

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

WEDNESDAY, THE EIGHTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION NO: 29317 OF 2023

Between:

Vankanavath Somani, S/o. Vankanavath Pakeera, Aged about Major, Rank: Constable (GD), Occ. Shashastra Seema Bal, Regt. No.120773959, Unit. 69th BN Currently R/o. Building Thanda, Kanchiraju Pally, Chandan Petmandal, Nalgonda, Telangana PIN - 508248

...PETITIONER

AND

1. Union of India, Rep. by Director General, Sashastra Seema Bal, Block-V (East), R.K. Puram, New Delhi-66
2. The Commandant, 69th Battalion, SSB, Rungdung Basti, Mata Golai, Rhenock, East Sikkim (Sikkim) 737133
3. The Commandant, (PERS-II), FHQ SSB, New Delhi
4. The Commandant (Admin), FTR Hqrs, SSB, Siliguri, West Bengal
5. The Deputy Commandant (Admn), SHQ, SSB, Gangtok, Sikkim

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Writ, order or direction, one more particularly in the nature of a writ of Mandamus declaring the action of the Respondents more particularly the Respondent No.2 in issuing order No.SRC/PF/CT(GD)/V.S/69 Bn/SSB/RGP/2020/8159-69 dated 08-06-2021 dismissing the Petitioner from the service as harsh, excessive and illegal and in violation of Articles 14, 16 and 20 of Constitution of India and consequently direct the Respondents to reinstate the Petitioner to his place in the 69th Battalion, SSB Rhenock.

I.A. NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order No.SRC/PF/CT(GD)/V.S/69 Bn/SSB/RGP/2020/8159-69 dated 08-06-2021 pending disposal of the Writ Petition.

I.A. NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent No.2 to consider the letter / extension of leave letter dated 02.09.2020 addressed by the Petitioner to the Respondent No.2 pending disposal of the Writ Petition.

Counsel for the Petitioner: SRI K.JAGADISHWAR REDDY

Counsel for the Respondents: SRI R.ANURAG, SC FOR CENTRAL GOVT.

The Court made the following: ORDER

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

WRIT PETITION No.29317 OF 2023

ORDER:

Heard Sri K.Jagadishwar Reddy, learned counsel appearing on behalf of the petitioner and Sri R.Anurag, learned Standing Counsel appearing on behalf of the respondents.

2. The petitioner approached the Court seeking prayer as under:

"...to issue Writ, order or direction, one more particularly in the nature of a writ of Mandamus declaring the action of the Respondents more particularly the Respondent No.2 in issuing order No.SRC/PF/CT(GD)/V.S/69Bn/SSB/RGP/2020/8159-69 dated 08-06-2021 dismissing the Petitioner from the service as harsh, excessive and illegal and in violation of Articles 14, 16 & 20 of Constitution of India and consequently direct the Respondents to reinstate the Petitioner to his place in the 69th Battalion SSB Rhenock and pass..."

3. The case of the petitioner, in brief, as per the averments made in the affidavit filed by the petitioner in support of the present Writ Petition is as under:

- i) The Petitioner was appointed as Constable (GD) in Sashastra Seema Bal in 2019 and had an unblemished

service record. In June 2020, the Petitioner availed duly sanctioned leave to attend to his seriously ill father. When the petitioner was about to rejoin duty, the petitioner and his family also developed COVID-19 symptoms and were advised mandatory quarantine.

ii) The Petitioner immediately informed the authorities and submitted multiple requests for medical leave extension with supporting documents. Instead of considering the Petitioner's genuine and unavoidable circumstances, the Respondents repeatedly directed the petitioner to report back to duty.

iii) Shockingly, the Respondent No.2 declared the Petitioner a "deserter" and later dismissed him from service vide order No.SRC/PF/CT(GD)/V.S/69 Bn/SSI/RGP/2020/8159-69 dated 08.06.2021, treating the petitioner's absence as unauthorized. Aggrieved by the same, the petitioner filed the present writ petition.

4. PERUSED THE RECORD:

A) The relevant portion of the order impugned vide
No.SRC/PF/CT(GD)/V.S/69 Bn/SSB/RGP/2020/8159
-69 dated 08.06.2021, is extracted hereunder:

"Subject: DISMISSAL FROM THE SERVICE UNDER
RULE-21 OF THE SSB RULES-2009.

Whereas, UIN-11280487 Regt. No.120773959 CT(GD) Vankanavath Somani S/o. Sh. Vankanavath Fakeera, Vill-Building Thanda. PO-Kachiraju Pally. PS-Chandan Pet mandal, Distt-Nalgonda, State-Andhra Pradesh (Now Telangana) PIN-508248 is overstaying from leave wef. 03.07.2020 (F/N) without prior permission of the authority and you have been informed vide letter No.SRC/PF/CT(GD)/V.S/69TH/Bn SSB/RGP/2020/15312-13 dated 24.10.2020 and letter No.SRC/PF/CI(GD) V.S/69th Bn/SSB/RGP/2020/16405-07 dated 19.11.2020 to rejoin duty. But neither you have reported to join the duty nor submitted any reply in this regard.

2. And whereas, a Court of Inquiry was ordered vide order No.SRC/PF/CT (GD)/V.S/69th Bn/SSB/RGP/2020/2324-26 dated 19.02.2021 under Section 74(1) of the SSB Act 2007 and on the basis of Court of Inquiry. I am satisfied of the facts of such absconding without due authority and the deficiency in government property which are in your possession i.e. Service Identity Card & Govt. kit items.

3. And whereas, Apprehension Poll was issued to concerned Police authority to apprehended you vide letter No.SRC/PF/CT(GD)/V.S/69thBn/SSB/RGP/2020/5017 dated 10.04.2021 and No. No.SRC/PF/CT(GD)/V.S/69thBn/SSB/RGP/2020/5545 dated 18.04.2021. But neither you have surrendered yourself before the police authority or in the unit nor you have been apprehended by the police. Accordingly you have been declared as deemed to be a "deserter" vide letter No.SRC/PF/CT(GD)/V.S/69thBn/SSB/RGP/2020/6004-10 dated 24.04.2021

4 And whereas, you have been called upon vide this letter No.SRC/PF/CT (GD) VS/69th Bn/SSB/RGP/2020/6353 dated 03.05.2021 and No.SRC/PF/CT (GD) VS/69th Bn/SSB/RGP/2020/7099 dated 18.05.2021 to show cause as to why action to tentatively dismiss you from service for misconduct should not be initiated against you under Rule-21 of the SSB Rules 2009.

5 And whereas, you have not filed any reply till date and it is presumed that you have nothing to put forth in your defence.

6. Now therefore, in view of above, undersigned utilizing the power vested under section 11(2) of the SSB Act 2007 read with Rule 179 of the SSB Rule 2009 and Rule-21 read with Rule-18 "Dismissed you from the service with immediate effect and also struck off from the strength of 69th Bn SSB. Rhenock from 08.06.2021 (AN). The period of unauthorized absence from 03.07.2020 to 08.06.2021 (i.e. 341 days) shall be treated as dies-nonfor all the purposes.

7. You are at liberty to prefer an appeal to the authority higher than the undersigned within 30 days as per provisions given under Rule 29 of the SSB Rules 2009"

DISCUSSION AND CONCLUSION:-

5. Learned counsel appearing on behalf of the petitioner contends that the impugned order dated 08.06.2021 issued by respondent No.2 was passed mechanically, without application of mind, without following due procedure, and without conducting any enquiry as mandated under the rules. It is further contended that the order was issued

without providing a reasonable opportunity to the petitioner, and therefore, the said order of dismissal from service with immediate effect is liable to be set aside as it is in clear violation of the principles of natural justice.

6. Learned Standing Counsel appearing on behalf of the respondents, on the other hand, submits that it is true that the petitioner had rendered eight years of service as Constable (GD). However, in view of the fact that the petitioner was called upon vide letters dated 03.05.2021 and 18.05.2021 to show cause as to why an action to tentatively dismiss the petitioner from service for misconduct should not be initiated against the petitioner, as the petitioner had overstayed his leave from 03.07.2020 without prior permission of the competent authority, and despite two letters dated 24.10.2020 and 19.11.2020 addressed by the respondents directing the petitioner to rejoin duty, the petitioner neither reported for duty nor submitted any explanation. Therefore, respondent No.2 was constrained to issue the order of dismissal from service with immediate effect. Since the said order was passed in accordance to law, it warrants no interference by this Court,

and hence, the present writ petition is liable to be dismissed.

7. Learned Standing Counsel further submits that, though the learned counsel appearing on behalf of the petitioner has orally contended that there is a violation of the principles of natural justice, there are no specific pleadings to that effect in the affidavit filed by the petitioner in support of the present writ petition. Hence, on that ground also, the petitioner is not entitled to the relief as prayed for in the present writ petition.

8. A bare perusal of the impugned order dated 08.06.2021, particularly paragraph No.5, clearly indicates that the petitioner was called upon to show cause as to why action should not be initiated against the petitioner for dismissal from service on the ground of misconduct under Rule 21 of the SSB Rules, 2009, vide letters dated 03.05.2021 and 18.05.2021. However, the petitioner failed to furnish any reply even as on 08.06.2021, and therefore, respondent No.2 proceeded on the presumption that the petitioner had nothing to submit in his defence and accordingly passed the impugned order.

9. This Court opines that in any departmental proceedings relating to unauthorized absence from duty, the disciplinary authority is required to record a finding as to whether the absence was willful. In the absence of such a finding, this Court is of the view that the absence cannot be treated as misconduct.

10. In the similar circumstances, the Division Bench Judgment of this Court dated 28.01.2016 in W.P.No.38057 of 2015, the relevant portion at para No.11, observed as under:

"The department did not sanction leave or refer him to the Medical Board for examination. Inasmuch as the leave application dt: 26.11.2009 was within the period of one year, upon which no order of either sanctioning or refusing was passed, the invocation of drastic provision of F.R 18-A and ordering deemed resignation is not legally valid. In the decision reported in *Krushnakant B. Parmar vs. Union of India and another (AIR 2012 SC (Supp) 42)* submitted by learned counsel for respondent, Hon'ble Apex Court held that in a Departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or his behaviour unbecoming of a Government servant.

The above decision squarely applies to the instant case. Here, the petitioner failed to establish firstly that the respondent remained unauthorisedly absent exceeding one year without applying for leave and secondly, such unauthorized absence was wilful. Therefore, the impugned order passed under G.O.Ms.No.122 General Administration (OP.V) Department dt: 01.05.2014 was rightly set aside by the Tribunal. We see no reason to interfere with the said order."

11. The Apex Court judgment dated 15.02.2012 reported in 2012 SCC in "KRUSHNAKANT B. PARMAR v UNION OF INDIA AND ANOTHER", in particular, the paras 16 to 25, observed as under:

"16. The question whether 'unauthorised absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty such absence cannot be held to be wilful.

18. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

19. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the

disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct.

20. In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold the absence is willful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty.

21. The question relating to jurisdiction of the Court in judicial review in a Departmental proceeding fell for consideration before this Court in M.B. Bijlani vs. Union of India and others reported in (2006) 5 SCC 88 wherein this Court held:

"It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi- criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

22. In the present case, the disciplinary authority failed to prove that the absence from duty was willful, no such finding has been given by the Inquiry Officer or the Appellate Authority. Though

the appellant had taken a specific defence that he was prevented from attending duty by Shri P. Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3rd October, 1995 addressed to Shri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office of Telephone calls dated 29th September, 1995, etc. but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the Inquiry Officer held the appellant guilty.

23. Mr. P. Venkateswarlu, DCIO, Palanpur, who was the complainant and against whom appellant alleged bias refused to appear before the Inquiry Officer in spite of service of summons. Two other witnesses, Shri Jivrani and Shri L.N. Thakkar made no statement against the appellant, and one of them stated that he had no knowledge about absence of the appellant. Ignoring the aforesaid evidence, on the basis of surmises and conjectures, the Inquiry Officer held the charge proved.

24. Though the aforesaid facts noticed by the Appellate Authority but ignoring such facts giving reference of extraneous allegations which were not the part of the charge, dismissed the appeal with following uncalled for observation:

"The appellant even avoided the basic training required for the job and asked JAD Ahmedabad to send all the training papers for his training at IB Training School, Shivpuri (Madhya Pradesh) to his residence at Ahmedabad. 'An untrained officer is of no worth to the department'."

25. In the result, the appeal is allowed. The impugned orders of dismissal passed by disciplinary authority, affirmed by the Appellate Authority; Central Administrative Tribunal and High Court are set aside. The appellant stands

reinstated. Taking into consideration the fact that the Charged Officer has suffered a lot since the proceeding was drawn in 1996 for absence from duty for a certain period, we are not remitting the proceeding to the disciplinary authority for any further action. Further, keeping in view the fact that the appellant has not worked for a long time we direct that the appellant be paid 50% of the back wages but there shall be no order as to costs."

12. In the present case, no enquiry has been conducted by respondent No.2 to arrive at a finding that the petitioner's absence was deliberate and willful. In the absence of such a finding, this Court opines that the impugned order has been passed arbitrarily against the petitioner in clear violation of principles of natural justice without conducting due enquiry as per the procedure as mandated under the statute and the relevant rules.

13. TAKING INTO CONSIDERATION:

a) The aforesaid facts and circumstances of the case,

b) The submissions made by the learned counsel appearing on behalf of the petitioner and the learned Standing Counsel appearing on behalf of the respondents,

c) The observations of the Apex Court in the judgments (referred to and extracted above),

The present writ petition is allowed. The impugned order No. SRC/PF/CT(GD)/V.S/69 Bn/SSB/RGP/2020/8159-69 dated 08.06.2021 is set aside. However, it is observed that it is open to the respondents to proceed against the petitioner in accordance to law, by following the due procedure as mandated under the rules, if they intend to do so. This order is passed in the facts and circumstances of the present case and shall not be treated as a precedent in other similar cases. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

SD/- A. SRINIVASA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Director General, Sashastra Seema Bal, Block-V(East), R.K. Puram, New Delhi, Union of India-66
2. The Commandant, 69th Battalion, SSB, Rungdung Basti, Mata Golai, Rhenock, East Sikkim (Sikkim) 737133
3. The Commandant, (PERS-II), FHQ SSB, New Delhi
4. The Commandant (Admin), FTR Hqrs, SSB, Siliguri, West Bengal
5. The Deputy Commandant (Admn), SHQ. SSB, Gangtok, Sikkim
6. One CC to SRI K.JAGADISHWAR REDDY, Advocate [OFUC]
7. One CC to SRI R.ANURAG, SC FOR CENTRAL GOVT. [OPUC]
8. One CC to SRI N.BHUJANGA RAO, DEPUTY SOLICITOR GENERAL OF INDIA, High Court for the State of Telangana at Hyderabad [OPUC]
9. Two CD Copies

CC TODAY

HIGH COURT

DATED: 08/10/2025



ORDER

WP.No.29317 of 2023

ALLOWING THE WRIT PETITION,
WITHOUT COSTS

⑪ MT
13/4/26