



2024:CHC-AS:2508

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(VIA VIDEO CONFERENCE)**

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

WPA No 12398 of 2023

Sudhan Mondal

Vs

Union of India

For the petitioner : Mr. Ziaul Islam

For the Union of India : Mr. Partha Ghosh

Judgment on : 07.10.2024

Ravi Krishan Kapur, J.:

1. The petitioner assails an order dated 24 December 2022 passed by the respondent authorities whereby the petitioner has been inter-alia held guilty of unauthorised absence from work for a period of 37 days commencing from 1 November 2022 to 7 December 2022. The



order directs punishment of *dies non* for the specified 37 days under Rule 25 of the Central Civil Service (Leave) Rules, 1972 as applicable vide GSR 849 dated 16 June 1979. However, such absence was condoned insofar as pension payable to the petitioner was concerned.

2. Briefly, the petitioner had been initially appointed as a Constable General Duty in the Border Security Force on 21 July 1998 and was serving as Head Constable, Jammu at the time of the incident. In 2022, the petitioner had returned to his native place at Murshidabad for treatment upon obtaining earned leave for the period 3 October 2022 to 31 October 2022. Upon his arrival, the petitioner complained of stomach and knee pain. After medical investigation it transpired that the petitioner had suffered a high grade knee injury and that his gall bladder also required surgery. Hence, the petitioner was advised complete rest pre and post surgery until further medical examination. In such circumstances,



the petitioner forwarded an application dated 16 November 2022 to the concerned respondent authority requesting for extension of leave without indicating any specific time period. Thereafter, the petitioner had also forwarded an application by an email dated 2 December 2022 praying for extension of leave till 8 December 2022.

3. The petitioner ultimately reported for duty after overstaying his sanctioned leave by 37 days. Due to the petitioner's overstay, the case of the petitioner was put up for hearing on 24 December 2022 before the Commandant under the Border Security Force Act 1968 and the Rules framed thereunder. The petitioner was tried summarily and was unable to justify his extended leave. In such circumstances, the petitioner was found guilty and the impugned order came to be passed.
4. It is submitted that the petitioner received treatment for his knee injury on 6 October 2022 from a Super Speciality Hospital at Murshidabad and was subsequently referred to Murshidabad



Medical College and Hospital, Berhampore and thereafter continued his treatment at AMRI Hospital. Simultaneously, the petitioner had also suffered upper abdominal pain for which he was treated at the BSF hospital and subsequently at Desun Hospital, Kolkata and was advised bed rest till early December. The respondent authorities were provided with all medical prescriptions and documents in support of his prolonged leave of absence. Despite providing the respondent authorities with all necessary medical documents, the respondent authorities issued the impugned order at Jammu. Thereafter, an appeal challenging the impugned order before the Appellate Authority was also rejected at Jammu.

5. It is contended that the respondents failed to consider the sanctioned earned leave of 28 days and erroneously held the petitioner guilty for 37 days unauthorised absence. The respondent authorities also failed to consider the medical evidence and



prescriptions issued by the different hospitals justifying the petitioner's absence.

6. The respondents raise the ground of maintainability of the writ petition. It is alleged that no part of the cause of action has arisen within the jurisdiction of this Court and this Court has no jurisdiction to entertain this petition. The petitioner had been tried at Jammu. The impugned order was also passed by the Commandant:148BN BSF: Paloura Camp:, Jammu. The appeal preferred by the petitioner was also filed and disposed of at Jammu.
7. On merits, it is alleged that the petitioner failed to provide most medical documents during the initial proceedings. It was only when an appeal was preferred by the petitioner, did the petitioner provide all such additional documents. In any event, the petitioner had pleaded guilty during the stage of the summary proceedings.
8. Admittedly, the petitioner was posted at Jammu. The initial leave was sanctioned outside the jurisdiction of this Court. A summary



trial was also conducted at Jammu, outside the jurisdiction of this Court. The Appellate Authority is also situated at Jammu. All orders were received by the petitioner at Jammu. In such circumstances, the petitioner has failed to demonstrate that any part of cause of action has arisen within the territorial limits of this Court. On the contrary, the entire cause of action has arisen outside the jurisdiction of this Court and this Court has no jurisdiction to entertain this petition. The medical treatment of the petitioner having taken place at Murshidabad and at Kolkata cannot clothe this Court with jurisdiction. (*Eastern Coalfields Ltd. And others vs. Kalyan Banerjee*, (2008) 3 SCC 456).

9. In view of the above, WPA 12398 of 2023 is not maintainable and stands dismissed on the ground of lack of territorial jurisdiction.

(Ravi Krishan Kapur, J.)