **W.P.(C) 2488/2026 & CM APPL. 12078/2026**

SANJEEV KUMAR

.....Petitioner

Through: Mr. Anil, Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Amit Gupta, SPC, Mr. Vidur
Dwivedi, GP, Mr. Devendra Singh,
Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

MANMEET PRITAM SINGH ARORA, J. (ORAL)

CM APPL. 12078/2026 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 2488/2026

1. The present writ petition is being filed under Article 226 of the Constitution of India, seeking quashing of the dismissal order dated 23.07.2022 passed by commandant 40th battalion, Indo-Tibetan Border Police Force ['ITBP'] and statutory appeal order dated 15.11.2023 passed by Director General ITBP through DIG(Estt.) ITPB headquarter ['impugned orders'].



2. The facts relevant to the present petition, as pleaded are: -

2.1 The petitioner was appointed as Constable (GD) in the Indo-Tibetan Border Police Force on 29.07.2012. In the year 2015, the petitioner developed a serious psychiatric illness while in service. He was treated by ITBP psychiatrists and other government institutions. The petitioner was repeatedly placed in low medical category owing to his mental illness and last reported on duty on 26.11.2021.

2.2 The respondents initiated a Court of Inquiry ('COI') on 14.01.2022 for alleged unauthorized absence of the petitioner since 27.11.2021 and declared him 'deserter' vide order dated 15.02.2022.

2.3 Subsequently, following the procedure contemplated under Rule 20 of the ITBP Rules *vide* order dated 23.07.2022, the petitioner was dismissed from service, w.e.f. 26.11.2021 in exercise of powers under Rule 17 of the ITBP Rules.

2.4 A statutory appeal dated 09.09.2022 was filed by petitioner's wife, but the same was not decided. After directions from the coordinate Bench of this Court in W.P.(C) 11217/2023 to decide the appeal in a time-bound manner, the appellate authority has rejected it by order dated 15.11.2023 and upheld the order of dismissal.

2.5 By way of this petition, the petitioner has impugned the the orders dated 23.07.2022 and 15.11.2023.

3. The main ground raised by the petitioner for challenging the impugned orders of dismissal are that the petitioner's absence was involuntary and solely attributable to clinically diagnosed psychiatric illness; therefore, it could not amount to misconduct or desertion. It is averred that the respondents wrongly invoked procedure of Rule 20 (misconduct) of the



ITBP Rules instead of proceeding under Section 21 of the ITBP Act, which mandates trial by a Force Court for absence without leave, rendering the orders of dismissal without jurisdiction.

3.1. It is also stated that the dismissal proceedings held under Rule 20 were conducted ex parte. It is stated that the punishment of dismissal is disproportionate, ignoring his 9+ years of clean service, absence of moral turpitude, and the availability of less drastic alternatives such as medical invalidation or sheltered posting. It is stated that the appellate authority failed to consider medical records and passed a non-speaking, mechanical order.

4. This Court has heard the learned counsel for the parties and has perused the impugned orders along with annexures filed with the petition.

5. The scope of interference in a writ of certiorari against the impugned orders is limited to correcting jurisdictional errors, patent errors of law apparent on the face of the record, failure to exercise jurisdiction, excess of jurisdiction, or violations of the principles of natural justice, as held in **Syed Yakoob v. K.S. Radhakrishnan**¹. The jurisdiction under Article 226 is supervisory in nature and does not confer upon this Court the power to act as an appellate authority by re-appreciating evidence or disturbing findings of fact recorded in the impugned orders.

6. The impugned order dated 23.07.2022 records that the petitioner had been unauthorizedly absent from the Battalion Headquarters, 40th Battalion, ITBP Ranchi Camp since 27.11.2021 (forenoon), without permissions of the competent authority and without prior intimation. It records that despite repeated communications directing the petitioner to report back, lodging of a



DDR [‘Daily Diary Report’] with the local police, stoppage of salary and allowances, and initiation of action under Section 72 of the ITBP Act, 1992 [‘ITBP Act’] for arrest, he neither reported for duty nor was produced before the Battalion. It is stated that, infact, his father informed the authorities that petitioner was mentally unwell and undergoing treatment at home and therefore unable to join the duty.

The impugned order records that the Battalion offered medical treatment facilities to the Petitioner at its own medical unit and at CIP/RIMS, Ranchi, and requested the father that petitioner be sent with medical documents. Even thereafter, petitioner failed to report.

A Court of Inquiry (COI) was constituted to ascertain the reasons for his unauthorized absence. On the basis of its findings, he was declared a ‘deserter’ w.e.f. 27.11.2021 (forenoon) vide order dated 15.02.2022.

Thereafter, a show cause notice and final opportunity was issued to petitioner, including publication of notice in newspapers (Amar Ujala and The Hindustan Times, Aligarh edition), directing him to report within 30 days or submit a defence. Despite these opportunities, no appearance or explanation was received. Accordingly, in exercise of powers under Section 11 of the ITBP Act, 1992 read with Rules 17 and 20 of the ITBP Rules, 1994 [‘ITBP Rules’], the petitioner was dismissed from service with effect from 26.11.2021 (afternoon).

7. Similarly, the impugned order dated 15.11.2023 recorded that the petitioner had remained absent for 239 days, despite repeated actions, issuance of show cause notice, and even publication in newspapers. The authorities had also offered medical treatment facilities in the Unit and at

¹ AIR 1963 SC 477, at paragraph 7 and 8.



CIP/RIMS in view of the father's plea regarding mental illness, but the petitioner never reported back. It was further observed that during his service of about nine years, the petitioner had earlier remained absent without leave on multiple occasions for prolonged periods, reflecting habitual absenteeism. Considering his continued unauthorized absence, failure to avail opportunities, and past conduct, the dismissal order dated 23.07.2022 was found justified. Accordingly, the statutory appeal dated 09.09.2022 was rejected as devoid of merit.

8. Having perused the petition and the impugned orders, we are of the considered opinion that the plea of denial of opportunity of being heard during the Court of Inquiry ('COI') which led to passing of the impugned dismissal order dated 23.07.2022 is without any merit. The contents of the impugned orders show that petitioner was granted several opportunities to report back and resume duty. The notices calling upon him to report were duly received by him and acknowledge by his family members. The petitioner consciously elected not to report back and have himself examined by the medical authorities of the respondent. Similarly, during the course of the proceedings for dismissal initiated under Rule 21 of the ITBP Rules, show cause notice was duly issued and served on the petitioner. Notice was also served through publication in newspapers. However, petitioner elected not to appear or respond to the said notice. There was no representation on behalf of the petitioner despite notice(s). In these facts, this Court is not persuaded by the submission of the petitioner that there was violation of principles of natural justice or that the petitioner was condemned unheard, before passing of the impugned order dated 23.07.2022.

9. The conclusion of the respondent in the impugned order that



petitioner's conduct evidenced that he was not willing to continue further service in the ITBP and retaining him was not in interest of the Force is reasonable and merits no interference. Pertinently, the petitioner has not impugned the order dated 15.02.2022 declaring him a deserter.

10. For the reasons discussed above, the petition is hereby dismissed for being devoid of any merits. No order as to costs.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

FEBRUARY 23, 2026/AM/hp