



2025:DHC:6657-DB



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

Date of decision: 01st AUGUST, 2025

IN THE MATTER OF:

+ **W.P.(C) 4012/2007**

PREM SHANKAR DWIVEDI

.....Petitioner

Through: Mr. Vinayak Mohan, Advocate

versus

UOI & ORS.

.....Respondents

Through: Mr. Akshay Amritanshu, Senior Panel Counsel, Ms. Drishti Saraf, Ms. Drishti Rawal and Mr. Sarthak Srivastava, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

1. The instant writ petition is filed by the Petitioner challenging the Order dated 08.05.2004 passed by the Respondent No. 4 herein i.e., Adjutant, 6th Battalion, ITBP Force, terminating the services of the Petitioner and the subsequent Orders dated 30.09.2004, passed by the Director Inspector General (LWA); order dated 28.04.2006 passed by Inspector General, ITBP (HQ), confirming the Order dated 08.05.2004. The Petitioner also challenges the Order dated 28.01.2004 *vide* which the Petitioner was declared as an absconder.

2. Shorn of unnecessary details, the facts leading to this writ petition are as follows –



- a. Petitioner was appointed as a Ground Duty Constable in the Indo-Tibetan Border Police (ITBP) in the year 1987. Thereafter, he was promoted to the rank of Lance Naik Ground Duty.
- b. It is stated that while working as Lance Naik and being posted at 6th Battalion, ITBP, Ramgarh, District Panchkula, Haryana, the Petitioner sought for an earned leave of 60 days commencing from 15.02.2003 to 18.04.2003. The leave was sanctioned by the Respondent No. 4 and the Petitioner left for his hometown.
- c. It is stated that the Petitioner was supposed to join the duties on 18.04.2003 afternoon. However, he did not join the duty on the said day. It is the case of the Petitioner that he was suffering from acute hepatitis and has written several letters to the Respondent No. 4 seeking extension of leave on the ground of his medical illness.
- d. It is stated that out of the several letters written to the Respondent No. 4 by the Petitioner, only the Letter dated 23.04.2003, which was for the extension of leave for 15 days, was acknowledged by Respondent No. 4, and the same was rejected by Respondent No. 4, directing the Petitioner to join his duties immediately.
- e. Material on record discloses that the Petitioner wrote another Letter dated 26.04.2003 seeking extension of leave for a period of 30 days which was rejected by Respondent No.4 *vide* Letter dated 06.06.2003.
- f. It is stated that in reply to the rejection Letter dated 06.06.2003, the Petitioner submitted all his medical documents seeking extension of leave which was forwarded to Respondent No.4. However, Respondent No.4 *vide* reply dated 11.07.2003 denied the said request and directed the Petitioner to join the service immediately.



- g. Respondent No. 4 issued a Memo dated 13.08.2003 to the Petitioner stating that it is the last warning to the Petitioner to join the duty. The Memo also stated that the Petitioner can get himself treated in the Battalion Hospital.
- h. It is stated that a further memo was issued to the Petitioner on 28.08.2003 asking him to join the services immediately. Material on record indicates that the Respondent No. 4 on prior occasions requested the Additional Superintendent of Police, Allahabad, U.P., to conduct a secret enquiry regarding the health of the Petitioner. Again, a Letter dated 29.11.2003 was sent by the Respondent No. 4 to the Superintendent of Police, Allahabad, U.P., requesting the authorities to conduct a secret enquiry on the Petitioner's health condition to determine whether he is unfit to join the service in actuality. The Enquiry Report stated that the Petitioner was not ill.
- i. Material on record further indicates that *vide* Order dated 28.01.2004, the Petitioner was declared as an 'absconder' by the Respondent No.4. Paragraph 4 and 5 of the said Order reads as under:-

“4. By the enquiry report of Mohd. Kallamuddin forwarded vide OR No.926 of the Senior Superintendent of Police District Allahabad (U.P.) Batch No.870112543 L.N. G.D. Prem Shankar Dwivedi HO Company 6th Battalion Indo Tibetan Border Police without permission of the competent authority is deliberately absenting himself from 18.4.2003 afternoon after sixty days earned leave. For the purposes of finding out the reasons of absent from leave without the permission of the competent authority, under Section 74 (1) of ITBP Force Act 1992 a Judicial Enquiry Committee has been constituted. Therefore, on the basis of the opinion of the Judicial



Enquiry Committee and statement of the witnesses Batch No.870112543 L.N. G.D. Prem Shankar Dwivedi of HO Company 6th Battalion Indo Tibetan Border Police Force is hereby declared absconding from Force with effect from forenoon of 19.04.2003 under the provisions given in Section 74(2) of Indo Tibetan Border Police Force Act 1992. And from 19.4.2003 (forenoon) this employee shall not be entitled for I any salary or allowances.

5. The Government articles found of the Government kit of Batch No.870112543 L.N. G.D. Prem Shankar Dwivedi of HO Company 6th Battalion Indo Tibetan Border Police which costs around Rs.2584 + Rs.100 for his personal weapon is found crohit was given to him. The total amount comes to Rs.2684/- (Rupees Two thousand six hundred eighty four) which may be recovered from personal amount payable to him and be deposited in the government coffer.

The following is the service record of the employee:

<i>Batch No.</i>	<i>870112543</i>
<i>Post</i>	<i>L. N./G.D.</i>
<i>Name</i>	<i>Prem Shankar Dwivedi</i>
<i>Father's Name</i>	<i>Baij Nath</i>
<i>Date of Birth</i>	<i>29.12.1964</i>
<i>Date of Appointment</i>	<i>19.9.1987</i>
<i>Identification Mark:</i>	<i>1) One mole of the middle of the leg on left side.</i>

Address: Village Barhaiya, P.O. Shankar Garh, Tehsil Wara, District Allahabad (U.P.)”

- j. A final warning was issued to the Petitioner on 13.02.2004 directing him to join the duties within 30 days of the receipt of the said letter and also informing him that he has already been declared as an ‘absconder’.



k. A Press Note dated 02.03.2004 was also issued by Respondent No.4 which was published in the Amar Ujala (Hindi Edition), Allahabad, directing the Petitioner to join the duties within 10 days from the date of the publication of the notice.

l. A communication dated 10.03.2004 was sent by the Petitioner stating that his medical condition is in a bad state and that he is not in a position to join the services. He requested Respondent No.4 to give him one more opportunity to join the services as soon as he recovers.

m. It is claimed by the Petitioner that he returned to the Battalion Headquarters and joined the services on 14.03.2004.

n. On 28.03.2004, a notice was published by Respondent No.4 informing the Petitioner that he has not submitted any medical certificate in the proforma prescribed according to the CCS Leave Rules, 1972, and that he has not reported to the duty despite several correspondences. The notice also stated that Judicial Enquiry Committee was constituted to find out the reasons of his absence and that the Petitioner has been declared as an 'absconder' on the basis of the opinion of the Judicial Enquiry Committee. The notice asked the Petitioner to join duties within 30 days, failing which action would be taken against the Petitioner under Section 21 of the Indo Tibetan Border Police Force Act, 1992, (*hereinafter referred to as "ITBP Force Act"*).

o. Pursuant thereto, an Order dated 08.05.2004 was passed by Respondent No.4 dismissing the Petitioner from service. Paragraph 5 to 7 of the said Order reads as under:-

"5. Batch No.870112543 LN/GD Prem Shanker Dwivedi D 6th Company Battalion, ITB Police is



running absent from his leave without information with effect from 18.4.2003 forenoon and without giving information from 10.3.2004 from which it is clear that this employee do not want to serve in ITBP nor he is able to be retain in service.

6. The aforesaid employee has been directed for present on duty by publishing the notice in different newspapers three times but the employee did not report on duty. Therefore, by taking ex-parte action and by exercising the powers conferred under Rule 17 and 20 of the ITBP Force Regulation 1994 Batch No.870112543 LN/GD Prem Shankar Dwived D Company, 6th Battalion Indo Tibetan Border Police is hereby dismissed from service with effect from 8.5.2004 forenoon. And the employee is hereby reduced from the Nafri of this Battalion with effect from 8.5.2004 forenoon. The employee is also hereby given doios non for all purposes with effect from 19.4.2003 to 7.5.2004 for treating him absent for a period of 385 days.

7. The Batch No.870112543 LN/GD Prem Shankar Dwivedi D Company, 6th Battalion Indo Tibetan Border Police is hereby ineligible for any other government service due to being dismissed from ITBP Service. The service details of the employee are as under:

<i>Batch No.</i>	<i>870112543</i>
<i>Post</i>	<i>LN/GD</i>
<i>Name</i>	<i>Prem Shankar Dwivedi</i>
<i>Father's Name</i>	<i>Baij Nath</i>
<i>Date of Birth</i>	<i>29.12.1964</i>
<i>Date of Recruitment</i>	<i>19.9.1987</i>
<i>Identification Mark:</i>	<i>1) One mole of the middle of the neck on LT. side.</i>



Address:

Village Barhaiya, P.O.
Shankar Garh, Tehsil Bawa,
District, Allahabad, U.P.”

(emphasis supplied)

p. Against the said Order, a representation was filed by the Petitioner, which has been rejected by the Deputy Inspector General, ITBP, by passing a non-speaking order. The said Order dated 30.09.2004, in its entirety, is reproduced as under:-

“Kindly peruse your application dated 7.8.2004 which is addressed Adjutant, 6th Battalion ITB Police.

2. Your application has been inquired in detail in this office and the action taken by the Adjutant 6th Battalion was found correct. Therefore, your appeal which against the termination from service is hereby rejected.”

q. Thereafter, the Petitioner filed an appeal challenging the Order dated 30.09.2004 before the Director General, ITBP. Pending the said appeal, the Petitioner also filed W.P.(C) No.23452/2005 before this Court which was disposed of by this Court *vide* Order dated 13.12.2005 directing the concerned authority to dispose of the said appeal.

r. The said appeal was disposed of *vide* Order dated 28.04.2006 passed by the Inspector General (HQ), ITBP, upholding the termination of the Petitioner’s service. Paragraph 8 of the said Order reads as under:-

“8. Whereas under the provisions of Rule 28 of ITBPF Rules 1994, only one appeal lies against the order of dismissal and the petitioner has already avail this remedy. However, in view of the directions passed by Hon’ble High Court of Delhi on 13.12.05 in Civil Writ



Petition, the undersigned after going through the facts and circumstances of the case, is of the view that appellant was given ample opportunity to resume duties through show cause notices issued by the Commandant, 6th Bn., ITBPF, but appellant had not submitted any reply to show cause notices against the proposed dismissal from service and remained absent for 385 days. As such order of dismissal passed by the Commandant was in accordance with the rules.”

s. The Orders dated 08.05.2004, 30.09.2004 and 28.04.2006, are impugned herein.

3. Learned Counsel for the Petitioner contends that the Petitioner was not in a position to rejoin his duties in view of his ill health. He states that he had made various representations, however, the same has not been taken into account by the concerned authorities. He further states that he has repeatedly attached medical documents concerning his ill health to the Respondent No.4, however, they were inconsiderate towards the Petitioner's condition and repeatedly discarded his representation.

4. Furthermore, learned Counsel for the Petitioner submits that the Petitioner joined the services on 14.03.2004 and despite his joining, repeated notices were sent to the Petitioner, directing him to join the duties and the Petitioner was not permitted to join the duties. After not allowing the Petitioner to join the duties, termination Order dated 08.05.2004 has been passed against him without affording any opportunity of hearing.

5. *Per contra*, learned Counsel for the Respondents state that the Petitioner has, time and again, shown that he was not interested in joining the services and that he has been absent from the afternoon of 18.04.2003, on which date he was supposed to join his duties. It is submitted that the



ITBP is a disciplined force and unauthorized absence for such a long period cannot be tolerated. He states that the procedure in accordance with law has been followed by the Respondents and therefore, the order of termination and the subsequent orders emanating therefrom, does not warrant any interference.

6. Heard learned Counsel for the parties and perused the material on record.

7. Section 74 of the ITBP Force Act deals with the powers given to the concerned authorities to conduct an inquiry for absence without leave. The said provision reads as under:-

“74. Inquiry into absence without leave.—

(1) When any person subject to this Act has been absent from duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be appointed by such authority and in such manner as may be prescribed; and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof and the said deficiency, if any, and the commanding officer of the unit to which the person belongs or is attached, shall make a record thereof in the prescribed manner.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.”



8. A perusal of Section 74 of the ITBP Force Act indicates that when any person who is subject to the ITBP Force Act is absent from duty, without any due authority, for a period of 30 days, then a Court of Inquiry shall be appointed by the competent authority and the inquiry has to be conducted in the manner prescribed. The Court of Inquiry, on oath or affirmation, as prescribed in the manner set out under the said provision, inquires into the absence of the respective person and if satisfied that the absence is without any due authority or other sufficient cause and if the person is absent and does not surrender, he is declared as a 'deserter' by the Court of Inquiry.

9. In the present case, a Judicial Enquiry Committee i.e., the Court of Inquiry was constituted and the Petitioner was declared as an 'absconder' (and not a 'deserter') in terms of Section 74 of the ITBP Force Act *vide* Order dated 28.01.2004. No criminal action is initiated against the Petitioner. It is the case of the Petitioner that after declaring him an absconder, he re-joined the services on 14.03.2004. However, upon perusal of the material on record, the said fact has not been dealt in any of the Orders impugned herein.

10. Pursuant to the Petitioner being declared as an 'absconder', proceedings have been initiated against the Petitioner for his termination from the services conferred under Rule 17 and 20 of the ITBP Force Regulations, 1994. The impugned Order dated 08.05.2004 proceeded on the conduct showcased by the Petitioner over the period of time, wherein he refused to join the services despite several reminders and notices from the



Respondent No. 4. It further stated that after declaring the Petitioner an ‘absconder’, the Respondent No. 4 has issued various notices and publications demanding his presence and stated that in failure to do so, an *ex parte* action would be taken against him. Paragraph 6 of the Order dated 08.05.2004 indicates that since the Petitioner had not joined the duty, Respondent No.4 exercised its powers conferred under Rule 17 and 20 of the ITBP Force Regulations, 1994, dismissed the Petitioner from service w.e.f. 08.05.2004 and the period of absence has been treated as *dies non*.

11. It is pertinent to mention that the Order dated 08.05.2004, which was challenged in appeal and his representation, have been dismissed by the First Appellate Authority, being the Deputy Inspector General, ITBP *vide* Order dated 30.09.2004. The said Order is completely unreasoned. The said Order was challenged by the Petitioner and *vide* Order dated 28.04.2006, Second Appellate Authority, being the Inspector General (HQ), ITBP dismissed the appeal, merely stating that the Petitioner was given sufficient opportunity to join the services. The Order dated 28.04.2006 is equally an unreasoned Order.

12. As also mentioned above, as per the Letter dated 14.03.2004, the Petitioner had re-joined the services. The said statement being a disputed fact has not been dealt by the competent appellate authorities in either of the Orders.

13. It is well settled that an order passed in appeal must definitely contain reasons. The Petitioner has specifically stated that he has made himself present before the department on 14.03.2004 which is certified by the competent authority and is also proved from the Battalion Hospital which is the biggest hospital of the department. If this averment is correct, then the



procedure initiated by the department proceeding *ex parte* against the Petitioner is not in conformity with Rules 17 and 20 of the of the ITBP Force Regulations, 1994. The First and Second Appellate Authority were, therefore, required to consider this aspect at least and, if correct, ought to have given the Petitioner an opportunity of defending himself rather than proceeding *ex parte* against him.

14. At this juncture, it is apposite to mention the case of Director (Marketing), Indian Oil Corpn. Ltd. v. Santosh Kumar, (2006) 11 SCC 147, wherein the Apex Court emphasised that the appellate authorities cannot merely adopt the language of the Disciplinary Committee while affirming its order. The relevant paragraphs of the same are as follows:-

“9. We have also perused the order passed by the General Manager (Operations) which is available at p. 51 and the order passed by the Director (Marketing) who is the Appellate Authority. A close scrutiny of both the orders would only go to show that the Appellate Authority has simply adopted the language employed by the disciplinary authority and inflicted the punishment of dismissal on the respondent herein.

11. A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set aside the order passed by the disciplinary authority and the Appellate Authority and remit the matter for fresh disposal to the disciplinary authority. The disciplinary authority shall consider the detailed representation made by the respondent and also consider the detailed report of the enquiry officer and the records placed before him in its proper perspective and decide the mater afresh on merits. The disciplinary authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the disciplinary authority. The order passed by the High Court is set aside for the above



reason. We also set aside the direction issued by the High Court ordering reinstatement into service with continuity in service and all consequential benefits. The disciplinary authority is also directed to dispose of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties. The civil appeal is disposed of accordingly. No order as to costs.”

(emphasis supplied)

15. The Apex Court in Kushuma Devi v. Sheopati Devi & Ors., **2019 (5) SCC 744**, has stated that an Appellate Authority is mandated to consider the contentions raised by any employee and decide the same by giving reasons.

*“8. This Court has consistently laid down that every judicial or/and quasi-judicial order passed by the court/tribunal/authority concerned, which decides the lis between the parties, must be supported with the reasons in support of its conclusion. **The parties to the lis and so also the appellate/revisionary court while examining the correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order.** In the absence of any discussion, the reasons and the findings on the submissions urged, it is not possible to know as to what led the court/tribunal/authority for reaching to such conclusion. (See *State of Maharashtra v. Vithal Rao Pritirao Chawan* [*State of Maharashtra v. Vithal Rao Pritirao Chawan*, (1981) 4 SCC 129 : 1981 SCC (Cri) 807] , *Jawahar Lal Singh v. Naresh Singh* [*Jawahar Lal Singh v. Naresh Singh*, (1987) 2 SCC 222 : 1987 SCC (Cri) 347] , *State of U.P. v. Battan* [*State of U.P. v. Battan*, (2001) 10 SCC 607 : 2003 SCC (Cri) 639] , *Raj Kishore Jha v. State of Bihar* [*Raj Kishore Jha v. State of Bihar*, (2003) 11 SCC 519 : 2004 SCC (Cri) 212] and *State of Orissa v. Dhaniram Luhar* [*State of Orissa v. Dhaniram Luhar*, (2004) 5 SCC 568 : (2008) 2 SCC (Cri) 49] .)”* (Emphasis supplied)



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16. In view of the above, this Court is inclined to set aside the Order dated 30.09.2004 and 28.04.2006 and remand the matter back to the First Appellate Authority for deciding the case afresh by giving reasons and considering the matter on its own merits. The First Appellate Authority is directed to decide the appeal within a period of eight weeks from the date of receipt of the Order. In case the Petitioner herein seeks personal hearing, the same be granted to the Petitioner in accordance with the Rules.

17. The writ petition is allowed to this extent. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J.

SAURABH BANERJEE, J.

AUGUST 01, 2025

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