

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-22373-2015
RESERVED ON: 09.09.2025
PRONOUNCED ON: 30.10.2025

AYUB KHAN

...PETITIONER

VERSUS

UNION OF INDIA AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rajeev Anand, Advocate with
Mr. Aryan Singh, Advocate
for the petitioner.

Mr. Ashish Choudhary, Sr. Panel counsel
for UOI/ respondents no. 1&2.

SANDEEP MOUDGIL, J

1. Prayer

The present Civil Writ Petition under Articles 226/227 of the Constitution of India has been filed seeking quashing of the chargesheet dated 13.09.2010 (Annexure P-17), the order dated 26.04.2011 (Annexure P-18) convening the General Security Force Court, the finding and sentence dated 18.05.2011 (Annexure P-19), the modified order dated 09.04.2012 (Annexure P-21), and the final order dated 07.05.2015 (Annexure P-27) whereby the petitioner's representation was rejected. The petitioner further seeks direction to the respondents to grant all consequential benefits including seniority, promotion, arrears, and financial benefits with interest @ 18% pa.

2. **Brief Facts**

The petitioner was appointed as an Assistant Commandant in the Border Security Force (BSF) and was granted five days of casual leave from 07.04.2006 to 15.04.2006. However, he did not rejoin duty on the scheduled date of 16.04.2006 and remained absent from service without authorization. During this period, the petitioner submitted a resignation letter dated 13.04.2006, citing personal and domestic difficulties. The resignation was received at his unit on 18.04.2006. The authorities, however, informed the petitioner that his resignation could not be processed or accepted unless he physically reported back for duty, as required under the Central Civil Services (Temporary Service) Rules, 1965 and the relevant provisions of the BSF Act and Rules. Despite repeated communications from the authorities between 2006 and 2009, the petitioner did not rejoin duty. Further in compliance with departmental directions, he also deposited Rs. 1,70,027/- as reimbursement of training expenses, presuming that his resignation would be accepted. Throughout this period, he continued to provide regular updates regarding his parents' illness and his own medical condition, including certified medical documents.

Despite these communications and medical evidence, no decision was taken by the respondent authorities for several years. The petitioner remained on extended medical rest and continued to represent his case, even filing a civil suit in 2007 to prevent coercive actions and for acceptance of his resignation. Following recovery from domestic exigencies and illness, the petitioner withdrew his resignation unconditionally on 29.06.2009 and repeatedly sought permission to rejoin service. After a prolonged delay of nearly eight months, he was finally directed to rejoin duty via a signal dated

08.02.2010 and resumed service on 01.03.2010.

Upon approval by the competent authorities, he rejoined duty on 01.03.2010, after being absent for approximately 3 years and 10 months. However, on 13.09.2010, the petitioner was issued a chargesheet under Section 19(b) of the Border Security Force Act, 1968 (hereinafter referred as BSF Act) for overstaying his leave without authorisation from 17.04.2006 to 01.03.2010 and disciplinary proceedings were initiated against him. He was tried by a General Security Force Court (in short as GSFC), which awarded him punishment of forfeiture of three years' service for the purposes of promotion, pay, and pension, along with a severe reprimand. This was later modified on 09.04.2012, reducing the forfeiture to one year each for promotion and pay, while retaining the reprimand. The petitioner's post-confirmation petitions and statutory representations under Sections 117(2) and 128 of the BSF Act were rejected, culminating in the impugned order dated 07.05.2015.

The petitioner has now filed a writ petition challenging the disciplinary proceedings, seeking to annul the GSFC orders and for regularization of the period of absence.

3. **Contentions**

On behalf of Petitioner

Learned counsel appearing on behalf of the petitioner submitted that the petitioner's absence from duty was neither deliberate nor unauthorized in the true sense, but was occasioned by compelling and unavoidable personal and medical circumstances. It was contended that prior to the expiry of his sanctioned leave, the petitioner had tendered his resignation on 13.04.2006, citing serious domestic difficulties arising from the critical illness of both his

parents. The said resignation was duly received by the competent authorities on 18.04.2006, and thereafter the petitioner remained in continuous correspondence with his unit, submitting medical certificates and other relevant documents in support of his bona fide inability to report for duty. The petitioner also complied with the departmental direction to deposit a sum of ₹1,70,027/- towards the cost of training, under the bona fide belief that his resignation would be accepted in due course. It is argued by the counsel that since the resignation of the petitioner was under active consideration by the competent authorities and he cannot be faulted for non-joining in that period.

Learned counsel would further contend that upon resolution of his domestic exigencies, the petitioner voluntarily withdrew his resignation unconditionally on 29.06.2009 and expressed his readiness to rejoin duty. Despite such willingness, the respondents took almost eight months to issue permission to rejoin, which was ultimately granted only on 08.02.2010, and the petitioner resumed service on 01.03.2010. The counsel submitted that the respondents, having accepted his rejoining and refunded the training cost deposit, are estopped from treating his earlier absence as wilful or from initiating punitive proceedings for the same period.

Furthermore, the counsel would submit that the action of treating 1,266 days as "*dies non*" (period not counting for any service benefit) in addition to the punishment awarded by the GSFC amounts to double jeopardy and violates the petitioner's fundamental right under Article 20(2) of the Constitution. He also submitted that the procedural safeguards under Section 97, 62 of the BSF Act and Rule 173(8) of BSF Rules, 1969 (in short as BSF Rules) which mandate a Court of Inquiry and an opportunity to be heard were

not followed.

Lastly, the counsel submitted that the impugned proceedings and the resultant orders are arbitrary, disproportionate, and contrary to the principles of natural justice. The punishment imposed is wholly excessive, particularly when the petitioner had already been permitted to rejoin service and his long absence was attributable to circumstances beyond his control.

On behalf of Respondents

Per contra, learned counsel appearing for the respondents refuted the submissions advanced on behalf of the petitioner and contended that the petitioner's prolonged absence from duty from 16.04.2006 to 01.03.2010, extending over three years and ten months, was wholly unauthorized and in clear violation of the provisions of the BSF Act and the Rules framed thereunder. It was submitted that the petitioner was sanctioned only five days of casual leave from 07.04.2006 to 15.04.2006, and despite repeated reminders and official communications, he failed to report back for duty after the expiry of the sanctioned leave. The respondents assert that the resignation letter dated 13.04.2006 was received at the unit only on 18.04.2006, after the petitioner had already overstayed his sanctioned leave, and in any event, could not be processed or accepted under the Central Civil Services (Temporary Service) Rules, 1965, unless he physically reported for duty.

The counsel further submitted that rejoining of service by the petitioner did not absolve him of the misconduct already committed and disciplinary proceedings under Section 19(b) of the BSF Act were rightly initiated against the petitioner for his unauthorized overstay of leave. These proceedings followed due process, including the issuance of a charge sheet dated 13.09.2010 and the conduct of a trial by the GSFC. The petitioner was

afforded a reasonable opportunity of hearing and to defend himself. Initially, he was awarded the punishment of forfeiture of three years' service for promotion, pay, and pension along with a severe reprimand. However, upon his petition under Section 117(2) of the BSF Act, a lenient view was taken considering his young age and clean service record, and the punishment was reduced vide order dated 09.04.2012 to forfeiture of one year each for pay and promotion while retaining the reprimand.

Lastly, learned counsel on behalf of the respondents strongly rebutted the plea of "double jeopardy" with the argument that treating the period of unauthorized absence as "*dies non*" does not constitute a second punishment but is a necessary administrative consequence of the fact that the individual did not perform duty during that period. It was explained that "*dies non*" merely denotes that the period will not count for pay and service benefits and cannot be equated with a punitive action. Moreover, after considering all aspects, due credit of 147 days in his leave account was given to the petitioner and intervening period was regularised within the ambit of relevant rules. Therefore, the writ petition deserves to be dismissed.

Heard counsel for both parties.

4. Analysis

This Court has carefully considered the material placed on record and rival submissions advanced by learned counsel for both parties. Before advertng to the merits of the case, it is necessary to first examine the scope of judicial interference in matters of disciplinary proceedings.

It is well settled that while exercising jurisdiction under Article 226 of the Constitution of India, this Court does not ordinarily act as an appellate authority to re-appreciate evidence or substitute its own conclusions for that of

the disciplinary authority. However, the scope of interference, though limited, extends to ensuring that administrative action is lawful, fair, and reasonable. If the proceedings are found to be vitiated by procedural irregularities or are arbitrary in their outcome, this Court would be justified in exercising its writ jurisdiction. In such circumstances judicial review is not an intrusion but a safeguard.

Turning to the facts of the present case, it is not in dispute that the petitioner was appointed as an Assistant Commandant in the Border Security Force, was sanctioned five days of casual leave from 07.04.2006 to 15.04.2006 and did not report back for duty on the due date but the record reveals that the absence was not wilful but occasioned by genuine domestic and medical difficulties, which were duly brought to the notice of the authorities. However, before the expiry of his sanctioned leave, the petitioner submitted a resignation letter dated 13.04.2006, citing compelling domestic circumstances arising out of the serious illness of both his parents. The said resignation was received at his unit on 18.04.2006. The record reveals that the petitioner thereafter remained in continuous correspondence with the authorities, furnished medical certificates, and even though the authorities declined to process the resignation unless the petitioner physically reported for duty as per the Central Civil Services (Temporary Service) Rules, 1965, the respondents directed the petitioner to deposit the training cost of ₹1,70,027/- creating a bona fide belief in the mind of the petitioner that his resignation would be accepted.

While the position that the petitioner was required to physically report to duty for the processing of his resignation may be technically correct under the service rules. Yet, his resignation remained suspended in

bureaucratic limbo as the department thereafter failed to take any conclusive decision for almost three years, thereby leaving the petitioner in a state of administrative uncertainty. During this period, the petitioner continued to communicate with the department and eventually, upon resolution of his personal difficulties, unconditionally withdrew his resignation on 29.06.2009 and sought to rejoin duty. After a considerable delay by the authorities, they permitted the petitioner to rejoin on 01.03.2010 and refunded the training cost deposit. The fact that the authorities allowed the petitioner to resume service nearly four years later without initiating termination or declaring him a deserter, and subsequently refunded his training deposit, militates against the claim that the petitioner had engaged in wilful misconduct or sought to permanently disengage from service.

However, upon rejoining of duty the petitioner was subjected to disciplinary proceedings under Section 19(b) of the BSF Act for unauthorized overstay of leave. A charge sheet dated 13.09.2010 was issued, culminating in a GSFC trial, which awarded the punishment of forfeiture of three years' service for the purposes of promotion, pay, and pension, in addition to a severe reprimand vide order dated 15.07.2011 attached as Annexure P-19. The provision has been reproduced as below:

“Section 19. Any person subject to this Act who commits any of the following offences, that is to say:

*(a) ****

(b) without sufficient cause overstays leave granted to him

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.”

Upon a statutory petition filed by the petitioner under Section 117(2) BSF Act on 29.11.2011(Annexure P-20), the punishment was later reduced to forfeiture of one year each for promotion and pay, while the

reprimand was retained vide order dated 09.04.2012 (Annexure P-21). While the respondents claim that due process was followed, the petitioner has rightly contended that procedural safeguards as envisaged under Section 62 of the BSF Act and Rule 173(8) of the BSF Rules but in the opinion of this court, these were not adhered to in full. These provisions are not empty procedural formalities but are designed to ensure that an individual is not condemned unheard, particularly when the allegation relates to “overstay of leave without sufficient cause.” These provisions have been given as below:

“Section 62, BSF Act

*(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 necessities, 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 Commandant of the unit to which the person belongs 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.

“173. Procedure of Courts of Inquiry, BSF Rules

(8) Before giving an opinion against any person subject to the Act, the court will afford that person the opportunity to know all that has been stated against him, cross-examine any witnesses who have given evidence against him, and make a statement and call witnesses in his defence.”

Both the above discussed provisions contemplate that when a member of the Force is alleged to have overstayed leave, an inquiry must be held to determine whether such overstay was with or without sufficient cause, and the individual must be afforded a reasonable opportunity to explain and defend himself. The phrase “**absence without due authority or other sufficient cause**” is a qualifying element of the offence under Section 19(b) of

the BSF Act and therefore, the presence of “sufficient cause” negates the very foundation of criminality under that provision. Reliance may be placed on the Supreme court judgement in “**Krushnakant B. Parmar v. Union of India** 2012(2) SCT 572”, Relevant extracts of which are as follows:

“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 can not 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.”

In the instant case, there existed a *justified reason* since the petitioner’s absence from 11.09.2006 to 04.02.2007 was found by the GSFC itself to be supported by valid medical certificates issued by government medical officers. The certificates categorically established that the petitioner was medically unfit to perform duty. It was further noted in the proceedings that during this period the petitioner repeatedly submitted letters enclosing medical documents, including those dated 9th January 2007 and 22nd January 2007, duly attested by the Principal Medical Officer, General Hospital, Ambala City, certifying his continued illness and recommending further rest. These medical records, along with his correspondence seeking consideration of resignation and later permission to rejoin, clearly demonstrate that his non-reporting for duty was neither wilful nor deliberate but was occasioned by circumstances beyond his control.

Indeed, the GSFC itself, while recording findings on the charge levelled against the petitioner while concluding him guilty, accepted that the petitioner's overstaying of leave was justified and that he had sufficient cause for not rejoining duty during that period. However, the same finding paradoxically concluded that his absence from 17.04.2006 to 10.09.2006 and from 05.02.2007 to 01.03.2010 was without sufficient cause despite the absence of any finding that the medical documents or explanations for those periods were false or fabricated. Such partial appreciation of the evidence is inconsistent with the protective intent of Section 62 BSF Act and Rule 173(8), which require a full and fair inquiry into the *entire* period of alleged overstay before attributing culpability. The supreme Court in "**M.V. Bijlani v. Union of India and others (2006) 5 SCC 88**" 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"

The present facts and circumstances clarify that the disciplinary authority failed to prove that the absence from duty was wilful and it must be borne in mind that the BSF Act and Rules, being special legislation governing a disciplined force, impose strict obligations but also confer corresponding safeguards to ensure fairness and proportionality.

Moreover, the Supreme Court in “*Sheel Kr. Roy v. Secretary M/O Defence 2007(12) SCC 462*”, emphatically held that a person does not cease to be a citizen upon joining the armed forces and cannot be deprived of his constitutional or human rights merely because of the uniform he wears. Relevant extract of the same is as follows:

“It is now a well settled legal principle which has firmly been accepted throughout the world that a person merely by joining Armed Forces does not cease to be a citizen or be deprived of his human or constitutional right.”

The observance of fairness, procedural compliance, and humane consideration of circumstances is integral to military justice as much as to civil administration. In addition to the non-compliance of Section 62 of the BSF Act and Rule 173(8) of the BSF Rules, the record further discloses complete disregard of the mandatory safeguard embodied in *Rule 97* of the BSF Rules, which specifically provides as follows:

“Section 97. Reference by Accused to Government Officer

(1) If at any trial for desertion or absence without leave, over-staying leave or not rejoining when warned for service, the accused person states in his defence any sufficient or reasonable excuse for his unauthorised absence, and refers in support thereof to any officer in the service of the Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn the proceedings until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him, be received in evidence and have the same effect if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial.”

Under this provision, whenever an accused in a trial for absence without leave or overstay of leave pleads any sufficient or reasonable excuse and refers to any Government officer in support thereof, the Court is bound to address such officer and adjourn the proceedings until his reply is received. The rule ensures that the Court of Inquiry or GSFC obtains an independent

verification of the circumstances cited by the accused before forming an opinion on culpability. In the present case the petitioner, throughout his representations and statutory petitions, consistently referred to and enclosed medical certificates issued by Government Medical Officers certifying his illness and recommending medical rest for the precise period forming part of the alleged absence and thus squarely attracted the operation of Rule 97 of the BSF Rules. Despite the petitioner's express reliance upon these Government officers to substantiate his defence, the proceedings were neither adjourned for receipt of their replies nor was any verification sought as mandated under Rule 97(1).

Additionally, Rule 97(3) itself provides that where the Court omits to comply with the said provision, the convening officer may annul the proceedings and order a fresh trial. The failure of the respondents to invoke or adhere to this safeguard renders the entire process of inquiry legally infirm.

Therefore, it is apparent that the respondents proceeded mechanically to hold the petitioner guilty of unauthorized absence without ever satisfying themselves that such absence was *wilful* or *without sufficient cause*. The punishment imposed in disregard of these procedural mandates and factual circumstances is, thus, arbitrary, disproportionate, and unsustainable in law.

More troubling is the double burden imposed on the petitioner. After the GFSC found him guilty and awarded the punishment of forfeiture of service and reprimand, the department went further to treat his entire period of absence as "*dies non*", except for 147 days. The term "*dies non*" has originated from a Latin term '*dies non juridicus*' meaning thereby 'not a juridical day' or 'a day of no legal work'. In service jurisprudence, any such

decision on *dies non* is considered not a penalty in itself but at the same time, while treating the period as such and since severe consequences are to follow suit affecting the service benefits, it cannot be directed straightaway such as depriving an employee of salary, leave and increments for the declared period and in some cases, long period of unauthorised absence treated as absence with 'no work, no pay' may even lead to forfeiture of past service for pension purposes.

The simultaneous imposition of penal punishment and administrative deprivation for the same act offends the very spirit of fairness. Though Article 20(2) of the Constitution may not apply strictly to disciplinary proceedings, the doctrine it embodies the principle that no individual should be punished twice for the same wrong finds resonance in service jurisprudence and principles of natural justice. The twin penal consequences of formal punishment through GSFC and denial of service benefits for the same period is manifestly harsh, excessive, and disproportionate, especially when the petitioner had already rejoined service and the department accepted the continuance of his employment.

This court is sanguine that discipline is non-negotiable but so is justice. The two are not adversaries but are complementary to each other. A disciplined force is sustained not merely by obedience but by fairness and the belief that authority will act justly even in adversity. In the instant case, the petitioner's conduct reveals no *malafide* intent to defy authority, but rather a prolonged and painful struggle with personal hardship accompanied with with administrative silence

5. Conclusion

Accordingly, the present writ petition is allowed. The charge sheet

dated 13.09.2010, the proceedings and punishment awarded by the General Security Force Court, and the impugned order dated 07.05.2015 rejecting the petitioner's statutory petition are hereby quashed. The respondents are directed to regularize the petitioner's period of absence from 17.04.2006 to 01.03.2010 in accordance with applicable rules, by adjusting available leave and treating the balance period as duty, without treating it as dies non. The petitioner shall be entitled to restoration of his seniority, promotion eligibility, pay and pension benefits, including arrears with interest at the rate of 6% per annum from the date of entitlement until the date of actual payment. The necessary consequential orders shall be issued by the respondents within a period of three months from the date of receipt of a copy of this judgment.

(SANDEEP MOUDGIL)
JUDGE

30.10.2025
anuradha

<i>Whether speaking/reasoned</i>	<i>:Yes/No</i>
<i>Whether reportable</i>	<i>:Yes/No</i>