



2025:DHC:6624-DB



\$~114

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

+ **W.P.(C) 5143/2016**

EX CONSTABLE SAILESH SHARMAPetitioner
Through: Mr. Jitendra Kumar Singh,
Adv.

versus

UNION OF INDIA AND ORSRespondents
Through: Mr. Bhagwan Swarup Shukla,
CGSC with Mr. Vinay Kumar Shukla, Adv.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **16.07.2025**

AJAY DIGPAUL, J.

1. Through the medium of instant petition, the petitioner has called in question the dismissal order dated 14.08.2012 passed by the respondents on grounds of absence without leave, as also the order dated 22.08.2015 rejecting the statutory appeal. The petitioner further seeks a direction to the respondents to reinstate him in service with all consequential benefits, by treating the period of absence and dismissal as having been spent on duty.

2. The factual backdrop leading to the filing of this petition is that



2025:DHC:6624-DB



the petitioner was enrolled in Border Security Force¹ as Constable (GD) on 23.06.2008. Upon completion of Basic Recruit Training at RTC, Bhondsi under 25 Battalion, BSF, he was posted to 7th Battalion, BSF, where he joined on 22.04.2010.

3. Thereafter, the petitioner was detailed for participation in the DG's Farewell Parade/ BSF Raising Day Parade and was accordingly sent to the 25th Battalion, BSF, along with a certificate of medical fitness issued by the Medical Officer of the unit, vide Movement Order dated 15.09.2011.

4. The genesis of the present controversy arises from the petitioner's absence without leave from the 25th Battalion, BSF, with effect from 29.12.2011. In this regard, a missing report/ First Information Report was lodged by the said Unit at Police Station Chhawla, New Delhi.

5. Pursuant thereto, it is the specific case of the petitioner that due to the continued rigour of parade practise for the forthcoming Republic Day function, he suffered mental exhaustion and was unable to sleep at night. It is stated that he was granted a day's rest on 28.12.2011. However, on 29.12.2011, he allegedly left the Khel Gaon Parade Camp, New Delhi, and somehow reached Lucknow, where he was located by his family members, who commenced his medical treatment at the Institute of Human Behaviour and Allied Sciences

¹ Hereinafter "BSF"



2025:DHC:6624-DB



(IHBAS), Dilshad Garden, Delhi.

6. The records indicate that the respondents issued a registered letter dated 02.01.2012 to the petitioner at his residential address as per the service records maintained by the parent unit, i.e. 7th Battalion, BSF, on 21.02.2012.

7. Pursuant to such sustained efforts, the petitioner reported back to the 7th Battalion, BSF, on 21.02.2012. However, he again absented himself the very next day, i.e. on 22.02.2012, after leaving his father at the unit location.

8. Accordingly, a further missing report/ First Information Report was lodged by the unit with Police Station Kotwali, Coochbehar (West Bengal) on 23.02.2012.

9. Upon receipt of information regarding the petitioner's medical condition, as communicated by his father and the SHO, Police Station Badauth, District Baghpat, the petitioner was informed vide registered letters dated 11.04.2012 and 17.04.2012 to rejoin duty and continue his treatment at a BSF Hospital.

10. Meanwhile, a Court of Inquiry was convened vide order dated 09.02.2012 and concluded on 02.04.2012. The Court of Inquiry held the petitioner blameworthy for unauthorised absence and recommended disciplinary action under the applicable provisions of the BSF Act & Rules. Based on the findings of the said Inquiry, an



2025:DHC:6624-DB



Apprehension Roll under Sections 60 and 61 of the BSF Act was issued to the Superintendent of Police, District Baghpat (U.P.), vide registered letter dated 30.04.2012, requesting that the petitioner be apprehended and handed over to the nearest BSF establishment. No response was received from the concerned police authorities.

11. In the absence of any response either from the petitioner or the police authorities, the respondents issued a Show Cause Notice dated 06.05.2012 along with a copy of the adverse report and the Court of Inquiry proceedings, directing the petitioner to respond within 30 days, failing which action for termination from service would be initiated.

12. The petitioner failed to respond to the aforesaid Show Cause Notice or to rejoin duty. While his father intimated that the petitioner was undergoing treatment and would rejoin after recovery, no formal request for leave was made, nor was any timeline provided regarding the expected duration of such treatment.

13. Thereafter, the petitioner was once again directed, vide letter dated 11.06.2012, to report to the BSF Hospital at R.K. Puram, New Delhi for continuation of his treatment. Even this direction went uncompiled with, as the petitioner neither reported to the hospital nor resumed the duty.

14. A second Show Cause Notice dated 03.07.2012 was dispatched to the petitioner at his recorded residential address. The petitioner did



2025:DHC:6624-DB



not furnish any response to the same nor reported back for duty.

15. Consequently, the respondents, having exhausted all efforts, proceeded to dismiss the petitioner from service with effect from 14.08.2012 on the ground of unauthorised absence without leave. The order of dismissal was sent by registered post to the petitioner's last known address.

16. After a lapse of more than two years, the petitioner submitted a statutory representation dated 14.11.2014 seeking reinstatement. The said representation, however, was rejected by the Deputy Inspector General, Sector Headquarters, BSF, Coochbehar, vide order dated 02.02.2015, on the ground of being time-barred and devoid of merit.

17. Subsequently, the petitioner preferred an appeal dated 09.06.2015 addressed to the Inspector General, BSF, Guwahati, once again seeking reinstatement on the plea that he was not served with the dismissal order earlier.

18. The said appeal was also rejected by the Appellate Authority vide order dated 22.08.2015.

19. Thereafter, the petitioner filed a revision petition against the rejection of his appeal, but no response was received.

20. Aggrieved by the orders of dismissal and rejection of his appeal, the petitioner has approached this Court by way of the present



2025:DHC:6624-DB



writ petition seeking the reliefs as set out hereinabove.

21. During hearing of the present petition following submissions were advanced by the counsel for the petitioner, Mr. Jitendra Kumar Singh:

- i. The petitioner, a Constable in the BSF since 2008, was a disciplined and meritorious officer who suffered serious mental breakdown due to continuous physical and mental exertion while preparing for ceremonial parades in late 2011. It is submitted that owing to his deteriorating mental health, the petitioner left his post and was later found and treated at IHBAS, Delhi and other medical institutions. His condition was regularly communicated by his family to the BSF authorities, including the local police station, which confirmed his mental illness.
- ii. It is contended that the petitioner neither received the show-cause notice nor the dismissal order dated 14.08.2012, which was ultimately received only on 15.04.2015 pursuant to a request made by the petitioner in March 2015. On receipt thereof, the petitioner promptly filed an appeal, which was mechanically rejected by the appellate authority without due consideration of the material placed on record. A revision petition was also submitted but no response was received.
- iii. Learned counsel emphasises that the petitioner's absence from duty was not wilful or intentional, but a result of bona fide



medical circumstances which rendered him incapable of performing duties. It is submitted that the impugned order of dismissal is grossly disproportionate and fails to reflect any humanitarian or sympathetic consideration, particularly in view of the petitioner's family responsibilities and recovery.

- iv. Reliance is placed on the judgments of the Hon'ble Supreme Court in *Krushnakant B. Parmar v. Union of India*², *Tapash Kumar Paul v. BSNL*³, and *Bhagwan Lal Arya v. Commissioner of Police*⁴, to contend that absence from duty occasioned by genuine medical incapacity, particularly due to mental illness, cannot be construed as willful or deliberate so as to warrant the extreme penalty of dismissal from service. In *Krushnakant B. Parmar (supra)*, the Hon'ble Court held that where absence is the result of compelling circumstances, such as illness, it cannot be termed misconduct unless intent or wilfulness is established. Similarly, in *Bhagwan Lal Arya (supra)*, the Hon'ble Court held that when absence is supported by medical evidence, imposition of a disproportionate penalty like dismissal is arbitrary and unsustainable. In *Tapash Kumar Paul (supra)*, reinstatement with back wages was directed where the employee's absence was not intentional and he was not gainfully employed during the period of removal.

² (2012) 3 SCC 178

³ (2014) 15 SCC 313

⁴ (2004) 4 SCC 560



2025:DHC:6624-DB



22. *Per contra*, the learned CGSC for the Respondents, Mr. Bhagvan Swarup Shukla, submits that the petitioner was dismissed from service from 14.08.2012 for unauthorised absence amounting to 228 days, in two spells, first from 29.12.2011 to 20.02.2012, for 54 days, and then from 22.02.2012 to 14.08.2012, for 174 days.

23. He further submits that the disciplinary proceedings were conducted under Rule 22 of the BSF Rules, 1969 read with Section 11(2) of the BSF Act, 1968. Show cause notices were duly issued and dispatched to the petitioner at the address on record, and also communicated to the local police station and Gram Pradhan. A Court of Inquiry was convened and the petitioner was afforded due opportunity to represent his case.

24. He further contends that the petitioner did receive prior communications, including the letter dated 17.04.2012, but feigned ignorance of receiving the dismissal order and show cause notices. The petitioner's father was also in regular correspondence with the BSF, and it is implausible that they remained unaware of the dismissal proceedings.

25. The claim of mental illness or depression is denied as being an afterthought. It is contended that there is no contemporaneous medical evidence or record showing any diagnosis or treatment at the relevant time through BSF authorised medical facilities. The petitioner failed



2025:DHC:6624-DB



to avail the opportunity offered by the BSF to get examined at a designated hospital.

26. It is submitted that the petitioner was selected for high-profile ceremonial duties such as DG's Farewell Parade and Republic Day parade based on fitness certificates, and no mental illness was ever reported or recorded during service.

27. The respondents deny the claim that the petitioner required family care for his alleged illness. Further reliance is place on an FIR dated 25.07.2012 lodged by the petitioner's father-in-law under Sections 498A, 323, 307 IPC and Sections 3 and 4 of the Dowry Prohibition Act, to submit that the petitioner's personal conduct was itself under serious question and not indicative of mental incapacity.

28. In view of the petitioner's prolonged unauthorised absence, wilful disregard of lawful orders, and failure to substantiate his medical condition, the dismissal from service is stated to be legal, justified, and not liable to be interfered with.

29. Having heard learned Counsel for the parties, we regret our inability to come to the aid of the petitioner.

30. The moot question for consideration before this Court is whether the impugned order of dismissal dated 14.08.2012, passed by the respondents on account of unauthorised absence of the petitioner from duty, is liable to be interfered with in exercise of writ jurisdiction



2025:DHC:6624-DB



under Article 226 of the Constitution of India, on the ground that the petitioner was suffering from mental illness and was under treatment, thereby constituting sufficient cause for such absence.

31. From the admitted facts on record, it is evident that the petitioner was absent from duty in two spells, firstly from 29.12.2011 to 20.02.2012 and thereafter from 22.02.2012 to 14.08.2012, amounting to a total of 228 days. The petitioner, though initially traced by his family and stated to be under treatment at IHBAS, Delhi and subsequently at other hospitals, neither reported back to his unit nor availed the opportunity extended to him by the respondents to undergo medical examination or treatment at BSF designated medical facilities.

32. The material placed on record by the petitioner does not disclose any contemporaneous or official communication made by him, or on his behalf, seeking grant of medical leave. Though the petitioner's father is stated to have written to the authorities regarding the petitioner's mental condition, no formal request for leave or extension, supported by medical records certified by BSF medical officers, has been produced. We deem it appropriate to reproduce the letter dated 07.05.2012 filed by the petitioner's father addressed to the respondents:

“To

The Commandant
07 Battalion BSF
Talliguri, Coochbehar



2025:DHC:6624-DB



North Bengal

Sub: -Intimation for sickness of Sailesh Sharma S/O Shri. Surya Bhushan Sharma.

Sir,

I beg to state that Saleshe Sharma S/o Shri. Surya Bhushan Sharma who is suffering from mental sickness since 29.12.2011 and he absent from the duty. He is being treated in the hospital of Institute of Human Behaviours and Allied Science (IHBAS) Dilshad Garden, Delhi-95 and his condition is improving.

Sir, on registered letter No. Estt/7 Bn BSF/12/594 dated 17.04.2012 received from office where in it is directed to come head office for treatment.

Sir, Delhi is near to us and the condition is also improving. At home Saleshe is looked after properly by his mother, wife and he given medicine on time. But in headquarter it would be so many difficulties from my family members.

Saleshe Sharma needs family at this time, family which is willful and after recovering, he would join the duty. Because he has been absent twice from the duty for the disease.

This is for your kind information.

Applicant

Sd/-

Surya Bhushan Sharma
S/O Late Sh. Jagdish Prasad Sharma,
Village + Post- Bijrol,
District- Bagpat, (UP)
Date – 07.05.2012”

33. Furthermore, it is an admitted position that the petitioner failed to respond to repeated notices, including show cause notices dated 06.05.2012 and 03.07.2012, which were dispatched not only to his residential address but also communicated to the local police and Gram Pradhan. A perusal of the record, particularly the letter dated



2025:DHC:6624-DB



07.05.2012, as well as the present petition reveal that the petitioner's residential address is Village and Post - Bijrol, P.S.:- Barut, District-Bagpat, U.P.-250611, Bagpat, U.P.-250611, and that both the show cause notices as well as the impugned orders were duly addressed and sent to this very address. This fact clearly shows that the petitioner was not very keen to join the force. Therefore, it is safe to say that the present petition and the ground of ill health appears to be an afterthought.

34. The petitioner's contention that he did not receive the dismissal order until April, 2015 is belied by the record, which shows that the dismissal order dated 14.08.2012 was sent through registered post to the petitioner's address on record. Notably, the letter dated 07.05.2012 from the petitioner's father acknowledges receipt of the respondent's earlier communication dated 17.04.2012, thereby affirming that correspondence sent to the said address was being duly received. It is well settled principle of law that dispatch of a document to the address on record by registered post raises presumption of service, unless rebutted by cogent evidence, which in the present case, is conspicuously absent.

35. This Court is also not persuaded to accept the plea of mental incapacity as a justifiable ground for prolonged unauthorised absence. While the petitioner has relied on medical certificates issued by private hospitals and has made general assertions regarding mental illness, no contemporaneous diagnosis or certification from BSF



2025:DHC:6624-DB



medical authorities was either sought or reproduced. The offer made by the respondents to the petitioner to report at the BSF Hospital, R.K. Puram, New Delhi for medical evaluation was not availed. Such conduct amounts to absconding from the force without authorisation, which in a disciplined service like the BSF constitutes a grave dereliction of duty.

36. The contention of the petitioner that the disciplinary proceedings were conducted without adopting a sympathetic approach is equally without merit. The record reveals that the respondents issued repeated notices, including an Apprehension Roll, and granted adequate opportunities to the petitioner to respond and present his case. The proceedings were initiated and concluded in accordance with Rule 22 of the BSF Rules, 1969 read with Section 11(2) of the BSF Act, 1968, and no violation of principles of natural justice has been demonstrated.

37. With a view to buttress his arguments, learned counsel for the petitioner has placed reliance on the judgments *Krushnakant B. Parmar* (supra), *Tapash Kumar Paul* (supra), and *Bhagwan Lal Arya* (supra), which are misplaced and distinguishable on facts. In the present case, there is no satisfactory or medically certified proof of compelling circumstances, which incapacitated the petitioner from either reporting back to duty or complying with repeated directions issued by the respondents.



38. Another ground raised by the petitioner, which is required to be considered by this Court, is the proportionality of the punishment, which has been imposed on the petitioner as the petitioner claims it to be very harsh. From the perusal of record, it reveals that the petitioner was imposed with the order of dismissal under Section 11(2) of the BSF Act for admittedly remaining absent from duty from a disciplinary force of BSF w.e.f. 29.12.2012 to 20.02.2012 and from 22.02.2012 to 14.08.2012. With regard to the scope of intervention by the Courts in the proportionality of punishment imposed, the same has been settled in various legal pronouncements.

39. The Apex Court in the case of *Union of India & Ors. v. P. Gunasekaran*⁵, held 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 and provided various parameters for intervention by the High Court. The relevant paras of which has been reproduced as under:

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.

⁵ (2015) 2 SCC 610



2025:DHC:6624-DB



40. Considering the facts of the present case, where the petitioner remained unauthorisedly absent from duty for an extended duration without any sanctioned leave or cogent justification, the action taken by the respondents is consistent with the settled principles of law governing disciplinary proceedings. The petitioner, being a member of a uniformed and disciplined force, was expected to maintain the highest standards of discipline and commitment. In such circumstances, the respondents were well within their rights to initiate and conclude disciplinary action resulting in dismissal.

41. In light of the foregoing analysis, this Court finds no infirmity, procedural or substantive, in the decision of the respondents to dismiss the petitioner from service for unauthorised absence without leave. The action taken is neither arbitrary nor disproportionate, and no ground for interference is made out.

42. The petition is accordingly dismissed. No order as to costs.

AJAY DIGPAUL, J.

C.HARI SHANKAR, J.

JULY 16, 2025/AS