

GAHC010047002023



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WA/174/2024

UNION OF INDIA AND 4 ORS.

REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, NEW DELHI-110001.

2: THE DIRECTOR GENERAL OF B.S.F.
10TH BLOCK
CGO COMPLEX
LODHI ROAD
NEW DELHI-3

3: THE INSPECTOR GENERAL
FRONTIER HEAD QUARTER
B.S.F. GUWAHATI-1
ASSAM

4: THE COMMANDANT
57BN
BSF
PRAHARI NAGARI
ARAI MILE
WEST GARO HILLS
TURA
MEGHALAYA

5: THE COMMANDANT
BSF TRANSIT CAMP
KAMAKHYA
GUWAHATI
ASSAM
PIN-78101

VERSUS

NO 134502953 CONSTABLE/COOK KOMAL B
S/O LATE GIRIJA PRASAD, R/O VILLAGE KUTUBPUR UJIYAR, P.O.
KORANTADIH, P.S- NARHI, DISTRICT - BALIA, UTTAR PRADESH- 277501.

Advocate for the Petitioner : MR. B CHAKRAVARTY

Advocate for the Respondent :

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

31.05.2024

(Vijay Bishnoi, CJ)

This writ appeal is filed by the appellants being aggrieved with the order dated 20.09.2022 passed by the learned Single Judge in WP(C) 7146/2015, whereby the writ petition filed by the present respondent has been allowed and the order dated 18.04.2015 dismissing the respondent from service, and the order dated 24.11.2015, by which the appeal filed by the respondent has been dismissed, are set aside.

The brief facts of the case are that the respondent, while working as a Constable (Cook) under the Border Security Force (BSF), availed leave from 04.10.2014 to 25.10.2014. Subsequently, his casual leave was converted into Earned Leave from 04.10.2014 to 08.11.2014 as, during the leave period, the mother of the respondent had expired.

It is the case of the appellants that after the Earned Leave period, i.e. 04.10.2014 to 08.11.2014 was over, the respondent did not report back to his place of posting and, therefore, a Court of Enquiry was constituted on 28.11.2014 against the respondent. Pursuant to the said Court of Enquiry, the respondent was discharged from service vide order dated 18.04.2015. Subsequently, the appeal preferred by the respondent against his

discharge order was also dismissed by the appellate authority.

The learned Single Judge, having considered the facts and circumstances of the case, has come to the conclusion that the procedures provided under the Border Security Force Rules, 1969, precisely, the procedures provided under Section 171 and 173 thereof had not been followed while conducting the Court of Enquiry against the respondent. While dealing with the allegation of "unauthorised absence" from duty levelled against the respondent, the learned Single Judge has observed that the respondent was not absent from duty without leave, but he overstayed the leave. Ultimately, the learned Single Judge has come to the conclusion that the services of the respondent had been dismissed without providing reasonable opportunity to him to defend himself. It is observed that the present case is *ex facie* violation of law. While observing so, the learned Single Judge has set aside the dismissal order dated 18.04.2015 and the order passed by the appellate authority dated 24.11.2015. The learned Single Judge has also issued a direction to reinstate the respondent in service forthwith and has made it clear that the respondent shall be entitled to notional benefit from the date of submission of the appeal, i.e. 20.07.2015.

Having heard the learned counsel for the parties and after going through the material available on record, we find that the mandatory procedure laid down under the relevant rules has not been followed by the appellants while dismissing the services of the respondent. Therefore, we do not find any illegality in the conclusion arrived at by the learned Single Judge in the impugned order. Hence, no case for interference is made out. Accordingly, the writ appeal is dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant